

Texas Register

Volume 15, Number 85, November 13, 1990

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

Governor-Appointments, executive orders, and proclamations

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

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

Proposed Sections-sections proposed for adoption

Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date.

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

Open Meetings-notices of open meetings

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

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

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

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



Texas Register Publications

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06/1/16
Susan Bailey
Richardson Junior High
Richardson ISD
7th Grade

Name: Susan Bailey

Grade: 7

School: Richardson Junior High, Richardson ISD



Chiho Nishioka
RICHARDSON JR. HIGH
7th Grade

Name: Chiho Nishioka

Grade: 7

School: Richardson Junior High, Richardson 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 October 15, 1990

To be a member of the **State Board of Vocational Nurse Examiners** for a term to expire September 6, 1995: Doris A. Parker, Route 1, Box 79K-7, Frankston, Texas 75763. Mrs. Parker will be replacing Adelia Miller of Tyler, whose term expired.

Appointments Made October 30, 1990

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1992: Leo L. Rodriguez, Jr., 3012 Laurie Lane, Edinburg, Texas 78539. Mr. Rodriguez will be replacing Tom Tiner of Spicewood, whose term expired.

To be chairman of the **Product Commercialization Advisory Board** for a term at the pleasure of the Governor: Thomas L. Whaley of Marshall.

To be a member of the **Nueces River Authority Board of Directors** for a term to expire February 1, 1995: Alvaro D. Saenz, 4322 Pecan Valley Drive, Corpus Christi, Texas 78413. Mr. Saenz will be filling the unexpired term of Daniel Martinez of Corpus Christi, who resigned.

To be a member of the **Governor's Committee For Disabled Persons** for a term to expire July 8, 1991 and at the pleasure of the Governor: Betty S. Neal, 520 West Vine, McAllen, Texas 78501-2147. Mrs. Neal will be replacing Gary Adrian of Austin, whose term expired.

To be a member of the **Governor's Committee For Disabled Persons** for a term to expire July 8, 1991 and at the pleasure of the Governor: Miles O'Loughlin, 2705 Teckla, Amarillo, Texas 79106. Mr. O'Loughlin will be replacing Alton B. Clark of Waco, whose term expired.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1992: Romeo M. Villareal, 103 Enfield, Edinburg, Texas 78539. Mr. Villareal will be replacing Benito Trevino, Jr. of Rio Grande City, whose term expired.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1991: Dr. William F. Bennett, Sr., 9 Brentwood Circle, Lubbock, Texas 79407-2160. Dr. Bennett will be replacing Dr. David Keoppe of Lubbock, who is deceased.

To be a member of the **State Seed and**

Plant Board for a term to expire October 6, 1992: Gary T. Ivey, Box 1090, Ralls, Texas 79357. Mr. Ivey is being reappointed.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1992: Charles Leamons, Route 3, Box 263A, Weimar, Texas 78962. Mr. Leamons is being reappointed.

To be a member of the **Teachers' Professional Practices Commission** for a term to expire August 31, 1991: Marilyn Adams, 801 Rock Creek Drive, Austin, Texas 78746. Mrs. Adams will be filling the unexpired term of Hazel Moye of McAllen, who resigned.

To be a member of the **Teachers' Professional Practices Commission** for a term to expire August 31, 1991: Glenda Judith Scarbrough, 306 South West 12th Street, Andrews, Texas 79714. Mrs. Scarbrough will be replacing Wendell Whittenburg of Sweetwater, whose term expired.

To be a member of the **Continuing Advisory Committee For Special Education** for a term to expire February 1, 1991: Bessie Mae Green, P.O. Box 8421, Levelland, Texas 79338. Ms. Green is being reappointed.

To be a member of the **Continuing Advisory Committee For Special Education** for a term to expire February 1, 1991: Michael J. Wiebe, Ph.D., 905 Hilton Place, Denton, Texas 76201. Dr. Wiebe is being reappointed to a new position.

To be a member of the **Continuing Advisory Committee For Special Education** for a term to expire February 1, 1991: Rhonda Corbell Gayle, 4812 Hetherington, Box 74911, The Colony, Texas 75056. Mrs. Gayle will be replacing Cecelia Rodriguez of Arlington.

To be a member of the **Continuing Advisory Committee For Special Education** for a term to expire February 1, 1991: Rita K. Klier, 212 Redmond Drive, College Station, Texas 77840. Mrs. Klier is being appointed to a vacant parent position.

To be a member of the **Continuing Advisory Committee For Special Education** for a term to expire February 1, 1991: Sara Gonzalez, 530 Dixon, Corpus Christi, Texas 78408. Mrs. Gonzales will be replacing Sylvia Ledezma of San Antonio.

To be a member of the **Continuing Advisory Committee For Special Education** for a term to expire February 1, 1991: Robert C. Murray, 8706 Mission Road, San Antonio, Texas 78214-3144. Mr. Murray is being reappointed.

To be a member of the **State Job Training Coordinating Council** for a term at the pleasure of the Governor: Mary Magdalen Zuloaga, 5701 Buming Tree, El Paso, Texas 79912. Mrs. Zuloaga will be filling the unexpired term of Reverend Johnny Bryant of Dallas, who resigned.

To be a member of the **Texas Board of Licensure For Nursing Home Administrators** for a term to expire January 31, 1993: Jack Sayre Weinblatt, M.D., 609 Fannin Loop, Temple, Texas 76501. Dr. Weinblatt will be filling the unexpired term of Dr. Roy Borrell of Houston, who resigned.

To be a member of the **Texas Industrialized Building Code Council** for a term to expire February 1, 1992: James Robert Hickman, 6601 Oxford, Lubbock, Texas 79413. Mr. Hickman will be filling the unexpired term of Don Tusha of Lubbock, who resigned.

To be a member of the **Texas National Research Laboratory Commission** for a term to expire February 1, 1993: J. Fred Bucy, P.O. Box 780929. Mr. Bucy will be filling the unexpired term of Morton H. Meyerson of Dallas, who resigned.

To be Chairman of the **Texas National Research Laboratory Commission** for a term at the pleasure of the Governor: J. Fred Bucy of Dallas.

Appointments Made October 31, 1990

To be a member of the **Educational Economic Policy Center Committee** for a term to expire June 1, 1992: William A. McKenzie, 1525 Elm Street, 26th Floor, Dallas, Texas 75201. Mr. McKenzie is being reappointed.

To be a member of the **Educational Economic Policy Center Committee** for a term to expire June 1, 1992: Jack Ladd, 550 West Texas, Midland, Texas 79705. Mr. Ladd is being reappointed.

To be a member of the **Educational Economic Policy Center Committee** for a term to expire June 1, 1992: John T. Cater, P.O. Box 2629, Houston, Texas 77252. Mr. Cater is being reappointed.

To be a member of the **Educational Economic Policy Center Committee** for a term to expire June 1, 1992: Louis A. Beecherl, Jr., 2911 Turtle Creek Boulevard, Suite 1080, Dallas, Texas 75219. Mr. Beecherl is being reappointed.

To be Criminal District Attorney of Calhoun County until the next general election and until his successor shall be duly elected and qualified: John D. (Jack) Whitlow, P.O. Box 32, Port Lavaca, Texas 77979. Mr. Whitlow will be replacing Mark Kelly of Port Lavaca, who resigned.

To be a member of the Southern Regional Education Board for a term to expire June 30, 1994: Mike Toomey, 3603 Pinnacle Road, Austin, Texas 78746. Mr. Toomey will be replacing Max Sherman of Austin, whose term expired.

To be a member of the Gulf Coast Waste Disposal Authority for a term to expire August 31, 1992: Oscar G. Weir, 10022 Pinehurst, Baytown, Texas 77521. Mr. Weir will be replacing Kathleen Vaughn of Baytown, who resigned.

To be a member of the Coastal Water Authority for a term to expire March 31, 1992: Buster E. French, P.O. Box 345, Dayton, Texas 77535. Mr. French is being reappointed.

To be a member of the Teachers' Professional Practices Commission for a term to expire August 31, 1991: Dr. Marsha W. Lilly, 3147 Chesterfield Lane, Stafford, Texas 77477. Dr. Lilly will be replacing

Michael Gary Hardin of Bedford, whose term expired.

To be a member of the Teachers' Professional Practices Commission for a term to expire August 31, 1991: Rosa D. Cotner Lavender, 151 Crockett Drive, Kerrville, Texas 77028. Mrs. Lavender will be replacing Robert Cecil Gore of Rockport, who is no longer eligible.

To be a member of the Teachers' Professional Practices Commission for a term to expire August 31, 1992: Robert William Caster, 217 Lisa Lane, Palestine, Texas 75801. Mr. Caster is being reappointed.

To be a member of the Advisory Council on Community Affairs for a term to expire January 31, 1992: Winfree L. Brown, 1400 Murray, Midland, Texas 79701. Mr. Brown will be replacing Barbara Sinclair of Rockwall, whose term expired.

To be a member of the Advisory Council on Community Affairs for a term to expire January 31, 1992: Joseph Allen Atkison, Jr., 1107 Folts Avenue, Austin, Texas 78704. Mr. Atkison will be replacing George Rice of Nacogdoches, whose term expired.

To be a member of the State Board of Vocational Nurse Examiners for a term to expire September 6, 1995: Ruth Leopard,

226 Highview, San Antonio, Texas 78228. Mrs. Leopard will be replacing Linda Savannah of Fort Worth, whose term expired.

To be a member of the State Board of Vocational Nurse Examiners for a term to expire September 6, 1995: Connie M. Davis, 7529 Nutwood Place, Fort Worth, Texas 76133. Mrs. Davis will be replacing Suzanne Wilkinson of Pampa, whose term expired.

To be a member of the Governing Board of the Texas School For the Deaf for a term to expire January 31, 1993: Trena Lenell Baxley, 511 First Street, Livingston, Texas 77351. Ms. Baxley will be filling the unexpired term of Dr. Kenneth Altshuler of Dallas, who resigned.

To be a member of the Texas Low-Level Radioactive Waste Disposal Authority for a term to expire February 1, 1993: Tom Ingram, 11 Saddleclub Drive, Midland, Texas 79705. Mr. Ingram will be filling the unexpired term of James P. Smothermon of Austin, who resigned.

Issued in Austin, Texas, on November 2, 1990

TRD-9011687

William P. Clements, Jr.
Governor of Texas



Executive Orders

WPC 90-9

RELATING TO EMERGENCY MANAGEMENT

WHEREAS, the Legislature of the State of Texas has heretofore enacted the Texas Disaster Act of 1975, Chapter 418 et seq. of Vernon's Texas Codes Annotated to:

- (1) Reduce vulnerability of people and communities of this state to damage, injury, loss of life and property resulting from natural or manmade catastrophes, riots, or hostile military or paramilitary action; and
- (2) Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by disaster;
- (3) Provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons affected by disaster;
- (4) Clarify and strengthen the roles of the Governor, state agencies and local governments in the prevention of, preparation for, response to, and recovery from disasters;
- (5) Authorize and provide for cooperation and coordination of activities relating to hazard mitigation, emergency preparedness, incident response and disaster recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (6) Provide a comprehensive emergency management system for Texas that is a coordinated effort to make the best possible use of existing organizations and resources within government and industry, and includes provisions for actions to be taken at all levels of government before, during, and after the onset of an emergency situation;
- (7) Assist in the prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and
- (8) Provide the authority and mechanism to respond to an energy emergency; and,

WHEREAS, under §418.013, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, the Governor is expressly authorized to establish by executive order an EMERGENCY MANAGEMENT COUNCIL composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups to advise and assist him in all matters relating to disaster preparedness, emergency services, energy emergencies, and disaster recovery; and,

WHEREAS, FURTHER UNDER §418.041, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, a DIVISION OF EMERGENCY MANAGEMENT is established in the Office of the Governor and the Director of the DIVISION OF EMERGENCY MANAGEMENT is to be appointed by and serve at the pleasure of the Governor; and,

WHEREAS, with the aid and assistance of the EMERGENCY MANAGEMENT COUNCIL and DIVISION OF EMERGENCY MANAGEMENT, the Governor may recommend that cities, counties and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with those developed at the state level;

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me do hereby create and establish the EMERGENCY MANAGEMENT COUNCIL, to be composed of the Chief Executive Officers of the following state agencies, boards, commissions and volunteer groups: Adjutant General's Department, Texas Department of Aviation, Texas Department of Agriculture, Texas Air Control Board, Texas Attorney General's Office, State Auditor, The Banking Department of Texas, Comptroller of Public Accounts, State Purchasing and General Services Commission, Texas Education Agency, Texas Employment Commission, Texas Department of Health, Texas Department of Highways and Public Transportation, General Land Office, State Board of Insurance, State Aircraft Pooling Board, Texas Department of Commerce, Texas Department of Mental Health and Mental Retardation, Texas Parks and Wildlife Department, Texas Department of Public Safety, Public Utility Commission, Texas Department of Human Services, Railroad Commission of Texas, Texas Water Commission, Texas Forest Service, Governor's Division of Emergency Management, Texas Department of Community Affairs, American Red Cross, Texas Engineering Extension Service.

The specific duties and responsibilities of each member of this group shall be as designated in the State Emergency Management Plan and Annexes thereto. Each member of the group may designate a member of his staff to represent him on the COUNCIL.

I further hereby designate the Director of the Texas Department of Public Safety to serve as Chairman of the COUNCIL and as Director of the DIVISION OF EMERGENCY MANAGEMENT of the Governor's Office. He shall be my designated agent to exercise the powers granted to me under the Texas Disaster Act of 1975 in the administration and supervision of the Act including, but not limited to, the power to accept from the federal government, or any public or private agency or individual, any offer of services, equipment, supplies, materials, or funds as gifts, grants, or loans for the purposes of civil defense or disaster relief and may dispense such gifts, grants, or loans for the purposes for which they are made without further authorization other than as contained herein. He shall establish emergency operations areas to be known as Disaster Districts which shall correspond to the boundaries of the Texas Highway Patrol Districts and Sub-Districts and shall arrange for each Disaster District to be composed of representatives of the state agencies, boards and commissions having membership on the COUNCIL. The Highway Patrol Commanding Officer of each Highway Patrol District or Sub-District shall serve as Chairman of the Disaster District Committee and report to the Director on matters relating to disasters and emergencies. The Chairman shall be assisted by the COUNCIL representatives assigned to that DISTRICT who shall provide guidance, counsel and administrative support as may be required.

The COUNCIL is hereby authorized to issue such directives as may be necessary to effectuate the purpose of the Texas Disaster Act of 1975, as amended, and is further authorized and empowered to exercise the specific powers enumerated in the Act.

Further, in accordance with §418.102 and §418.103 Texas Disaster Act of 1975, Vernon's Texas Codes Annotated and published rules of the Division of Emergency Management, I hereby designate the Mayor of each municipal corporation and the County Judge of each county in the

state as the Emergency Management Director for each such political subdivision. The County Judge and Mayor serve as the Governor's designated agents in the administration and supervision of the Texas Disaster Act of 1975, and may exercise the powers, on an appropriate local scale, granted the Governor therein. The Mayor and County Judge may each designate an Emergency Management Coordinator who shall serve as assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

By the authority vested in me under §418.104, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, I further hereby authorize each political subdivision of the state to establish in the county in which they are sited, interjurisdictional agencies by intergovernmental agreement, supported as needed by local City Ordinance or Commissioner's Court Order, in cooperation and coordination with the DIVISION OF EMERGENCY MANAGEMENT of the Governor's Office. In compliance with §418.101, Vernon's Texas Codes Annotated, the presiding officer of each political subdivision shall promptly notify the DIVISION OF EMERGENCY MANAGEMENT of the manner in which it is providing or securing an emergency management program and the person designated to head that program.

This Executive Order repeals Executive Order WPC-87-6a, and shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

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

TRD-9011678 William P. Clements, Jr.
Governor of Texas



WPC 90-10

RELATING TO ELECTRONIC TRANSMISSION IN THE VOTING PROCESS

WHEREAS, the Secretary of State of Texas has been contacted by the Federal Voting Assistance Program of the Office of the Secretary of Defense for the purpose of informing the State that the Presidential Designee under the Uniformed and Overseas Citizens Absentee Voting Act, 42 United States Code, 1973ff, has authorized electronic transmissions of election related materials including absentee ballots; and,

WHEREAS, the Presidential Designee recognizes emergency conditions related to Operation Desert Shield; and,

WHEREAS, this authorization is for the limited period of the November 6, 1990 General Election; and,

WHEREAS, the Secretary of State has consulted with the State Chairmen of the Democratic and Republican Parties and has received their endorsement of this attempt to provide access to the ballot for the men and women participating in this operation; and,

WHEREAS, the Secretary of State has attempted to consult with the State Chairman of the Libertarian Party;

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me by Texas Disaster Act of 1975, as amended and codified at **Texas Government Code**, Chapter 418, do hereby certify that recent events in the Middle East, which have required the immediate assignment of thousands of American military personnel who reside in Texas to a military operation known as Desert Shield, constitute a statewide disaster, for the reason that these men and women may be injured by a deprivation of their constitutional right to vote in the November 6, 1990 General Election.

I proclaim the existence of such disaster and direct that all necessary measures be implemented to meet that disaster including the use of electronic transmission in the voting process. As provided in the **Texas Government Code**, §418.016 all rules and regulations that may inhibit or prevent prompt response to this disaster are suspended for the duration of the incident.

The Secretary of State is hereby directed to notify the appropriate county officials and to prescribe such rules, regulations or directives as necessary to protect the integrity of the military ballot while providing for the systematic and orderly transmission of the ballots in order to be received for the General Election.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

This Executive Order shall be effective immediately and shall remain in full force and effect for a period of thirty (30) days.

Issued in Austin, Texas, on October 23, 1990

TRD-9011681 William P. Clements, Jr.
Governor of Texas



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.

Open Records Decisions

ORD-570 (RQ-2120). Request from Gibson D. Lewis Speaker, House of Representatives, Austin, concerning whether correspondence files of the Speaker of the House are excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. A written or otherwise recorded communication from a citizen of this state received by a member of the legislature or the lieutenant governor in his official capacity is excepted from required public disclosure by the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1), and the Government Code, §306.004.

TRD-9011695

◆ ◆ ◆
ORD-571 (RQ-2112). Request from Ann Manning McWhorter, Cobb, and Johnson, Attorney for Lubbock I.S.D., Lubbock, and Rosalinda Garcia, Assistant County Attorney, Harris County, Houston, concerning whether the Open Records Act gives members of the public a right of access to a

governmental body's computer to inspect records.

Summary of Decision. The Open Records Act does not give members of the public a right to use a governmental body's computer to inspect records as an alternative to receiving a computer printout.

TRD-9011696

◆ ◆ ◆
ORD-572 (RQ-1971). Request from Fred G. Rodriguez, Bexar County Criminal District Attorney, San Antonio, concerning whether information about the release of arrestees on personal bond is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. The Bexar County Personal Bond Program is a governmental body and not within the judicial exception found in the Open Records Act, §2(1)(G). However in conducting investigations and preparing reports pursuant to Texas Civil Statutes, Article 17.42, the Personal Bond Program functions as an arm of the court. The information gathered and the reports prepared pursuant to Article 17.42 are,

therefore, records of the judiciary and not subject to the Open Records Act. Access to this information is within the discretion of the courts.

TRD-9011697

◆ ◆ ◆
ORD-573 (RQ-1967). Request from A. W. Pogue, Commissioner of Insurance, State Board of Insurance, Austin, concerning whether a notice of cancellation of appointment of an agent of an insurance company is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. The evidentiary privilege accorded information submitted to the Insurance Commissioner pursuant to §11 of Article 21.07-1 of the Insurance Code does not render such information confidential for purposes of the Open Records Act, Texas Civil Statutes, Article 6252-17a. Therefore, the requested notices of cancellation of appointment must be disclosed.

TRD-9011698

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 19. EDUCATION

Part VI. Foundation School Fund Budget Committee

Chapter 201. Practice and Procedure

- 19 TAC §§201.1, 201.5, 201.9,
201.13, 201.17, 201.21, 201.25,
201.29

The Foundation School Fund Budget Committee adopts on an emergency basis §§201.1, 201.5, 201.9, 201.13, 201.17, 201.21, 201.25, and 201.29, concerning practice and procedure before the Foundation School Fund Budget Committee.

The sections state the methods of practice and procedure to be followed by the Foundation School Fund Budget Committee.

The sections adopted on an emergency basis are being contemporaneously proposed for comment in this issue of the *Texas Register*.

The sections are adopted on an emergency basis to immediately ensure that an orderly procedure for submitting information and testimony to the Foundation School Fund Budget Committee is established.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 252-13a, which provide an agency with rule making authority; and the Texas Education Code, §16.256, which specifically directs the Foundation School Fund Budget Committee to adopt rules to carry out its functions.

§201.1. Purpose. The purpose of these rules is to provide for an orderly and efficient system of procedure before the Foundation School Fund Budget Committee in order to receive information, reports, testimony, and public comment pertinent to the Foundation School Fund Budget Committee's duties under Texas Education Code, §16.203 and §16.256.

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

C.E.I.—The Cost of Education Index as defined by the Texas Education Code, §16.256(e)(2).

Committee—The Foundation School Fund Budget Committee.

Designees—Those individuals representing a committee member.

Hearing—A proceeding at which testimony is taken.

LEB—The Legislative Education Board.

LBB—The Legislative Budget Board.
Meeting—A meeting of the committee subject to the Open Meetings Act, Texas Civil Statutes, Article 252-17.

TEA—The Texas Education Agency.

§201.9. Filing of Documents.

(a) Documents. All documents relating to any matter pending before the committee shall be filed with the Office of Budget and Planning of the Governor's office.

(1) Documents may be filed by mail.

(2) Documents shall be deemed to have been filed when received.

(b) Mandatory filings.

(1) The LEB/LBB shall file with the committee all recommendations and all written and oral testimony and reports used or reviewed in their deliberations under the Texas Education Code, §16.008 and §16.203.

(2) The committee may request from TEA, LBB, and LEB prior to November 1 of each even-numbered year, estimates of the annual costs of the Foundation School Program under existing state law for the succeeding biennium. The estimates shall be based on projected student counts and projected tax rates for the effective period. The methodology and assumptions used in computing the estimates of costs of the Foundation School Program may also be requested. Unless requested otherwise, estimates shall be filed no later than October 15th.

(c) Permissive filings. Any other person interested in the committee's rulemaking may file any information pertinent to a proposed rule.

§201.13. Organization of the Committee.

(a) The chair of the committee shall be the governor.

(b) The vice-chair of the committee shall be the lieutenant governor.

(c) The committee shall designate a clerk who shall be responsible for the maintenance of all committee records and who

shall serve as committee liaison to the secretary of state in accordance with Texas Civil Statutes, Article 6252-13a.

(d) Any two members of the committee constitutes a quorum.

(e) Any action of the committee requires the affirmative vote of at least two members.

(f) The meetings of the committee may be called by the chair.

(g) The meetings of the committee may be called by the vice-chair at the request of any other committee member.

(h) Notice of any meeting shall be posted in accordance with Texas Civil Statutes, Article 6252-17.

§201.17. Place and Nature of Hearings. All hearings conducted in any proceedings shall be open to the public. All hearings shall be held in Austin, unless for good and sufficient cause, the committee shall designate another place of hearing in the interest of the public.

§201.21. Designees.

(a) Each member of the committee may name a designee to represent that member in any hearing to take public testimony with regard to a proposed rule.

(b) At any hearing at which public testimony with regard to any proposed rule is given, a quorum of committee members or their designees is not required.

(c) The committee members or their designees may call upon any interested person to present testimony.

(d) The designees shall have authority to receive testimony and examine interested persons.

(e) Any hearing may be recessed from day to day.

(f) If a designee is unable to continue presiding over any hearing at any time before the end of the hearing, another designee may be appointed who will perform any function remaining to be performed without the necessity of repeating any previous proceedings.

(g) At the conclusion of the hearings the designees shall prepare a summary of the testimony received and submit it to the committee.

§201.25. Proposed Rules. The committee shall accept the recommendations of the LEB/LBB as the committee's proposed rules. Further the committee hereby empowers the committee clerk to prepare and deliver or cause to be delivered the said proposed rules to the *Texas Register* for publication.

§201.29. Reporters and Transcripts. All proceedings will be either recorded or transcribed. When requested, a transcript of the proceedings will be made available to an interested person making such request. The cost of such transcript will be borne by said interested person.

Issued in Austin, Texas on October 31, 1990.

TRD-9011850 Brian L. Wilson
Committee Clerk, Budget
and Planning Office
Office of the Governor

Effective date: November 6, 1990

Expiration date: March 6, 1991

For further information, please call: (512) 463-1788



TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.58

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended §7.58, for a 60-day period effective November 10, 1990. The text of amended §7.58 was originally published in the July 24, 1990, issue of the *Texas Register* (15 TexReg 4150).

Issued in Austin, Texas, on November 6, 1990.

TRD-9011785 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 10, 1990

Expiration date: January 9, 1991

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



Chapter 27. State Fire Marshal

Subchapter A. Fire Extin- guisher Rules

• 28 TAC §27.16

The State Board of Insurance is renewing the effectiveness of the emergency adoption of

amended §27.16, for a 60-day period effective November 14, 1990. The text of amended §27.16 was originally published in the July 24, 1990, issue of the *Texas Register* (15 TexReg 4150).

Issued in Austin, Texas, on November 6, 1990.

TRD-9011786 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 14, 1990

Expiration date: January 13, 1991

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



Subchapter B. Fire Alarm Rules

• 28 TAC §27.215

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended §27.215, for a 60-day period effective November 14, 1990. The text of amended §27.215 was originally published in the July 24, 1990, issue of the *Texas Register* (15 TexReg 4153).

Issued in Austin, Texas, on November 6, 1990.

TRD-9011787 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 14, 1990

Expiration date: January 31, 1991

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



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 4. AGRICULTURE

Part III. Texas Feed and Fertilizer Control Service

Chapter 61. Feed

General Provisions

• 4 TAC §61.1

The Texas Feed and Fertilizer Control Service, Office of the Texas State Chemist, proposes an amendment to §61.1, concerning definitions. The amendment will clarify the meaning of the terms "toxin" and "chemical adulterant" found in §141.002(c)(2) the Texas Commercial Feed Control Act (Act).

George W. Latimer, Jr., interim state chemist, 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. Latimer 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 to permit the sale of whole grain and seed subject to the law when the level of toxin and/or chemical adulterant is below the level generally recognized as safe or at or below a maximum level approved by the service. 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 Dr. George W. Latimer, Jr., Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendment is proposed under the Texas Agricultural Code, Title 4, Chapter 61 §114.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules as necessary for the enforcement of the Act including rules defining and establishing minimum standards for commercial feeds.

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

Chemical adulterant—Any compound—natural or synthetic—possessing little or no intrinsic nutritional value, avoidably present at levels inconsistent with its generally accepted use in a feed or unavoidably present at levels in

a feed above those authorized by the service.

Toxin—Any compound causing adverse biological effects including, but not limited to, poisons, carcinogens or mutagens, produced by an organism avoidably present at any level or which is unavoidably present at levels in a feed above those authorized by the service.

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

Issued in College Station, Texas, on November 1, 1990

TRD-9011750

George W. Latimer, Jr.
Interim State Chemist
Office of the Texas State Chemist

Earliest possible date of adoption: December 14, 1990

For further information, please call: (409) 845-1121

Labeling

• 4 TAC §61.22

The Texas Feed and Fertilizer Control Service, Office of the Texas State Chemist, proposes an amendment to §61.22, concerning the exemption of whole kernel feed grade grain. The section is being amended to comply with the Texas Agricultural Code §141.002(C)(2), which requires the labeling for protein, fat, and fiber when the grain is mechanically mixed with other whole kernel feed-grade grain.

George W. Latimer Jr., interim state chemist, 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. Latimer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an economic relief to those selling whole kernel corn subject to the law since those selling whole kernel corn not subject to the law do not have guarantee these items. 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 Dr. George W. Latimer, Jr., Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendment is proposed under the Texas Agricultural Code, Title 4, Chapter 61, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules as necessary for the enforcement of the Texas Commercial Feed Control Act including rules defining and establishing minimum standards for commercial feeds.

§61.22. Labeling of Customer-Formula Feed. Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this title on the principal display panel of the product with the following general format, unless otherwise specifically provided:

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

(4) the guaranteed analysis of the feed:

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

(E) exemptions.

(i)-(iv) (No change.)

(v) Whole feed-grain, unprocessed in any manner save mechanical blending or mixing with other batches of the same whole kernel feed-grade grain, need not provide guarantees for protein, fat, and fiber.

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

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

Issued in College Station, Texas, on November 1, 1990

TRD-9011751

George W. Latimer, Jr.
Interim State Chemist
Office of the Texas State Chemist

Earliest possible date of adoption: December 14, 1990

For further information, please call: (409) 845-1121

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 178. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §178.10

The Texas Department of Commerce (Commerce) proposes an amendment to §178.10, concerning the allocation of community development block grant (CDBG) nonentitlement area funds under the Texas Community Development Program (TCDP). The proposed amendment adds racetracks and prisons as ineligible activities and prohibits an otherwise eligible city or county from submitting an application or receiving funding under the TCDP until all outstanding findings on Texas Rental Rehabilitation contracts are resolved.

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

Mr. Anderson, 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 ensuring that CDBG funds are used to the greatest extent possible to benefit persons of low and moderate income. 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 Bruce W. Anderson, General Counsel, P.O. Box 12728, Austin, Texas within 30 days after the date of publication in the *Texas Register*.

The amendment is proposed under the Texas Government Code, Chapter 481, which provides Commerce with the authority to allocate CDBG nonentitlement area funds to eligible cities and counties according to department rules.

§178.10. General Provisions.

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

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a), (42 United States Code, §5301 et seq.) is ineligible for funding under the Texas Community Development Program. Specific ineligible activities include, but are not limited to, construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the housing development fund, the financing of political activities; purchases of construction equipment; income pay-

ments, such as housing allowances; most operation and maintenance expenses; [and] pre-contract costs, such as application preparation fees paid prior to submittal of the application prisons; and racetracks.

(f)-(g) (No change.)

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the Texas Community Development Program;

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

(5) resolve all outstanding compliance and audit findings related to existing and prior Texas Community Development Program and Texas Rental Rehabilitation Program contracts.

(i)-(m) (No change.)

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

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

TRD-9011746

William D. Taylor
Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: December 14, 1990

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

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

Docketing and Notice

• 16 TAC §21.24

The Public Utility Commission of Texas proposes an amendment to §21.24, concerning the type of notice required in certain licensing proceedings. The proposed amendment would require applicants to provide notice by certified mail to landowners directly affected by an application for a certificate of public convenience and necessity. The commission further proposes to redesignate current §21.24(c)(3), without change, as new §21.24(c)(4).

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

Mr. Hunter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased assurance that affected landowners will be made aware of pending applications for pub-

lic convenience and necessity. There will be no effect on small businesses. The anticipated economic cost to utilities required to comply with the section as proposed is expected to be minimal.

Mr. Hunter has further determined that for each year of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal amendment (11 copies) may be submitted to Mary Ross McDonald, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a) which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§21.24. Contents of Notice for Licensing Proceedings.

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

(c) Applicant notice in licensing proceedings. In all licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways.

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

(3) Applicant shall on the day of or before filing its application, mail notice of its application to all owners of land which will be directly affected by the requested certificate. The notice shall be made by certified mail, return receipt requested, and shall contain a clear and conspicuous statement that the owner's land will be directly affected if the certificate is granted, as well as all information required in paragraph (1) of this subsection.

(4)[(3)] The commission may require the applicant to mail or deliver notice to other affected persons or agencies.

(d) (No change.)

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

Issued in Austin, Texas, on November 2, 1990

TRD-9011692

Mary Ross McDonald
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 458-0100

Chapter 23. Substantive Rules

Certification

• 16 TAC §23.31

The Public Utility Commission of Texas proposes an amendment to §23.31, concerning definition of the scope of notice-of-intent proceedings filed pursuant to the Public Utility Regulatory Act, §54(d) Texas Revised Civil Statutes, Article 1446(c) (Supplement 1990)(PURA). The PURA, §54(d), requires electric utilities to file a notice of intent to apply for a certificate for a generating plant and obtain approval of such notice prior to filing an application for a certificate of convenience and necessity for the plant. The proposed new subsection states the purpose of notice-of-intent proceedings and the standards to be applied.

Bret J. Slocum, deputy general counsel, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Slocum also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased efficiency in the processing of notice-of-intent filings and reduced transaction costs related to the processing of such filings. 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.

Mr. Slocum also has determined that for each year of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (11 copies) may be submitted to Polly McDonald, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 232S, Austin, Texas 78757. Comments should be submitted within 30 days after publication of the proposed section.

The amendment is proposed under PURA, §16(a), which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

§23.31. Certification Criteria.

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

(h) Notice-of-intent filings. The purpose of a notice-of-intent (NOI) proceeding is to decide the appropriateness of a proposed generating plant in light of the alternatives before a utility commits or expends substantial resources on the proposed plant. The purpose of an NOI proceeding is not to decide the specific site or site facilities, or whether the proposed generating plant is the best and most economical choice of technology available, because those issues will be decided in the subsequent certification proceeding in the event that the NOI is approved. The word "plant," when used

in this subsection, includes the addition of a generating unit.

(1) Commission review. The commission will review an NOI filing and all record evidence to decide the appropriateness of the proposed generating plant. The commission will approve the NOI if it decides that the proposed generating plant is feasible and should be given further consideration in light of the alternatives. Approval of the NOI thus allows the utility to apply for certification of the proposed generating plant, but does not imply that the plant is the best alternative available to the utility.

(2) Standards. The commission will apply the standards in this paragraph in reviewing a utility's NOI filing, which must include the information required in the commission's application to enable the commission to decide the appropriateness of the proposed generating plant.

(A) Finality of plans. A utility should file an NOI upon deciding that it should construct a new generating plant. The utility's plans must be specific enough for the proposed plant to be compared with alternatives, but the plans should not be final. In particular, in the NOI the utility need not propose a specific site for a generating plant.

(B) Need. The utility must show that the proposed generating plant is compatible with the commission's most recent long-term load forecast. Such compatibility includes consideration of any recent data that materially affects the forecast.

(C) Alternatives. The utility must show that it has considered the advantages and disadvantages of the proposed plant and a broad range of alternatives to it. At a minimum, the following alternatives must be considered:

(i) increasing the capacity or efficiency of existing generation, transmission, distribution facilities;

(ii) extending the life of existing generating capacity;

(iii) purchase of all or a portion of an existing generating plant;

(iv) constructing a generating plant employing technologies or fuels different from those of the proposed generating plant;

(v) purchasing power from other utilities;

(vi) purchasing power from qualifying facilities as defined in §23.66(a) of this title (relating to Arrangements Between Qualifying Facilities and Electric Utilities);

(vii) conservation and load management;

(viii) renewable resources; and

(ix) joint ownership of a new generating plant.

(D) Analysis of alternatives. The utility must show that it has adequately considered the alternatives to the proposed plant that, after an initial consideration of a broad range of alternatives, appear to be the feasible alternatives worthy of further study. At a minimum, adequate consideration includes an assessment of the following factors for each feasible alternative:

(i) availability;

(ii) cost of the alternative and any related electrical facilities (including operating capital and environmental costs);

(iii) reliability;

(iv) risks; and

(v) financing requirements.

(E) Financing. The utility must show that it can finance the proposed generating plant without unduly impairing its financial condition.

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 November 2, 1990

TRD-9011693

Mary Ross McDonald
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 458-0100

Quality of Service

• 16 TAC §23.61

The Public Utility Commission of Texas proposes an amendment to §23.61, concerning the definition of local exchange service. The proposed amendment eliminates the current reference to "local exchange tariffs" and more clearly states the commission's long-standing position that the provision of dedicated connections between points within an exchange—either between customer locations or between customer locations and the facilities of interexchange carriers—does not constitute the provision of local exchange service.

Susan M. Hafeli, assistant general counsel, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hafell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the status of entities that provide various telecommunications services. There will be no effect on small businesses. The anticipated economic cost to utilities required to comply with the section as proposed is expected to be minimal.

Ms. Hafell also has determined that for each of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposed amendment (11 copies) may be submitted to Mary Ross McDonald, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and to enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.61. Telephone Utilities.

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

(1)-(17) (No change.)

(18) Local exchange service—Telecommunications service consisting of the switching functions that establish connections on a call-by-call basis between customer access lines of two or more customers within a local calling area or between customer access lines and the facilities of interexchange carriers. The provision or use of shared tenant services, private networks, virtual private network services, or services excluded from the commission's jurisdiction by the Public Utility Regulatory Act, §3(c)(2)(A), shall not be considered local exchange service. [provided within service areas in accordance with the local exchange tariffs. It includes the use of exchange facilities required to establish connections between customer access lines within the exchange and between customer access lines and the long distance facilities serving the exchange. Local exchange service does not include use or provision of pay telephones registered in 47 Code under Federal Regulations, Part 68.]

(19)-(36) (No change.)

(b)-(m) (No change.)

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

Issued in Austin, Texas, on November 2, 1990

TRD-9011694

Mary Ross McDonald
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption: December

14, 1990

For further information, please call: (512) 458-0100

Part IV. Texas Motor Vehicle Commission

Chapter 107. Warranty Performance Obligations

• 16 TAC §107.2 §107.8

The Texas Motor Vehicle Commission proposes amendments to §107.2 and §107.8, concerning decisions made by the commission in lemon law complaints filed by lessees. Specifically, the amendments provide what information a lessee is required to submit to the commission in pursuing a lemon law complaint and a method of calculating the purchase price of a leased vehicle and the reasonable allowance to be deducted therefrom when the commission enters a repurchase order in lemon law cases. The adoption of the section will enable the commission to provide consumers with important information in determining how the lemon law will apply to their complaint, and will result in the more expeditious processing and disposition of lemon law cases involving leased vehicles.

Russell Harding, executive director of the commission, 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.

Pursuant to Senate Bill 612, Chapter 845, Mr. Harding has determined that for each year of the first five years the sections are in effect, there will be no impact on local employment.

Mr. Harding also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the establishment and clarification of a fair and equitable method for calculating the repurchase price in lemon law cases involving leased vehicles, and establishment of a formula to calculate reasonable allowance for use in cases where the commission orders a repurchase of a leased vehicle under the lemon law. 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 should be submitted in writing by December 14, 1990, to Russell Harding, Executive Director, Texas Motor Vehicle Commission, P.O. Box 2293, Austin, Texas 78768-2293.

The amendments are proposed under Texas Civil Statutes, Article 4413(36), §6.07(e), which provide the commission with the authority to adopt rules for the enforcement and implementation of the Texas Motor Vehicle Commission Code, §6.07.

§107.2. Filing of Complaints.

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

(c) Complaints must provide the following information:

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

(4) name and address of dealer, or other person, from whom vehicle was purchased or leased, including the name and address of the current lessor, if applicable [, and with respect to leased vehicles, written consent of owner of vehicle to lemon law action must be provided];

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

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

§107.8. Decisions. Any decisions by the commission and recommended decision by a hearing officer shall give effect to the presumptions provided in the Texas Motor Vehicle Commission Code, §6.07(d), where applicable.

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

(5) Where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by him to the lessor under the terms of the lease; and

(ii) all sums previously paid by him to the lessor in connection with entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other applicable governmental fees.

(B) The lessor shall receive the total of:

(i) the actual price paid for the vehicle by the original lessor; plus

(ii) an additional 5.0% of such purchase price;

(iii) provided, however that a credit, reflecting all of the payments made by the lessee to the lessor, shall be deducted from the actual purchase price which the manufacturer is required to pay the lessor, under clause (i) of this subparagraph.

(C) When the commission orders a manufacturer to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph above. The lessor shall transfer title of the vehicle to the manufacturer, as necessary in order to effectuate the lessee's rights under this section. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interests may appear. The refund to the lessee under subparagraph (A) of this paragraph above shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in the current paragraph (4) of this section, using the sum of subparagraph (A)(i) and (ii) of this paragraph as the applicable purchase price.

(6)(5) In any award in favor of a complainant, the commission may require the dealer involved to reimburse the [complainant] owner, lienholder, manufacturer, converter, or distributor for the cost of any accessories, equipment, or extended service policies sold by the dealer and which were not included in the original price of the vehicle as delivered to the dealer by the manufacturer.

(7)(6) If it is found by the commission that a complainant's vehicle does not qualify for replacement or repurchase, then the commission shall enter an order dismissing the complaint insofar as relief under the lemon law is concerned. However, the commission may enter an order in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's [or], distributor's, or converter's warranty obligations.

(8) (No change.)

(9) [(7)] The commission will issue a written order in each case in which a hearing is held and a copy of the order will be sent to all parties.

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 November 1, 1990.

TRD-9011634

Russell Harding
Executive Director
Texas Motor Vehicle
Commission

Proposed date of adoption: January 1, 1991

For further information, please call: (512) 476-3618

TITLE 19. EDUCATION

Part VI. Foundation School Fund Budget Committee

Chapter 201. Practice and Procedure

- 19 TAC §§201.1, 201.5, 201.9, 201.13, 201.17, 201.21, 201.25, 201.29

(Editor's Note: The Foundation School Fund Budget Committee 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 Foundation School Fund Budget Committee proposes new §§201.1, 201.5, 201.9, 201.13, 201.17, 201.21, 201.25, and 201.29, concerning practice and procedure before the Foundation School Fund Budget Committee.

The new sections are proposed to establish methods of practice and procedure to be followed by the Foundation School Fund Budget Committee as well as ensuring that an orderly procedure for submitting information and testimony to the Foundation School Fund Budget Committee is established.

Brian L. Wilson, committee clerk, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Wilson has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide government entities and interested person with a clarification of the procedure for submitting information and testimony to the Foundation School Fund Budget Committee. 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 Mr. Wilson, Committee Clerk, Senior budget Analyst, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711.

The new sections are proposed under Civil Statutes, Article 6252-13a, which provide an agency with rule making authority; and the Texas Education Code §15.256, which specifically directs the Foundation School Fund Budget Committee to adopt rules to carry out its functions.

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 October 31, 1990.

TRD-9011849

Brian L. Wilson
Committee Clerk
Budget and Planning
Office of the Governor

Proposed date of adoption: December 20, 1990

For further information, please call: (512) 463-1778

Chapter 203. Education Index for Public Education

- 19 TAC §§203.1, 203.5, 203.10, 203.15, 203.20, 203.25, 203.30

The Foundation School Budget Committee (FSFBC) proposes new §§203.1, 203.5, 203.10, 203.15, 203.20, 203.25, and 203.30, concerning the cost of education index for public education for the 1991-1992 and 1992-1993 school years.

The new sections establish a formula for the calculation of each public school district's cost of education index which will be used to adjust the basic allotment used by the Central Education Agency in determining each district's state aid. The cost of education index is also an adjustment in the weighted student count which is used in each district's guaranteed yield calculation.

Lynn Moak, deputy commissioner for research and information, Texas Education Agency, has determined that for the first two-year period the proposed sections are in effect, there will be the following fiscal implications as a result of enforcing or administering the sections. For fiscal year 1992 there will be an estimated additional cost for state and local government of \$306 million. For fiscal year 1993 there will be an estimated increase in revenue for state and local government of \$560 million. The rule expires at the end of the 1992-1993 school year. There is no effect on small businesses.

Brian Wilson, committee clerk, has determined that for each year of the two years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to encourage efficiency and to adjust the allocation of state aid to public school districts for factors beyond the control of school districts. There is no anticipated additional economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mr. Wilson, Committee Clerk, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, §16.203(c) and §16.256, which require the Foundation School Fund Budget Committee to adopt a cost of education index beginning with the 1991-1992 school year.

§203.1. General Provisions. This rule establishes a formula for the calculation of each public school district's cost of education index which will be used by the Central Education Agency in determining each district's state aid for the 1991-1992 and 1992-1993 school years. The cost of education index shall consist of a component to adjust for cost variations caused by factors beyond the control of school district and a diseconomies of scale component to adjust for variations from optimal district size. Variations will be based on the most efficient service delivery systems.

§203.5. Definition of Terms and Data Elements.

(a) Average daily attendance. The average daily attendance (ADA) for the diseconomies of scale component shall be that reported on the "Principal's Semester Report of Student Attendance and Contact Hours" for the relevant school year, either 1991-1992 or 1992-1993.

(b) Competitive beginning average annual salary. The competitive beginning average annual salary for a district was the

average annual salary of beginning instructional personnel in other districts with which the district competes. Instruction staff was defined as teachers, nurses, and librarians. The role identification reported on the Public Information Management System (PEIMS) data submission for the 1989-1990 school year was used to determine if an individual was assigned as instructional staff. The assignment must have been the major assignment of the individual as determined by days employed and percent of day assigned. If the role identification was equal to 25, 29, 13, or 22 then the individual was categorized as instructional staff. To compute the competitive beginning average annual salary, the salaries and full-time equivalencies of instructional staff with zero years of experience was aggregated for all the districts in counties contiguous to the district's county and the other districts in the district's county. The average salary is then computed as the aggregate salaries divided by the aggregate full-time equivalencies. The source was the fall PEIMS data submission for the 1989-1990 school year.

(c) County population. The estimate of 1990 county population from the Texas Department of Health, dated May 1987 was used.

(d) District type. The district types were those determined by the Texas Education Agency for the 1989-1990 school year. An adjustment is made for districts which are categorized as independent towns or rural. All other districts do not receive a district type adjustment. A district categorized as an independent town was the largest school district in a county with a population between 25,000 to 100,000, or any other district in that county with an average daily attendance at least 75% of the largest districts. Furthermore, the district must not have qualified for categorization as a major suburban district or an other central city suburban district as defined by the Texas Education Agency. Districts categorized as rural are those school districts which either had a student count of between 300 and 743 and a growth rate of less than 20%, or that had a student count of less than 300.

(e) Percent low income. This value shall be derived by dividing the best six-months average of students claiming free and reduced lunches under the National School Lunch Program (NSL) for the 1988-1989 school year by the average daily attendance in the district for the 1989-1990 school year, and multiplying the result by 100.

(f) Size of district. This value for the cost component is the average daily attendance in the district for the 1989-1990 school year as reported on the "Superintendent's Report of Pupil Attendance and Contact Hours."

§203.10. Calculation of Adjustment for Cost Variations. The adjustment for cost variations shall be computed according to the following chart. District values for the elements defined in §203.05(b)-(f) of this title (relating to Definition of Terms and Data Elements) shall be compared to the ranges listed below and the appropriate number of points shall be added or subtracted to the base index value of \$1.00.

<u>Value To Add To 1.00</u>	<u>Competitive Beginning Average Annual Salary</u>	<u>County Population <40,000</u>	<u>District Type</u>	<u>Percent Low Income</u>	<u>Size of District</u>
-.01			Indep. Town		
.00	Below \$17,300	No		Below 50%	200 to 499
.01	\$17,300 to \$17,750	Yes	Rural	50 - <68%	500 to 999 or < 200
.02	\$17,751 to 18,250			68 - <77%	1,000 to 1,599
.03	\$18,251 to 18,700			77 - <86%	1,600 to 2,399
.04	\$18,701 to 19,100			86 - <93%	2,400 to 3,599
.05	\$19,101 to 19,500			93% or more	3,600 to 5,399
.06	\$19,501 to 20,000				5,400 to 8,499
.07	\$20,001 to 20,450				8,500 or more
.08	\$20,451 to 20,850				
.09	\$20,851 or more				

§203.15. Calculation of Adjustment for Diseconomies of Scale Variations. The

adjustment for dieconomies of scale shall be computed according to the following formulas. District values for ADA shall be

as defined in §203.5(a) of this title (relating to Definition of Terms and Data Elements):

(1) If ADA > 2000: Scale factor = 1.0;

(2) If 1000 < ADA <= 2000:

Scale factor = 1 + ((2000 - ADA) * .00014);

(3) If $700 < ADA \leq 1000$:

$$\text{Scale factor} = 1.14 + ((1000 - ADA) * .00023)$$

(4) If $300 < ADA \leq 700$:

$$\text{Scale factor} = 1.209 + ((700 - ADA) * .0008)$$

(5) If $ADA \leq 300$:

$$\text{Scale factor} = 1.529 + ((300 - ADA) * .00485),$$

except that 130 is used for ADA if ADA is less than 130.

§203.20. Computation of Cost of Education Index. A district's cost of education index adjustments for the 1991-1992 school year and 1992-1993 school year shall be computed by the commissioner of education by combining the district's cost adjustment and diseconomies of scale adjustment for the

relevant school year as follows: cost of education index = (cost adjustment * diseconomies of scale adjustment) where the cost adjustment is the adjustment in §203.10 of this title (relating to Calculation of Adjustment for Cost Variations) and the Diseconomies of Scale Adjustment is the adjustment in §203.15 of this title (relating

to Calculation of Adjustment of Diseconomies of Scale Variations).

§203.25. Adjustment of Basic Allotment. For the 1991-1992 and 1992-1993 school years, the commissioner shall adjust each district's basic allotment by applying the following formula:

$$ABA = BA * (((\text{Cost of Education Index} - 1) * .71) + 1)$$

where "ABA" is the adjusted basic allotment;

"BA" is the basic allotment; and

"Cost of Education Index" is the Cost of Education Index for the relevant school year computed in Section 203.20.

§203.30. Data Values for Cost of Education Index Factors.

(a) The data values for the data items listed in §203.5(b)-(f) of this title (relating to Definition of Terms and Data Elements) are listed for each school district in Texas in the table entitled "Listing of Data Values for 1991-1992 / 1992-1993 COE Index Factors" which is adopted by reference as an official rule of the Foundation School Fund Budget Committee. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Governor's Budget and Planning Office, 201 East 11th Street, Austin, Texas 78701.

(b) Should the need for correction of any data values be proven, the commissioner of education shall adjust the index for the district.

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 November 7, 1990.

TRD-9011866

Brian Wilson
Committee Clerk
Governor's Office of
Budget and Planning

Proposed date of adoption: December 20, 1990

For further information, please call: (512) 463-1788

◆ ◆ ◆

TITLE 22. EXAMINING BOARDS

Part VI. State Board of Registration for Professional Engineers Chapter 131. Practice and Procedure

Education

• 22 TAC §131.92

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.92, concerning foreign degrees.

The amendment will allow applicants having foreign degrees which are accredited by the Accreditation Board for Engineering and Technology's counterpart organizations in Australia, Canada, Ireland, New Zealand, and

the United Kingdom to apply for registration in accordance with the provisions of the Texas Engineering Practice Act, §12(a).

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

Mr. Nemir 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 recognition of the five countries' accredited courses/programs leading to a degree in engineering as being substantially equivalent to the United States Accreditation Board for Engineering and Technology as evidence of acceptable educational preparation of graduates for the practice of engineering at a professional level. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3281a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.92. Foreign Degrees.

(a) An individual who has completed his undergraduate engineering education and received the equivalent of a baccalaureate degree from an institution other than one located in the United States and its possessions must apply under the Texas Engineering Practice Act (Act), §12(b), except as follows.

(1) (No change.)

(2) Applicants having degrees accredited by the **ABET counterpart organizations in Australia, Canada, Ireland, New Zealand, and the United Kingdom** [Canadian Accreditation Board that are published in the ABET annual report] may apply under the Act, §12(a).

(3) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on November 6, 1990.

TRD-9011629 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: January 23, 1991.

For further information, please call: (512) 440-7723

Registration

• 22 TAC §131.133

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.133, concerning certificates of registration.

The amendment deletes the ceramic branch of engineering under which the board will accept applications for registration as the National Council of Examiners for Engineering and Surveying no longer offers the principles and practice examination in ceramic engineering. The ceramic branch is being added to the list of previously recognized disciplines.

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

Mr. Nemir 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 recognition of engineering branches that are consistent with examinations offered to test competency. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3281a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.133. Certificates of Registration.

(a) (No change.)

(b) Effective December 1, 1988, applications for registration will be accepted only for the branches of engineering for which there is an available principles and practice examination from the National Council of Examiners for Engineering and Surveying (NCEES), and the board records annotated with the corresponding alphabetical code as follows:

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

[(3) (D) ceramic;]

(3)[(4)] (K) chemical;

(4)[(5)] (C) civil;

(5)[(6)] (E) electrical;

(6)[(7)] (H) fire protection;

(7)[(8)] (L) industrial;

(8)[(9)] (M) mechanical;

(9)[(10)] (I) mining/mineral;

(10)[(11)] (J) metallurgical;

(11)[(12)] (U) manufacturing;

(12)[(13)] (N) nuclear;

(13)[(14)] (P) petroleum;

(14)[(15)] (S) sanitary;

(15)[(16)] (B) structural.

(c) [Prior to December 1, 1988, the] The board previously recognized certain other branches of engineering practice for which there are presently no NCEES examination, but board records were annotated with the corresponding alphabetical code as follows:

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

(7) (D) ceramic.

(d) (No change.)

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

Issued in Austin, Texas, on November 6, 1990.

TRD-9011630 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: January 23, 1991

For further information, please call: (512) 440-7723

Part XXIX. Texas Board of Professional Land Surveying

Chapter 661. General Rules of Procedures and Practices

The Board

• 22 TAC §§661.1-661.11

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

The Texas Board of Professional Land Surveying proposes the repeal of §§661.1-661.11, 661.21-661.24, 661.31, 661.41-661.47, 661.61-661.94, 661.101, 661.120, 661.121, 661.131-661.133, and new §§661.1-661.11, 661.23, 661.24, 661.31, 661.41-661.47, 661.62-661.65, 661.67-661.70, 661.72-661.75, 661.77-661.80, 661.82-661.88, 661.91, 661.93, and 661.121, concerning procedures and practices. The sections are being repealed and replaced in order to conform with the existing statute.

Sandy Smith, acting executive director, has determined that for the first five-year period the proposed repeals and sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals and sections.

Ms. Smith also has determined that for each year of the first five years the repeals and sections are in effect there will be no public benefit anticipated as a result of enforcing the repeals and sections as the public is relatively unaffected by these particular proposed repeals and sections. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals and sections as proposed.

Comments on the proposal may be submitted to Sandy Smith, Acting Executive Director, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752. Written public comment is invited for 30 days from the date of publication in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.1. Name.

§661.2. Headquarters.

§661.3. Chairman.

§661.4. Vice Chairman.

§661.5. Executive Secretary.

§661.6. Bond.

§661.7. Executive Committee.

§661.8. Standing Committees.

§661.9. Special Committees.

§661.10. Financial.

§661.11. Vacancies.

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 November 2, 1990.

TRD-9011713

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427



The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land

Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.1. Name. The name of the board shall be Texas Board of Professional Land Surveying. For the purpose of brevity in succeeding rules this organization shall be subsequently referred to as the board.

§661.2. Headquarters. The headquarters of the board shall be in Austin.

§661.3. Chairman. The chairman shall, when present, preside at all meetings, except as otherwise provided herein. The chairman shall appoint such committees as the board may authorize from time to time. The chairman shall sign all certificates.

§661.4. Vice Chairman. The vice chairman may in the absence or incapacity of the chairman, exercise the duties and may possess all the powers of the chairman, as permitted by law.

§661.5. Executive Director. The executive director shall conduct and care for all correspondence in the name of the board. The executive director shall maintain all records prescribed by law. The executive director shall keep a record of all meetings and maintain a proper account of all business of the board. The executive director shall be the custodian of the official seal and affix same to all certificates and other official documents upon the orders of the board. The executive director shall check and certify all bills and check all vouchers (claims) and shall approve same, if appropriate, and shall perform such other duties as directed by the board. The board shall furnish the executive director the necessary equipment, supplies, and stenographic assistance, paying for same directly on vouchers (claims) handled as prescribed herein and by law.

§661.6. Bonds. The employees of the board shall furnish a surety bond to the board as provided by law.

§661.7. Executive Committee. The executive committee may consist of three members of the board. Its duties shall be to transact all business instructed by the board, during the intervals between board meetings, and to report thereon to the board at its meetings. It shall also recommend to the board such actions in respect to policies and procedures as it may consider desirable.

§661.8. Standing Committees. For the purpose of administering examinations there shall be two standing committees.

(1) The Licensed State Land Surveyors Committee shall prepare, admin-

ister, and grade the licensed state land surveyors examination. This committee shall be made up of the commissioner or his authorized representative and all of the licensed state land surveyors on the board. A quorum shall be a majority of the committee members.

(2) The Registered Professional Land Surveyors Committee shall attend to the preparation and grading of the registered professional land surveying examination. This committee shall be made up of all members of the board. A quorum shall be six of which three shall be registered professional land surveyors.

§661.9. Special Committees. Special committees shall have such duties as may be assigned by the chairman of the board, with the consent of the board.

§661.10. Financial. Payment of all salaries and other approved operating expenses of the board shall be made by itemized vouchers (claims) on the land surveying fund. Such vouchers (claims) shall be approved by the executive director of the board. The executive director shall maintain complete records of the financial transactions of the board as prescribed by the state comptroller and by law.

§661.11. Vacancies. If for any reason, a vacancy shall occur in the board, the chairman shall call a special meeting for the purpose of preparing a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chairman, the vice chairman shall call the meeting.

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 November 2, 1990.

TRD-9011726

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

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Meetings

• 22 TAC §§661.21-661.24

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

The repeals are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.21. Regular Meetings.

§661.22. Special Meetings.

§661.23. Notice of Meetings.

§661.24. Proceedings.

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 November 2, 1990.

TRD-9011714

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

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• 22 TAC §661.23, §661.24

The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.23. Notice of Meetings. Notice of meetings shall be published and posted in compliance with law. Notice of all meetings shall be mailed out by the executive director to each member at his last known address at least one week prior to said meeting.

§661.24. Proceedings. Robert's Rules of Order shall govern the proceedings of the board except as otherwise provided herein or by statute.

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 November 2, 1990.

TRD-9011727

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

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Definitions

• 22 TAC §661.31

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

The repeal is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.31. Definition.

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 November 2, 1990.

TRD-9011715

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

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Definitions of Terms

• 22 TAC §661.31

The new section is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

Act—The Professional Land Surveying Practices Act and Amendment.

Certificate of registration and certificate of licensure—A certificate of registration is a license to practice professional surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

Contested case—A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Renewal—The payment of a fee annually as set by the board within the limits of the law for the certificate of registration or the certificate of licensure.

Rule—Any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the board and not affecting the private rights or procedures.

Seal—The seal of the board shall be as authorized by the board.

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 November 2, 1990.

TRD-9011725

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

◆ ◆ ◆
Applications, Examinations,
and Licensing

• 22 TAC §§661.41-661.47

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

The repeals are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.41. Applications.

§661.42. Fees.

§661.43. References.

§661.44. Rejections.

§661.45. Examinations.

§661.46. Certificate of Registration/Licensure.

§661.47. Reciprocal Registration.

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 November 2, 1990.

TRD-9011716

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.41. Applications.

(a) An applicant qualified by law who wishes to take an examination for certification or for registration to practice professional land surveying and/or state land surveying in Texas shall be furnished duplicate application forms, one to be returned to the office of the board, the other to be retained by the applicant. Applications received by the board shall be examined by the executive director for conformity with the rules and regulations governing applications as established by the board. Applications accompanied by proper fees and in the form prescribed by the board shall be entered in the records of the board. Applications not accompanied by proper fees or not conforming with the rules and regulations shall be returned to the applicant. Each Applicant shall be required to furnish all information requested on the application form. The application form shall contain general information regarding the applicant, a recent passport type photograph, other registration and memberships, references and qualifications, formal education information with certified transcripts of college work, personal surveying experience, instructions for filing the form, and a sworn affidavit concerning information contained in the application, and a record of the board.

(b) The application shall be neatly typed or lettered and all questions must be answered. If the answer is negative, the applicant shall use the word "no" or "none". It is the applicant's responsibility to see that certified transcripts of college work and any other information required or requested by the board are received in the office of the board on or before June 30 or December 1 in order for the applicant's file to be considered for the ensuing examination. Experience time will be counted only up to the

date of the filing of the application with fee. Applications will not be considered if essential information is lacking. It is important that the experience record of the applicant be completed in detail giving character of work performed, particularly with respect to percentage of time engaged in boundary land surveying as opposed to engineering surveying, title of position, employer, amount of time, and responsibility in each engagement listed. Experience in responsible charge will be counted only if under the direct supervision of a registered professional land surveyor. Give total time in actual land boundary surveying in each engagement. If the space provided in the forms is not sufficient, the applicant may attach as many sheets as necessary. If the experience is of the character that it cannot be described properly in the tabulated form, the applicant may submit a complete narrative account of his education, professional, or business career. All documents filed with the application shall remain in the permanent files of the board.

(c) Application files are considered initiated the date the application is received with fee. If an application is not received within 90 days after date of receipt of reference forms and required information, that file will be closed and the applicant so notified at his last known address. If the applicant does not take the examination within one year from the date the application is approved, the file will be closed, and for further consideration by the board, the applicant will be required to file a complete new application with fee and references.

(d) No credit will be considered for experience obtained in violation of the Professional Land Surveying Practices Act or any applicable prior Act governing the surveying profession. Only that experience obtained in regular full-time employment will be considered in evaluating an applicant's record.

(e) Each application shall be attested to before a notary public or other official qualified to administer oaths.

§661.42. Fees.

(a) All fees are payable by cashier's check or money order and are not refundable.

(b) Each application fee is \$100.

(c) In addition to the application fee, the examination fee is \$100 per examination.

(d) New registrants will be required to pay a prorated part of the annual licensing fee according to their date of registration or licensure.

§661.43. References.

(a) All references shall be chosen carefully for their personal knowledge of the applicant's experience and qualifica-

tions. All applicants shall submit to the board the names and complete addresses, including zip codes, of not less than three references unrelated to the applicant. All such references shall be registered or licensed surveyors and have personal knowledge of the applicant's surveying experience and qualifications.

(b) No member of the board will be accepted as a reference unless the board member is the registered professional land surveyor with the most knowledge of the applicant's experience. The board prefers that when an applicant is employed by an organization that includes registered professional land surveyors, the applicant use only one reference from a registered professional land surveyor who is associated with him in such organization. The board reserves the right to ask for additional references.

§661.44. Rejections. Should the board reject the application of any applicant, the fee accompanying the application will be retained by the board. If an application is rejected for any reason, the applicant will be notified by first class mail. The applicant may thereafter file with the board any further evidence or reason to support a claim for reconsideration. It is the policy and intention of the board to give a rejected applicant every reasonable opportunity to support a claim for reconsideration and to consider such evidence as may have been omitted from or overlooked in the original application. An applicant may timely apply for a hearing pursuant to Texas Civil Statutes, Article 6252-13a, the Administrative Procedure and Texas Register Act.

§661.45. Examinations.

(a) Registered professional land surveyor examinations shall be written and so designed to aid the board in determining the applicant's knowledge of surveying, mathematics, surveying laws, and his general fitness to practice the profession as outlined in the Professional Land Surveying Practices Act. The examinations will cover a two-day period and the applicant will be notified at least 10 days in advance of the date, time, and place of the examination. If an applicant fails to appear for two successive examinations, the applicant's file will be closed and will not be re-opened without the filing of a new application and fee.

(b) Calculators will be permitted to be used during any examination. Any slide rule or silent, hand held, battery operated, non-printing calculator will be permitted.

(c) An applicant repeating the examination will be required to repeat only those portions of the examination on which the applicant made less than a passing grade.

(d) Licensed state land surveyors' examinations shall be written and so designed to test the applicant's knowledge of

the history, files, and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

(e) The licensed state land surveyor examination will be in two four-hour sections and each part graded independently. If an applicant fails either part, that applicant will be required to file an updated application with fee and repeat the entire examination.

§661.46. Seal and Stamps. At the time the applicant receives a certificate of registration/licensure, the applicant will also be instructed to secure an impression seal of the type specified by the board. As soon as the registrant has secured an impression seal, the registrant shall make an imprint thereof and shall forward said imprint to the board for its files. A rubber stamp is not considered an impression seal, but may be used at the discretion of the licensee for the purpose of this rule. A rubber stamp signature or other facsimile signature is not permitted. A registrant or licensee may not use a facsimile signature on any work required to be sealed or stamped.

§661.47. Reciprocal Registration.

(a) Applicants applying for reciprocal registration under the Professional Land Surveying Practices Act (Act) §20 shall file with the board application forms as described in these rules and such other forms as required by the board.

(b) The board shall determine whether the licensing standards of the governmental authority under which the reciprocal applicant is licensed are substantially equivalent to those standards required in the State of Texas.

(c) If the board determines that such standards are not substantially equivalent, the board may require the reciprocal applicant to take and pass all or any part of the 16-hour examination required for applicants under the Act, §15.

(d) Any cost for administering a reciprocal examination for this board by another state will be at the expense of the applicant.

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 November 2, 1990.

TRD-9011728
Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

◆ ◆ ◆
Hearings

• 22 TAC §§661.61-661.94

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

The repeals are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.61. Purpose of These Sections.

§661.62. Filing of Documents.

§661.63. Complaints Officer.

§661.64. Computation of Time.

§661.65. Agreements To Be in Writing.

§661.66. Service in Rulemaking Proceedings.

§661.67. Conduct and Decorum.

§661.68. Appearances Personally or by Representative.

§661.69. Motions.

§661.70. Amendments.

§661.71. Incorporation by Reference of Board Records.

§661.72. Motions for Postponement, Continuance, Withdrawal, Dismissal of Other Matters before the Agency.

§661.73. Place and Nature of Hearings.

§661.74. Presiding Officer at Hearings.

§661.75. Notice and Hearing.

§661.76. Order of Procedure in Hearings.

§661.77. Dismissal without Hearing.

§661.78. Rules of Evidence.

§661.79. Documentary Evidence and Official Notice.

§661.80. Limitations on Number of Witnesses.

§661.81. Exhibits.

§661.82. Offer of Proof.

§661.83. Depositions.

§661.84. Subpoenas.

§661.85. Oral Argument.

§661.86. Final Decisions and Orders.

§661.87. Administrative Finality.

§661.88. Motions for Rehearing.

§661.89. Rendering of Final Decision, Recommendation, or Order.

§661.90. Notice of Board's Order.

§661.91. The Record.

§661.92. Ex Parte Consultations.

§661.93. Appeals.

§661.94. Suspension of These Sections.

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 November 2, 1990.

TRD-9011717
Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

◆ ◆ ◆
Contested Case

• 22 TAC §§661.62-661.65, 661.67-661.70, 661.72-661.75, 661.77-661.80, 661.82-661.88, 661.91, 661.93

The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules,

regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.62. Filing of Documents. All complaints, motions, replies, answers, notices, requests for hearings by applicants whose applications the board has rejected, and other pleadings relating to any proceeding pending or to be instituted before the board shall be filed with the executive director. They shall be deemed filed only when actually received in the board's office.

§661.63. Complaints Officer. The licensed or registered members of the board or the commissioner or his designee may act as complaints officers on a rotating basis. It shall be the duty of the complaints officer to review a complaint filed against a person licensed under the Professional Land Surveying Practices Act and to make recommendations to the board regarding further actions. The complaints officer shall have no vote in the rendering of a final decision on any matter reviewed by the complaints officer.

§661.64. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by these rules, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the executive director, upon written motion duly filed prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefore is not caused by neglect, indifference, or lack of diligence of the movant.

§661.65. Agreements To Be in Writing. Stipulations or agreements between parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the board shall be reduced to writing and signed by the parties or their authorized representatives, or dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This rule does not limit a person's ability to waive, modify, or stipulate any right or privilege afforded by these rules, unless precluded by law.

§661.67. Conduct and Decorum. Every party, witness, attorney, or other repre-

sentative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the executive director, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

§661.68. Appearances Personally or by Representative. A party may appear and be represented by an attorney at law authorized to practice law in the State of Texas.

§661.69. Motions. Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefore.

§661.70. Amendments. Any pleading may be amended upon motion filed at least three days before the hearing. The complaint upon which notice has been issued may be amended upon amended notice.

§661.72. Motions for Postponement, Continuance, Withdrawal, Dismissal of Other Matters before the Agency.

(a) Motions for postponement, continuance, withdrawal, or dismissal, or matters which have been duly set for hearing, shall be in writing, shall be filed with the executive director, and distributed to all interested persons under a certificate of service, no less than five days prior to the designated date that the matter is to be heard, except upon an unforeseen emergency. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding.

(b) Failure to comply with subsection (a) of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the executive director, may result in the dismissal of the matter in issue, with prejudice to refiling.

§661.73. Conduct of Hearings. All hearings conducted in any proceeding shall be governed by Texas Civil Statutes, Article 6252-17, the Open Meetings Act, and Texas Civil Statutes, Article 6252-13a, the Administrative Procedure and Texas Register Act. The board may recess any hearing from day to day.

§661.74. Presiding Officer at Hearings.

(a) The chairman or another board member may be given the authority by the board to preside at hearings. The presiding member shall have the authority to rule upon the admissibility of evidence and amendments to pleadings.

(b) The executive director shall have authority to administer oaths and examine witnesses.

§661.75. Notice and Hearing.

(a) An applicant or licensee is entitled to at least 20 days notice of any hearing.

(b) Notice of hearing for rejection, cancellation, or revocation may be served personally by the board or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address.

(c) In the event that notice cannot be effected by either of these methods after due diligence, the board may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The board shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

§661.77. Dismissal without Hearing. The executive director may entertain motions for informal disposition by stipulation, agreed settlement, consent order, or default, and make appropriate recommendations to the board for its decision.

§661.78. Rules of Evidence. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs. The presiding board member shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and in the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

§661.79. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received. When numerous documents are offered, the presiding member may limit those admitted to a number which are typical and representative, and may, at his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that all parties of record or their representatives may be given the right to examine the docu-

ments from which such abstracts were made.

(b) Official notice may be taken of all facts judicially recognizable. In addition, notice may be taken of generally recognized facts within the area of the board's specialized knowledge. All persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the board and its staff may be utilized in evaluating the evidence.

§661.80. Limitations on Number of Witnesses. The presiding member shall have the right in any proceeding to limit:

(1) the number of witnesses whose testimony is merely cumulative;

(2) and/or the number of cumulative exhibits.

§661.82. Offer of Proof. When testimony is excluded, the person offering such testimony shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The board may ask such questions of the witness as it deems necessary to satisfy itself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§661.83. Depositions. The taking and use of depositions in any proceeding shall be governed by Texas Civil Statutes, Article 6252-13a, §14, the Administrative Procedure and Texas Register Act.

§661.84. Subpoenas. Subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding, may be issued by the executive director in accordance with the Professional Land Surveying Practices Act.

§661.85. Oral Argument. Any party may request oral argument prior to the final determination in any proceeding, but oral argument shall be allowed only in the sound discretion of the presiding member.

§661.86. Final Decisions and Orders. All final decisions, recommendations, and orders of the board shall be in writing and shall be signed by the presiding member. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory

language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision, recommendation, or order shall be delivered or mailed to the party and to his attorney of record.

§661.87. Administrative Finality.

(a) A decision is final in the absence of a timely motion for rehearing, and is final and appealable on the date of rendition or the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

(b) If the executive director finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

§661.88. Motion for Rehearing. A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party within 20 days after the date the party or his attorney of record is notified of the final decision or order. Replies to a motion for rehearing must be filed with the board within 30 days after the date the party or his attorney of record is notified.

§661.91. The Record.

(a) The record of a hearing shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the presiding member at the hearing; and

(7) all staff memoranda or data submitted to or considered by the board in making the decision.

(b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

§661.93. Appeals. Appeals will be in accordance with Texas Civil Statutes, Article 5282c, and Texas Civil Statutes, Article 6252-13a, §13(g), the Administrative Procedure and Texas Register 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 November 2, 1990.

TRD-9011724

Sandy Smith
Acting Executive Director
Texas Board of
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Surveying

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For further information, please call: (512) 452-9427

Engineers Presently Practicing Surveying

• 22 TAC §661.101

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

The repeal is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.101. Registered Professional Engineer in Texas.

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

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Sandy Smith
Acting Executive Director
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For further information, please call: (512) 452-9427

Temporary Permits

• 22 TAC §661.111

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

The repeal is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.111. Temporary Permits for Land Surveyors.

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

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TRD-9011719 Sandy Smith
Acting Executive Director
Texas Board of
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◆ ◆ ◆
Branch Offices

• 22 TAC §661.120

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

The repeal is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.120. Branch Offices.

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

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Acting Executive Director
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For further information, please call: (512) 452-9427

◆ ◆ ◆
Firms Furnishing Surveying Crews

• 22 TAC §661.121

(Editor's note: The text of the following section proposed for repeal will not be published. The

section may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.121. Firms Furnishing Surveying Crews-Principal.

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

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TRD-9011721 Sandy Smith
Acting Executive Director
Texas Board of
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Surveying

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For further information, please call: (512) 452-9427

◆ ◆ ◆
The new section is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.121. Firms Furnishing Crews. Any firm furnishing contract land surveying crews must have a registered professional land surveyor as a full-time employee in that firm as reflected in its certificate of firm name filed with the board.

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 November 2, 1990.

TRD-9011729 Sandy Smith
Acting Executive Director
Texas Board of
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Surveying

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For further information, please call: (512) 452-9427

◆ ◆ ◆
Surveyor-in-Training

• 22 TAC §§661.131-661.133

(Editor's note: The text of the following sections proposed for repeal will not be published. The

sections may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§661.131. Minimum Education, Requirements, Examination, and Application Fees.

§661.132. Surveyor-in-Training Activities, Reports, and Application Updates.

§661.133. Limitations.

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 November 2, 1990.

TRD-9011722 Sandy Smith
Acting Executive Director
Texas Board of
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For further information, please call: (512) 452-9427

◆ ◆ ◆
Chapter 663. Standards of Responsibility and Rules of Conduct

• 22 TAC §§663.1-663.11

The Texas Board of Professional Land Surveying proposes the repeal of §§663.1-663.11 and new §§663.1-663.12, concerning standards of responsibility and rules of conduct. The sections are being repealed and replaced in order to conform with the existing statute.

Sandy Smith, acting executive director, has determined that for the first five-year period the repeals and sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals sections.

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

Comments on the proposal may be submitted to Sandy Smith, Acting Executive Director, 7701 North Lamar Boulevard, Suite 400,

Austin, Texas 78752. Written public comment is invited for 30 days from the date of publication in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§663.1. *Ethical Standards.*

§663.2. *Intent.*

§663.3. *Offer to Perform Services.*

§663.4. *Conflict of Interests.*

§663.5. *Representations.*

§663.6. *Unauthorized Practice.*

§663.7. *Maintenance of Standards.*

§663.8. *Adherence to Statutes and Codes.*

§663.9. *Professional Conduct.*

§663.10. *Disciplinary Rules.*

§663.11. *Certification and Monumentation of Surveys.*

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 November 2, 1990.

TRD-9011723

Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

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For further information, please call: (512) 452-9427

◆ ◆ ◆
• 22 TAC §§663.1-663.12

The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§663.1. *Ethical Standards.*

(a) Inasmuch as the practice of the land surveying profession is essential to the orderly use of our physical environment,

and inasmuch as the technical work resultant thereof has important effects on the welfare, property, economy, and security of the public, the practice should be conducted with the highest degree of moral and ethical standards. And inasmuch as the state legislature has vested in the board the authority, power, and duty to establish and enforce standards of conduct and ethics for professional surveyors and licensed state land surveyors to ensure compliance with and enforcement of the Texas Board of Professional Land Surveying, the following standards of responsibility and rules of conduct are hereby promulgated and adopted by the board.

(b) So that every applicant for registration as a professional land surveyor or licensed state land surveyor shall be fully aware of the great obligation and responsibility due the public, the standards of responsibility are promulgated by the board. In furtherance of this intent, every registrant should endorse the standards of responsibility.

§663.2. *Intent.*

(a) The intent of the sections in this chapter shall be:

(1) to create standards of responsibility as guidelines for the profession; and

(2) to create rules of conduct for governance of the profession.

(b) The rules shall be binding on all registrants, but nothing contained therein shall be construed to supersede the statutory law of the state.

(c) The board shall determine what acts constitute gross negligence, incompetence, misconduct, and violation of the rules and shall institute appropriate disciplinary action which may lead to reprimand, suspension, or revocation of the certificate of registration or certificate of licensure.

§663.3. *Offer to Perform Services.* The client or employer is entitled to a careful and competent performance of services. Competence in performance of services requires the exercise of proficiency, reasonable care, and diligence. Therefore, every effort should be made to remain proficient in a field of endeavor, and employment for services to be rendered should not be accepted unless such services can be competently performed. The registrant:

(1) shall accurately and truthfully represent to any prospective client or employer his capabilities and qualifications to perform the services to be rendered;

(2) shall not offer to perform, nor perform, services for which he is not qualified in any of the technical fields involved, by education or experience, without retaining the services of another who is so qualified;

(3) shall not evade his statutory responsibility nor his responsibility to a client or employer.

§663.4. *Conflict of Interests.* The acceptance of employment, or engagement to perform services, requires the faithful discharge of duty and performance of services, as well as the avoidance of any conflict of interests. All dealings with a client or employer, and all matters related thereto should be kept in the closest confidence. Should an unavoidable conflict of interest arise, the client or employer should be immediately informed of any and all circumstances which may hamper or impair the quality of the services to be rendered. The registrant:

(1) shall not agree to perform services for a client or employer if there exists any significant financial or other interest that may be in conflict with the obligation to render a faithful discharge of such services, except with the full knowledge, approval, and consent of the client or employer and all other parties involved;

(2) shall not continue to render such services without informing the client or employer, and all other parties involved, of any and all circumstances involved which may in any way affect the performance of such services, and then only with the full approval of the client or employer;

(3) shall not perform, nor continue to perform services for a client or employer, if the existence of conflict of interest would impair independent judgment in rendering such services;

(4) shall withdraw from employment at any time during such employment or engagement when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer;

(5) shall not accept remuneration from any party other than his client or employer for a particular project nor have any other direct or indirect financial interest in other services or phase of service to be provided for such project, unless the client or employer has full knowledge and so approves;

(6) shall keep inviolate the confidences of his client or employer, except as otherwise required in the rules of conduct.

§663.5. *Representations.* The highest degree of integrity, truthfulness, and accuracy should be paramount in all dealings with, and representations to, others by not misleading in any way the other's understandings of personal qualifications or information regarding a project. The registrant:

(1) may not allow a person who is not registered or licensed under the Professional Land Surveying Practices Act to

exert control over the end product of his professional work.

(2) shall not indulge in publicity that is false, misleading, or deceptive;

(3) shall not misrepresent the amount or extent of prior education or experience to any employer or client, nor to the board;

(4) shall as accurately and truthfully represent to a prospective client or employer the costs and completion time of a proposed project as is reasonably possible;

(5) shall not hold out as being engaged in partnership or association with any person or firm unless there exists in fact a partnership or associations;

(6) shall not, without the knowledge and consent of his client, recommend to a client services of another for the purpose of collecting a fee for himself for those services.

§663.6. Unauthorized Practice. All reasonable assistance in preventing the unauthorized practice of land surveying should be given the board. Unauthorized practice should not be aided in any way. The registrant:

(1) shall make known to the board any unauthorized practice of which he has personal knowledge;

(2) shall divulge any information, of which he has personal knowledge, related to any unauthorized practice to the board upon request of the board or its authorized representatives;

(3) shall not delegate responsibility to, nor in any way aid or abet, an unauthorized person to practice, or offer to practice.

§663.7. Maintenance of Standards. Aid should be given the board in maintaining the highest standards of integrity and competence of those in its subject profession and occupation. The registrant:

(1) shall furnish the board with any information that comes into his possession, indicating that any person or firm has violated any of the provisions of the registration laws or code;

(2) shall furnish any information he might have concerning any alleged violation of the registration laws or code upon request of the board or its authorized representatives.

§663.8. Adherence to Statutes and Codes. Strict adherence to practice requirements of related sections of the statutes, the state code, and all local codes and ordinances should be maintained in all services rendered. The registrant:

(1) shall abide by, and conform to, the registration and licensing laws of the state;

(2) shall abide by, and conform to, the provisions of the state code and all local codes and ordinances;

(3) shall not violate nor aid and abet another in violating a rule of conduct nor engage in any conduct that may adversely affect his fitness to practice;

(4) shall not sign nor impress his seal or stamp upon documents not prepared by him or under his control or knowingly permit his seal or stamp to be used by any other person.

§663.9. Professional Conduct.

(a) The surveyor shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, or reward as an inducement to secure any specific surveying work or assignment; provided however, this rule shall not prevent a professional surveyor from offering or accepting referral fees or from discounting fees for services performed, with full disclosure to all interested parties. Further provided however, a surveyor may pay a duly licensed employment agency its fee or commission for securing surveying employment in a salaried position.

(b) The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his professional qualifications or those of his partners, associates, firm, or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public concerning his surveying education, experience, specialization, or any other surveying qualification.

(c) The public shall be provided every reason for relying upon the surveyor's seals, signatures, or professional identification on all documents, plats or maps, surveyor's reports, plans, or other surveying data on which they appear as a representation that the surveyors whose seals, signatures, or professional identification appear thereon, have personal knowledge thereof and that they are professionally responsible therefor.

§663.10. Disciplinary Rules. The surveyor shall not:

(1) violate any provision of the Professional Land Surveying Practices Act (the Act) or disciplinary rules thereof;

(2) circumvent or attempt to circumvent any provision of the Act or disciplinary rules thereof through actions of another;

(3) participate, directly or indirectly, in any plan, scheme, or arrangement attempting to or having as its purpose the

evasion of any provision of the Act and disciplinary rules;

(4) fail to exercise reasonable care or diligence to prevent his partners, associates, or employees from engaging in conduct which if done by him, would violate any of the provisions of the Act or rules.

(5) engage in any conduct that discredits or attempts to discredit the profession of surveying;

(6) permit or allow himself, his professional identification, seal, form, or business name, or his service to be used or made use of, directly or indirectly, or any manner whatsoever, so as to make possible to create the opportunity for the unauthorized practice of professional surveying by any person, firm, or corporation in this state.

(7) perform any acts, allow any omission, or make any assertions or representation which are fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression;

(8) aid or abet, directly or indirectly, any unlicensed person in connection with the unauthorized practice of professional surveying or any firm or corporation in the practice of professional surveying unless carried on in accordance with the Act.

§663.11. Certification and Monumentation of Surveys. When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Professional Land Surveying Practices Act, §2, subsection (1) or (3)), the land surveyor shall set, or leave as found, sufficient, stable, and reasonable permanent survey markers to represent or reference the property or boundary corners, angle points, and points of curvature or tangency. All survey markers shall be shown and described with sufficient evidence of the location of such markers on the surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he shall include in that written description:

(1) reference to and a description of the survey markers as shown on the plat; and

(2) the seal and signature of a registered or licensed surveyor.

§663.12. Texas Guaranteed Student Loan Corporation Defaulters.

(a) In accordance with the Texas Education Code, §57.491, holders of licenses as defined in that section who have been identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as student loan defaulters are precluded from having their license renewed unless:

(1) the renewal is the first renewal following the board's receipt of the list including the licensee's name among those in default; or

(2) the licensee presents to the board a certificate issued by the TGSLC certifying that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the TGSLC.

(b) Whenever the board has been notified by the TGSLC that a licensee is in default on a student loan the board shall notify the licensee by certified mail of its intention not to renew his/her license upon the licensee's expiration. The licensee may in writing within 30 days of receipt of the proposed action request a hearing. In the absence of such a written request for a hearing the proposed intention not to renew will become final upon informal disposition, pursuant to Texas Civil Statutes, Article 6252-13a, §13(e).

(c) Once the board has received a certificate issued by the TGSLC that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the TGSLC, the licensee may apply for his/her license renewal subject to all other requirements for renewal.

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

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Sandy Smith
Acting Executive Director
Texas Board of
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Surveying

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For further information, please call: (512) 452-9427

Chapter 664. Continuing Education

• 22 TAC §§664.1-664.11

The Texas Board of Professional Land Surveying proposes new §§664.1-664.11, concerning continuing education. The Texas Board of Professional Land Surveying proposes new §§664.1-664.11 concerning continuing education for registered professional land surveyors to implement the require-

ments required in the Professional Land Surveying Practices Act, §17.

Sandy Smith, acting executive director, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the section is in effect will be an estimated additional cost of \$16,800 per year. There will be no effect on local government as a result of enforcing or administering the sections.

Ms. Smith, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better educated registered professional land surveyors. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be less than \$100 per year.

Comments on the proposal may be submitted to Sandy Smith, Acting Executive Director, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752. Written public comment is invited for 30 days from the date of this *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§664.1. Purpose. The purpose of the sections in this chapter is the establishment of continuing professional education course or professional development activity requirements, which a registrant must complete periodically for the renewal of the certificate of registration.

§664.2. Deadlines.

(a) Continuing education requirements for renewal shall be fulfilled during annual periods beginning on the first day of a registrant's renewal year and ending on the last day of the registrant's renewal year.

(b) The initial annual period for each registrant shall include the annual year period described in this section plus the period of time from the issuance of the registrant's first certificate to the first renewal date, or from the effective date of this section to the next renewal date, or whichever occurs last.

§664.3. Numerical Requirements for Continuing Education. A registrant to be eligible for renewal of the certificate of registration must complete sufficient credits in continuing education courses or professional development to satisfy the following:

- (1) first renewal period requirement—1.0 continuing education unit;
- (2) second renewal period requirement—1.2 continuing education units;

(3) third and all following renewal period requirement—1.4 continuing education units.

§664.4. Types of Acceptable Continuing Education. Continuing education courses and professional development undertaken by a registrant shall be acceptable if the activity is approved by the board and falls in one or more of the following categories:

- (1) appointment and membership on the board;
- (2) completion of undergraduate or graduate academic courses with a passing grade in areas supporting development of skill and competence in professional land surveying at an institution which is accredited by ABET or the Association of Southern Colleges and Universities;
- (3) teaching or consultation in programs such as institutes, seminars, or workshops which provide increased professional knowledge related to the practice of professional land surveying;

(4) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which provide increased professional knowledge related to the practice of professional land surveying and are conducted by persons qualified within their respective professions by appropriate state licensure or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a graduate degree and certification by their respective professional associations;

(5) author of a technical paper relating to professional land surveying published in a refereed publication. The board shall maintain a list of approved publications;

(6) appointment to and active participation by non-board members on a committee of the board;

(7) satisfactory completion of scheduled assignments in a correspondence course.

§664.5. Procedure for Approval of Programs. Individuals and organizations may initiate requests for board approval and credits of specific programs for continuing education credit before these programs occur. Approval shall be given only for the specific program described in the request.

(1) The registrant is ultimately responsible for providing, or arranging for sponsors to provide, the information necessary for the board to make a determination of the applicability of the program to the continuing education requirements.

(2) Sponsors may initiate their own requests and may, when approval is obtained in advance, announce such ap-

proval in connection with the continuing education experience utilizing statements prescribed by the board.

(3) Programs preapproved by registration boards of other jurisdictions will be accepted by this board at the same continuing education unit value assigned by the other board unless such program has been specifically disallowed by this board.

§664.6. Criteria for Approval of Continuing Education Activities. Each continuing education experience submitted by a registrant will be evaluated on the basis of the following criteria:

(1) satisfactory completion of undergraduate or graduate academic courses in areas supporting development or skill and competence in professional land surveying at an institution which is accredited by ABET or the Association of Southern Colleges and Universities;

(2) teaching in approved programs which shall be in accordance with §664.4(3) of this title (relating to Types of Acceptable Continuing Education) and documentation from sponsor(s) including evaluative statement of performance;

(3) satisfactory completion of academic work which shall be in accordance with §664.4(2) of this title (relating to Types of Acceptable Continuing Education) and official transcript(s) from accredited school(s) showing completion of hours in appropriate areas for which the registrant received at least a passing grade;

(4) attendance at programs which shall be in accordance with §664.4(4) of this title (relating to Types of Acceptable Continuing Education) and shall consider the following:

(A) relevance of the subject matter to increase or support the development of skill and competence in professional land surveying;

(B) objectives of specific information and/or skill to be learned;

(C) subject matter, education methods, materials, and facilities utilized including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(D) sponsorship and leadership of programs including the name of the sponsoring individual(s) or organization(s); program leaders if different from sponsor(s); and contact person if different from the preceding.

§664.7. Determination of Credit Units. The requirements for determination of continuing education units shall be as follows.

(1) Membership of the board will satisfy continuing education for renewal periods which occur during the appointment.

(2) Satisfactory completion of academic work at an institution which meets the accreditation standards acceptable to the board shall be credited on the basis of 1.5 continuing education units credit, by previous action, for each semester hour completed and passed as evidenced by an official transcript.

(3) Parts of programs which meet the criteria of §664.3 of this title (relating to Numerical Requirements for Continuing Education) and §664.6 of this title (relating to Criteria for Approval of Continuing Education Activities) shall be credited on a 1 for 10 basis with one continuing education unit credit for each 10 contact clock hours spent in the continuing education activity.

(4) Teaching or consultation in programs which meet the board's criteria as set out in §664.4(3) of this title (relating to Types of Acceptable Continuing Education) shall be credited on the basis of two continuing education unit credits for each continuing education unit credit received by the program attendees.

(5) Authorship which meets the board's criteria as set out in §664.4(5) of this title (relating to Types of Acceptable Continuing Education) shall be credited on the basis of 0.25 continuing education unit credit, for each such publication.

(6) Participation on a committee which meets the criteria as set out in §664.4(6) of this title (relating to Types of Acceptable Continuing Education) shall be credited at the amount set when such appointments are made.

(7) Satisfactory completion of scheduled assignments in a correspondence course approved by the board shall constitute an amount set by the board when such courses are approved.

(8) continuing education units will be assigned as deemed appropriate by the board for other experiences for which a determination is requested in writing.

§664.8. Reporting of Continuing Education. The requirements for reporting continuing education shall be as follows.

(1) A registrant's continuing education report shall be filed on a form provided by the board which the registrant shall complete and sign.

(2) A registrant may submit the required report any time during the continuing education cycle; provided, however, continuing education must be reported and approved prior to renewal at the end of the cycle, or §664.11 of this title (relating to Failure to Complete Required Continuing Education) will apply.

(3) The continuing education sponsor may submit a roster on a form provided by the board of those registrants completing a continuing education experience; however, the registrant is ultimately responsible for ensuring that the board receives timely notice of the registrant's completion of any continuing education activity.

(4) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) for a program attended, a signed verification by a program leader or instructor of registrant's participating in the program by certificate, letter on letterhead of the sponsoring agency, or official continuing education validation form as supplied by the board;

(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving name of program, location, dates, and subjects taught and giving total clock hours of teaching or consultation and continuing education units credited to attendees. Documentation such as the board's roster form, official programs, or other appropriate documentation may be accepted; or

(C) for completion of academic work from accredited schools, an official transcript showing course credit with a passing grade.

§664.9. Activities Unacceptable as Continuing Education. The following activities are unacceptable as continuing education:

(1) authorship of letters to editor or self-opinionated articles of a nontechnical nature which are included in trade publications;

(2) education incidental to the regular professional activities of a registrant such as learning occurring from experience or research;

(3) organizational activities such as serving on committees or councils or as an officer in a professional organization;

(4) meetings and activities such as inservice programs which are required as a part of one's job;

(5) any experience which does not fit the types of acceptable continuing education in §664.4 of this title (relating to Types of Acceptable Continuing Education);

(6) any continuing education activity completed before the first renewal period for which the registrant is required to obtain continuing education credit.

(7) any continuing education activity completed before or after the annual renewal period for which continuing education credit is submitted except as allowed in §664.11(b) of this title (relating to Failure to Complete Required Continuing Education) and in §664.10 of this title (relating to Acceptable Carry Over Continuing Education).

§664.10. Acceptable Carry Over Continuing Education Units. Excess continuing education units acquired by a registrant in one renewal period, may be carried over only one renewal period.

§664.11. Failure to Complete Required Continuing Education.

(a) The board shall not renew the certificate of registration of a registrant who fails to complete the required continuing education within any reporting period.

(b) A registrant who failed to complete all requirements for renewal of the certification of registration may complete the required continuing education within 90 days after the end of his or her continuing education period. The registrant's certificate shall be renewed upon submission of the required continuing education report within the 90-day period and upon payment of required late renewal fees as appropriate. The ending dates of a registrant's subsequent annual continuing education cycles under §664.2 of this title (relating to Deadlines) are not changed or extended when a registrant did not meet continuing education requirements in any previous period(s).

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 November 2, 1990.

TRD-9011712 Sandy Smith
Acting Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 452-9427

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 1. General Administration

Subchapter A. Rules of Practice and Procedure

• 28 TAC §1.100

The State Board of Insurance proposes new §1.100, concerning definition of the phrase

"not worthy of public confidence" as used in the Insurance Code, Article 1.14, §3. The Insurance Code, Article 1.14, §3, permits the State Board of Insurance to refuse the application for certificate of authority of a company or to revoke an insurance company's certificate of authority if its officers and directors are, in the statute's words, "not worthy of the public confidence"; however, the statute does not clearly specify what actions justify revocation or refusal. New §1.100 is necessary to permit the legal staff to use the enforcement powers of Article 1.14 to their full extent. It is essential to maintaining a solvent and trust-worthy insurance industry to prevent the licensure of companies whose management includes persons who might in the future commit acts that could damage a company's financial condition or injure its policyholders in some other way. Many people responsible for the demise of one company appear later at the helm of another. By specifying conduct which could result in a determination that a given officer or director is "not worthy of the public confidence," the new section gives a firm legal basis for denying licensure to such companies.

Alexander J. Gonzales, deputy commissioner, legal and compliance, has determined that, for the first five-year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section, and there will be no effect on local employment or local economy.

Mr. Gonzales also has determined that, for each year of the first five years the section is in effect, the public benefit of enforcing the section is the availability of a firm legal basis for denying licensure to companies whose officers or directors are not worthy of the public confidence, with the intended result being a healthier insurance industry that merits consumer confidence. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Alexander J. Gonzales, Deputy Commissioner, Legal and Compliance, Division 016-1, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.04(b), and Article 1.14, §3. The Insurance Code, Article 1.04(b), authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. The Insurance Code, Article 1.14, §3, permits the State Board of Insurance to refuse the application for certificate of authority of a company or to revoke a company's certificate of authority if its officers are not worthy of the public confidence.

§1.100. Definition of "Not Worthy of the Public Confidence."

(a) For the purposes of the Insurance Code, Article 1.14, §3, the phrase "not worthy of the public confidence" includes, but is not limited to, the following:

(1) violation of a fiduciary duty while serving as an officer or director of a company including, but not limited to, the following:

(A) borrowing the funds of such company;

(B) having an interest in any loan, pledge, security, or property of such company, except as a stockholder;

(C) taking or receiving to one's own use any fee, brokerage or other commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company; and

(D) taking, receiving, or authorizing another person to take or receive compensation, consideration, or benefits under circumstances in which such action violates the officer's fiduciary duty;

(2) commission of any fraudulent or dishonest act;

(3) misappropriation or conversion of any funds;

(4) violation of any of the insurance laws, rules or regulations, or orders of any court or regulatory agency, whether of Texas or any other state;

(5) conviction of a felony or any type of theft or fraud;

(6) being placed under a permanent injunction related to a violation of any insurance or securities law by any court or regulatory agency;

(7) being a defendant against whom judgment has been entered in a civil action under the Federal Racketeer Influenced and Corrupt Organizations Act;

(8) misstating or omitting a material fact in one of the following:

(A) biographical information submitted to the State Board of Insurance;

(B) documents submitted as part of an application for a certificate of authority; or

(C) any other document which is filed with the State Board of Insurance;

(9) service as an officer or director of an insurance company that has failed to pay valid claims promptly with such frequency as to indicate a general business practice;

(10) lack of managerial experience so as to make a company's operation potentially hazardous to the public;

(11) affiliation, as a general business practice, directly or indirectly, through ownership, control, reinsurance transactions, or other insurance or business

relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors, or the public; or

(12) a record of past business failures.

(b) A finding of any one of the elements listed in subsection (a) of this section may support a conclusion that a person is not worthy of the public confidence. Before making the determination to impose disciplinary action, consideration must be given to the elements listed in this subsection, which may mitigate the finding that the officer or director is not worthy of public confidence. A finding that any of the elements exist may warrant a determination not to revoke an insurer's certificate of authority; and, under such circumstances, lesser penalties may be imposed. The elements to be considered are as follows:

(1) the relationship of the act or acts which resulted in the finding to the duties which the officer or director performs;

(2) the relationship of the act or acts which resulted in the finding to the business of insurance or finance;

(3) the extent to which the position of officer or director in the company offers an opportunity to commit other acts similar to the act or acts which resulted in the finding;

(4) the person's age or level of experience at the time of the act or acts which resulted in the finding;

(5) whether the person knew or should have known of the commission of the act or acts which resulted in the finding;

(6) the amount of time that has elapsed since the commission of the act or acts which resulted in the finding; and

(7) the conduct and work activity of the person prior to and following the act or acts which resulted in the finding.

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 November 3, 1990.

TRD-9011680 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: December 3, 1990

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



Part II. Texas Workers' Compensation Commission

Chapter 102. General Provisions-Practice and Procedures

• 28 TAC §102.4

The Texas Workers' Compensation Commission proposes new §102.4.

The new section requires filing of documents with a representative for a claimant for workers' compensation benefits, and with the claimant as well. The section states that notices, reports, and written communications to a claimant shall be mailed to the last address supplied for the claimant, on any one of various documents listed in the section. The section also provides that once the insurance carrier or the commission is notified in writing that a claimant is represented, that copies of notices and reports mailed after that point will go to the representative as well as the claimant, unless the claimant requests delivery only to his/her representative.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on employment, locally, or statewide as a result of implementing the section.

Mr. Looney also has determined that for each year of the first five years the section is in effect the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8308, §2. 09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act.

§102.4. Filing Documents With Claimant's Representative.

(a) All notices, reports, and written communications to a claimant (who is either an employee, an employee's legal beneficiary, or a subclaimant) shall be mailed to the last address supplied, either on the employer's first notice of injury, any claim form filed by the claimant, or by a claimant's letter.

(b) After the insurance carrier or the commission is notified in writing that a claimant is represented by an attorney or other representative, all copies of notices

and reports will be thereafter mailed to the representative and the claimant, unless the claimant requests delivery to the representative only. However, copies of settlements, notices setting benefits review conferences and hearings, and orders of the commission shall also be sent to the claimant.

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 October 31, 1990.

TRD-9011578 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 7, 1990

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

Chapter 104. General Provisions-Rule Making

• 28 TAC §104.1

The Texas Workers' Compensation Commission proposes new §104.1, concerning the process for an interested person to petition for agency rulemaking according to the Administrative Procedure and Texas Register Act, Article 6252-13a, §11. The section sets out the form for petitions and the procedure for submitting a petition to the commission. The section also states how the commission will consider a petition, either by initiating rule-making procedures, or by denying the petition in writing.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on employment, locally, or statewide as a result of implementing the section.

Mr. Looney also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8308, §2. 09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, and the Administrative Procedure and Texas Register Act, Article 6252-13a, §11, which requires an agency to

prescribe by rule the form of a rule-making petition.

§104.1. Contents of Rule-Making Petitions.

(a) Changes or additions to these rules may be petitioned by any person. Rule-making petitions shall be in the form of a letter, that contains the following:

(1) a brief statement summarizing the proposed section;

(2) the text of the proposed section, in the exact form proposed for adoption;

(3) a statement setting forth the statutory reference that authorizes the proposed rule;

(4) a suggested effective date;

(5) any other matter which may be required by law;

(6) the petitioner's name, mailing address, and telephone number; and

(7) the petitioner's signature.

(b) The petitioner may also include a cost-benefit analysis, estimating the public benefit expected as a result of adoption of the proposed section, and the probable economic cost to persons required to comply with the proposed section. This provision is optional.

(c) The petition shall be filed with the executive director of the commission by personal delivery or certified mail. Copies of the petition will be forwarded to each commissioner.

(d) Within 60 days after the petition is submitted, the commission shall either initiate rule-making procedures, or shall deny the petition and state the reasons for denial in writing.

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 October 31, 1990.

TRD-9011577

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 7, 1990

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



Chapter 130. Benefits-Impairment and Supplemental Income Benefits

Subchapter A. Impairment Income Benefits

• 28 TAC §§130.1, 130.2, 130.3, 130.5, 130.6, 130.7

Texas Workers' Compensation Commission Proposes new §§130.1-130.3 and 130.5-130.7.

New §130.1 requires a doctor who finds that an injured employee has achieved maximum medical improvement, or finds that an employee has an impairment, to file a medical evaluation report form. The section spells out the information that a doctor must include in the report to support his findings of maximum medical improvement and any impairment rating assigned, which must be based upon a certain edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.

New §130.2 is concerned with certification by an employee's treating doctor of whether an injured employee has reached maximum medical improvement (MMI). The section requires a treating doctor to file the medical evaluation report and send it to the employee, the commission, and the insurance carrier. The section also states that, when a treating doctor has not certified MMI by the 98th week of payment of temporary income benefits to an injured employee, the commission shall notify the doctor of the requirements of the statute and rules relating to MMI, and require that an impairment rating report be mailed to the commission no later than 104 weeks from the date temporary income benefits began to accrue.

New §130.3 is concerned with certification by a doctor other than an employee's treating doctor, of whether an injured employee has reached maximum medical improvement (MMI). The doctor must file a medical evaluation report form and mail it to the treating doctor, the commission, the employee, and the carrier. The new section states that the treating doctor has seven days to respond, either by agreeing with the report, or by filing his/her own medical evaluation report with the commission, based upon his/her most recent examination of the employee, if the treating doctor disagrees with the certifying doctor.

New §130.5 concerns the procedure for an insurance carrier to follow if it disagrees with the impairment rating assigned by an injured employee's doctor. The Texas Workers' Compensation Act, §4.26, requires a carrier to pay impairment income benefits based upon the impairment rating assigned by an employee's doctor, or, in the alternative, its own reasonable assessment of impairment. The new section sets out the procedure and time limits for a carrier to file its own reasonable assessment, and provides that a carrier may request examination of the employee by a designated doctor in lieu of performing its own reasonable assessment. The new section describes the procedures a carrier and an injured employee must follow if a designated doctor is chosen to resolve the impairment rating dispute, in lieu of the carrier

performing a reasonable assessment. Finally, the section provides that an impairment rating is final if not disputed by either party within 90 days after the rating is assigned.

New §130.6 concerns the use of a designated doctor to examine the injured employee in order to resolve a dispute over whether an employee has reached maximum medical improvement, or over the impairment rating assigned to an injured employee. The section states that, if the commission receives notice that a dispute exists, it will notify the parties that a designated doctor will be directed to examine the employee. The section further states that the parties may agree to a choice of doctor, or, if they do not within ten days, the commission will order examination by a designated doctor. The section tells an injured employee how to reschedule the examination if there is a conflict with the employee's schedule. The section requires the designated doctor to file the medical evaluation report form. Finally, the section requires the carrier to begin payment of impairment income benefits in accordance with the designated doctor's report, no later than seven days after receiving it.

Finally, new §130.7 concerns the procedure an employee must follow, once he/she is receiving impairment income benefits, in order to accelerate the payment schedule of those benefits if there is a financial hardship. The section requires that a request be filed with the insurance carrier and the commission, that the commission must approve the amount and number of accelerated payments, and that the carrier shall begin payments according to the accelerated schedule within seven days after notification of the commission's approval. The section further makes clear that acceleration of the payment of impairment income benefits will not change the calculation of the date that supplemental income benefits will begin to accrue.

Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on employment, locally or statewide as a result of implementing the section.

Mr. Looney also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2. 09(a), which authorizes the Commission to adopt rules necessary to administer the Texas Workers' Compensation Act.

§130.1. Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment.

(a) A doctor who is required to certify, or who determines during the course of treatment, whether an employee has reached maximum medical improvement, or has an impairment, shall complete and file a medical evaluation report as required by this rule.

(b) "Certification", or to "certify", in these rules, means the formal assertion of medical facts or expert opinion by a doctor supporting or relating to:

(1) whether an employee has or has not reached maximum medical improvement; or

(2) whether an employee has any impairment, and, if so, the employee's impairment rating.

(c) All reports made under this rule shall be on a form prescribed by the commission and shall contain:

(1) the workers' compensation number assigned to the claim by the commission;

(2) the employee's name and social security number;

(3) the date of injury;

(4) the doctor's name, address, professional license number, federal tax identification number, and signature;

(5) a narrative history of the employee's medical condition(s), including, but not limited to:

(A) onset and course of the employee's medical condition(s); and

(B) findings of previous examinations, treatments, and responses to treatments not previously reported to the insurance carrier and the commission by the doctor making the report;

(6) a description of the results of the most recent clinical evaluation of the employee; and

(7) a statement that the employee has reached, or an estimate of when the employee will reach, maximum medical improvement.

(d) After the doctor has certified maximum medical improvement and before the doctor assigns an impairment rating, the doctor must:

(1) determine if an objective clinical or laboratory finding of permanent impairment exists; and

(2) document specific laboratory or clinical findings that an impairment exists.

(e) If a doctor certifies that an employee has an impairment, the doctor shall assign a whole body impairment rating based on the injury. All certifications of impairment shall be made in compliance with the rating criteria contained in the second printing, dated February, 1989, of the American Medical Association's Guides to the Evaluation of Permanent Impairment, third edition (The "Guides"). An impairment rating of less than 5.0% may be reported without further written description of the elements underlying the rating, unless requested by the commission. A report of an impairment rating of 5.0% or greater shall contain the information set forth in §2.2 of the Guides.

(f) A doctor required to submit a report under this chapter shall submit supplementary and explanatory reports and information as requested by the commission or the carrier.

(g) The Medical Evaluation Report form shall contain:

(1) the information required in subsection (c) of this section;

(2) an instruction to the doctor that the impairment rating shall be based on the compensable injury alone; and

(3) an instruction to the doctor as to the definition of objective clinical or laboratory finding as contained in the Act, §1.03.

(h) A report required under this rule shall be filed with the commission, employee, and insurance carrier no later than seven days after the examination.

§130.2. Certification of Maximum Medical Improvement by the Treating Doctor.

(a) A treating doctor shall examine the employee and certify that an employee has reached maximum medical improvement and assign an impairment rating, if any, as soon as the doctor anticipates that the employee will have no further material recovery from or lasting improvement to the work-related injury or illness, based on reasonable medical probability.

(b) A treating doctor who certifies that the employee has reached maximum medical improvement shall assign an impairment rating and shall:

(1) complete the report required by §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment); and

(2) send it, no later than seven days after the examination, to the commission, the employee, or the employee's representative, if any, and the insurance carrier.

(c) The commission shall mail a notice to a treating doctor on the expiration of 98 weeks from the date the injured employee's temporary income benefits began to accrue if the employee is still receiving

temporary income benefits. The commission's notice shall advise the treating doctor of the requirements the Act, §4.26, and this rule, and require that an impairment rating report be mailed to the commission no later than 104 weeks from the date temporary income benefits began to accrue.

§130.3. Certification of Maximum Medical Improvement by Doctor Other Than Treating Doctor.

(a) A doctor, other than a treating doctor, who certifies that an employee has reached maximum medical improvement shall complete a medical evaluation report under §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), and send a copy of the medical evaluation report, no later than seven days after the examination, to the treating doctor, if the certifying doctor is not a designated doctor selected to resolve a dispute about maximum medical improvement. A copy of the report shall also be sent to the commission, the employee, and the insurance carrier at the same time.

(b) A treating doctor who receives the report shall mail to the commission within seven days:

(1) a statement indicating the treating doctor's agreement with the certifying doctor's certification and impairment rating; and

(2) the report required by §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), based on the most recent examination, if the treating doctor disagrees with either the finding that the employee has reached maximum medical improvement, or the impairment rating assigned by the certifying doctor.

§130.5. Impairment Rating Disputes.

(a) An insurance carrier that disputes an impairment rating shall file with the commission a statement of disputed impairment income benefits that gives the insurance carrier's reasonable assessment of the correct rating. A copy of the statement shall be sent to the employee, and the employee's representative, at the same time as it is filed with the commission.

(b) If the carrier does not begin paying impairment income benefits, the statement shall be filed no later than five days after receiving the report from the certifying doctor.

(c) If the carrier begins payment of impairment income benefits, the statement shall be filed no later than three weeks after the carrier receives the report from the certifying doctor.

(d) In lieu of performing its own reasonable assessment, the carrier may file

a request for selection of a designated doctor to assess impairment. Section 130.6 of this title (relating to Designated Doctor: General Provisions) shall apply except that:

(1) the examination shall be held no later than 14 days after a designated doctor is agreed to by the parties, or appointed by the commission, whichever is earlier; and

(2) if the request does not indicate agreement on the designated doctor by the employee and the insurance carrier, the commission shall select the designated doctor; and

(3) the employee shall not reschedule the examination other than for an "exceptional circumstance", and the rescheduled examination must be within 72 hours of the original examination.

(e) The first impairment rating assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned.

§§130.6. Designated Doctor: General Provisions.

(a) If the commission receives a notice from the employee or the insurance carrier that disputes either maximum medical improvement or an assigned impairment rating, the commission shall notify the employee and the insurance carrier that a designated doctor will be directed to examine the employee.

(b) After notifying the employee and the insurance carrier, the commission shall allow the employee and insurance carrier ten days to agree on a designated doctor. The commission shall inform an unrepresented employee that an ombudsman is available to explain the contents of the agreement for a designated doctor.

(c) If the employee and the insurance carrier agree on a designated doctor, the insurance carrier shall immediately notify the commission of the agreement. The commission shall contact the employee to confirm the agreement.

(d) No later than ten days after agreeing on a designated doctor, the carrier shall send a letter confirming the agreement to the employee and the commission. The letter shall include:

(1) the workers' compensation number assigned to the claim by the commission;

(2) the employee's name, address, and social security number;

(3) the date of the injury; and

(4) the designated doctor's name, business address, and telephone number, and the time and date of the examination.

(e) If the commission is not notified by the end of the 10th day that an agreement has been reached, the commission

shall issue an order directing the employee to be examined by a designated doctor chosen by the commission. The examination shall be held within a reasonable time after the order is made. The order shall specify the name, business address, and telephone number of the designated doctor, and the date and time of the examination.

(f) If a scheduling conflict exists, the employee shall contact the doctor to reschedule the examination to a time within seven days before or after the scheduled examination. The employee shall notify the commission of the time and date of the rescheduled examination.

(g) The designated doctor shall complete and file the medical evaluation report in accordance with §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment).

(h) The insurance carrier shall pay any accrued income benefits, and shall begin to pay weekly income benefits, in accordance with the designated doctor's report, no later than seven days after receipt of the report.

§130.7. Acceleration of Impairment Income Benefits.

(a) An employee seeking an acceleration of impairment income benefits shall submit a request in writing to commission, on a form prescribed by the commission, and send a copy to the insurance carrier. The form shall explain subsection (d) of this section.

(b) The commission shall approve the request for acceleration of impairment benefits pursuant to the Act, §4.321. The commission shall notify the insurance carrier when a request for acceleration is approved, and of the amount and number of accelerated payments which shall be made.

(c) The insurance carrier shall initiate the accelerated payment schedule no later than seven days after receiving notice of the commission's approval.

(d) Acceleration of payment of impairment income benefits does not reduce the impairment period for purposes of the date that entitlement to supplemental income benefits begins.

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 October 31, 1990.

TRD-9011576

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 7, 1990

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

Chapter 134. Benefits-Guidelines for Medical Services, Charges, and Payments

Subchapter B. Disclosure by Health Care Provider of Financial Interest in Referred Provider

• 28 TAC §134.100, §134.101

The Texas Workers' Compensation Commission proposes new §134.100 and §134.101.

New §134.100 concerns the disclosure that a health care provider must make to the commission, annually, if that provider refers injured employees to another health care provider in which he/she owns greater than 5.0% financial interest. The section defines "financial interest" as that term is used in the section. The section requires the provider to file a written report with the division of medical review of the commission, describing specific information about the other providers in which it owns greater than 5.0% interest. The section provides an administrative penalty for failure to disclose the interest in accordance with the law.

New §134.101 concerns a similar disclosure that the provider must make to an insurance carrier, at the time the provider refers an injured employee to another provider in which it owns greater than 5.0% financial interest. The section requires specific information about its interest to be reported in writing to the carrier within seven days after a referral is made, along with identifying information about the employee. The section also provides an administrative penalty for failure to disclose the interest to the carrier.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on employment, locally or statewide as a result of implementing the sections.

Mr. Looney also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, and §8.41, which authorizes the commission to adopt rules relating to filing by a provider of an annual disclosure statement if the provider refers injured em-

ployees to another provider in which it owns greater than a 5.0% financial interest.

§134.100. Provider Disclosure of Financial Interest, Submission to Commission.

(a) A health care provider who refers an injured employee to another health care provider in which the referring provider has a greater than 5.0% financial interest shall, by April 1, 1991, and annually thereafter, provide the following information in writing to the division of medical review in Austin:

(1) the referring health care provider's name, business address, federal tax identification number, and professional license number;

(2) the name(s), business address(es), federal tax identification number(s), and professional license number(s) of the health care provider(s) in which the referring health care provider has a financial interest greater than 5.0%; and

(3) the percentage(s) of the financial interest.

(b) For purposes of this rule, financial interest is defined as any legal or equitable interest, including partnership interest, community property interest, or ownership of shares or bonds of a corporation.

(c) Failure to disclose a financial interest may subject the health care provider to an administrative violation and penalty as described in the Act, §10.07.

§134.101. Provider Disclosure of Financial Interest, Submission to the Carrier.

(a) A health care provider who refers an injured employee to another health care provider in which the referring provider has a greater than 5.0% financial interest shall submit to the insurance carrier, within seven days of the referral, the following:

(1) general information required under §133.1 of this title (relating to Information Required In Communications) ;

(2) the referring health care provider's name, business address, federal tax identification number, and professional license number;

(3) the name, business address, federal tax identification number, and professional license number of the health care provider in which the referring health care provider has a financial interest greater than 5.0%; and

(4) the percentage of the financial interest.

(b) For purposes of this section, financial interest is defined as described by §134.100(b) of this title (relating to Provider Disclosure of Financial Interest, Submission to Commission) .

(c) Failure to disclose a financial interest may subject the health care provider to an administrative violation and penalty as described in the Act, §10.07.

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 October 31, 1990.

TRD-9011579

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 7, 1990

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

◆ ◆ ◆
**Chapter 142. Dispute
Resolution-Benefit Contested
Case Hearing**

• **28 TAC §§142.1-142.18**

The Texas Workers' Compensation Commission proposes new §§142.1-142.18.

New §142.1 provides for the application of the Administrative Procedure and Texas Register Act, §14(a), to benefit contested case hearings.

New §142.2 sets out the duties and authority of the hearing officer.

New §142.3 prohibits ex parte communications between the hearing officer and any party, representative, witness attorney or employer except in specified conditions. The section makes clear that the prohibition does not apply regarding merely procedural matters, or to communications between the hearing officer and other commission employees. The section also provides for sanctions for failure to comply with this section.

New §142.4 requires that if any document is sent to the commission by a party relating to a benefit contested case hearing, copies must also be sent to all other parties, their representatives or attorneys. The section requires that a statement certifying delivery of the document to all parties accompany the document sent to the commission. The section also sets out the permissible means of delivery of the document.

New §142.5 sets out the sequence of proceedings involved in resolving benefit disputes. The section requires parties to attempt resolution by mediation at a benefit review conference before proceeding to a contested case hearing or, after January 1992, to arbitration by mutual election. The section also sets out the circumstances under which a party may proceed directly to a contested case hearing and the procedures which must be followed in requesting a hearing. The section provides for the commission to rule on a request for a hearing, and allows an opposing party to submit a response to a request or a hearing. The section sets out the requirements for such a response.

New §142.6 details the procedures, involved in setting a benefit contested case hearing,

both when there has been a prior benefit review conference and when there has been no prior benefit review conference. The section provides for expedited settings as determined by the commission to be appropriate. The section sets out the requirements for notice of the hearing, the information to be included in the notice and the deadlines for sending the notices.

New §142.7 defines the statement of disputes and makes clear that only the disputes included there in are to be considered by the hearing officer. The section describes the information to be included in a statement of disputes when there has been a prior benefit review conference, including the benefit review officer's report, party responses, and additional disputes provided by this section. The section allows a party to submit a response to disputes that are identified as unresolved in the benefit review officer's report, and describes the procedures and requirements relating to such a response. The section also allows for additional disputes to be included in the statement of disputes that were not identified as unresolved upon a determination by the hearing officer of good cause to allow the amendment. The section sets out the requirements relating to a request to conclude such additional disputes, and requires the hearing officer to rule on the request and notify the parties. The section also sets out the requirements of a statement of disputes when there has been no prior benefit review conference.

New §142.8 allows a hearing officer to use summary procedures to expedite the presentation of a case, sets out some of these procedures, and indicates when they may be allowed. They may be requested by party any time before the hearing, and in any manner.

§New §142.9 allows parties to enter into stipulations, resolve benefit disputes by agreement, or resolve all benefit disputes by settlement. The section sets out the requirements for stipulations before or at a hearing, and refers to other sections in the requirements relating to agreements and settlements.

New §142.10 defines a continuance and sets out the requirements for a party, whether represented or unrepresented, to request one, while allowing the commission to continue a hearing on its own motion. The section requires the hearing officer to rule on a request and to notify all parties of the date, time, and location of the rescheduled hearing.

New §142.11 imposes a penalty for failure without good cause to attend a benefit contested case hearing.

New §142.12 defines the terms "evidence," "service," and "subpoena," and allows the commission to issue a subpoena on its own motion or at the request of party upon a determination of good cause, and sets out the manner of requesting a subpoena and the information to be included in the request. The section also sets out special provisions relating to hearing subpoenas. The section also provides for service of a sub-

poena, and requires the party requesting the subpoena to pay all costs associated with a subpoena. The section provides for a fee and mileage cost to be paid to a non-party witness who is subpoenaed or compelled to attend a hearing or deposition. The section also provides a penalty for failure to comply with subpoena and for enforcement on the manner provided by the Administrative Procedure and Texas Register Act, Article 6252-13a, §14(a).

New §142.13 describes discovery procedures and permits the issuance of a subpoena for evidence not produced voluntarily. The section requires parties to exchange certain specific information no later than fifteen days before a benefit review conference, and other evidence as it becomes available. Information not previously exchanged must be brought to the hearing, at which time the hearing officer must make a determination as to whether good cause exist for a party who did not previously exchange the information to introduce such evidence at the hearing. The section allows interrogatories to elicit information from both claimants and insurance carriers. The section requires interrogatories to be made under oath, and sets out the required deadlines or presenting and answering them. The section provides for the deposition of witnesses by requesting permission from the hearing officer, and sets out the requirements for the request. The section also provides that a hearing officer may grant permission for additional discovery. The section also requires that a notice for expedited hearing or a hearing held without prior benefit review conference shall include time limits for completion of discovery.

New §142.14 allows a party to request permission to have the hearing recorded by a court reporter selected by the party, and requires the party to bear the cost of the court reporter and to provide a copy of the court reporter's audiotape or transcript to the commission at no charge. The request may be made in any manner anytime before the hearing. The section requires the hearing officer to rule on the request and to notify the parties only if the request is denied.

New §142.15 sets out the roles of the participant in a hearing and sets out in detail the order of the hearing and each of its three parts: opening, presentation, and closing.

New §142.16 requires the hearing officer to issue a decision on benefits after the hearing record closes and sets out the requirements of the decision and the time limits for filing the decision with the division of hearings and furnishing a copy to the parties. The section requires a hearing officer to prepare a separate signed written decision on each request for attorney fees. The section provides

that the decisions issued under this section are affective and binding on the date signed by the hearing officer. Decisions on benefits that are not appealed become final on the sixteenth day after the date received from the hearings division and are binding during an appeal to the appeals panel. The section provide for a penalty for failure to comply with a with decision.

New §142.17 allows a party or employer to request a transcript of the hearing audiotape and/or for a duplicate of the audiotape, to be paid for by the requestor.

New §142.18 requires a priority setting for hearing cases reversed and remanded to the hearings division. The section requires that notice of the remanded hearing be sent to the parties and set out the information to be included on the notice. The section makes clear that the statement of issues includes the decision of the appeals panel and the parties responses.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on employment, locally or statewide as a result of implementing the sections.

Mr. Looney also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, and §6.31(d), which authorizes the commission to adopt rules governing the procedures under which contested case hearings are conducted.

§142.1. *Application of the Administrative Procedure and Texas Register Act.* The following sections of the Administrative Procedure and Texas Register Act (Vernon's Texas Civil Statutes, Article 6252-13a,) apply to benefit contested case

hearings: §14(n), relating to enforcement of subpoenas.

§142.2. *Authority and Duties of the Hearing Officer.* The hearing officer is authorized to:

- (1) issue subpoenas;
- (2) rule on requests;
- (3) issue orders;
- (4) use summary procedures;
- (5) direct parties to appear at a prehearing to resolve evidentiary and procedural issues;
- (6) establish time limits for conducting a hearing;
- (7) administer oaths;
- (8) rule on the admissibility of evidence;
- (9) determine the relevancy, materiality, weight, and credibility of evidence;
- (10) request additional evidence;
- (11) take official notice of the law of Texas and other jurisdictions, Texas city and county ordinances, the contents of the Texas Register, the rules of state agencies, facts that are judicially cognizable, and generally recognized facts within the commission's specialized knowledge;
- (12) examine parties and witnesses, and permit examination and cross-examination of parties and witnesses;
- (13) recess, postpone, or dismiss a hearing; and
- (14) take any other action as authorized by law, or as may facilitate the orderly conduct and disposition of the hearing.

§142.3. *Ex Parte Communications.*

(a) No person, except as otherwise provided in subsection (c) of this section may communicate, either directly or indirectly, with the hearing officer regarding any facts, issues, law, or rules relating to the benefit contested case hearing after the hearing has been set, and until all administrative and judicial remedies have been exhausted, unless all parties to the hearing are present, except where the communication is:

- (1) written; and
- (2) delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(b) Notwithstanding subsection (a) of this section, any of the individuals named above may communicate with the hearing officer in any manner regarding procedural issues.

- (c) A hearing officer assigned to

§142.4. Delivery of Copies to All Parties. A party who sends a document relating to a benefit contested case hearing to the commission shall also deliver copies

of the document to all other parties, or their representatives or attorneys. Delivery shall be accomplished by presenting in person, mailing by first class mail, or transmitting

by fax machine. The document sent to the commission shall contain a statement certifying delivery. The following statement of certification shall be used:

"I hereby certify that I have on this _____ day of _____, 19____, delivered a copy of the attached document to _____ [state the names of all parties to whom a copy was delivered] by _____ [state the manner of delivery]."

Signature

§142.5. Sequence of Proceedings to Resolve Benefit Disputes.

(a) Usual sequence. Except as provided in this rule, parties to a benefit dispute are required to attempt to resolve the dispute by mediation at a benefit review conference before proceeding to a contested case hearing or, after January 1, 1992, to arbitration by mutual election.

(b) Guidelines for proceeding directly to a benefit contested case hearing. Parties may proceed directly to a contested case hearing without attending a benefit review conference if the commission determines that:

(1) mediation would not prove effective to resolve the dispute;

(2) necessary evidence cannot be obtained without subpoena; or

(3) the situation of the parties or the nature of the facts or law of the case is such that the overall policy of the Act would be advanced by proceeding directly to a contested case hearing.

(c) Requesting a hearing. A party may request the commission to set a benefit contested case hearing. The request shall be made in the following manner.

(1) If the party is represented, the request shall:

(A) be made in writing;

(B) identify and describe the disputed issue or issues;

(C) state the reason for requesting the hearing;

(D) be sent to the commission; and

(E) be delivered to all other parties, as provided by §142.4 of this Chapter (relating to Delivery of Copies).

(2) An unrepresented claimant may request a hearing by contacting the commission in any manner.

(d) Commission action on a request for hearing. The commission will rule on the request, and notify the parties. A ruling granting the request will include a notice of hearing, as provided in §142.6 of this Chapter (relating to Setting a Benefit Contested Case Hearing). A ruling denying the request may include a notice of benefit review conference.

(e) Response. If a hearing is set upon request, the other party or parties may submit a response. The response shall:

(1) be made in writing;

(2) describe and explain the party's position on the dispute or disputes;

(3) be sent to the commission no

later than five days before the hearing; and

(4) be delivered to all other parties, as provided by §142.5 of this title (relating to Delivery of Copies to All Parties).

§142.6. Setting a Benefit Contested Case Hearing.

(a) Setting with prior benefit review conference. The commission shall set a benefit contested case hearing to be held:

(1) not later than 60 days from the date of the benefit review conference; or

(2) if the commission determines that an expedited setting is appropriate, as provided by §140.3 of this title (relating to Expedited Hearings), not later than 30 days from the date of the benefit review conference.

(b) Setting without prior benefit review conference. For those disputes determined not to require a benefit review conference, as defined in §142.5 of this chapter (relating to Sequence of Proceedings to Resolve Benefit Disputes), the commission may set a benefit contested case hearing on its own motion, or at the request of a party. When requested, the hearing shall be set on a date:

(1) not later than 60 days from receipt of the request; or

(2) if the commission determines that an expedited setting is appropri-

ate, not later than 30 days from the commission's receipt of the request.

(c) Notice of hearing. After setting a hearing, the commission shall furnish to the parties, by first class mail or personal delivery, written notice of the date, time, duration, and location of the hearing. The notice shall be furnished:

(1) at the same time that the notice of the benefit review conference is given;

(2) not later than 45 days before a hearing set under subsection (b)(1) of this section; or

(3) not later than 10 days before a hearing set under subsection (b)(2) of this section.

§142.7. Statement of Disputes.

(a) Statement of disputes. The statement of disputes is a written description of the benefit dispute or disputes to be considered by the hearing officer. A dispute not expressly included in the statement of disputes will not be considered by the hearing officer.

(b) Statement of disputes after a benefit review conference. The statement of disputes for a hearing held after a benefit review conference includes:

(1) the benefit review officer's report, identifying the disputes remaining unresolved at the close of the benefit review conference;

(2) the parties' responses, if any;

(3) additional disputes by unanimous consent, as provided by subsection (c) of this section; and

(4) additional disputes presented by a party, as provided by subsections (d) and (e) of this section, if the hearing officer determines that the party has good cause.

(c) Party response to the benefit review officer's report. A party may submit a response to the disputes identified as unresolved in the benefit review officer's report. The response shall:

(1) be in writing;

(2) describe and explain the party's position on the unresolved dispute or disputes;

(3) be sent to the commission no later than 20 days after receiving the benefit review officer's report; and

(4) be delivered to all other parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

(d) Additional disputes by unanimous consent. Parties may, by unanimous consent, submit for inclusion in the state-

ment of disputes one or more disputes not identified as unresolved in the benefit review officer's report. Additional disputes submitted by consent shall:

(1) be made in writing;

(2) identify the dispute, explain the party's position on it;

(3) be signed by all parties; and

(4) be sent to the commission no later than 10 days before the hearing; and

(5) explain why the issue was not raised earlier.

(e) Additional disputes by permission of the hearing officer. A party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. The hearing officer will allow the amendment only on a determination of good cause.

(1) If the party is represented, the request shall:

(A) be made in writing;

(B) identify and describe the dispute or disputes;

(C) state the reason for the request;

(D) be sent to the commission no later than 15 days before the hearing; and

(E) be delivered to all other parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

(2) An unrepresented claimant may request additional disputes to be included in the statement of disputes by contacting the commission in any manner no later than 15 days before the hearing.

(3) The hearing officer will rule on the request, and notify the parties of the ruling.

(f) Statement of disputes without prior benefit review conference. The statement of disputes for a hearing held without a prior benefit review conference includes:

(1) the request for hearing, as described in §142.5(c) of this chapter (relating to the Manner in Which a Hearing may be Requested); and

(2) the other party's response, as described in §142.5(e) of this chapter (relating to the Party or Parties Response to a Request for a Hearing), if any.

§142.8. Summary Procedures.

(a) In order to expedite the presen-

tation of a case, the hearing officer may allow summary procedures, including but not limited to:

(1) sworn witness statements;

(2) summaries of evidence; and

(3) medical reports.

(b) The hearing officer may allow the use of summary procedures:

(1) on its own motion; or

(2) at the request of a party.

(c) A party may request the use of summary procedures in any manner and at any time before the hearing.

§142.9. Stipulations, Agreements, and Settlements.

(a) At any time before or during the hearing, parties may:

(1) enter into stipulations, as provided by §140.1 of this title (relating to Definitions);

(2) resolve one or more benefit disputes by agreement; or

(3) resolve all benefit disputes by settlement.

(b) Stipulations shall be made as follows.

(1) Stipulations made before the hearing shall be:

(A) made in writing;

(B) signed by all parties to the stipulation, or their representatives; and

(C) sent to the commission no later than the day before the hearing.

(2) Stipulations may be made orally at a hearing and preserved in the record.

(c) Agreements shall be made as provided by §140.5 of this title (relating to Resolution of Benefit Disputes by Agreement or Settlement) and §140.6 of this title (relating to Special Provisions Regarding Agreements).

(d) Settlements shall be made as provided by §140.5 of this title (relating to Resolution of Benefit Disputes by Agreement or Settlement) and §140.7 of this title (relating to Special Provisions Regarding Settlements).

§142.10. Continuance.

(a) As used in this chapter, "continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

(b) The commission may continue a hearing:

(1) on its own motion; or
(2) at the request of a party, if the hearing officer determines the party has good cause.

(c) A request for continuance may be made before or during a hearing.

(1) A request made by a represented party before a hearing shall:

(A) be in writing;

(B) state the reason for continuing the hearing;

(C) be sent to the commission no later than five days before the hearing; and

(D) be delivered to all parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

(2) An unrepresented claimant may request a continuance before a hearing by contacting the commission in any manner.

(3) A party may orally request a continuance during a hearing. In addition to showing good cause, the party must show that a continuance will not prejudice the rights of the other parties.

(d) The hearing officer will rule on the request, and notify all parties of the ruling. A ruling granting the continuance will include notice of the date, time, and location of the rescheduled hearing.

§142.11. Failure to Attend a Contested Case Hearing. Failure to attend a benefit contested case hearing without good cause, as determined by the hearing officer, is a Class C administrative violation, with a penalty not to exceed \$1,000.

§142.12. Subpoena.

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

(1) Evidence—Testimony or documents, including books, papers, and tangible things.

(2) Service—Delivery of a subpoena by an authorized individual to the person to whom it is addressed.

(3) Subpoena—A commission order issued by the hearing officer requiring a person to attend or to produce evidence at a deposition (deposition subpoena) or at a hearing (hearing subpoena).

(b) How issued. The commission may issue a subpoena:

(1) on its own motion; or

(2) at the request of a party, if the hearing officer determines the party has good cause.

(c) Request for subpoena. A party may request a subpoena in the following manner:

(1) If the party is represented, the request shall:

(A) be in writing;

(B) identify the evidence to be produced, and explain why it is relevant to a disputed issue;

(C) state whether the subpoena is for a deposition or a hearing;

(D) be sent to the commission; and

(E) be delivered to all parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties).

(2) An unrepresented claimant may request a subpoena by contacting the commission in any manner, and may also request the commission to arrange for service, if service will be at no cost to the commission.

(d) Special provisions for hearing subpoenas. A request for a hearing subpoena shall be sent to the commission and delivered to the parties, as provided by §142.4 of this chapter (relating to Delivery of Copies to All Parties), no later than 10 days before the hearing. The hearing officer may deny a request for a hearing subpoena upon a determination that the testimony may be adequately obtained by deposition or written affidavit.

(e) Service. Upon granting a request and issuing a subpoena, the hearing officer shall:

(1) return it to the requester for service, according to Rule 178, Texas Rules of Civil Procedure; or

(2) send it to the appropriate sheriff or constable for service, if an unrepresented claimant has requested the commission to arrange for service, as provided by subsection (c)(2) of this section.

(f) Costs.

(1) Except as provided by subsection (c)(2) of this section, the party requesting the subpoena is responsible for all costs associated with the subpoena, including service, witness fees, and mileage.

(2) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or deposition to give testimony or produce documents is entitled to receive from the party requesting the subpoena:

(A) a fee of \$30 a day for each day or part of a day the person is necessarily present as a witness or deponent; and

(B) mileage at the rate set for state employees in the General Appropriations Act, for going to, and returning from the place of the hearing or the place of the deposition, if the place is more than 25 miles from the person's place of residence.

(g) Failure to comply with a subpoena. Failure to comply with a subpoena:

(1) may be enforced in the manner provided by Texas Civil Statutes, Article 6252-13a, §14(n); and

(2) is a Class A administrative violation, with a penalty not to exceed \$10,000.

§142.13. Discovery.

(a) Description of discovery. As used in this chapter, discovery is the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses. If the evidence is not produced voluntarily, the party may request a subpoena, as provided in §142.12 of this chapter (relating to Subpoena). Discovery includes:

(1) parties' exchange of documentary evidence;

(2) interrogatories, on commission-prescribed forms; and

(3) witness depositions, as follows:

(A) a health care provider may be deposed only on written questions; and

(B) other witnesses may be deposed within their county of residence or employment, orally or on written questions, if the hearing officer determines the party has good cause to request such testimony.

(b) Sequence of discovery. Parties shall exchange documentary evidence in their possession not previously exchanged, as described in subsection (c) of this section, before requesting additional discovery by interrogatory, as described in subsection (d) of this section, or deposition, as described in subsection (e) of this section. Additional discovery shall be limited to evidence not exchanged, or not readily derived from evidence exchanged.

(c) Parties' exchange of documentary evidence.

(1) Except as provided in subsection (g) of this section, no later than 15 days after the benefit review conference, parties shall exchange with one another the following information:

(A) all medical reports and reports of expert witnesses who will testify at the hearing;

(B) all medical records;

(C) any witness statements;

(D) the identity and location of any witness known to have knowledge of relevant facts; and

(E) all photographs or other documents which a party intends to offer into evidence at the hearing.

(2) Thereafter, parties shall exchange additional documentary evidence as it becomes available.

(3) Parties shall bring all documentary evidence not previously exchanged to the hearing in sufficient copies for exchange. The hearing officer shall make a determination whether good cause exists for a party not having previously exchanged such information or documents to introduce such evidence at the hearing.

(d) Interrogatories. Interrogatories as prescribed by the commission may be used to elicit information from claimants and insurance carriers. Except as provided in subsection (g) of this section, interrogatories shall be presented to a party no later than 20 days before the hearing, unless the parties otherwise agree. Answers to interrogatories shall be exchanged no later than five days after a party's receipt of the interrogatories. Answers to interrogatories shall be made under oath.

(e) Witness deposition. A party wishing to depose a witness shall request permission for deposition from the hearing officer. The request shall:

(1) be made in writing;

(2) identify the witness to be deposed;

(3) state why the testimony is needed;

(4) propose a date, time, and place for taking the deposition;

(5) include a copy of the questions to be asked, if the deposition is to be on written questions;

(6) if needed, include a request for subpoena, as provided by §142.12 of this title (relating to Subpoena);

(7) be sent to the commission no later than 10 days before the hearing; and

(8) be delivered to all parties, as provided by §142.4 of this title (relating to Delivery of Copies to All Parties).

(f) Additional discovery. The hearing officer may grant a party permission to

conduct discovery beyond that described above upon a showing of good cause at a hearing held for this purpose.

§142.1. Permission to Use Court Reporter.

(a) A party may request permission to have the hearing recorded by a court reporter provided by the party. The party may select, and must bear the cost of, the court reporter.

(b) A request for permission to use a court reporter may be made in any manner and at any time before the hearing. The hearing officer will section on the request, and notify the parties only if the request is denied.

(c) A copy of the court reporter's audiotape, or transcript, if produced, shall be furnished to the commission at no charge.

§142.15. Order of Proceeding.

(a) Roles of the participants. The hearing officer will preside over the hearing, and record the proceedings on audiotape, unless a court reporter is present. Each party may present evidence, respond to evidence presented, and offer argument on any disputed issue. The employer may present relevant evidence on disputed issues.

(b) Description of the hearing. The benefit contested case hearing consists of three parts: opening, presentation, and closing.

(c) Opening. The hearing officer shall:

(1) call the hearing to order;

(2) identify the persons present and their relationship to the case;

(3) identify the issues to be decided;

(4) outline the procedures and order of the presentation to be followed;

(5) administer oaths to those who intend to testify; and

(6) take any other preliminary action to provide for a fair, just, and impartial hearing, including invoking the section of sequestration.

(d) Presentation. The hearing officer shall permit each party, and the employer, if present, to:

(1) make an opening statement;

(2) offer evidence;

(3) cross-examine or otherwise question any witness; and

(4) offer rebuttal evidence.

(e) Closing. The hearing officer:

(1) may permit closing statements; and

(2) shall take written evidence on attorney fees, if offered.

§142.16. Decision.

(a) After the record closes, the hearing officer shall issue a decision on benefits. The decision shall:

(1) be in writing;

(2) include findings of fact and conclusions of law; a determination of whether benefits are due; and, if so, an award of benefits due; and

(3) be signed by the hearing officer.

(b) The hearing officer shall additionally issue a separate, signed, written decision on each request for attorney fees presented.

(c) No later than the 14th day after the close of the hearing, the hearing officer shall file all decisions with the division of hearings.

(d) No later than seven days after receiving the decision, the division shall furnish to the parties, by first class mail or personal delivery:

(1) a file-stamped copy of the decision; and

(2) a statement specifying the place, manner, and time period within which an appeal must be filed.

(e) A decision issued under this section shall be effective and binding on the date signed by the hearing officer.

(f) A decision regarding benefits not appealed to the appeals panel, as provided by the Act, §6.41 et seq. and Chapter 143 of these sections, becomes final on the 16th day after the date received from the division of hearings. Failure to comply with a final decision or order within 20 days of the date it becomes final is a Class A administrative violation, with a penalty not to exceed \$10,000.

(g) A decision regarding benefits is binding on the parties during an appeal to the appeals panel.

§142.17. Transcript or Duplicate of the Hearing Audiotape.

(a) A party or the employer may submit a request to the commission for a transcript of the hearing audiotape. The requester shall pay the cost of the transcript, as established by the commission.

(b) A party or the employer may submit a request to the commission for a duplicate of the hearing audiotape. The requester shall pay the cost of the duplication, as established by the commission.

§142.18. Special Provisions for Cases on Remand from the Appeals Panel.

(a) Priority setting for case on remand from appeals panel. When the appeals

panel reverses a hearing officer's decision and remands the case for further consideration, the commission shall set the hearing to be held within 30 days of the date of the appeals panel's decision.

(b) Notice of hearing. After setting a hearing under this section, the commission shall furnish, by first class mail or personal delivery, written notice of the date, time and location to the parties. The notice shall be furnished at least 20 days before the hearing.

(c) Statement of issues. For cases on remand from the appeals panel, the statement of issues includes:

- (1) the decision of the appeals panel; and
- (2) the parties' responses, if any.

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 October 31, 1990.

TRD-9011575 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 7, 1990

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

Chapter 143. Dispute Resolution-Review by the Appeals Panel

• 28 TAC §§143.1-143.5

The Texas Workers' Compensation Commission proposes new §§143.1-143.5.

New §143.1 sets out the definitions used in appeals panel proceedings.

New §143.2 describes the proceedings of the appeals panel and makes clear that the parties do not appear in person before the panel. The section sets out the actions the appeals panel may take concerning a decision by a hearing officer, specifically: affirm, reverse, or remand for a second benefit contested case hearing as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel).

New §143.3 sets out the procedures to be followed by a party in requesting a review by the appeals panel of a decision of a hearing officer. The section requires the request to be in writing, to rebut each issue of the decision for which review is sought, and to state the relief sought to be granted. The section requires that the request be served on the other party on the same day it is filed with the commission, i.e. no later than the fifteenth day after receipt of the hearing officer's decision. The section requires that the request contain a statement certifying service has been made on the other party, and provides a model form for the certification.

New §143.4 describes the procedure to be followed by the other party in responding to the appellant's request. The response must be in writing, support each issue in the decision that the appellant has rebutted in the request, and state the reasons the appellant's relief should not be granted. The response must be filed in the commission's central office not later than the 15th day after the request was received by the respondent and be served on the appellant the same day as it is delivered to the commission. The section also requires the response to contain a statement certifying that a copy has been served on the appellant and sets out a model certificate that must be substantially followed.

New §143.5 describes the procedures relating to the decisions of the appeals panel. The section requires the appeals panel to issue a written decision no later than the 30th day after the date the response was filed with the commission, and to file a copy with the director of the hearings division. The section describes the circumstances under which the hearing officer's decision becomes final if the appeal's panel does not issue a written decision, and indicates when the division is to send each party a copy of the decision, or a notice that the hearing officer's decision has been deemed final. The section indicates when an appeals panel decision becomes final, sets out a penalty for failure to comply with a final decision, and makes clear that an appeals panel decision that is appealed for judicial review is binding on the parties pending the outcome of the appeal.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on employment, locally or statewide as a result of implementing the section.

Mr. Looney also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the Commission to adopt rules necessary to administer the Texas Workers' Compensation Act.

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

Appellant—A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer, and files a request for review of that decision by the appeals panel.

Request—The appellant's written appeal for review of the decision of a hearing officer.

Respondent—The other party to a benefit contested case hearing who must file a response to the appellant's request.

Response—The respondent's written answer to the appellant's request.

Served on (a party)—Presented to a party in person, or mailed by certified mail, return receipt requested.

§143.2. Description of the Appeal Proceeding.

(a) To review the decision of the hearing officer, the appeals panel considers the appellant's request, the respondent's response, and the record of the benefit contested case hearing. The parties do not appear in person before the panel.

(b) The appeals panel may:

(1) affirm the decision of the hearing officer;

(2) reverse the decision of the hearing officer and render a new decision; or

(3) reverse the decision of the hearing officer and remand to the hearing officer for a second benefit contested case hearing, which shall be set as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel).

§143.3. Requesting the Appeals Panel to Review the Decision of the Hearing Officer.

(a) A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer may request the appeals panel to review that decision. The request shall:

(1) be in writing;

(2) clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed, and state the relief the appellant wants granted;

(3) be filed with the commission's central office in Austin not later than the 15th day after receipt of the hearing officer's decision; and

(4) be served on the other party on the same day filed with the commission.

(b) The request shall contain a statement certifying that a copy has been served on the other party. A certificate in substantially the following form shall be used:

"I hereby certify that I have on this _____ day of _____, 19____, served a copy of the attached request for appeal on _____ [state the name of the other party on whom a copy was served] by _____ [state the manner of service]."

Signature

§143.4. Responding to a Request for Review by the Appeals Panel.

(a) The other party shall respond to the appellant's request. The response shall:

- (1) be in writing;
- (2) clearly and concisely support each issue in the hearing officer's decision

that the appellant has rebutted in the request, and state why the appellant's relief should not be granted;

(3) be filed with the commission's central office in Austin not later than the 15th day after the request was received by the respondent; and

(4) be served on the appellant on the same day filed with the commission.

(b) The response shall contain a statement certifying that a copy has been served on the appellant. A certificate in substantially the following form shall be used:

"I hereby certify that I have on this _____ day of _____, 19____, served a copy of the attached response on _____ [state the name of the appellant on whom a copy was served] by _____ [state the manner of service]."

Signature

(c) Failure to respond to the appellant's request is an administrative violation,

with a sanction to be determined by the commission.

§143.5. Decision of the Appeals Panel.

(a) Not later than the 30th day after the date the response was filed with the commission, the appeals panel will issue its written decision, and file a copy with the director of the hearings division.

(b) If the appeals panel does not issue a written decision by the thirtieth day after the date the response was filed with the commission, the hearing officer's decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the director of the hearings division on that day.

(c) Not later than the seventh day after the appeals panel files its decision with the director of the hearings division, or a decision is deemed filed, as provided in subsection (b) of this section, the division shall send to each party a copy of the decision, or a notice that the hearing officer's decision has become final and constitutes the decision of the appeals panel.

(d) A decision of the appeals panel that is not appealed for judicial review, as provided by the Act, §6.61 et seq., becomes final on the 41st day after the date the decision was filed, or deemed filed, with the director of the hearings division. Failure to comply with a final decision or order within 20 days of its becoming final is a Class A administrative violation, with a penalty not to exceed \$10,000.

(e) A decision of the appeals panel that is appealed for judicial review is binding on the parties for the duration of the judicial review.

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 October 31, 1990

TRD-9011574

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 7, 1990

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.6, §101.7

The Texas Air Control Board (TACB) proposes amendments to §101.6, concerning notification requirements for major upset, and to §101.7, concerning notification requirements for maintenance. The proposed amendments add specifications which are in-

tended to clarify the purposes of the sections, emphasize the differences between the two sections, and improve the source operator's understanding of actions required following a major upset or during preparation for scheduled maintenance.

The amendment to §101.6 reformats the section into three subsections, rewords the first sentence of the section for clarification, specifies the content of an upset notification, adds a requirement for a technical evaluation of an upset, and adds a new subparagraph (c) to prohibit nuisance conditions. While the amendments add new specifications to the section language, they simply enumerate those actions which currently are conducted subsequent to a major upset and place increased emphasis on the proper reporting of potentially toxic or odorous emissions. The proposed wording makes official that which is a general practice in most TACB regions today. The proposed new subsection (c) emphasizes that the emissions which result from an upset must not be allowed to create a nuisance condition.

The amendment to §101.7 rewords the first sentence of subsection (b) for clarification, deletes the second sentence of subsection (b), specifies the content of a maintenance notification, adds a new subsection (c) to require a technical plan for scheduled maintenance activities, and adds a new subsection (d) to prohibit nuisance conditions.

Most plant operators develop schedules far in advance of planned shutdowns in preparation for maintenance and, in any case, will complete the planning and scheduling more than 10 days before actual shutdown. The second sentence of §101.7(b) confuses the intent of the section by appearing to allow unplanned occurrences (upsets) to be reported as planned maintenance. Since unplanned occurrences or upsets are covered by the provisions of §101.6, the deletion of the sentence will remove an ambiguous statement from the rule, eliminate potential abuse of the rule, and emphasize an important difference between the two sections. A new sentence in §101.7(b) enumerates the content of a maintenance notification and includes much of the information which currently is submitted prior to planned maintenance. The proposed sentence makes official that which is common practice today.

The proposed new subsection (c) requires the submittal of a technical plan of scheduled maintenance and, unlike similar wording proposed in §101.6(c), represents a new requirement. Such a technical plan could include excerpts from the documents already developed in preparation for the scheduled maintenance and would not necessarily involve the development of new information by the plant operator. The intent of the new requirement is to allow the TACB staff to be better informed of planned maintenance procedures and to draw the source operator's attention to any and all means of minimizing emissions during shutdown, maintenance, and start-up.

The new subsection (d) emphasizes that, even though some unusual emissions are allowed during planned maintenance operations, such emissions are prohibited from creating a nuisance condition.

Debra Barber, director of the Enforcement and Field Operations Program, has deter-

mined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local units of government as a result of enforcing or administering the sections.

Mrs. Barber also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer understanding of TACB upset and maintenance reporting requirement by the regulated community and the general public. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Public hearings on this proposal are scheduled for the following times and places: December 4, 1990, 10:00 a.m., Texas Air Control Board, 6330 Highway 290 East, Austin; and December 4, 1990, 7 p.m., City of Houston Pollution, Control Building Auditorium, 7411 Park Place Boulevard, Houston.

Copies of the proposed rule changes are available from Barry Irwin at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposal is invited at the hearing. Written testimony received by 4 p.m. on December 5 will be included in the hearing record and should be sent to the Control Strategy Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are proposed under the Texas Clean Air Act (TCAA), §382.017(a), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§101.6. Notification Requirements for Major Upset.

(a) The owner or operator of a facility shall notify the executive director and the appropriate local air pollution control agency [shall be notified] as soon as possible of any major upset condition which causes or may cause an excessive emission that contravenes the intent of the Texas Clean Air Act and/or the regulations of the board. A list of persons to contact may be obtained from the executive director upon request. The notification shall identify the cause of the upset and the equipment involved and shall include the date and time of the upset, the duration of the upset, and the compound-specific types and quantities of emissions released during the upset. In the event that the duration of the upset and the compound-specific types and quantities of emissions are not known at the time of the initial notification, such information shall be provided as soon as possible, but not later than two weeks after the onset of the upset condition.

(b) The owner or operator of any source subject to the provisions of this subsection shall perform, upon request by the executive director a technical evaluation of the upset event. The evaluation shall include an analysis of the probable causes of the upset and any necessary

actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

(c) The owner or operator of a source may not allow the emissions produced during an upset to create a nuisance condition in violation of §101.4 of this title (relating to Nuisance).

§101.7. Requirements for Operations and Maintenance.

(a) (No change.)

(b) The owner or operator of a source shall notify the executive director and the appropriate local air pollution control agency [shall be notified] in writing at least 10 days prior to any planned maintenance, start-up, or shutdown which will or may cause an excessive emission that contravenes the intent of the Texas Clean Air Act or the regulations of the board. The notification shall identify the equipment and shall include the date and time of the scheduled maintenance, the duration of the maintenance period, and the compound-specific types and quantities of emissions expected to be released during the maintenance activities. [If 10 days notice cannot be given due to an unplanned occurrence, notice shall be given as soon as practical prior to the shut-down.]

(c) The owner or operator of any source subject to the provisions of this subsection shall submit with the notification required by subsection (b) of this section a technical plan for the scheduled maintenance activities. The plan shall contain a detailed explanation of the means by which emissions will be minimized during shutdown, maintenance and start-up. Also, for those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions cannot be reduced further.

(d) The owner or operator of a source may not allow the emissions produced during shutdown, maintenance or start-up to create a nuisance condition in violation of §101.4 of this title (relating to Nuisance).

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 October 31, 1990.

TRD-9011625 Lane Hartsock
Director, Planning and
Development Program
Texas Air Control Board

Proposed date of adoption: February 8, 1991

For further information, please call: (512) 451-5711, ext. 433

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Water Commission proposes amendments to §§335.29, 335.112, 335.112, 335.160, 335.168, and 335.173, concerning industrial solid and municipal hazardous waste management and standards. These amendments are proposed to implement the federally mandated change from the extraction procedure (EP) method to the toxicity characteristic leaching procedure (TCLP) method for determining characteristically hazardous waste and to expand the list of constituents for which the leachate will be analyzed.

The federal TCLP rule adopted in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796) et seq. was promulgated pursuant to the Resource Conservation and Recovery Act, 42 United States Code, §6901 et seq (1976) (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Under of the RCRA, §3006(g), 42 United States Code, §6926(g), new requirements imposed by HSWA take effect in authorized states (of which Texas is one) at the same time they take effect in nonauthorized states. While states must still adopt HSWA-related provisions to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim. Pursuant to 40 Code of Federal Regulations (CFR), §271.21(e)(2), Texas must modify its program to reflect federal program changes and must subsequently submit those program modifications to EPA for approval. Upon EPA approval of the state program modifications, Texas will be authorized to implement the TCLP requirements in lieu of EPA.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period these sections are in effect there will be direct fiscal implications as a result of enforcing or administering these sections. The direct effect on state government will be an increase in cost of \$471,000 in fiscal year 1991 and \$1.8 million in fiscal years 1992-1995. These provisions adopt new Environmental Protection Agency rules as required to maintain federal authorization of the state's hazardous waste regulatory program. The cost of compliance with these provisions exists as a result of the adoption of federal rules regardless of their incorporation into state regulations. There are some potential cost savings to regulated entities by the incorporation of the federal requirements due to establishing consistency between current federal and state programs and eliminating duplicative but inconsistent rules. The direct effect on local government for the first five-year period the sections are in effect will be an increase in cost of \$54,000 in each of the fiscal years 1990 and 1991 and \$27,000 in each of the fiscal years 1992-1994. There are no anticipated reductions in cost or increases in revenue to local governments. According to estimates of the Environmental Protection Agency found in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11856) the direct effect on small businesses will be an

increase in cost of compliance of \$2 million statewide per year. The cost of compliance for small businesses will generally be significantly less than the cost of compliance for the largest businesses affected by these amendments. Because of the much greater volumes of waste generated by the largest facilities, their cost of compliance could be up to eight times greater per employee than that for small businesses. The total cost of compliance for all concerns affected by these rules is estimated to be \$4 million in fiscal year 1990, \$20 million in 1991, and \$40 million in each fiscal year 1992-1994.

Mr. Bourdeau also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing and administering the sections will be improvements in: the regulation of hazardous wastes, consistency between federal and state regulatory requirements for hazardous wastes, protection of the water resources of the state and enforcement of the Texas Water Code and regulations of the Texas Water Commission. There are no known costs to persons who are required to comply with these sections as proposed that are not included in the costs identified previously.

Comments on the proposed amendments may be submitted to Steve Dickman, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted 30 days after publication of this amendment in the *Texas Register*.

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

• 31 TAC §335.29

The amendment is proposed under the Texas Water Code, §5.103, Texas Water Code Annotated, Chapter 5 (Vernon 1990) which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, §361.017 and §361.024, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplement 1990), which provides the Texas Water Commission with the authority to promulgate rules necessary to accomplishing the purposes of the Act which includes controlling all aspects of the management of industrial solid and municipal hazardous wastes. These amendments are in response to EPA's adoption of the HSWA mandated TCLP rules set forth in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796) et seq.

§335.29. Adoption of Appendices by Reference. The following appendices contained in 40 Code of Federal Regulations, Part 261, which are in effect as of April 1, 1987, except Appendix II which is in effect as of September 25, 1990, are adopted by reference:

(1) Appendix I—Representative Sampling Methods;

(2) Appendix II—Method 1311 Toxicity Characteristic [Toxicity Test Procedures];

(3)-(7) (No change.)

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

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

TRD-9011736 Jlm Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: December 14, 1990

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

◆ ◆ ◆
Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

• 31 TAC §335.112

The amendment is proposed under the Texas Water Code, §5.103, Texas Water Code Annotated, Chapter 5 (Vernon 1990) which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, §361.017 and §361.024, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplement 1990), which provides the Texas Water Commission with the authority to promulgate rules necessary to accomplishing the purposes of the Act which includes controlling all aspects of the management of industrial solid and municipal hazardous wastes. These amendments are in response to EPA's adoption of the HSWA mandated TCLP rules set forth in

the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796) et seq.

§335.112. *Standards.*

(a) Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Supplemental 1990) [Texas Civil Statutes, Article 4477-7], or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations, Part 265 (including all appendices to Part 265) which are in effect as of June 4, 1987 (except as otherwise specified herein), are adopted by reference:

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

(10) Subpart K—Surface Impoundments, except 40 Code of Federal Regulation, §265.221(d)(1) which is adopted by reference as in effect on September 25, 1990;

(11) (No change.)

(12) Subpart M—Land Treatment, except 40 Code of Federal Regulations, §§265.272, 265.279, and 265.280; provided, however, that §265.273(a) is adopted by reference as in effect on September 25, 1990;

(13)-(16) (No change.)

(b) (No change.)

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

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

TRD-9011735 Jlm Haley
Director, Legal Division
Texas Water Commission

Earliest proposed date of adoption: December 14, 1990

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

Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

• 31 TAC §§335.160, 335.168, 335.173

The amendments are proposed under the Texas Water Code, §5.103, Texas Water Code Annotated, Chapter 5 (Vernon 1990) which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, §361.017 and §361.024, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplemental 1990), which provides the Texas Water Commission with the authority to promulgate rules necessary to accomplishing the purposes of the Act which includes controlling all aspects of the management of industrial solid and municipal hazardous wastes. These amendments are in response to EPA's adoption of the HSWA mandated TCLP rules set forth in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796) et seq.

§335.160. *Concentration Limits.*

(a) (No change.)

(b) The commission will establish an alternate concentration limit for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering the maximum concentration of constituents for groundwater protection described in the following Table 1:

Table 1

Maximum Concentration of Constituents for Groundwater Protection

Constituent	Maximum Concentration 1
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
2,4-D	0.01
2,4,5-TP (Silvex)	0.01
<u>Benzene</u>	<u>0.005</u>

<u>Carbon Tetrachloride</u>	<u>0.005</u>
<u>Chlordane</u>	<u>0.0003</u>
<u>Chlorobenzene</u>	<u>1.0</u>
<u>Chloroform</u>	<u>0.06</u>
<u>o-Cresol</u>	<u>2.0</u>
<u>m-Cresol</u>	<u>2.0</u>
<u>p-Cresol</u>	<u>2.0</u>
<u>Cresol</u>	<u>2.0</u>
<u>1,4-Dichlorobenzene</u>	<u>0.075</u>
<u>1,2-Dichloroethane</u>	<u>0.005</u>
<u>1,1-Dichloroethylene</u>	<u>0.007</u>
<u>2,4-Dinitrotoluene</u>	<u>0.001</u>
<u>Heptachlor (and its epoxide)</u>	<u>0.00008</u>
<u>Hexachlorobenzene</u>	<u>0.001</u>
<u>Hexachloro-1,3-butadiene</u>	<u>0.005</u>
<u>Hexachloroethane</u>	<u>0.03</u>
<u>Methyl ethyl ketone</u>	<u>2.0</u>
<u>Nitrobenzene</u>	<u>0.02</u>
<u>Pentachlorophenol</u>	<u>1.0</u>
<u>Pyridine</u>	<u>0.05</u>
<u>Tetrachloroethylene</u>	<u>0.007</u>
<u>Trichloroethylene</u>	<u>0.005</u>
<u>2,3,5-Trichlorophenol</u>	<u>4.0</u>
<u>2,4,6-Trichlorophenol</u>	<u>0.02</u>
<u>Vinyl Chloride</u>	<u>0.002</u>

1 Milligrams per liter.

(A)-(I) (No change.)

(2) (No change.)

(c) (No change.)

§335.168. Design and Operating Requirements (Surface Impoundments).

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

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics [EP toxicity characteristics] in 40 Code of Federal Regulation, §261.24, and is in compliance with either of the following requirements.

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

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

§335.173. Design and Operating Requirements (Landfills).

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

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics [EP toxicity characteristics] in 40 Code of Federal Regulation, §261.24, and is in compliance with either paragraph (1) or (2) of this subsection.

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

(f)-(j) (No change.)

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

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

TRD-9011737

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest proposed date of adoption: December 14, 1990

For further information, please call: (512) 483-8069



Title 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 73. Benefits

§ 34 TAC §63.7

The Employees Retirement System of Texas proposes new §63.7, concerning board of trustees. The new section will provide a procedure whereby members of the public can make comments to the Board of Trustees regarding items on the board's meeting agenda.

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

Mr. Nail also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that this section will provide a procedure for members of the public to be able to make public comment to the ERS Board of Trustees on those agenda items in which they are interested. 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 William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The new section is proposed under the Texas Government Code, §815.102, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to adopt rules for the transaction of business of the Board of Trustees.

§63.7. Public Comment to the Board of Trustees. Members of the public who wish to make a presentation to the Board of Trustees regarding items on the board's agenda may do so in accordance with the following rules and procedures.

(1) Immediately preceding the board meeting, a form furnished by the board shall be completed, indicating the agenda item or items to be addressed.

(2) Comments regarding agenda items relating to administrative appeals to the board are limited only to parties involved in those appeals or their legal representatives.

(3) Comments from the public regarding agenda items will be heard by the board at the time the agenda item is under consideration and before a final decision is made.

(4) Comments by an individual on a particular agenda item shall be limited to five minutes, unless modified at the dis-

cretion of the chairman of the Board of Trustees.

(5) The maximum amount of time for all public comments for an agenda item is 30 minutes, unless modified at the discretion of the chairman of the Board of Trustees.

(6) Members of the public are encouraged to submit written comments to the board in place of, or in addition to, oral presentations.

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 November 7, 1990.

TRD-9011862

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 867-3213

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• 34 TAC §73.11, §73.21

The Employees Retirement System of Texas proposes amendments to §73.11 and §73.21, concerning Supplemental Retirement Program and reduction factor for age and retirement option. The actuarial reserve tables used to determine the amount necessary to fund retirement benefits have been revised as a result of new actuarial assumptions adopted by the Board of Trustees.

William S. Nail, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Nail also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that persons retiring from state service will have their benefits determined under the revised and updated actuarial tables. 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 William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Texas Government Code, §815.105, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to adopt mortality, service, and other tables the Board of Trustees considers necessary for the retirement system.

§73.11. Supplemental Retirement Program.

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

(d) The reserve factors for retirements with an effective date after December 31, 1990, shall be those developed by the actuaries and based on the actuarial assumptions adopted by the Board of Trustees in September 1990. The reserve factors are adopted by reference and made a part of this section for all purposes. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207 Austin, Texas 78711-3207.

(e)[(d)] No payment shall be required to establish service credit in the supplemental program unless payment would be required to establish that credit in the regular program.

(f)[(c)] Military service credit shall be creditable in the supplemental program only if, within 60 days of termination of covered employment, the member went into the military without intervening employment and the member resumed covered employment within 60 days of termination of military service.

§73.21. Reduction Factor for Age and Retirement Option.

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

(d) Reserve factors.

(1) The reserve factors vary by sex as well as age. For service retirement and death benefit plan Option 1, the reserve factors are based on the UP-1984 table with an age set back of one year for males and an age set back of eight years for females. For disability retirement, the mortality basis is 85% of the 1965 RRB disabled annuitants mortality table for Males and 55% of the 1965 RRB disabled annuitants mortality table for females. Those tables are adopted by reference and made a part of this section for all purposes. Copies of these mortality tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(2) The reserve factors for retirements with an effective date after December 31, 1990, shall be those developed by the actuaries and based on the actuarial assumptions adopted by the Board of Trustees in September 1990. The reserve factors are adopted by reference and made a part of this section for all purposes. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(e) (No change.)

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

Issued in Austin, Texas, on November 7, 1990.

TRD-9011863

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 867-3213

Chapter 77. Judicial Retirement

• 34 TAC §77.11

The Employees Retirement System of Texas proposes an amendment to §77.11, concerning Reduction Factors for Age and Retirement Options—Judicial Retirement System of Texas Plan Two (JRS-II). The actuarial reserve tables used to determine the amount necessary to fund retirement benefits have been revised as a result of new actuarial assumptions adopted by the board of trustees.

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

Mr. Nail has also 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 judges retiring from state service will have their benefits determined under the revised and updated actuarial tables. 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 William S. Nail, General counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments is proposed under the Texas Government Code §815.105, which provides the board of trustees of the Employees Retirement System of Texas with the authority to adopt mortality, service, and other tables to board of trustees considers necessary for the retirement system.

§77.11. Reduction Factors for age and Retirement Options—Judicial Retirement System of Texas Plan Two (JRS-II).

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

(e) Reserve factors.

(1) The reserve factors vary by the age of the retiree and the age of the nominee, if applicable. The mortality basis is the UP-1984 Table with an age set back of one year for retirees and an age set back of eight years for nominees. The interest assumption is 8.5%. Member contributions are assumed to be 25% of the standard benefit reserve. For disability retirement, the mortality basis is 85% of the 1965 RRB Disabled Annuitant Mortality Table for disabled members. The reserve factors are adopted by reference and made a part of this rule for all purposes. Copies of these tables are available from the executive di-

rector of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207.

(2) The reserve factors for retirements with an effective date after December 31, 1990, shall be those developed by the actuaries and based on the actuarial assumptions adopted by the board of trustees in September 1990. The reserve factors are adopted by reference and made a part of this rule for all purposes. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207.

(f) (No change.)

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

Issued in Austin, Texas, on November 7, 1990.

TRD-9011864

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Earliest proposed date of adoption: December 14, 1990

For further information, please call: (512) 867-3213

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-home and Family Support Program

• 40 TAC §48.2703

The Texas Department of Human Services (DHS) proposes an amendment to §48.2703, concerning the In-home and Family Support Program, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to update the client co-payment schedule.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be current copayment information for program participants. 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.

Questions about the content of this proposal may be directed to Linda Lamb at (512) 450-3199 in DHS's Long Term Care Special Programs Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy and Document Support Department-

529, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22

and 32, which authorizes the department to administer public and medical assistance programs.

§48.2703. Income Eligibility.

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

(d) Copayments are figured according to the following table.

*Percent (%) Copay:	10%	20%	30%	40%	50%	
<u>Family Size</u>	<u>Median Income</u>	<u>105% of Median</u>	<u>110% of Median</u>	<u>115% of Median</u>	<u>120% of Median</u>	<u>125% of Median</u>
1	\$18,346	\$19,263	\$20,181	\$21,098	\$22,015	\$22,933
2	23,990	25,189	26,389	27,589	28,788	29,988
3	29,365	30,833	32,302	33,770	35,238	36,706
4	35,280	37,044	38,808	40,572	42,336	44,100
5	40,925	42,971	45,018	47,064	49,110	51,156
6	46,570	48,898	51,227	53,556	55,884	58,213

NOTE: For families larger than six, add three percentage points for each additional family member to 132% (which is the factor for a family of six) and multiply the new percentage by the State Median Income (SMI) for a family of four. Example: A family of seven (one additional member): 3% + 132% = 135% X \$35,280 (SMI for family of four) = \$47,628.

Maximum Copayment Amount	0	\$ 720	\$ 1,440	\$ 2,160	\$ 2,880	\$ 3,600
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*Percent % Copay:	60%	70%	80%	90%	100%
<u>Family Size</u>	<u>130% of Median</u>	<u>135% of Median</u>	<u>140% of Median</u>	<u>145% of Median</u>	<u>150% of Median</u>
1	\$23,850	\$24,767	\$25,684	\$26,602	\$27,519
2	31,187	32,387	33,586	34,786	35,985
3	38,175	39,643	41,111	42,579	44,048
4	45,864	47,628	49,392	51,156	52,920
5	53,203	55,249	57,295	59,341	61,388
6	60,541	62,870	65,198	67,527	69,855

Maximum Copayment Amount	\$ 4,320	\$ 5,040	\$ 5,760	\$ 6,480	\$ 7,200
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(e)-(i) (No change.)

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

Issued in Austin, Texas, on November 7, 1990.

TRD-9011855 Cathy Rossberg
Agency Liaison, Policy and Document Support Department
Texas Department of Human Services

Proposed date of adoption: February 1, 1991

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

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Chapter 50. Day Activity and Health Services

Program Overview

• **40 TAC §50.901**

The Texas Department of Human Services (DHS) proposes an amendment to §50.901,

concerning program overview, in its Day Activity and Health Services chapter. The purpose of the amendment is to establish licensure standards for adult day care facilities not under contract with DHS. The amendment describes standards the facilities must meet.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased access for the elderly and disabled to licensed day care facilities. 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.

Questions about the content of this proposal may be directed to Carl Giles at (512) 450-3156 in DHS's Long Term Care Department. Comments on the proposal may be submitted to Cathy Rossberg, Policy and Document Support Department-555, Texas

Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and the Human Resources Code, Title 6, Chapter 103, which requires the department to establish standards for adult day care facilities.

§50.901. Legal Authority.

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

(c) Pursuant to the authority of the Human Resources Code, Title 6, §103.004, DHS establishes standards for DAHS licensure in facilities not contracted to provide services to DHS clients. Under the authority of the Human Resources Code, Title 6, §103.006 and §103.008, TDH is the state agency with authority to inspect DAHS facilities not under contract with DHS, determine compliance with standards, and issue li-

censes. DHS has no authority to enter or inspect facilities not under contract to provide services to DHS clients.

(1) An elderly or disabled individual is eligible to attend a DAHS facility not under contract with DHS where he can benefit from the services provided. A facility may provide services to clients up to its licensed capacity.

(2) The following standards apply to those DAHS providers who do not contract to provide services to DHS clients:

(A) §50.902 of this title (relating to Service Objective);

(B) §50.904 of this title (relating to Service Descriptions);

(C) §50.2904(b) of this title (relating to Facility Requirements);

(D) §50.3901 of this title (relating to Staff Qualifications);

(E) §50.3902 of this title (relating to Staff Responsibilities);

(F) §50.3903 of this title (relating to Staff Requirements);

(G) §50.3904 of this title (relating to Initial Training);

(H) §50.3905 of this title (relating to Ongoing Training);

(I) §50.3908 of this title (relating to Plan of Care);

(J) §50.3911 of this title (relating to Personnel Records);

(K) §50.3912 of this title (relating to Medication Administration);

(L) §50.3914 of this title (relating to Food Service);

(M) §50.3915 of this title (relating to Transportation); and

(N) §50.4901 of this title (relating to Recipients' Rights).

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 November 7, 1990.

TRD-9011856

Cathy Roesberg
Agency Liaison, Policy and
Document Support
Department
Texas Department of
Human Services

Proposed date of adoption: February 1, 1991

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

Part IV. Texas Department on Aging

Chapter 251. Support Documents

Memorandum of Understanding with State Agencies Statutes and Regulations

• 40 TAC §251.12

The Texas Department on Aging proposes new §251.12, concerning memorandum of understanding between the Texas Commission for the Deaf and the Texas Department on Aging in accordance with House Bill 550 passed by the 70th Legislature to assure coordination of the delivery of services to deaf persons over age 60 and to reduce duplication of services provided by the two agencies.

Charles Hubbard, fiscal officer, Texas Department on Aging 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.

Alex Guerra, director of programs, Texas Department on Aging, 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 to promote better coordination of services to the elderly furnished by the Texas Department on Aging and the Texas Commission for the Deaf. 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 Paula Johnson, Special Projects Coordinator, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§251.12. Memorandum of Understanding between Texas Commission for the Deaf and the Texas Department on Aging.

(a) Introduction and purpose.

(1) Authority. In accordance with House Bill 550 passed by the 70th Legislature and signed by the Governor, the Texas Commission for the Deaf and the Texas Department on Aging herein agree to a memorandum of understanding.

(2) Purpose. The purpose of this document is to coordinate the delivery of

services to deaf persons over age 60 and to reduce duplication of services. Gaps in the delivery of services were identified in the course of developing this memorandum and methods to reduce or eliminate them have been included in this document.

(3) Definitions. For the purposes of this document, the term "deaf," in accordance with the definition established by state law, shall refer to any person who has a hearing loss of any degree so that it inhibits communication with others. Article 38.31, subsection (g) of the Code of Criminal Procedure states: "'Deaf person' means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings of communication with others." Thus, "deaf" will include persons who are profoundly deaf, hearing impaired, or hard of hearing.

(b) Description of programs/services, Texas Commission for the Deaf. The Texas Commission for the Deaf, hereafter referred to as TCD, is the state agency authorized to provide direct services to persons who are deaf; to develop and implement a statewide program of advocacy and education to ensure continuity of services to persons who are deaf; and to work to ensure more effective coordination and cooperation among public and nonprofit organizations providing social and educational services to individuals who are deaf.

(1) Direct services. Direct services are provided through biennial contracts with nonprofit, community-based organizations called Councils for the Deaf. TCD currently has 17 such contracted councils located in 15 cities: Abilene, Amarillo, Austin, Beaumont, Big Spring, Corpus Christi, Dallas, El Paso, Fort Worth, Houston (2), Lubbock, San Antonio (2), Sherman, Tyler, and Waco. The number of staff, types of direct services, and number of clients vary considerably from council to council. Many of the councils provide direct services in addition to those authorized and subsidized by the state through TCD. The range of TCD-contracted services includes the following:

(A) Interpreter services. Interpreters are provided for clients who are deaf to assist them in obtaining educational, medical, legal, governmental, and economic services, as well as some special services. The rate of payment that the councils are reimbursed for providing interpreter services is based on a fee schedule established by TCD for interpreters at varying levels of skill.

(B) Information and referral services. Councils provide information regarding general and specialized community services to persons who are deaf or hearing impaired, as well as information about deafness to the general public.

(C) Services to the elderly. Clients who are 60 years or older and deaf are assisted in obtaining information and/or services from federal, state, county and city agencies and departments. Direct services provided may include transportation assistance, nutrition, and social interaction. This program reduces the need for long-term care; provides information to concerned individuals; and provides training to other personnel serving elderly persons who are deaf. These programs are referred to as Services to Older Hearing Impaired Texans, SOHIT.

(D) Telephone relay services. A person who is deaf can use a Telecommunication Device for the Deaf (TDD) to call a council where the message will be relayed by regular telephone to the appropriate party, business, etc. Council staff can also return messages. Councils are reimbursed according to TCD recommended rate schedules.

(2) Interpreter-related programs.

(A) Interpreter instruction and continuing education. TCD is required to establish a system to approve courses and workshops for the instruction and continuing education of interpreters.

(B) Interpreter fee scale. TCD establishes a recommended schedule of fees for all entities to consider in their payment of interpreters.

(C) Board for evaluation of interpreters. The Board for Evaluation of Interpreters (BEI), which exists within the commission, conducts interpreter examinations at Levels I, II, III, IV, and V, and certifies interpreters at varying skill levels.

(D) Registry of interpreters. TCD publishes an annual Registry of Interpreters which consists of all certified interpreters who pay a listing fee. This publication is provided free of charge to government agencies, medical emergency facilities, courts, and law enforcement agencies.

(3) Safety communication sticker program. TCD implements the safety communication sticker program for drivers who are deaf. This program issues a sticker for a \$2.00 fee to be placed on the back window of each vehicle regularly driven by a person who is deaf. This is a voluntary program which aims at allowing law enforcement and emergency response personnel to immediately identify drivers who are deaf.

(4) Outdoor training program. An outdoor training program for children ages eight-17 who are deaf is held for one

week each summer. This program offers communication barrier-free recreation and instructional activities. TCD annually contracts with a private facility for this program. Students are referred by the Texas Education Agency and the Texas School for the Deaf.

(5) TDD Program. TCD monitors TDDs which have been loaned by TCD to state agencies, emergency dispatch centers, and private entities with which TCD contracts.

(6) Directories. TCD publishes the "Annual Directory of Services to the Deaf in Texas" and the "Directory of Services for Older Hearing Impaired Texans." TCD is required to charge for copies of these publications.

(7) Miscellaneous activities. TCD currently has interagency contracts to provide interpreter services with the Texas Employment Commission, the Texas Department of Corrections, the Texas Commission on Alcohol and Drug Abuse, and the Texas Department of Mental Health and Mental Retardation. In 1988, TCD received a grant from Southwestern Bell Telephone Company to conduct a research project on the feasibility of a statewide message relay system for Texas. TCD has a representative on the Texas Planning Council for Developmental Disabilities.

(c) The Texas Department on Aging. The Texas Department on Aging, hereafter referred to as TDoA, is the only state agency whose sole responsibility is serving older Texans. It provides a wide array of services to Texans over the age of 60. There is no income criteria for these elderly Texans to be eligible to receive services. However, as the majority of the agency's funds are federal, there are federal requirements for states to set priorities for services to persons in greatest social and economic need. The new amendments to the Older Americans Act of 1965 also stipulate that services be targeted to low-income minority elderly. TDoA has a network of 28 area agencies on aging (AAAs). Twenty-four of these AAAs have boundaries coterminous with the 24 State Planning Regions designated by the Governor's Budget and Planning Office and four are in each of the following counties: Harris, Dallas, Bexar, and Tarrant. Each area agency develops a formal written plan to meet the needs they identify for their service region. Area agencies are responsible for providing technical assistance to subcontractors and for monitoring contractors' performance. To maximize the effectiveness of service contracts, area agencies coordinate and pool resources with other agencies which serve the elderly. Each area agency has an advisory council to provide community input into plans and programs. TDoA, as the central unit of the network, provides leadership. It develops a state plan based on regional and state needs assessments. It has a statewide advisory committee which provides input for this

planning process. In addition, public hearings are conducted to provide open discussion forums for interested citizens. The state plan is approved by the TDoA Board.

(1) Specific services. It can be safely assumed that many of the elderly persons that receive TDoA services have some degree of hearing loss, since this is common for people who are 60 years and older. TDoA does not specifically design programs for elderly persons who are deaf or hearing impaired and does not keep records on the number of deaf or hearing impaired clients that are served. The following are various programs and services offered by the agency:

(A) Senior centers/nutrition sites. Most of TDoA's services are available through senior centers and nutrition sites. There are currently 880 nutrition sites where congregate meals are provided. Two hundred eighty of these are multipurpose senior centers where other services, such as transportation, health screening, and educational programs are provided.

(B) Home delivered meals program. This program provides home-delivered meals to persons who are elderly and cannot prepare their own meals and are physically unable to go to a nutrition site.

(C) Transportation. Over 1,000 vans are operated daily to assist elderly persons in going to hospitals, doctors, grocery stores, senior centers, and nutrition sites.

(D) Ombudsman Program. Specially trained and certified ombudsmen intervene on behalf of long-term care facility residents who have problems involving nursing care, community resources, or family situations.

(E) Housing. TDoA is working with many city, state, and federal government agencies, as well as with many private organizations to assess the major problems of housing for the elderly and to determine solutions.

(F) Senior Texans Employment Program (STEP). This program provides work/training opportunities for low-income Texans age 55 and older. TDoA contracts with the Farmers Union Community Development Association to provide management and operation of this program. STEP workers provide support for senior centers and nutrition projects for the elderly and utilize their talents in a wide variety of community activities.

(G) Retired Senior Volunteer Program (RSVP). This program is a part of the federal volunteer agency, ACTION, and

is operated in 32 cities statewide. Older persons are provided with a variety of opportunities for community service, enabling them to utilize their experience, abilities, and skills for the betterment of their communities and themselves.

(H) Friendly Visitor Program. Volunteers participate by maintaining contact with nursing home residents on an informal basis, offering friendship, reassurance, and a link with the outside world.

(I) Miscellaneous services. Other services provided through the area agencies may include: case management, legal assistance, in-home services for the homebound elderly, and information and referral.

(d) Duplication of services. TCD and TDoA provide some similar services. However, these services are targeted to different segments of the population. Therefore, while the agencies perceive no duplication in services, they nevertheless have chosen this section to clarify the similarity of some of their services.

(1) Councils for the deaf. Through its Councils for the Deaf, TCD primarily serves persons who are prelingually deaf, that is, they either became deaf before they learned a language or they were born deaf. Their native language is American Sign Language (ASL), which necessitates special communication techniques and special staff training and expertise.

(2) Older hearing impaired Texans. TCD's Services for Older Hearing Impaired Texans (SOHIT), provided at 10 Councils, identify and coordinate existing community services. Many are made available by TDoA, as well as other entities, and are accessible to persons who are elderly and prelingually deaf. The SOHIT programs also establish some direct services specifically tailored for elderly persons who are prelingually deaf if similar services are not available in the community.

(3) General elderly population. TDoA concentrates on providing services to the general elderly population. Many of the elderly persons which TDoA serves are postlingually deaf, that is, they lost all or part of their hearing in the latter part of their lives. Their native language is usually English or Spanish, they can voice normally, and they do not use sign language.

(4) Basic targeting responsibilities. Therefore, while both agencies provide services to persons who are elderly, they basically target different segments of the population. The SOHIT programs are only one responsibility of TCD, while TDoA's primary responsibility is to the entire elderly population.

(e) Gaps in the delivery of services. While preparing this document, gaps in ser-

vices were identified. They are herein presented, as well as methods for reducing or eliminating those gaps.

(1) Case management. Many persons who are elderly and deaf are isolated. Not only do they have many of the problems common for the elderly, such as fixed incomes, inability to travel, health problems, etc., but they also have communication difficulties which result from their deafness. Thus, while these persons often need to receive health and human services, their communication difficulties often prevent them from learning what services are available or accessible to them. Persons who are elderly and deaf may not seek necessary services and often must suffer the consequences of not receiving them. In addition, persons who have American Sign Language (ASL) as their native language require staff who have sign language skills and knowledge of deafness in order to bridge the communication difficulties inherent in deafness.

(2) Method of referral. In order to refer persons who are deaf to appropriate agencies to receive necessary services, TCD will request state funds to allow for the contracting of case worker services or personnel for each of its Councils for the Deaf. The case workers will serve as liaisons between the clients who are deaf and the various health and human service agencies. This would enable all Councils for the Deaf to provide direct case management services, not only to the elderly, but to all persons who are deaf and in need of this service. The staff members providing these services will be required to have skills in ASL and training and/or experience in deafness.

(f) Sharing information. Most elderly persons who become deaf in the latter part of their lives receive services from TDoA, not TCD. These persons usually have no knowledge of the specialized equipment which they can obtain to assist them in making their homes safer and more accessible.

(1) Information sharing methods. TDoA and TCD will use the following methods to share information.

(A) TCD will provide TDoA with information regarding special assistive devices for persons who are deaf, including information about TDDs; closed captioned decoders; flashing light fire alarms; visual smoke detectors; and phone amplifiers. TDoA will distribute this information to the Area Agencies on Aging.

(B) TDoA and TCD will work together to continue distribution of the joint brochure entitled "Can They Hear You?" This brochure was jointly developed and has been distributed widely.

(C) TDoA will distribute to its network the TCD brochure regarding the use of an interpreter, how and where to

locate an interpreter, special communication needs of prelingually deaf clients; and deafness.

(D) TDoA will invite TCD to make a presentation regarding deafness and/or deaf services to an inservice training provided to the area agencies on aging.

(E) Annually, each agency will provide the other with information regarding its local programs and services. Each agency will then distribute the other agency's materials to its own respective network. This information will be accompanied by a letter from the state agency that encourages cooperation between the two agencies in order to better serve their clients.

(F) In order to address the special needs of elderly persons who are postlingually deaf and who do not know or use American Sign Language, TDoA and TCD will work cooperatively and share information on this issue.

(g) Interpreter services. Interpreting services are necessary to make health and human services accessible to persons who have a profound hearing loss and who use sign language as their primary means of communication. TDoA will contract for interpreter service as needed.

(h) Nursing home residents who are deaf. Persons who are deaf who reside in nursing homes pose unique problems to staff because of their special communication needs. TDoA will invite TCD to make a presentation regarding deafness and deaf services at an inservice training for ombudsmen.

(i) Funding. Because the graying of America continues to produce more persons in need of services, it can be assumed that many of these persons will have hearing difficulties and there will be a need for funding. TCD and TDoA will jointly study the feasibility of obtaining additional federal funds through grant proposals for programs for elderly persons who are deaf.

(j) Planning. TDoA will have a representative on the Texas Planning Council for Developmental Disabilities.

(k) Effective date and duration of agreement. This Memorandum of Understanding shall be effective on the date signed by the respective Agencies and remain in effect for one year or until notice in writing is given by either party of termination/extension.

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 November 5, 1990.

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 444-2727



Chapter 268. Adequate Proportion of Priority Services

Statutes and Regulations

• 40 TAC §§268.3, 268.6, 268.7, 268.13

The Texas Department on Aging proposes amendments to §§268.3, 268.7, 268.13, and new §268.6 concerning methods area agencies are required to use to comply with the requirements of the Older Americans Act. The amendments will assure an adequate proportion of services are provided to the elderly under the Act, Title IIIB.

Charles Hubbard, fiscal officer, Texas Department on Aging, has determined that for the first five-year period the sections are in effect there will not be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Alex Guerra, program division director, Texas Department on Aging, has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a better understanding of the methods by which area agencies on aging may meet the adequate proportion requirements of the Older Americans Act. 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 Edwin R. Floyd, Program Liaison Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendments are proposed under the Human Resources Act Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§268.3 Priority [Supportive] Services Categories.

(a) As required by the Older Americans Act, an adequate proportion of Title IIIB funding will be expended for delivery of services in each of the categories of access, in-home, and legal assistance. Allowable services in these priority categories include [Services authorized under the Older Americans Act, Title III, consist of access services, in-home services, and legal assistance services. Each of these service categories is composed of separate components as follows]:

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

(b) Additional services that may be provided under the priority categories include:

(1) access services. Access services include case management; and in-home services. In-home services include emergency response systems, in-home respite, in-home hospice, residential repair/minor modification of homes, and in-home health maintenance services.

§268.6 Possible Reduction of Minimum Percentages Required to be Expended.

(a) The Texas Department on Aging may reduce the minimum percentages of the Older Americans Act (Act), Title IIIB funds required to be expended for the categories of access and/or in-home services described in §268.3(a) of this title (relating to Priority Services Categories) if the area agency on aging expends an amount equal to or greater than the minimum percentages required for those categories, on a combination of the services listed in §268.3(b) of this title (relating to Priority Services Categories), and the services listed in §268.3(a) of this title (relating to Priority Services Categories), for the appropriate category.

(b) The Texas Department on Aging may reduce the minimum percentages of the Act, Title IIIB funds required to be expended for the categories of service described in §268.3(a) of this title (relating to Priority Services Categories) if the area agency on aging expends an amount equal to or greater than the minimum percentages required for those categories from combination of Title IIIB funds and resources other than Title III funds.

(c) The Texas Department on Aging will review each area agency on aging on an individual basis and take into consideration all access, in-home and legal assistance services being funded by the area agency, through all resources, to determine if the minimum percentages of Title IIIB funds required to be expended, as listed in §268.5 of this title (relating to Adequate Proportion) may be reduced. In no case will the minimum percentage of Title IIIB funds required to be expended for any of the priority categories be reduced to zero.

§268.7 Waiver of the Requirement to Provide an Adequate Proportion of Funding for Priority Services.

(a) The Texas Department on Aging may grant a waiver of §268.5 of this title (relating to Adequate Proportion) for any category of services described in §268.3(a) of this title (relating to Priority [Supportive] Services Categories) if the area agency on aging documents that [the services for each] services in such category are being furnished and are sufficient to meet the need for such services in the area.

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

§268.13. Effective Date of Adequate Proportion Policy. The revised Adequate Proportion Policy will be effective January 1, 1991. [The percentages for expenditure of an adequate proportion of the Older Americans Act, Title III-B funding for priority services established in §268.5 of this title (relating to Adequate Proportion), the procedures for requesting a waiver established in §268.7 of this title (relating to Waiver of the Requirement to Provide an Adequate Proportion of Funding for Priority Services), and the procedures for granting a waiver established in §268.9 of this title (relating to Procedures for Granting Waivers), are effective with contracts signed after June 1, 1988. Contracts signed prior to that date will be subject to the area plans approved under the procedures in effect on or before June 1, 1987.]

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 November 5, 1990.

TRD-9011805

Polly Sowell
Executive Director
Texas Department on
Aging

Earliest proposed date of adoption: December 14, 1990

For further information, please call: (512) 444-2727



Chapter 285. Information and Referral Service Standards for the Elderly

Statutes and Regulations

• 40 TAC §§285.2, §285.3

The Texas Department on Aging proposes amendments to §285.2 and §285.3, concerning information and referral service standards for elderly persons in Texas. The amendments will provide expanded guidelines for providers of information and referral services.

Charles Hubbard, fiscal officer, Texas Department on Aging, 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.

Alex Guerra, program director, Texas Department on Aging 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 better understanding of the standards to be complied with in the delivery of information and referral services and improved reporting by information and referral service providers. 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 Linda Heath, Chief of Specialists, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendments are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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

Information and referral service—An organization, a part of an organization, or a functional activity or component within an organization providing I&R services for the elderly, whose primary function is to link an older person in need and/or their advocates with the appropriate service designed to eliminate or alleviate that need. Any activity that goes beyond linking an elderly person with the appropriate service is not an I&R activity and can be considered to be approaching a case management function.

Resource database [file]—An organized systematic, cross-indexed file of information on services and programs in the specific geographic area [covered by the information and referral service] for which the specific information and referral service provider is responsible.

§285.3. Scope of Service.

(a) (No change.)

(b) Access.

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

(3) Services will be provided through a telephone answering service, call forwarding, and/or other appropriate resource for emergencies outside of established working hours. Service providers should establish linkages with emergency response activities, such as local law enforcement agencies or other existing agencies/activities as appropriate to provide the necessary coverage. Clients should be informed of local emergency access numbers by public relation material or after hour answering machine

(4)-(5) (No change.)

(c) Resource information.

(1) A provider of information and referral services will prepare and maintain current information about the services and programs available to older persons in their geographic service areas.

(2) The [A] resource database [file] will be compiled which identifies opportunities, resources, and services and their providers throughout [within] the service area for [in] all activities relevant to the needs of older persons.

(3) The resource database [file] will be in a convenient form to enable rapid response to requests.

(4) (No change.)

(5) The resource database [file] will be updated on a continuing basis and will be verified or revised at least annually and preferably quarterly. Through follow-up service, verification, and/or revision can be ongoing and current.

(d) Staffing.

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

(4) The staff will be trained on all aspects of information and referral service delivery methods to advertise and publicize the service.

(e) Interviewing, information, and referral.

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

(3) Information. The staff either provides information requested and/or directs callers, as indicated, to agencies or organizations for the assistance required. If possible and practical, inquirers should be given a choice of three service providers to select from with at least one representing a "for profit" agency.

(4)-(5) (No change.)

(f) Outreach [Publicity and outreach]. Publicity and outreach involve the use of media and outreach services to apprise older persons, the general public, and providers of other services of the availability of an information and referral service. Every information and referral service provider should make a maximum effort to publicize and advertise the attributes of the program so senior citizens living in the area and other interested parties will inquire if they need information or assistance. Possibly consultants and/or an advertising agency may be helpful in arranging publicity. The information and referral service provider will:

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

(g) Records and reports. The information and referral service develops and maintains records of its transactions for the purpose of measuring utilization and effectiveness of its service, identifying gaps in the service structure, and assisting state and community planning. The information and referral services provider will:

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

(3) record for each inquiry received the number of service units earned;

(4)[(3)] maintain records of follow-up with service persons [providers] to assure that services were provided and whether further referrals are necessary. [;] Include the number of service units each follow-up generated;

(5)[(4)] maintain records of follow-up with older persons to determine what services were received, whether their needs were met, and whether they have

need for additional services.[;] Include the number of service units follow-up generated;

(6) insure that either paragraph (4) or (5) of this subsection or if appropriate both subparagraphs of this subsection are followed as appropriate;

(7)[(5)] maintain records of services which were needed but not available;

(8)[(6)] prepare and submit to state and area agencies on aging, on a regular basis, as required, reports of services and service agencies about which information was given or to which referrals were made, the results of follow-up efforts with service providers and persons who sought assistance, and identified gaps in service. Also include in the reports the total service units generated, from the original information call, the referral, and the follow-up inquiries. These reports may be available to communities and/or those agencies with planning and service development responsibilities; and

(9)[(7)] protect records containing personal participant information. Active files will be locked. Inactive records may have names removed and/or may be kept in an inactive locked file as some participants may require services at a later date.

(h) Information and referral limitations.

(1) Information and referral services are established to link senior citizens with individuals or agencies capable of providing them with the information and/or assistance requested. Only a brief discussion with the inquirer is normally needed. An additional purpose of information and referral services is to subsequently contact the inquirer and/or the individual or agency to whom the inquirer was referred to determine whether or not contact was made.

(2) Information and referral services generally do not include detailed discussions with inquirers about their situation, or giving advice to inquirers. Information and referral providers should be careful to avoid becoming involved with case management functions.

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 November 5, 1990.

TRD-9011803 Polly Sowell
Executive Director
Texas Department on
Aging

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For further information, please call: (512) 444-2727

Chapter 294. Eldercare Policies of the Texas Department on Aging

Statutes and Regulations

• 40 TAC §294.1

The Texas Department on Aging proposes new §294.1, concerning eldercare policies of the department. The new section is in compliance with the Administration on Aging Program Instruction AOA-P1-90-06 which requires the department to establish an eldercare policy to guide area agencies on aging in their involvement with private sector eldercare services. This policy was developed with the assistance of an eldercare task force, consisting of area agency on aging directors and the state agency staff. As instructed in the AoA program instruction, this policy does not apply to arrangements that area agencies on aging may have with insurance companies.

Charles Hubbard, fiscal officer, Texas Department on Aging, 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.

Alex Guerra, director of programs, Texas Department on Aging, 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 to guide Texas area agencies on aging in their involvement with private sector eldercare services. 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 Barbara Ellis, Program Specialist, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, Chapter 101, which provide the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§294.1. Eldercare Policies of the Texas Department on Aging.

(a) General.

(1) All arrangements between area agencies and the corporate sector must conform with both the letter and the spirit of the Older Americans Act.

(2) Compatibility between the statutory mission of the area agency on aging and any eldercare activities in which the area agency on aging may engage must be assured.

(3) The mission of area agencies on aging as set forth in Part VI, Department of Health and Human Services 45 Code of Federal Regulations 1321.53, is that the area agency on aging shall be a leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership

and direction of the state agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring, and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful, and dignified lives in their own homes and communities as long as possible.

(b) Definitions. Eldercare, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise. Eldercare-A service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. This service often includes a form of enhanced information and referral but may extend to other types of services and/or programs, as determined by the corporation. Typically, eldercare benefits are provided through a contract under which the corporation, or an intermediary, makes third party payments to an area agency on aging (or other agency or organization) to provide directly or to arrange for the provision of specified services and/or programs to a defined group of corporate employees on behalf of their older relatives.

(c) Scope of services. The criteria listed following is included to assure compatibility between the statutory mission of the area agency on aging and any eldercare activities in which the area agency on aging may engage.

(1) Area agencies must provide priority services consistent with the Older Americans Act.

(2) Area agencies must conform with all requirements of the Older Americans Act, as well as other federal, state, and local laws which may govern public purpose agencies which receive public funds.

(3) Area agencies must avoid any activity which may have the appearance of subordinating their public purpose mission to either organizational self interest or to the private interests of particular individuals or organizations.

(4) Area agencies must target services to low-income minorities in proportion to the population in the service area.

(5) Eldercare activities should be part of the comprehensive and coordinated service delivery systems being developed by the Area Agencies on Aging.

(d) Contracting requirements and limitations. An area agency on aging may not enter into an eldercare agreement or any other contract that demands exclusivity, inappropriate withholding of information, or any other provision which may limit the ability of the area agency on aging to judge

or act in the public interest or which would restrict the ability of the state agency on aging to exercise appropriate oversight of the area agency on aging. The following will not be allowed.

(1) An exclusivity requirement in the contract with a corporation is not acceptable. Area agencies must have the freedom to act objectively and responsibly on behalf of all older persons in its planning and service area.

(2) A corporate eldercare contract may not include provisions prohibiting the area agency on aging from providing similar services or benefits on behalf of or to persons designated by a corporation or group in the service area.

(3) Receiving corporate funds without assuring that there is adequate staff to meet the public mission of the area agency on aging.

(4) Corporate contract requirements that are in conflict with the area agency on aging's public purpose mission.

(e) Confidentiality requirements. Acceptable norms concerning confidentiality of information in any corporate eldercare contract must be addressed. Client data under private contracts must be designated as proprietary and, therefore, confidential.

(f) Department on Aging responsibilities. Specific methods which the department will employ to assure that each area agency on aging that engages in eldercare will continue fully and effectively to comply with its responsibilities to target its efforts on older persons with the greatest economic or social need, with particular attention to low-income minority older persons.

(1) Corporate contracts will be monitored by the state office as part of the annual program review process.

(2) The area plan, or its amendment, is required to describe the area agencies on aging's approach to, plans for, and/or current involvement with corporate eldercare.

(3) The area agency must assure that Older Americans Act funds and associated matching funds will not be used under any circumstances to offset the cost of services provided under the eldercare contract.

(4) The area plan must assure that the area agency or other service providers under an area plan will not have an exclusion clause in the contract which would preclude any other business firm from obtaining the same type of eldercare services or similar services from the area agency or service provider.

(5) The area agency on aging will disclose to the Texas Department on Aging all the provisions and terms of each eldercare contract.

(6) The Texas Department on Aging will monitor and assess the area agency on aging's compliance with all the provisions of this policy.

(g) Fiscal requirements. State policy requires that appropriate fiscal controls are established and implemented to govern the separate accountability of Older Americans Act funds, or other public funds awarded to the Area Agency on Aging, as distinct from funds received from a private corporation under an eldercare contract.

(1) Public funds may not be used to supplement third party payments made by a corporation under an eldercare contract.

(2) Each area agency on aging that enters into an eldercare contract is required to assure, at a minimum, that the private third party payment fully covers the cost of the services, including administration and overhead, provided under the contract.

(3) Contracts will be monitored by the state office on aging auditors as part of the regular area agency on aging monitoring.

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 November 5, 1990.

TRD-9011802

Polly Sowell
Executive Director
Texas Department on
Aging

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For further information, please call: (512) 444-2727

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Title 43. TRANSPORTATION
Part I. State Department of Highways and Public Transportation
Chapter 1. Administration
Substance Abuse Program
• 43 TAC §§1.101-1.103, 1.105-1.107

The State Department of Highways and Public Transportation proposes amendments to §§1.101-1.103 and §§1.105-1.107, concerning the Substance Abuse Program. In keeping with the commitment to achieve an alcohol and drug free workplace, it is necessary to amend the existing rules to expand and define certain departmental policies and procedures. In particular, the amended sections expand the definition of safety sensitive position to reflect recent court decisions which focus on the specific nature of job functions and activities that are safety sensitive.

Section 1.101 is amended to include new and expanded definitions of terms. The term "aftercare" is added as that concept is considered to be an integral part of chemical dependency rehabilitation treatment. The term "rehabilitation treatment" is added to describe treatment for chemical dependency in either an outpatient or inpatient setting followed by aftercare. The term "counseling" is added since an Employee Assistance Program (EAP) referral option is needed for non-addicted employees that test positive for alcohol or drugs. Parameters for successful completion of counseling and rehabilitation treatment are added in order to facilitate an employee's return to work.

Section 1.102 is amended to prohibit the sale, distribution, transportation, or manufacture of drugs outside of the workplace by an employee because the employee's integrity could be so undermined that his or her effectiveness as a department employee could be diminished. Moreover, confirmed suspicions of selling, distributing, transporting, or manufacturing drugs off of the job could tarnish the employee's positive image and undermine the public's trust of the department and its workforce.

Section 1.103 is amended by changing the dates for implementation of testing for all employees in safety sensitive positions. The dates to begin testing are deferred due to the need for evaluating positions by functional job title, consistent with criteria drawn from relevant federal court opinions. Presently, all maintenance positions have been evaluated with the remaining positions in the other operational areas of the department to be evaluated for testing dates as listed in this section. A description of the job activities that are involved in the performance of safety sensitive positions is included. Furthermore, court criteria warrant the refinement of the definition of a safety sensitive position. The method to be used by the Human Resources Division for evaluating job functions and determining if a position is safety sensitive is thus described.

Section 1.105 is amended to expand on the procedures for the chain of custody of drug testing to ensure that samples are not tampered with, lost, or mistaken with another sample. The blood alcohol cutoff level is added as .04 because current data suggests that impairment begins well before the .04 level. Research cited by Evans (Zero Alcohol, 1977, Evans, 1974) concludes that cognitive performance decreases at the .04 level and there is an increase in errors in tasks requiring divided attention. Furthermore, the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and Coast Guard have set blood alcohol levels of .04. Laboratory drug cutoff levels are added for the five drugs included in a drug test.

Section 1.106 is amended to add the stipulation that rehabilitation treatment facilities must be approved by the Texas Department of Mental Health and Mental Retardation, or approved as a licensed site facility by the Texas Commission on Alcohol and Drug Abuse. A provision is added which requires employees referred for alcohol or drug rehabilitation treatment to complete the rehabilitation treatment program's aftercare program as designated by the rehabilitation treatment

program's staff physician. It is further specified that the staff physician of the rehabilitation treatment program determines whether an employee has successfully completed rehabilitation treatment. This section is further amended to include that employees selling, distributing, transporting, or manufacturing drugs inside or outside the workplace will be subject to the procedures outlined in this section.

Section 1.107 is amended to provide five free EAP counseling sessions, including assessment, at the department's expense. The EAP is provided with an option for referring a non-addicted employee who tests positive for alcohol or drugs to counseling/education if the assessment warrants. This option allows an alternative for non-addicted employees other than in-patient or out-patient rehabilitation treatment programs which are for addicted individuals. The appropriate program referral for the employee will be determined by the EAP counselor during the assessment. Employees are required to complete aftercare, and their return to work is contingent upon their willingness to do so. This provision allows employees that are referred to outpatient rehabilitation treatment to continue to work as long as they successfully complete the rehabilitation treatment program and subsequent aftercare program. Those employees referred to an in-patient rehabilitation treatment program will be conditionally reinstated on the job as long as they successfully complete rehabilitation treatment and its subsequent aftercare program. The basis for these requirements are supported by documented scientifically and medically recognized research that aftercare is crucial to successful long term recovery from chemical dependency (Parkside Update, Issue Number 1, 1990).

Leslie A. Clark, director, human resources division, has determined that there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$540,912 for 1991; and a total of \$1,997,160 for 1992-1995. There will be no effect on local government for the first five-year period the sections are in effect.

There will be no impact on local economies or employment as a result of enforcing the proposed sections.

Mr. Clark also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide a safe working environment for the department's employees, and to enhance measures for protecting the safety of those members of the public who use the state highway system, including bridges and ferry boat segments, and further to assure that the department as an agency of the state government fully complies with applicable federal and state laws and regulations concerning use or abuse of alcohol or drugs in the workplace. 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 Leslie A. Clark, Director, Human Resources Division, State Department of High-

ways and Public Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701; but in any event, no later than December 14, 1990.

The State Department of Highways and Public Transportation will also conduct a public hearing, pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, to receive data, comments, views, and/or testimony concerning the proposed amendments. The public hearing will be held on Friday, November 30, 1990, at 10 a.m. in the first floor hearing room of the Dewitt C. Greer State Highway Building, 11th and Brazos, Austin. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content.

The amendments are adopted under Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

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

Aftercare—Usually, the second phase in rehabilitation treatment for alcohol and/or drug dependency, which follows intensive inpatient treatment or intensive outpatient treatment, and which may consist of weekly counseling sessions, the frequency and duration of which is designated by the treatment center's staff physician.

Counseling—A type of treatment which targets those employees who have been assessed by the EAP staff as being non-dependent on alcohol and/or drugs. (This treatment includes the five EAP counseling sessions in addition to other recommended educational and/or counseling sessions, the frequency and duration of which is to be prescribed by EAP staff.)

Highly dangerous chemicals or materials—Chemicals or materials which have the potential to cause serious bodily harm to the traveling public and/or other employees if handled improperly.

Other employees—One or more employees other than the employee who is performing the safety sensitive activity.

Rehabilitation treatment—Medical and psychological treatment for alcohol and/or drug dependency, which usually consists of intensive inpatient treatment followed by aftercare or intensive outpatient treatment followed by aftercare, and which may include individual counseling, group counseling, and education.

Safety sensitive position—A position which requires the performance of regularly assigned, routinely performed activities [involving duties] which if performed with inattentiveness, errors in judgment, [or] diminished coordination, dexterity, or composure could clearly result in mistakes that could present a real and imminent threat to the personal health and safety of other employees [the employee, co-workers.] and/or the public and which are performed with such independence that it cannot be reasonably assumed that those mistakes could be prevented by a supervisor or another employee. (Such activities may further be described as having one or more of the following characteristics: a direct, immediate relationship to safety and intimately related to the prevention of harm to the traveling public and/or other employees; fraught with extraordinary peril such that a single alcohol or drug-related lapse by a covered employee could have irreversible and calamitous consequences; performed in an extraordinarily hazardous setting such that careless performance carries with it the attendant risk of catastrophic consequences; or includes maintaining, storing, safeguarding, or using highly dangerous chemicals or materials.)

Successful completion of counseling—Completion of all recommended educational and/or counseling sessions, the content, frequency, and duration of which is to be prescribed by the EAP staff. (At a minimum, successful completion, determined by EAP staff, includes attendance and participation in all recommended educational and/or counseling sessions.)

Successful completion of rehabilitation treatment—Completion of a rehabilitation program, the composition and length of which is to be prescribed by the treatment program's staff physician. (At a minimum, successful completion includes participation by the employee in the rehabilitation treatment programs activities and therapies, which may include aftercare counseling. Usually, the treatment center's staff physician will determine whether an employee has successfully completed rehabilitation treatment.)

§1.102. Policy.

(a) (No change.)

(b) The sale, distribution, transportation, or manufacture of drugs outside of the workplace is prohibited. Department employees have an obligation to project a positive image at all times to other employees and the public in order to uphold the public's trust in the department.

(c)[(b)] An employee is also prohibited from performing official duties while under the influence of alcohol or illegally used drugs or, if performance is im-

paired, while under the influence of lawfully prescribed or over-the-counter substances.

(d)[(c)] In an effort to enhance worker productivity and protect the health and safety of employees and the public, final applicants for crewmember and safety sensitive positions will be tested for drugs; crewmembers and employees in safety sensitive positions will be subject to tests for alcohol and drugs.

(e)[(d)] An employee who violates the policies and prohibitions of this section or who fails to pass or refuses to submit to an approved alcohol or drug test will be subject to consistently applied discipline, up to and including termination.

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

(f)[(e)] All information related to the alcohol and drug testing of individuals will be held in strict confidence consistent with the provisions of applicable law.

(g)[(f)] The department will conduct an alcohol and drug-free awareness program which will provide all employees and supervisors with initial and ongoing periodic training regarding the department's policy, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol and drug abuse in the workplace, and the available employee assistance, counseling, and rehabilitation treatment programs.

§1.103. Applicability.

(a) A crewmember, an employee in a safety sensitive position, and a final applicant for a crewmember or safety sensitive position, will be subject to alcohol and drug tests as provided in this section.

(1) (No change.)

(2) A final applicant for or an employee engaged in a safety sensitive position which involves work in the maintenance of roadways, bridges, and/or right-of-way will be subject to the following categories of tests beginning on the dates indicated:

(A) pre-employment on March 1, 1991 [June 1, 1990];

(B) post accident on March 1, 1991 [June 1, 1990];

(C) reasonable cause on December 1, 1991 [March 1, 1991]; and

(D) random on March 1, 1992 [June 1, 1991].

(3) A final applicant for or an employee engaged in a safety sensitive position which involves work other than maintenance of roadways, bridges, and/or right-of-way will be subject to the following cat-

egories of tests beginning on the dates indicated:

(A) pre-employment on September 1, 1991 [December 1, 1990];

(B) post accident on September 1, 1991 [December 1, 1990];

(C) reasonable cause on December 1, 1991 [March 1, 1991]; and

(D) random on March 1, 1992 [June 1, 1991].

(b) (No change.)

(c) A position is considered safety sensitive for the purposes of this subsection if the employee holding the position performs one or more of the following activities or job functions:

(1) drives in an unusual fashion along the roadway in traffic in a manner inconsistent with normal traffic patterns. This includes driving slowly along the roadway or right-of-way, frequently pulling in and out of traffic, making frequent turns and stops, and getting in and out of a vehicle near traffic. Vehicle operation in this unusual manner in high speed traffic produces a high risk of causing immediate, catastrophic consequences. Examples of activities that fit this description include:

(A) inspecting roadways and bridges for repairs;

(B) inspecting barricades, traffic control devices, and traffic control setups;

(C) inspecting major maintenance projects such as bridge/roadway repairs or sign and striping operations;

(D) assisting stranded motorists;

(E) inspecting materials and work being performed at construction sites when unusual driving is required;

(F) inspecting vegetation growing along roadways;

(G) inspecting utility placements on roadways and rights-of-way;

(H) inspecting driveway placements;

(I) inspecting restorations of state rights-of-way;

(J) supervising the installation of signals;

(K) supervising sign installation;

(L) monitoring ramp meters;

(M) inspecting barrier fences;

(N) inspecting for damaged signs; or

(O) inspecting draw bridges;

(2) performs activities on highways or rights-of-way, in or around traffic such as:

(A) repairing signals;

(B) installing signals;

(C) flagging traffic and assisting with traffic control;

(D) installing reflective pavement markings;

(E) repairing roadway surfaces and bridges;

(F) doing water blasting;

(G) setting up and taking down signs and barricades;

(H) picking up litter on the right-of-way;

(I) removing encroachments from state rights-of-way;

(J) cleaning road signs;

(K) replacing signs;

(L) repairing sign illumination; or

(M) clearing debris from roadways and rights-of-way;

(3) uses dangerous chemicals/materials around other employees and/or the travelling public;

(4) operates any of the following in and around traffic or around one or more other employees:

(A) large/heavy equipment such as hole diggers, rotary brooms, front end loaders, asphalt distributors and heaters, water tanks, sanders, aerial buckets, snow plows, asphalt pots, pony blades, epoxy machines, gravel trucks, ladder trucks, stripers/stripping machines, cable lift hysters, spreaders, rollers, cranes, sweepers, paint machines, bulldozers, dump trucks, spreader boxes, chip spreaders, rotomillers, backhoes, drilling augers, pneumatic rollers, maintainers, wing plows, bucket trucks, drag lines, snoopers, boom trucks, mechanical rig runners, and maze meters (Depending on the height, weight, and type of materials being moved and the working environment, forklift operations may also be included.); and

(B) trucks and automobiles that are operated in support of road crews or that are driven in an unusual fashion as described in paragraph (1) of this subsection. Examples of trucks may include large trucks with trailers, service, litter, fuel, paint, supply, sign, and herbicide trucks.

(5) operates aircraft and swing bridges. The operation of aircraft and swing bridges carries with it a high risk of potential harm such that a single drug related lapse could have immediate, irremediable, and calamitous consequences to employees passengers, and/or the traveling public.

§1.105. Test Procedures.

(a) (No change.)

(b) The medical review officer will administer drug tests according to Department of Health and Human Services (DHHS) guidelines and alcohol blood tests according to coast guard guidelines. DHHS guidelines are summarized as follows.

(1) Specimen collection procedure.

(A) (No change.)

(B) Specimen collection and shipping will be conducted as follows.

(i)-(vii) (No change.)

(viii) Both the individual being tested and the collection site person shall keep the specimen in view at all times after the specimen is given, prior to the specimen being sealed and labeled. The specimen shall be sealed with a tamperproof seal over the bottle cap and down the sides of the bottle, and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of

the specimen and the placement of a tamperproof seal over the bottle cap and down the sides of the bottle.

(ix) The collection site person shall place an identification label securely on the bottle which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamperproof seal shall also be applied. The individual being tested shall be present during these procedures.

(x) The individual shall initial the identification label on the specimen bottle to certify that it is the specimen collected from that individual.

(xi) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from that individual is in fact the specimen he or she provided.

(xii)[(viii)] The collection site person will note any unusual behavior or appearance in the permanent record book.

(xiii) [(ix)] Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen will be obtained as soon as possible under the direct observation of a same gender collection site person.

(xiv)[(x)] Specimens will be shipped by an expeditious means to the laboratory.

(2) Laboratory analysis procedure.

(A) Each specimen will be analyzed in accordance with DHHS guidelines which requires testing for the following substances:

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

(B) DHHS guidelines presently specify the following confirmatory test cutoff levels.

<u>Drug</u>	<u>Confirmatory Test Level</u> <u>(ng/ml)</u>
<u>Marijuana metabolite</u> ¹	<u>15</u>
<u>Cocaine metabolite</u> ²	<u>150</u>
<u>Opiates:</u>	
<u>Morphine</u>	<u>300</u>
<u>Codeine</u>	<u>300</u>
<u>Phencyclidine</u>	<u>25</u>
<u>Amphetamines:</u>	
<u>Amphetamine</u>	<u>500</u>
<u>Methamphetamine</u>	<u>500</u>
<u>¹Delta-9-tetrahydrocannabinol-9-carboxylic acid</u>	
<u>²Benzoyllecgonine</u>	

(C) A blood alcohol level of .04 or above is considered to be a positive test result for alcohol.

(D)[(B)] The initial test will use an immunoassay screen which meets the requirements of the Food and Drug Administration for commercial distribution.

(E)[(C)] All specimens identifies as positive on the initial test will be confirmed by a confirmatory test using gas chromatography/mass spectrometry (GC/MS) techniques.

(F)[(D)] A specimen which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established in DHHS guidelines is reported to the medical review officer as positive.

(G)[(E)] Quality assurance and quality control designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs will be in accordance with DHHS guidelines.

(3) Reporting and reviewing of drug test results.

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

(E) If the medical review officer determines there is a legitimate medical explanation for the positive test result, he or she shall report the test result to the department as negative [will determine that the result is consistent with legal drug use and take no further action].

§1.106. Personnel Actions.

(a) Consequences of failing an alcohol or drug test.

(1) (No change.)

(2) Covered employee. A covered employee who fails an alcohol or drug test will be terminated unless he or she meets each of the following criteria:

(A) is referred to the Employee Assistance Program (EAP) and successfully completes counseling or an alcohol or drug rehabilitation treatment program, which may include aftercare for a length of time to be specified by the rehabilitation treatment program's staff physician. The rehabilitation treatment program must be approved by the Texas Department of Mental Health and Mental Retardation or licensed by the Texas Commission on Alcohol and Drug Abuse as a licensed site facility (Successful completion of counseling or rehabilitation treatment program must be certified to the substance control officer in writing by the EAP staff or the rehabilitation treatment center's staff physician [person or organization providing these services].);

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

(3) Subsequent actions, Except as provided in subsection (h)[i] of this section, when a covered employee has experienced work related problems as a result of alcohol or drug use and has been reinstated under paragraph (2) of this subsection, subsequent disciplinary action will not be taken for the previous work related problems provided the problems cease after reinstatement.

(b) (No change.)

(c) Voluntary admission of an alcohol or drug problem.

(1) (No change.)

(2) Disciplinary action will not be taken against an employee who voluntarily admits having a problem with alcohol or drug abuse, provided, however, that in the case of a covered employee, the admission occurs prior to a determination that the covered employee should be tested pursuant to §1.104 of this title (relating to Test Categories and Requirements). The referred employee must successfully complete counseling or a rehabilitation treatment program, and provide a letter from the EAP staff or the treatment program's staff physician certifying the success to the substance control officer.

(d) (No change.)

(e) Sale, distribution, transportation, or manufacture of drugs inside and/or outside [in] the workplace. If an employee is reasonably suspected of selling, distributing, transporting, or manufacturing drugs inside and/or outside [in] the workplace, due to direct observation of such acts in the workplace or by reason of the indictment, arrest, or charge of selling, distributing, transporting, or manufacturing

drugs inside or outside the workplace, the following procedure shall be followed.

(1) (No change.)

(2) The employee shall immediately be provided with a letter which:

(A) summarizes the facts upon which such action is taken [observed circumstances and behavior];

(B) notifies the employee that selling, distributing, transporting, or manufacturing drugs inside and/or outside [in] the workplace subjects the employee to termination;

(C) (No change.)

(D) advises the employee that if his or her response is insufficient or not acceptable or [and] if an investigation by law enforcement, the department, or other authorities confirms the suspicion, the employee will be terminated.

(3) When suspicious behavior is observed in the workplace, the [The] matter should be turned over to law enforcement authorities at the earliest possible time and a request made of such authorities to investigate.

(4) The employee shall be terminated if:

(A) (No change.)

(B) investigation by law enforcement or other authorities confirms the suspicion that the employee was selling, distributing, transporting, or manufacturing drugs [in the workplace].

(5) If the investigation reveals that the employee was using drugs inside [in] the workplace and not selling, distributing, transporting, or manufacturing drugs inside and/or outside [in] the workplace, the employee will be required [given an opportunity] to successfully complete counseling or a rehabilitation treatment program.

(6) If the investigation reveals that the employee was using drugs outside the workplace and not selling, distributing, transporting, or manufacturing drugs inside and/or outside the workplace, the employee will be given the opportunity to successfully complete counseling or a rehabilitation treatment program.

(f) (No change.)

[(g) Arrests. If an employee is arrested inside or outside of the workplace and is charged with selling, distributing, dispensing, transporting, or manufacturing drugs, actions contained in subsection (e)(1), (2), and (4) of this section shall be followed.]

(g)[(h)] Alcohol consumption or drug use in the workplace. If an employee is directly observed consuming an alcoholic beverage or taking a dangerous drug whether orally or by inhalation or injection in the workplace, the following procedure shall be followed:

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

(h)[(i)] Recurrence of substance abuse. Upon a third recurrence of the necessity to refer an employee to the EAP, counseling, or rehabilitation treatment under the department's substance abuse program, the employee will not be referred but will be terminated.

§1.107. *Counseling and Rehabilitation Treatment.* Except as provided in §1.106(i) of this title (relating to Personnel Actions), a covered employee who fails an alcohol or drug test or an employee who voluntarily admits to or is otherwise established to have an alcohol or drug abuse problem shall be referred to the EAP for assessment and referral to counseling or a rehabilitation treatment program. The department will pay for the cost of five [the] EAP counseling sessions which includes an initial assessment [and five counseling sessions]. An EAP counselor shall evaluate a referred employee to determine the extent of the dependence upon alcohol or drugs and as may be appropriate will refer the employee to:

(1) a counseling program which provides education and/or counseling sessions, the content, frequency, and duration of which is to be prescribed by the EAP staff, and which may include group or individual education and/or counseling sessions;

(2)[(1)] an outpatient rehabilitation treatment [counseling] program which provides individual counseling, group therapy, and education services for varying lengths of time, normally up to 10 weeks and which also includes an after-care program. (Covered employees participating in a counseling program will normally be able to continue to work while participating in the program. In such cases, the covered employee will be conditionally reinstated, based on successful completion of the counseling program and willingness to follow through with the aftercare treatment.); or

(3)[(2)] an intensive inpatient rehabilitation treatment program. (Covered employees participating in an inpatient [a] rehabilitation treatment program will not be able to work while enrolled in the program. After successful completion, he or she will be conditionally reinstated contingent on the employee's willingness to follow through with the aftercare plan as prescribed by the treatment center's staff physician). [(Covered employees may be referred to an outpatient follow-up program lasting from several months to a year or more.)]

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 November 7, 1990.

TRD-9011851

Diane L. Northam
Legal Administrative
Assistant
State Department of
Highways and Public
Transportation

Earliest possible date of adoption: December 14, 1990

For further information, please call: (512) 463-8630

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**Chapter 21. Right of Way
Division**

**Control of Outdoor Advertising
Signs**

• 43 TAC §21.150

The State Department of Highways and Public Transportation proposes an amendment to §21.150, concerning permits, which apply to outdoor advertising signs along interstate and federal-aid primary highways in Texas. Section 21.150 provides that all such permits issued by the department prior to September 6, 1985, shall be renewed no later than September 5, 1990. In order to determine the appropriateness of fee schedules for those permits and to assure their validity under

Texas Civil Statutes, Article 4477-9a, the department amended this section on September 27, 1990, on an emergency basis to deter the renewal deadline until January 1, 1991. The emergency amendment was published in the October 5, 1990, issue of the *Texas Register* (15 TexReg 5837). The State Highway and Public Transportation Commission confirmed the fee schedule by Minute Order Number 90929, dated October 25, 1990, and it is therefore proposed to establish the January 1, 1991, renewal deadline on a permanent basis.

Gary Bernethy, P.E., right of way engineer, Right of Way Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bernethy has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amended section.

Mr. Bernethy has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more effective and uniform enforcement of the display of outdoor advertising signs. 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 Gary Bernethy P.E., right of way engineer, Right of Way Division, State Department of Highways and Public Transportation, P.O. Box 5075, Austin, Texas 78763-5075.

The amendment is proposed under Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and Texas Civil Statutes, Article 4477-9a, which provide the commission with the authority to adopt rules to regulate the orderly and effective display of outdoor advertising signs along interstate and federal-aid primary highways.

§21.150. Permits.

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

(e) Permits issued by the department prior to September 6, 1985, shall be renewed no later than **January 1, 1991** [September 5, 1990], and the renewal permit will be for a period of time as provided in subsection (b) of this section.

(f) (No change.)

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

Issued in Austin, Texas, on November 6, 1990.

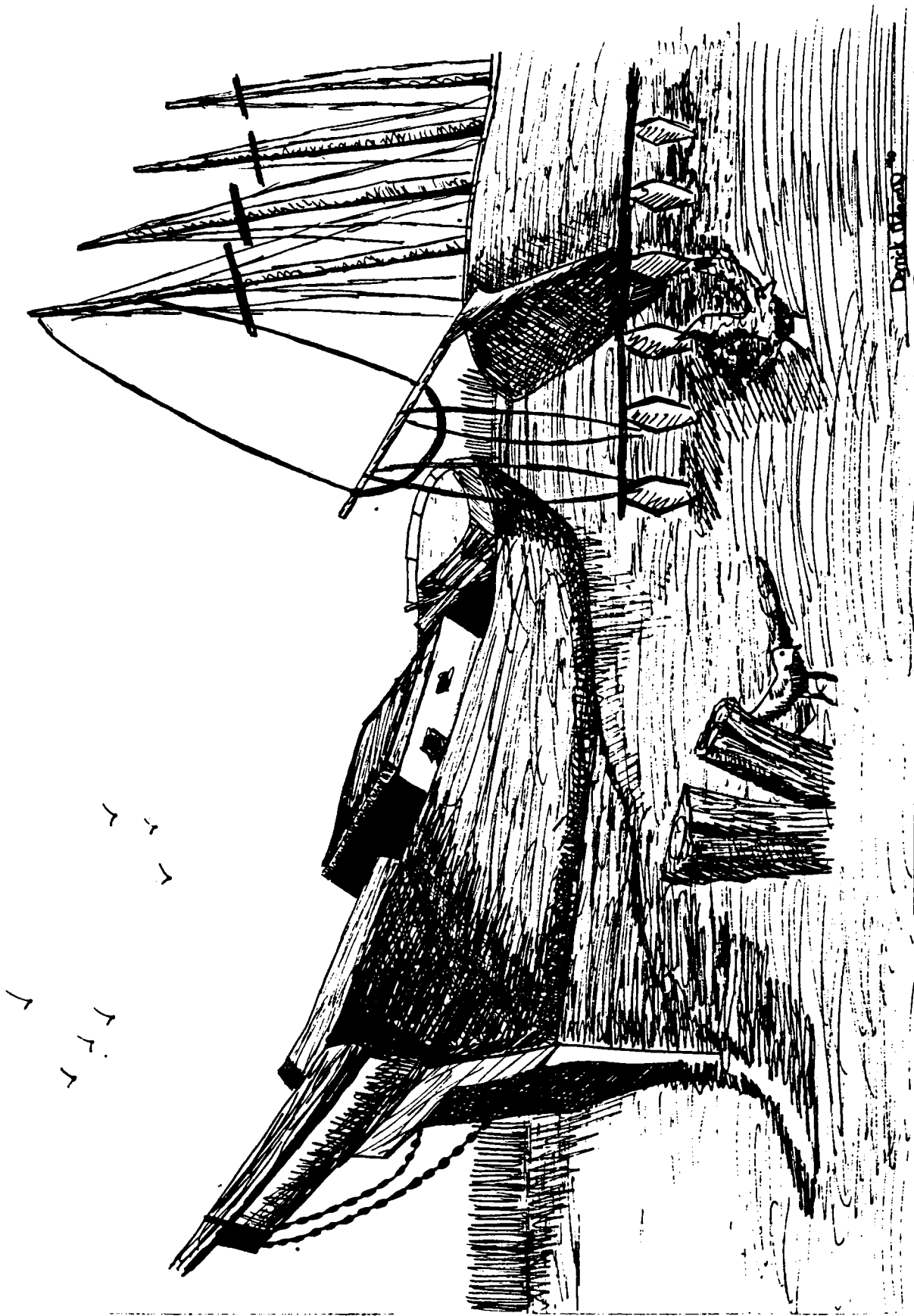
TRD-9011822

Diane L. Northam
Legal Administrative
Assistant
State Department of
Highways and Public
Transportation

Earliest proposed date of adoption: December 14, 1990

For further information, please call: (512) 463-8630

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Derrick Adams
RICHARDSON JR. HIGH
8th grade

Name: Derrick Adams

Grade: 8

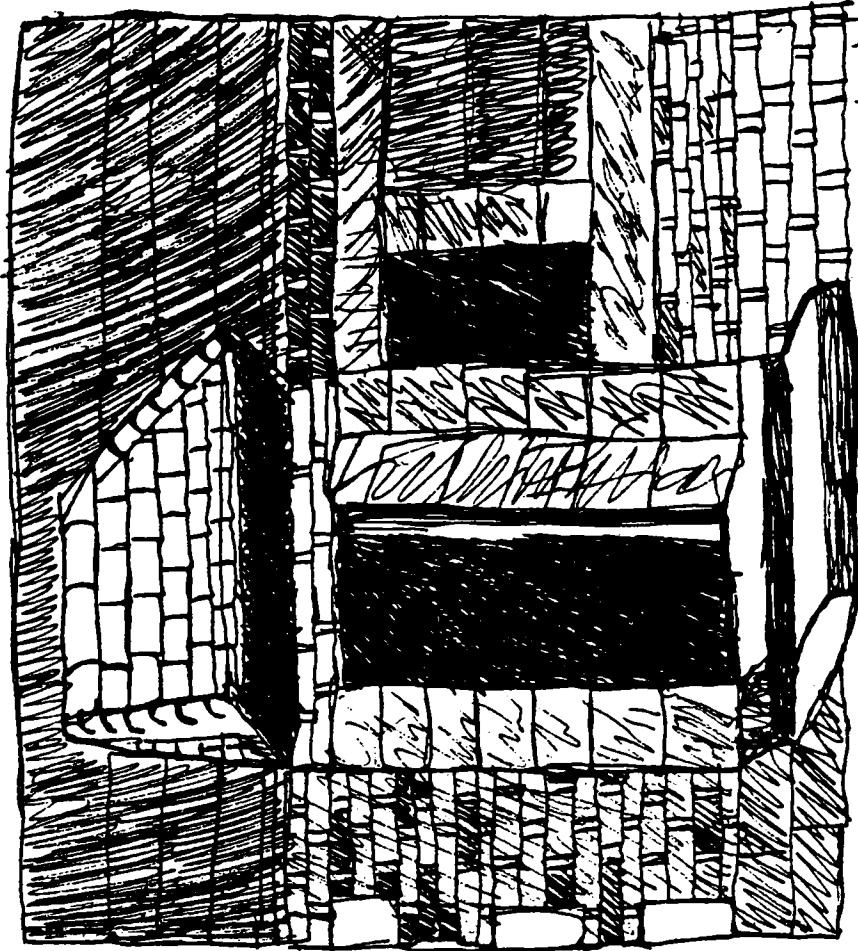
School: Richardson Junior High, Richardson



Name: Ernie Burdett

Grade: 7

School: Richardson Junior High, Richardson ISD



Ryan Knecht
ART RJHS - 7th grade

Name: Ryan Knecht

Grade: 7

School: Richardson Junior High, Richardson ISD



Carl Edlund - 7th
RICHARDSON JR. HIGH

Name: Carl Edlund

Grade: 7

School: Richardson Junior High, Richardson ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

Title 34. PUBLIC FINANCE

Part I. Comptroller

Chapter 3. Tax Administration

Subchapter B. Natural Gas Production Tax

• 34 TAC §3.21

The Comptroller of Public Accounts adopts new §3.21, without changes to the proposed text as published in the October 2, 1990, issue of the *Texas Register* (15 TexReg 5794).

The new section sets out the procedures for producers seeking exemption from the severance tax on gas wells certified by the Texas Railroad Commission to be high-cost natural gas wells. This exemption is provided by recent legislation. Producers may begin filing applications January 1, 1990.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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

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

TRD-9011663

Bob Bullock
Comptroller of Public
Accounts

Effective date: November 23, 1990

Proposal publication date: October 2, 1990

For further information, please call: (512) 463-4004

Part IV. Employees Retirement System of Texas

Chapter 63. Board of Trustees

• 34 TAC §63.3, §63.4

The Employees Retirement System of Texas adopts amendments to §63.3 and §63.4, with changes to the proposed as published in the September 25, 1990, issue of the *Texas Register* (15 TexReg 5569).

The sections make improvements in the nomination and election of trustees by furnishing additional information on candidates to the electorate and taking steps to insure the integrity of the nomination and election pro-

cess.

Petitions and ballots will be distributed to all eligible state employees in order that they may have an opportunity to nominate and vote for candidates for trustee of the Employees Retirement System of Texas.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Title 8, §815.003(a), and §815.102, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to promulgate rules necessary to nominate and elect trustees and to carry out other business of the board.

§63.3. Election of Trustees (Nomination Process). Names may be placed in nomination for the office of trustee of the Employees Retirement System of Texas in the following manner.

(1) A candidate, or his or her agency, must file a petition on a form approved by the system requesting the candidate's name to be placed in nomination. The petition must be signed by 300 or more persons qualified to vote in the Trustee election.

(2) The signature of each person on a petition must be accompanied by that person's printed name, Social Security number, and employing department. No person may sign a petition for more than one candidate. To do so, will cause the signatures of the member to be disqualified.

(3) Blank petition forms may be reproduced and utilized provided the reproduction is an exact replica of the original document.

(4) Petitions must be received in the system offices on or before the close of business (5 p.m.) of a specific workday set by the trustees. Petitions received after that time will not be counted.

(5) Reproduced or fax copies of signed petitions will be disqualified.

(6) Only those names of candidates whose petitions comply with this section will be presented on the ballot.

(7) The board shall adopt a calendar governing the conduct of each trustee election. Blank petitions and ballots shall be distributed by the system to state agencies at least 25 calendar days in advance of the return due date established by the trustees.

§63.4. Election of Trustees (Ballot).

(a) The order of names on the ballot will be set by drawing. All nominated candidates or their representatives are entitled to be present at the drawing.

(b) Qualified candidates must submit within the time frame established by the system the following information for printing on the ballot:

(1) name as it is to appear on the ballot;

(2) number of years and months state employment;

(3) current job title and position as a state employee;

(4) name of current employing state agency.

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide within the time frame provided by the system his or her state agency mailing address and a job description consisting of 15 words or less. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special ERS newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the membership immediately prior to the ballot distribution.

(d) Each ballot submitted must bear the voter's signature, printed name, Social Security number, and name of employing agency to be valid.

(e) No more than one ballot may be cast by the voting member. To do so will disqualify the voter's ballots.

(f) Blank ballots may be reproduced and utilized provided the reproduction is an exact replica of the original ballot.

(g) Reproduced or fax copies of signed ballots will be disqualified.

(h) Ballots must be received in the system offices on or before the close of business (5 p.m.) of a specific workday set by the trustees. Ballots received after that time will not be counted.

(i) The election ballots can be returned to the ERS either in person, by interagency mail, or by regular mail with the postage being paid by the ERS.

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 November 7, 1990.

TRD-9011861

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: November 28, 1990

Proposal publication date: September 25, 1990

For further information, please call: (512) 867-3213

Chapter 81. Insurance

• 34 TAC §81.7

The Employees Retirement System of Texas adopts an amendment to §81.7, with changes to the proposed text as published in the September 14, 1990, issue of the *Texas Register* (15 TexReg 5550) and September 25, 1990, issue of the *Texas Register* (15 TexReg 5570).

The amendment allows state employees in a leave without pay status during the limited enrollment period the right to make enrollment changes permitted other state employees during limited enrollment. The amendment also allows state employees and/or their dependents who are called to active duty to reinstate all insurance coverages that were in effect immediately prior to the commencement of their active duty upon returning to state employment.

Information will be furnished to insurance coordinators and state employees advising them of rights which they will have under the new rules to either make enrollment changes or reinstate coverages.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Insurance Code, §3.50-2, which provides the board of trustees of the Employees Retirement System of Texas with the authority to adopt rules as it shall deem necessary to insure the proper administration of the Texas Employees Uniform Group Insurance Benefits Act.

§81.7. Enrollment and Participation.

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

(f) Changes in coverages beyond the first 31 days of eligibility.

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

(6) Persons wishing to change from one HMO to another HMO in the same service area or change from the insured plan to an HMO will be allowed any annual opportunity to do so. Such opportunity will be scheduled prior to September 1 of each year at times announced by the Employees Retirement System. The pre-

existing conditions clause and evidence of insurability provision will not apply in these cases. Coverages in the new HMO will be effective September 1. Persons in a declined or canceled status may apply for coverages in an HMO for which they are eligible during the annual limited enrollment period. Coverage in the HMO will be effective September 1.

(7)-(9) (No change.)

(g) Pre-existing condition limitation. For initial health insurance coverage on or after September 1, 1985-August 31, 1988, or health insurance coverage changes effective on or after September 1, 1985-August 31, 1988, the preexisting condition exclusion shall apply to employees, retirees, and eligible dependents who are enrolled in the insured health benefits plan. The exclusion limits benefit payments to \$500 for a full 12 months from the effective date of coverage for a pre-existing condition, as defined in §81.1 of this title (relating to Definitions). For initial health insurance coverage on or after September 1, 1988, or health insurance coverage changes effective on or after September 1, 1988, the pre-existing condition exclusion shall apply to employees, retirees, and eligible dependents who are enrolled in the insured health benefits plan. The exclusion limits benefit payments to \$0 for a full 12 months from the effective date of coverage for a pre-existing condition, as defined in §81.1 of this title (relating to Definitions). The pre-existing condition exclusion will not apply to:

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

(6) an individual returning to state employment in accordance with the conditions described in subsection (h)(2) of this section.

(h) Reinstatement in the program.

(1) Unless specifically prohibited by these sections or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate coverage for himself and his dependents no greater than those that were in effect when the employee terminated by submitting an application for the coverages. The application must be submitted on the first day the employee returns to active duty, and the coverage will be effective on the day the employee returns to active duty. The pre-existing condition clause will apply. A returning employee who has selected coverages less than those in effect when terminating employment may reinstate any waived coverages by submitting the appropriate application during the 30 days following the date the employee returns to active service. The change in coverage will become effective on the first day of the month following the date of application. An application to reinstate disability insurance coverage for a returning employee must contain evidence of insurability acceptable

to the insurance carrier. Disability coverage will become effective on the first day of the month following the date approval is received by the Employees Retirement System of Texas, unless the employee is then in a leave without pay status, in which case, it will become effective on the date the employee returns to active duty.

(2) An employee who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and who is in a military leave without pay status or who must terminate employment as the result of an assignment to active military duty may, upon return to state employment, reinstate all Uniform Group Insurance Program coverages that were in effect immediately prior to the commencement of active military duty, as long as the return to state employment occurs within 90 days of the release from active military duty. An employee may also reinstate the coverage of the employee's dependent, who is a member of the Texas National Guard or any of the reserve components of the United States Armed Forces and whose coverage is terminated as the result of an assignment to active military duty. To reinstate canceled coverages, submission of evidence of insurability acceptable to the insurance carrier and the pre-existing condition exclusion will not apply. The application to reinstate such coverages must be submitted during the 30 days following the day the employee returns to active state employment. In the case of the dependents, the application to reinstate such coverages must be submitted within 30 days following the release from active duty. Applications for coverages to be effective on the day the employee returns to active state employment must be submitted to the state agency insurance coordinator on or before the first day of the return to active state employment. Coverages for which the application is submitted after the first day of the return to active state employment and within 30 days after that day will be effective on the first day of the month following the date of application; however, applications completed and signed by the employee on the first calendar day of the month will be effective on that day.

(i) Continuing coverage in special circumstances.

(1) (No change.)

(2) An employee in an approved extended sick leave without pay status due to a disabling condition or in an approved leave of absence without pay status while not disabled may continue the types and amounts of health and life coverage in effect on the date the employee entered that status for a maximum period of up to 12 months. During this period, the employee may not change coverage except that, employees in a leave without pay status may: add new dependents, including newborns; reduce or cancel coverage; and make such coverage changes as are permitted during

the annual limited enrollment period as described in subsection (f)(6) of this section. Disability income coverage for an employee in an approved extended sick leave without pay status due to a disabling condition will be suspended beginning on the first day of the month in which the employee enters the extended sick leave without pay status due to a disabled condition and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from an extended sick leave without pay status due to a disabling condition will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the agency as approved extended sick leave without pay due to a disabling condition. Disability income coverage for an employee in an approved leave of absence without pay status will be canceled and no premiums collected beginning on the first day of the month in which the employee enters the leave of absence without pay status. To reinstate canceled disability coverage, an employee returning to active duty from a leave of absence without pay status must submit evidence of insurability acceptable to the insurance carrier. If approved, disability income coverage will become effective on the first day of the month following the date the approval is received by the Employees Retirement System, unless the employee is then in another leave of absence without pay status. In that case, the disability income coverage will become effective on the date the employee returns to active duty.

(3)-(11) (No change.)

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

Issued in Austin, Texas, on November 7, 1990.

TRD-9011865 Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: November 28, 1990

Proposal publication date: September 14, and
September 25, 1990

For further information, please call: (512)
867-2313



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 15. Drivers License Rules

Licensing Requirements

• 37 TAC §§15.1, 15.5-15.7

The Texas Department of Public Safety adopts amendments to §§15.1, 15.5-15.7, without changes to the proposed text as published in the October 2, 1990, issue of the *Texas Register* (15 TexReg 5794).

Adoption of the amendments will ensure that the public is aware of the requirements for issuance of the licenses promulgated by these sections.

The amendment to §15.1 adds paragraph (4) regarding issuance of a noncommercial driver's license when needed. The amendment to §15.5 adds and deletes language and adds subsection (e). These amendments establish licensing requirements for issuance of a learner's license-instruction permit and minor's restricted driver's license. Amendments to §15.6 add and delete language converting the motorcycle operator's license to a Class M license. These amendments establish the licensing requirements for a Class M license applicable to operating a motorcycle, motor-driven cycle, and a moped. Amendments to §15.7 add and delete language establishing requirements for issuance of an occupational or essential need license. Subsection (f) is added which permits a person to operate a motor vehicle for a period of 30 days provided they have a certified copy of the court order authorizing issuance of an occupational or essential need license.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6687b, §1A, which provides the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer 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 November 5, 1990

TRD-9011818 Joe E. Milner
Director
Texas Department of
Public Safety

Effective date: November 27, 1990

Proposal publication date: October 2, 1990

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



Licensing Requirements

• 37 TAC §§15.2-15.4

The Texas Department of Public Safety adopts the repeal of §§15.2-15.4, without changes to the proposed text as published in the October 2, 1990, issue of the *Texas Register* (15 TexReg 5796).

The repeal of the sections will decrease administrative maintenance of sections that are no longer applicable due to renewal of driver's licenses to the classified driver's license system.

The department has determined that it is no longer necessary to maintain sections regarding operator's, commercial operator's, and chauffeur's driver's licenses due to statutory amendments implementing the classified driver license system effective January 1, 1984.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 6687b, §1, which provides the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer 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.

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465-2000



Examination Requirements

• 37 TAC §15.59

The Texas Department of Public Safety adopts an amendment to §15.59, without changes to the proposed text as published in the October 2, 1990, issue of the *Texas Register* (15 TexReg 5796).

Adoption of the amendments will ensure that the public is informed of the procedures to follow when renewing a driver's license.

The amendment adds language to subsection (d)(2) which does not permit a commercial driver's license (CDL) to be renewed by mail. Language is added and deleted in subsection (e) converting the name for an extension certificate to a certificate of current status. The certificate of current status must be attached to the back of the expired photo license. Loss of a certificate or photo license will require application for a duplicate license at a local driver license office.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6687b, §1A, which provide

the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer 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.

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Reciprocity in Driver Licensing

• 37 TAC §§15.91-15.93

The Texas Department of Public Safety adopts amendments to §§15.91-15.93, without changes to the proposed text as published in the October 2, 1990, issue of the *Texas Register* (15 TexReg 5796).

Adoption of the amendments will ensure the public is knowledgeable of the driver's license reciprocity agreements that are granted certain persons under certain conditions.

The amendment to §15.91 adds subsection (e) which states that foreign diplomats in the United States must obtain a Department of State driver's license. A Texas driver's license would be denied if the person is identified as having diplomatic status. The amendment to §15.92 adds and deletes language converting operator, commercial operator, or chauffeur license to Class A,B,C, or M licenses. In paragraph (1)(C)(ii) Canal Zone is deleted as reciprocity and the remaining clauses are renumbered as (ii)-(iv). In paragraph (6)(B) Spain is added as a NATO number. Paragraph (6)(C) is added which proved that members of the military or its civilian components of a NATO country may drive in Texas on their country's license or be issued a Texas license after they have met all of the licensing requirements except for the road test which will be waived. Amendments for §15.93 change section title and adds subsection (d) stating that department driver license personnel will test for a Department of State driver's license. The test results will be recorded on documents provided by the State Department.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6687b, §1A, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer 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.

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Joe E. Milner
Director
Texas Department of
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For further information, please call: (512) 465-2000

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facilities for Mentally Retarded (ICF-MR)

Subchapter C. Eligibility for Participation in an Intermediate Care Facility for the Mentally Retarded

• 40 TAC §27.203

The Texas Department of Human Services (DHS) adopts an amendment to §27.203, with changes to the proposed text published in the September 9, 1990, issue of the *Texas Register* (15 TexReg 5099).

The purpose for the amendment is to change dispersion requirements and add new Level of Care VIII intermediate care facilities for the mentally retarded with related conditions (ICF-MR/RC VIII) to the section.

The section will function by setting a 1/2 mile dispersion requirement between ICF-MR facilities and allowing for the development of new ICF-MR/RC VIII facilities.

During the comment period, DHS received comments from the Texas Association of Private Residential Resources; the Community Residential Services Association of Texas; and Advocacy, Incorporated. A summary of the comments and DHS's responses to the comments follows:

Comment - One commenter recommended that the requirement that the facility must comply with local zoning and special-use permit requirements include a qualification that compliance is required only if local regulations do not conflict with state or federal law.

Response - DHS disagrees with this comment because DHS has no authority to direct a facility to not comply with a local regulation. If the legality of a local requirement is in question, that may constitute a legal matter between the facility and the local authority.

Comment - One commenter proposed that the 1/2 mile dispersion requirement between facilities be reduced to 1,200 feet. The commenter maintained that this would be a more reasonable requirement for small cities.

Response - DHS disagrees with this comment because the proposed rule does not

require that facilities be located within a city's limits. A dispersion requirement of less than 1/2 mile is inconsistent with the community integration objectives of the small ICF-MR program. Additionally, a dispersion requirement of less than 1/2 mile would be inconsistent with current state law (Community Homes for Disabled Persons Location Act (Texas Civil Statutes, Article 1011n)).

Comment - One commenter supported the 1/2 mile dispersion requirement and the inclusion of the ICF-MR/RC VIII Level of Care under the provisions of §27.203.

Response - DHS concurs with this comment.

Comment - One commenter recommended that facilities that intend to provide Level of Care VIII services be required to notify other potential referral sources, in addition to the local mental health and mental retardation authority.

Response - DHS agrees with this comment and has revised subsection (a)(3)(D) to require that the applicant also notify the regional DHS office and at least two other appropriate referral sources.

The amendment 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.

§27.203. Provider Applications.

(a) All applications for participation in the Intermediate Care Facility for the Mentally Retarded (ICF-MR) Program are limited to one level-of-care classification (I, V, VI, or VIII) and must meet the following requirements.

(1) Requested certification is limited to a maximum of six beds per facility. This includes new facilities seeking initial certification and currently certified facilities seeking to increase the certified bed capacity.

(2) The proposed facility is non-contiguous to an already existing residential facility which serves individuals with mental retardation or a related condition. The proposed facility is in compliance with applicable special use permit requirements, local zoning, and/or occupancy code requirements. The proposed facility must also meet the following specifications:

(A) The applicant must submit information which documents access to community resources (as appropriate for the individuals to be served); and

(B) The applicant must submit documentation for all levels of care that verifies that the proposed facility is located such that no other ICF/MR is within a 1/2 mile radius of the proposed facility. One of the following is required:

(i) if the proposed facility is located in an incorporated city, documentation from a city official stating such; or

(ii) if the proposed facility is located in an unincorporated area, a statement from the applicant describing accessibility to appropriate community resources, including but not limited to emergency medical services and utility services.

(3) A needs assessment has been conducted to include the following.

(A) The applicant must identify the known number of developmentally disabled persons residing in the community and surrounding geographic area (defined in the assessment) who can benefit from the services provided by the facility.

(B) The applicant must identify by name other ICF/MR facilities, if any, located within the same community and/or geographic area. The applicant must state the level-of-care classification and the number of individuals served at each facility.

(C) If the facility serves individuals qualifying for Level-of-Care I, V, or VI services, the applicant must submit documentation to verify that the mental retardation authority in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria. The applicant must obtain and submit letters or supportive documentation from at least two of the following sources: the superintendent of the state school and/or the executive director of the MHMR center in whose catchment area the proposed facility is located, advocacy groups, service providers and organizations, and/or school districts. The letters must refer specifically to the proposed facility by name and/or address and include a statement as to the known number of individuals identified in the area who will meet the admission criteria of the facility.

(D) If the facility serves individuals qualifying for Level-of-Care VIII services, the applicant must submit documentation to verify that the mental retardation authority in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria. Additionally, the applicant must submit documentation that verifies that the regional DHS office and at least two other appropriate referral sources have been notified about the development of the proposed facility. The applicant must obtain at least two letters or supportive documentation from the appropriate referral sources. The letters must refer specifically to the proposed facility by name and/or address and include a statement as to the known number of individuals identified in the area who will meet the admission criteria of the facility.

(E) The applicant must submit a written description of the resident group to be served, including admission criteria.

(4) The applicant must develop a description of the educational, medical vocational, and any other programmatic support services (as defined by 42 Code of Federal Regulations Part 483, Subpart D) which are required by the individuals served. The applicant must send a copy of either a letter of intent, memorandum of understanding, or a contract with the educational and/or vocational service provider.

(5) If the applicant plans to serve individuals qualifying for Level-of-Care I or VIII services, the applicant must submit a written description of alternatives for semi-independent and independent living available to the facility for those individuals who successfully complete the active treatment plan and evidence ability to move to a less restrictive placement. In the absence of these alternatives, the applicant must present evidence of having initiated planning for the development of these alternatives.

(6) Facilities requesting to reclassify must withdraw from the program and reapply in compliance with the requirements of this section. This includes new facilities seeking to reclassify during the application process prior to initial certification and currently certified facilities.

(b) After the Texas Department of Mental Health and Mental Retardation (TDMHMR) receives and reviews the application for participation in the ICF/MR program and before request for a certification survey by the Texas Department of Health (TDH), the TDMHMR ICF/MR program staff contacts the applicant as necessary to facilitate completion of the application process. The contract for services is dependent on satisfactory compliance with these criteria.

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 November 2, 1990.

TRD-9011650 Cathy Rossberg
Agency liaison, Policy and
Document Support
Department
Texas Department of
Human Services

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TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 1. Administration

Sick Leave Pool Program

• 43 TAC §§1.300-1.305

The State Department of Highways and Public Transportation adopts new §§1.300-1.305. Sections 1.301, 1.303, and 1.304 are adopted with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 TexReg 3269). Sections 1.300, 1.302, and 1.305 are adopted without changes and will not be republished.

The new sections are adopted in order to comply with the passage of Senate Bill 357, 71st Legislature, 1989, codified as Texas Civil Statutes, Article 6252-8e, which mandates the governing body of each state agency to adopt rules regarding the Sick Leave Pool Program. The new sections provide for the creation of a sick leave pool from voluntary contributions of sick leave from an employee's personal leave account and authorizes the use of sick leave from the pool by an employee when the employee or a member of the employee's immediate family has a catastrophic illness or injury.

The new sections describe the purpose of the program, administration of the pool, eligibility criteria for participation, procedures for contributing to and withdrawing from the sick leave pool, and provisions for equal treatment of employees who use sick leave from the pool as compared with employees who use earned sick leave.

Eighty-seven comments were received from individual employees of the department. Ten of those employees were in favor of the program, six were opposed, and 71 offered suggestions for improving the proposed program without expressing clear favor or disapproval. The following addresses the comments received.

Regarding §1.300, concerning purpose, one commenter asked what is meant by the statement "lose compensation from the state?" The intent of Texas Civil Statutes, Article 6252-8e, which authorizes a state agency to create a sick leave pool program, is to lessen or mitigate the hardship caused to an employee who suffers the consequences of a catastrophic illness or injury. Article 6252-8e describes this hardship as being when the employee exhausts all leave time and loses compensation from the state. This article requires an agency to grant such an employee pool leave in order to lessen or mitigate the hardship.

Regarding §1.301, definition of Pool Administrator, one commenter suggested that the pool should be administered by three persons, one each from upper and middle management and one from a technical section. The commenter explained that this would give a person with a question or suggestion someone who is approximately on his or her level to talk with. The commenter added that in the case of a dispute over either an ap-

proved or denied request, there would be three persons with whom the employee could talk. One commenter thought that control of the pool should be in the hands of the employees rather than an administrator. Texas Civil Statutes, Article 6252-8e specifies that the Pool Administrator is "the person appointed by the governing body of a state agency to administer that agency's sick leave pool." Therefore, the department does not have the authority to appoint more than one person to serve as Pool Administrator. Further, this structure would slow down the process significantly. Time required to approve an application for withdrawal should be as short as possible due to the needs of the employees who suffer from a catastrophic illness or injury. Therefore, the current definition of the Pool Administrator as being one employee will be retained. Several commenters thought that the pool should be administered on a district/division level with each district/division being responsible for their own employees. These commenters further felt that each district/division should appoint their own pool administrator who would determine a catastrophic illness or injury within their jurisdiction which would then be approved by the Human Resources Division. One of these commenters stated that individual districts are more familiar with their employees and would be in a better position to make this type of determination. This method of operation would be cumbersome and time consuming and would more than likely result in inconsistent, inequitable administration of the program statewide. Further, Texas Civil Statutes, Article 6252-8e which authorizes state agencies to establish sick leave pool programs, allows state agencies to consider only two criteria when granting or denying sick leave withdrawal from the pool, that is, whether the employee or family member has a catastrophic illness or injury and whether the employee has exhausted all accrued leave time. This statute does not allow state agencies to consider the employee's history and potential abuse of sick leave, the employee's length of employment, or his or her work record. Therefore, administration of the pool shall remain the responsibility of the Pool Administrator as defined in this section.

Regarding the definition of the Sick Leave Pool, two commenters felt that each maintenance section should have its own pool and numerous commenters felt that each district and division should have its own pool. One commenter explained that as with donating blood, the inclination to donate is stronger when one knows the person he or she is helping. Another commenter wanted assurances that time would be available for their district employees when their district contributed. These suggestions have merit. However, Texas Civil Statutes, Article 6252-8e specifies that, "The governing body of the state agency shall establish a program within the agency to allow an employee of that agency voluntarily to transfer sick leave time earned by the employee to a sick leave pool...." Therefore, the department does not have the authority to establish more than one pool. Further, it was felt that this system would be cumbersome and very difficult to administer while insuring consistent, fair, and equitable application of the rules.

Regarding §1.303(a)(1), three commenters recommended that participation in the pool

should be limited to full-time employees only, and not allow participation by part-time employees, temporary employees, or temporary retirees. Texas Civil Statutes, Article 6252-8e, specifies that an employee is eligible to use time from the pool, and further defines an employee as "a person, other than a state officer, who is employed by a state agency." The department does not have the authority to change a law passed by the legislature by making the law more restrictive, more comprehensive, more lenient, etc. Therefore, the department does not have the authority to limit participation in the pool to full time employees. One commenter added that short-term employees should not be eligible for long term sick leave benefits. Termination of employment with the department will automatically terminate sick leave.

Regarding §1.303(a)(2), three commenters stated that an employee should be required to contribute to the pool before being eligible to use pool leave. One commenter stated that before an employee can be eligible to contribute to the pool, he or she should have a minimum amount of sick leave or a combination of vacation and sick leave earned. The department does not have the authority to change the eligibility criteria.

Regarding §1.303(b), several commenters expressed concern that the pool could be used by employees who have abused their sick leave privileges. One commenter added that as written, these rules reward the employee who has abused sick leave privileges. The department is concerned about sick leave abuse. However, Texas Civil Statutes, Article 6252-8e establishes the eligibility requirements for withdrawing time from the pool to be that the employee or a member of the employee's immediate family must have a catastrophic illness or injury and that the employee must exhaust all accrued leave time. Therefore, the department does not have the authority to change the eligibility requirements by limiting pool participation to employees who do not abuse their sick leave. Abuse of sick leave should be corrected through existing procedures, outlined in the Human Resources Manual. Denying pool sick leave to malingers does not correct the problem. One commenter complained that employees run out of sick leave because of "overuse." The eligibility criteria which requires that an employee or the employee's immediate family member must have a catastrophic illness or injury in order for the employee to be eligible to use pool leave will normally insure that the employee exhausted his or her accrued leave at least in part due to a catastrophic illness or injury.

Regarding §1.303(b)(1), one commenter stated that pool sick leave should not be used by an employee for the catastrophic illness or injury of the employee's immediate family member. Texas Civil Statutes, Article 6252-8e required that the trustee of the state employee uniform group insurance benefits program determine which injuries and illnesses are classified as catastrophic. The trustee of the Employees Retirement System issued the definition of a catastrophic illness or injury, which appears in ~§1.301 concerning definitions, and which states that it is, "A severe condition or combination of conditions affecting...an employee or the employee's immediate family...." The department does not have the authority to change this definition.

One commenter asked what medical knowledge or experience does the Pool Administrator have to qualify him or her for making determinations regarding catastrophic illnesses or injuries. If clarification is needed, the Pool Administrator may consult with the licensed practitioner who certified to the illness or injury as described under ~§1.304, a medical doctor under contract with the department, and/or a nurse employed with the department. A statement is being added to this paragraph, §1.303(b)(1), to reflect this fact.

Regarding §1.303(b)(2), several applications for withdrawal of leave time from the pool have indicated confusion regarding the eligibility criteria for withdrawing time from the pool. The confusion appears to be that employees consider exhaustion of all accrued leave time to be the major criteria for eligibility. The first eligibility criteria is that the employee or the employee's immediate family member must have a catastrophic illness or injury. The second eligibility criteria is that the employee must have exhausted all accrued leave time. Three commenters objected to requiring an employee to apply for sick leave from the sick leave pool first and extended sick leave second. One commenter explained that an employee's peers do not owe him or her anything but that the department does owe the employee something. Another commenter added that applying for pool leave first will result in the employees contributing sick leave to the state and that contributed leave will replace the extended sick leave program. Texas Civil Statutes, Article 6252-8e states that an employee must exhaust all accrued leave time before being eligible to apply for leave from the sick leave pool. Sick leave granted through the extended sick leave program is not accrued leave time, therefore it does not have to be taken prior to applying for pool leave. Further, extended sick leave is not an entitlement in that it is not mandated by the legislature in the Appropriation Bill. Rather the Legislature allows the administrative head of an agency to grant exceptions to the amount of sick leave authorized by the General Appropriation Bill provided such exceptions are authorized on an individual basis after a review of the merits of each particular case. Therefore, extended sick leave is a privilege and not an entitlement. Since extended sick leave is not an entitlement or accrued leave, it does not have to be taken prior to applying for pool leave.

Regarding §1.303(b)(3), four commenters objected to the restriction that a member of the employee's immediate family must reside in the same household of the employee or be totally dependent on a continuing basis. Situations include parents, married children, and children of divorced parents. One commenter complained that just because a parent or child does not live in the same household does not negate the emotional need to be with that family member who has a catastrophic illness or injury. One commenter objected to this restriction in that it does not allow the employee to share responsibility for another person such as an elderly parent or the child of divorced parents. The department agrees with these concerns and is therefore changing the definition of "totally dependent" on a continuing basis" to read, "A situation in which an employee has the responsibility for

the personal care or services of the employee's family member for any period during which the employee is the primary source of continual care." This revised definition will allow employees to use pool leave when sharing responsibility for caring for an immediate family member who has a catastrophic illness or injury and who does not live in the same household. One commenter stated that the requirement that the family member must be totally dependent on the employee is somewhat narrow in that it does not permit the person to have any income including social security. The statement "totally dependent upon the employee for personal care or services on a continuing basis," does not refer to financial dependency but rather self-care dependency.

Several commenters addressed concerns regarding the general eligibility criteria for withdrawing time from the pool. Four commenters stated that an employee should be employed with the department for a minimum amount of time (two years, five years) before being eligible to withdraw from the pool. One commenter stated that an employee should be a member of the Texas Public Employees Association in order to receive benefits from the pool. One commenter suggested that employees with on-the-job injuries should not be eligible for the pool. The department does not have the authority to change the eligibility criteria established by Texas Civil Statutes, Article 6252-8e.

Regarding §1.304(a)(1), one commenter thought that limiting contributions to 24 hours per fiscal year was a good idea. Fifteen commenters objected to the contribution limit of 24 hours of sick leave per fiscal year. One commenter suggested that the maximum be changed to 48 hours. One commenter suggested that each employee be given the opportunity to complete a form donating the balance of their sick leave to the pool in case of death while still employed. Two commenters suggested that all accrued, unused sick leave of retiring and terminating employees be automatically transferred to the pool. Several commenters suggested that all unused sick leave of terminating summer or temporary employees be regularly and systematically added to the pool. Most commenters recommended that all retiring and terminating employees be allowed to contribute all accrued, unused sick leave other than that used for additional retirement credit. One commenter added that he was sure many retiring and terminating employees would contribute gladly, feeling that they could possibly have an important part in keeping a family together financially during a very difficult time. The department agrees with these objections to the limit on contributions, and regrets that it lacks the authority to change the contribution limit established by Texas Civil Statutes, Article 6252-8e. Three commenters objected to the requirement that contributions be made in increments of eight hours. Two commenters stated that a primary source of contributions may be from retiring and terminating employees in which case all amounts less than eight hours would be lost. One commenter added that maintaining a current balance of the pool should be automated and therefore there should be no problem keeping track of contributions of various hours. The department agrees with these comments. Texas Civil Statutes, Article

6252-8e specifies that, "the employee may transfer to the pool not less than one day nor more than three days per fiscal year." Therefore, the department is changing this paragraph to read, "An employee may voluntarily contribute any amount of sick leave hours which is equal to or greater than eight hours and equal to or less than 24 hours per fiscal year."

Regarding §1.304(a)(2), one commenter thought that pressure was being applied to employees considering retirement, and this commenter resented this pressure. The department does not intend to pressure any employee into contributing to the pool, but simply to inform employees of the opportunity and benefits of contributing to the pool. One commenter stated that it is not proper for the department to encourage or discourage contributions to the pool by an employee who is planning to retire or terminate since there is a cost to the department for each day used. Texas Civil Statutes, Article 6252-8e authorizes the department to allow employees to contribute to the pool. Further, while there is a cost to the department when pool sick leave is used, the department considers the benefits of helping employees in need to outweigh the disadvantages.

Regarding §1.304(a)(3), seven commenters objected to the restriction that employees could not donate to a specific individual. One commenter explained that more donations would be obtained if employees could donate sick leave toward an individual who needs it and that donating to a state pool has little incentive. Two commenters stated that they would not donate to the pool due to this restriction. One commenter expressed concern that some employees use sick leave as extra time off from work and that these individuals might take unfair advantage of the pool when they do become ill. This commenter suggested that a solution to this problem would be to allow the contributor to choose who would use the donated time. Texas Civil Statutes, Article 6252-8e established the contribution conditions which do not include allowing contributors to specify who will use their donated time. Allowing contributors to specify who will use their donated time contradicts the intent of Texas Civil Statutes, Article 6252-8e which is to provide pool sick leave to all employees who suffer from a catastrophic illness or injury. Further, the department supports this position in an effort to prevent ill will and complaints.

Regarding §1.304(b)(2)(A), one commenter questioned if the "90 days" is calendar days or work days. Therefore for clarification, the department is adding the word "work" to this subparagraph so that it will read, "90 work days." One commenter suggested changing the maximum amount of time allowed for each application for withdrawal to be a maximum of 30 days, not to exceed one-tenth of the balance of the pool. Texas Civil Statutes, Article 6252-8e establishes the maximum amount of time which may be withdrawn from the pool as the lesser of one-third of the total amount of time in the pool or 90 days. The department does not have the authority to change this maximum amount. Five commenters suggested that the department limit the number of withdrawals which could be requested per employee. Three commenters suggested that a maximum withdrawal amount of 90 days be allowed per

eligible individual per calendar year. One commenter further explained that without a maximum withdrawal amount per year, the entire sick leave pool could be withdrawn by one employee. The department concurs with these suggestions and is therefore changing this subparagraph to indicate that the maximum amount of time which can be granted per illness is one-third of the balance of the pool or 90 days, whichever is less. This revised section also states that, "Multiple requests for pool leave for the same illness or injury can be made until the total amount granted equals the maximum amount of one-third of the balance of the pool or 90 work days, whichever is less. The one-third of the balance of the pool is established at the time of the first request and remains the same throughout multiple requests."

Regarding §1.304(b)(2)(E), one commenter asked if an employee's application for withdrawal will be rejected if the pool cannot accommodate the full amount of time requested. An employee's application will not be rejected if the pool cannot accommodate the full amount of time requested, but rather the employee will be granted an amount up to the maximum amount allowed which is 90 days or one-third of the balance of the pool, whichever is less. If the maximum grant available from the pool is not sufficient to meet the needs of the employee, the employee may apply for extended sick leave, provided he or she meets the eligibility requirements for extended sick leave as specified in the Human Resources Manual.

Regarding §1.304(b)(2)(F), one commenter recommended that the sentence which allows an employee to withdraw only what has been contributed in the fiscal year be changed to allow withdrawal of any amount contributed. The commenter explained that leaving this restriction as written would appear to be an incentive to not contribute. The department concurs with this suggestion and is therefore changing the sentence to read, "An employee who contributes to the sick leave pool, who exhausts all accrued sick leave time, and is in need of additional sick leave, but who does not suffer a catastrophic illness or injury, may withdraw the amount he or she contributed since the beginning of the program, June 1, 1990."

Regarding §1.304(b)(3), one commenter suggested that employees should be allowed to use pool sick leave on a piecemeal basis if the employee has been diagnosed with AIDS. Also, one employee has requested permission to use pool leave on a piecemeal basis who's immediate family member has a catastrophic illness and who is sharing responsibility with another family member for caring for the ill family member. The department considers these concerns to be legitimate. Therefore, a provision is being added to §1.304(b)(3)(D) which allows an employee to use pool leave on an as needed basis.

Regarding §1.304(b)(3)(C), two commenters thought that the Pool Administrator should use discretion in selecting recipients of greater need rather than considering applications for withdrawal in the order in which they are received. The department believes that this suggestion, if implemented, would place the Pool Administrator in a very difficult position of having to decide which employees' illnesses are more severe, which employees'

requests are more urgent, and which employees have the greatest need. Further, the department feels that ranking catastrophic illnesses and injuries would be inappropriate and would place an unnecessary burden on the Pool Administrator to continuously re-prioritize requests as they are received.

Regarding ~§1.304(b)(3)(F), one commenter recommended that an employee who uses pool leave should be required to pay back used leave. The department does not have the statutory authority to require an employee to pay back used pool leave. Further, the department believes that this requirement would place an undue hardship on an employee who is suffering from a catastrophic illness or injury. §Regarding ~§1.305, one commenter objected to allowing an employee on pool leave to accrue vacation and sick leave. Texas Civil Statutes, Article 6252-8e states, "An employee absent on assigned sick leave is treated for all purposes as if the employee were absent on earned sick leave." This means that the employee may accrue vacation and sick leave. The department does not have the authority to change this provision of Texas Civil Statutes, Article 6252-8e.

Two commenters asked a general question regarding how an employee's short-term disability insurance coverage would be affected by pool leave. All accrued and approved pool or extended sick leave must be taken prior to an employee going on short-term disability. Also, there is a 30-day waiting period after the last day the employee works or is on any type of sick leave before short-term disability begins. An employee may be on vacation leave and be paid the short-term disability benefit at the same time, but the employee may not be on any type of sick leave and be paid short-term disability.

Two commenters suggested that all unused sick leave should be counted towards retirement on a one-for-one basis. The legislature authorized the exchange of 320 sick leave hours for one month of retirement credit. The department does not have the authority to change this provision. One commenter suggested that unused sick leave should be returned to re-instated employees perhaps on a 50% basis. The legislature would have to authorize this provision. One commenter recommended that individuals who contribute to the pool should be given the same amount of credit upon retirement. The legislature would have to authorize this provision. One commenter suggested that regularly scheduled publicity be provided as to the amount of time donated, amount used and balance available for future use. The department concurs with this recommendation and will publish this information periodically. As of October 10, 1990, 39,975 hours have been contributed to the pool. Forty-eight applications for withdrawal have been received, 18 have been approved, and 6,979 hours have been used, leaving a pool balance of 32,996 hours. The department greatly appreciates the generosity of those employees who contribute sick leave to the pool.

Various commenters suggested grammatical and punctuation changes. To the extent necessary, appropriate changes were made. The department greatly appreciates the comments that were received and believes that the sick leave pool program is a better program as a result of employee input.

§1.301. Definitions. The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Accrued leave time—Vacation leave, sick leave, and compensatory time (excluding extended sick leave).

Catastrophic illness or injury—A severe condition or combination of conditions affecting the mental or physical health of an employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state for the employee.

Contribute—To give sick leave from an employee's personal sick leave account to the department sick leave pool.

District/Division Personnel Officer—An employee in a district or division who is responsible for verifying the accuracy of all employee leave time records, and who is also responsible for the district or division extended sick leave program. (If more than one employee has these responsibilities, they shall coordinate their activities for the purpose of these rules.)

Employee—A person, other than a state officer, who is employed by the department.

Immediate family—Those individuals related by kinship, adoption, or marriage, or foster children who are so certified by the Texas Department of Human Services, who are living in the same household or, if not in the same household, are totally dependent upon an employee for personal care or services on a continuing basis.

Licensed practitioner—A practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his/her license.

Part time employee—An employee who regularly works a set number of hours which is less than 40 hours per week.

Pool Administrator—An employee appointed by the Engineer-Director to administer the department's sick leave pool program.

Sick Leave Pool—A single department wide pool which receives voluntary contributions of sick leave from employees and which gives approved amounts of sick leave to eligible employees.

Temporary employee—An employee who works full time for a specified period of time, such as a seasonal or project employee, or a retiree returning for six months employment.

Totally dependent on a continuing basis—A situation in which an employee has the responsibility for the personal care or services of the employee's family member for any period during which the employee is the primary source of continual care.

Withdrawal—The use of sick leave hours from the department sick leave pool.

§1.303. Eligibility.

(a) Participation.

(1) All full time, part time, regular, and temporary employees, including temporary retirees, may participate in the sick leave pool program.

(2) An employee with a catastrophic illness or injury is not required to contribute to the pool before he or she can use pool leave.

(b) Withdrawal.

(1) An employee or an employee's immediate family member must have a catastrophic illness or injury. The pool administrator will determine if the illness or injury of the employee or a member of the employee's immediate family is catastrophic. The Pool Administrator may consult with the licensed practitioner who certified to the illness or injury as described under §1.304(b)(1)(B) of this title (relating to Procedures), and if necessary with a medical doctor under contract with the department, and/or a nurse employed with the department if clarification is needed.

(2) An employee must exhaust all accrued leave time before being eligible to apply for leave from the sick leave pool. An employee who is in need of additional sick leave after exhausting all accrued leave time shall apply for time from the sick leave pool first and extended sick leave second, provided he or she meets eligibility requirements of each program.

(3) If an employee's immediate family member has a catastrophic illness or injury, the immediate family member must reside in the same household as the employee or be totally dependent upon the employee for personal care or services on a continuing basis.

(4) An employee who has contributed to the pool in the past, and who has exhausted all accrued sick leave, but who does not suffer a catastrophic illness or injury may apply to use sick leave from the sick leave pool as specified in §1.304(b)(2)(F), of this title (relating to Procedures).

(5) An employee injured on the job, who integrates his or her sick leave and vacation leave, must use all accrued leave time before they can draw from the pool, and must meet the eligibility requirements in this section.

§1.304. Procedures.

(a) Contribution.

(1) An employee may voluntarily contribute any amount of sick leave hours which is equal to or greater than eight hours and equal to or less than 24 hours per fiscal year.

(2) An employee who is plan-

ning to retire, terminate, or resign will be encouraged to contribute sick leave hours upon termination, if they have not already contributed the 24-hour maximum allowed for the fiscal year.

(3) Contributions may not be specified for use by a certain individual.

(4) An employee who is planning to retire and who has contributed sick leave to the pool may not withdraw that contribution in order to receive a month's retirement credit for each 320 hours of accrued and unused sick leave, as provided by the Employees Retirement System of Texas.

(5) An employee who wishes to contribute sick leave to the pool shall submit an application to the district/division personnel officer. The application shall be in a form prescribed by the pool administrator.

(6) After verifying the accuracy of information on the application, the district/division personnel officer shall sign the application and submit it to the pool administrator.

(7) Once the application is approved by the pool administrator, the pool administrator shall transfer hours from the employee's account to the sick leave pool account.

(b) Withdrawal.

(1) Application.

(A) An employee who wishes to withdraw sick leave from the pool shall submit an application to the district/division personnel officer. The application for withdrawal shall be in a form prescribed by the pool administrator.

(B) The application must be accompanied by a written certification from a licensed practitioner concerning the diagnosis and prognosis of the condition or combination of conditions and the date the employee or family member will be able to return to work, school, or normal activities. This certification is also required when a family member is ill with a catastrophic illness or injury. The licensed practitioner's certification shall be made in a form prescribed by the pool administrator.

(2) Amount of time.

(A) The amount of sick leave granted for each application will be determined by the pool administrator based on the licensed practitioner's certification which indicates the approximate date the employee will be able to return to work. The maximum amount of time which can be granted per catastrophic illness or injury

is one-third of the balance of hours in the pool or 90 work days, whichever is less. Multiple requests for pool leave for the same illness or injury can be made until the total amount granted equals the maximum amount of one-third of the balance of the pool or 90 work days, whichever is less. The one-third of the balance of the pool is established on the date and time of the first request and remains the same throughout multiple requests.

(B) If the licensed practitioner's certification requests a lesser amount of sick leave than the maximum amount allowable, the amount requested by the licensed practitioner will be granted.

(C) The one-third of the balance of hours in the pool shall be based upon the balance of the pool at the time the first application is received in the pool administrator's office.

(D) The employee must meet the eligibility criteria each time he or she applies for pool leave, and each application for withdrawal must be accompanied by an updated licensed physician's certification justifying the additional request from the sick leave pool.

(E) If the pool balance cannot accommodate the amount of time needed by the employee, the employee may apply for extended sick leave, provided he or she meets the eligibility requirements for such sick leave as specified in the Human Resources Manual.

(F) An employee who contributes to the sick leave pool, who exhausts all accrued sick leave time, and is in need of additional sick leave, but who does not suffer a catastrophic illness or injury, may withdraw the amount he or she contributed since the beginning of the program, June 1, 1990. A licensed practitioner's certification which meets the criteria established in subsection (b)(1)(B) of this section, must accompany a request for refund of pool contributions. If the pool balance cannot accommodate a full refund of the amount contributed, the employee shall be refunded one-third the balance of the pool.

(3) Withdrawal process.

(A) The district/division personnel officer shall ensure that an appropriate licensed practitioner's certification regarding the catastrophic illness or injury accompanies the request, and shall verify that the information on the application is

correct, before signing and submitting it to the pool administrator.

(B) An application for withdrawal of pool sick leave should be submitted to the pool administrator at least 10 days in advance of the exhaustion of all accrued leave time, or when it is reasonably anticipated that pool sick leave will be needed.

(C) The pool administrator will consider applications for withdrawal in the order in which they are received by the pool administrator. The pool administrator shall stamp the time and date of receipt upon each application when received, and shall approve or deny the request within five working days of that date.

(D) Pool sick leave may be granted in a block of time and used on an as needed basis. The District/Division Personnel Officer shall inform the pool administrator at the end of each month as to how much time the employee used on an as needed basis.

(E) Unused sick leave from the pool shall be returned to the pool account.

(F) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

(G) An employee who uses pool sick leave is not required to pay back that leave.

(H) A withdrawal of hours from the sick leave pool or the transfer of hours between accounts must be approved by the pool administrator.

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 October 31, 1990.

TRD-9011636

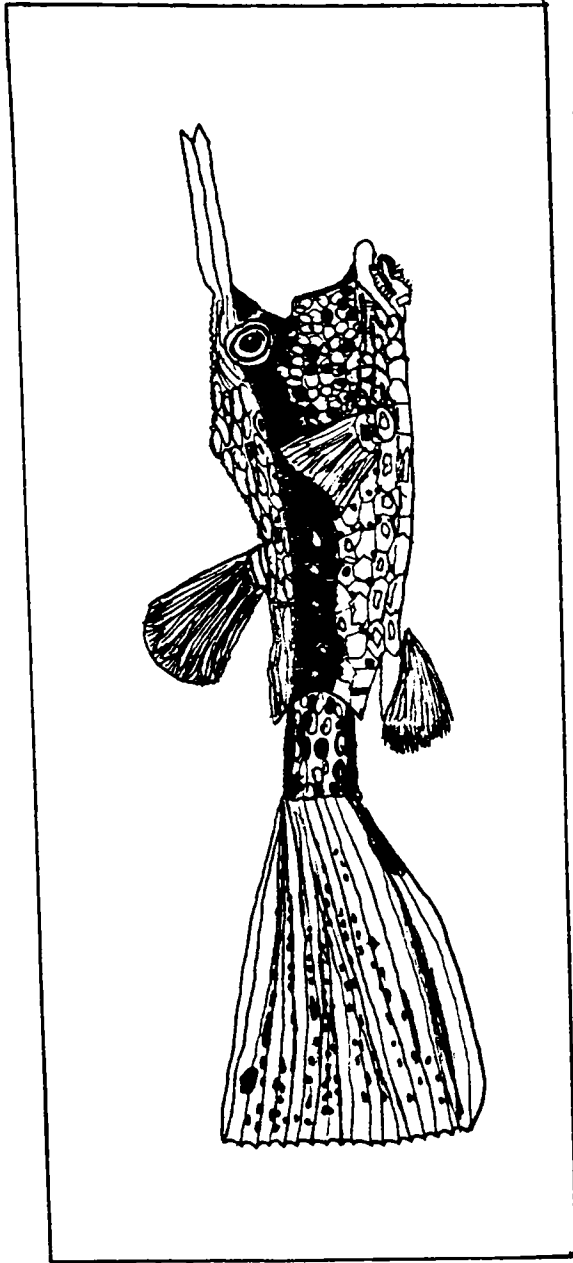
Diane L. Northam
Legal Administrative
Assistant
State Department of
Highways and Public
Transportation

Effective date: November 22, 1990

Proposal publication date: June 5, 1990

For further information, please call: (512) 463-8630





by:
Kim Kans
4th period
RICHARDSON JR. HIGH - 7th

Name: Kim Kans

Grade: 7

School: Richardson Junior High, Richardson 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 Department of Agriculture

Friday, November 16, 1990, 9 a.m. The Texas Corn Producers Board of the Texas Department of Agriculture will meet at the Kingston Hotel, I-40 East and Lakeside, Amarillo. According to the agenda summary, the board will approve minutes; hear financial reports; retirement and salaries; activity reports; and research reports and results.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: November 2, 1990, 3:13 p.m.

TRD-9011688

Thursday, December 13, 1990, 9 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, Stephen F. Austin Building, Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated, Section 13.035 by Brookshire Brothers, Inc.

Contact: Alana Marie Holmes, P.O. Box 12847, Austin, Texas 78711, (512) 475-1634.

Filed: November 6, 1990, 1:55 p.m.

TRD-9011808

Thursday, December 13, 1990, 11 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, Stephen F. Austin Building, Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated, Section 13.035 by Brookshire Grocery Company and Super One Foods #612.

Contact: Alana Marie Holmes, P.O. Box 12847, Austin, Texas 78711, (512) 475-1634.

Filed: November 6, 1990, 1:55 p.m.

TRD-9011809

Friday, December 14, 1990, 9:30 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, Stephen F. Austin Building, Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated, Section 13.035 by Sears, Roebuck and Company.

Contact: Alana Marie Holmes, P.O. Box 12847, Austin, Texas 78711, (512) 475-1634.

Filed: November 6, 1990, 1:56 p.m.

TRD-9011810

Texas Air Control Board

Thursday, November 15, 1990, 10 a.m. The Mobile Source Emissions Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will review and consider for public hearing on proposed revisions to Regulation IV; discussion and consideration of a contract with North Central Texas Council of Government to assist with the Urban Airshed Modeling project; and discussion of the mobile source (Title II) provisions of the revised Federal Clean Air Act.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:45 a.m.

TRD-9011792

Thursday, November 15, 1990, 11 a.m. The Budget and Finance Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will hear presentation by City of Houston concerning a proposed fee program to support the Bureau of Air Quality Control activities (presentation by Mr. Enrique Quevedo P. E., Health Director for Environmental Control, City of Houston); discussion and consideration of contract

with the North Central Texas Council of Governments to assist with the urban airshed modeling project; and update on effects of federal budget on federal grant.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:45 a.m.

TRD-9011793

Thursday, November 15, 1990, 1:30 p.m. The Monitoring and Research Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will hear a report on the City of Houston's air toxics monitoring program; and report on the status of privately owned air toxics monitoring networks in Texas.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext.433.

Filed: November 6, 1990, 10:46 a.m.

TRD-9011794

Thursday, November 15, 1990, 2:30 p.m. The Enforcement Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will discuss November 7, 1990 workshop on proposed revisions to Texas Air Control Board Enforcement policies.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:46 a.m.

TRD-9011795

Thursday, November 15, 1990, 3:30 p.m. The Hearings Oversight Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will consider the role of the staff in contested case hearings including the opportunity for interested persons to address the committee on this topic.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:46 a.m.

TRD-9011796

Friday, November 16, 1990, 8:30 a.m. The Regulation Development Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will review and consider for public hearing on proposed revisions to Regulation IV; and for public hearing on proposed revisions to Regulation I.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:47 a.m.

TRD-9011797

Friday, November 16, 1990, 9:30 a.m. The State and Federal Affairs Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will discuss the Federal Clean Air Act amendments; and update and discuss the work of the Legislative Round Table, including possible revisions to the Texas Clean Air Act.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:47 a.m.

TRD-9011798

Friday, November 16, 1990, 10:30 a.m. The Texas Air Control Board will meet at 6330 Highway 290 East, Auditorium, Austin. According to the complete agenda, the board will approve minutes of October 12, 1990 meeting; hear public testimony; enforcement report and consideration of agreed enforcement orders; update on the Federal Clean Air Act; resolution honoring Mrs. Janell Robertson, Personnel; request by Amoco Chemical Company for review of executive director's decision to call contested case Hearing Number 272; review reports; and discuss new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

Filed: November 6, 1990, 10:47 a.m.

TRD-9011799

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

Tuesday, November 13, 1990, 10 a.m. The Report Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the Texas Industries for the Blind and Handicapped, Inc., First Floor, Board Room, 314 Highland Mall

Boulevard, Austin. According to the complete agenda, the subcommittee will introduce subcommittee members and guests; overview of FY 1989 report to the legislature; and discussion and action on recommendations for FY 1990 report to the legislature.

Contact: Michael T. Phillips, P.O. Box 12866, Texas 78711, (512) 459-2603.

Filed: November 2, 1990, 2:17 p.m.

TRD-9011679

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Bond Review Board

Tuesday, November 13, 1990, 10 a.m. The Staff of the Bond Review Board will hold an emergency meeting at the State Capitol, Sergeant's Committee Room, Austin. According to the complete agenda, the staff will approve minutes; consider proposed issues; and discuss other business. The emergency status is necessary timely consideration for proposed issues prior to the board meeting.

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

Filed: November 6, 1990, 1:23 p.m.

TRD-9011801

◆ ◆ ◆
Texas Department of Commerce

Monday, November 12, 1990, 9 a.m. The Product Development Advisory Board of the Texas Department of Commerce met at the Texas Department of Commerce, 11th Floor Board Room (9 a.m.-12 p.m.), Room 1140 (1 p.m.-5 p.m.), 816 Congress Avenue, Austin. According to the complete agenda, the board discussed product development fund rules; and reconvened for discussion of rules in Room 1140 at 1 p.m.

Contact: Mike Klonsinski, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9678.

Filed: November 2, 1990, 3:14 p.m.

TRD-9011690

◆ ◆ ◆
Credit Union Department

Wednesday, November 14, 1990, 10 a.m. The Credit Union Commission of the Credit Union Department will meet at the Credit Union Department Building, 914 East Anderson Lane, Austin. According to the complete agenda, the commission will invite public input for future consideration; receive minutes of August 24, 1990 meeting; communications reported by the commissioner; reports by the director qualifications committee and on NCUA's funding project committee; consider proposed revision of

Rule 91.402 (records retention); final revisions of Rule 95.308 (refunds-TSGCU) and Rule 91.503 (director qualifications); legislation revisions and report of study by State Auditor; conduct an executive session credit unions and problem cases; to confer with legal counsel regarding impending hearings; discuss report of examination for Texas Share Guaranty Credit Union; and discuss complaint referred to commission.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: November 6, 1990, 9:57 a.m.

TRD-9011782

◆ ◆ ◆
Texas Board of Criminal Justice

Monday, November 12, 1990, 10 a.m. The Texas Board of Criminal Justice met at the John H. Reagan Building, 105 West 15th Street, Room 101, Austin. According to the agenda summary, the board met in executive session to discuss Ruiz litigation, pending/contemplated litigation, personnel matters, internal affairs investigations, and potential purchase or exchange of real estate. convene Windham School Board; convene regular session of Board to discuss/approve consent items, 1992-1993 TDCJ budget request; architect/engineering selections, authorization for construction and/or remodeling; intermediate sanction facilities; Lockhart report; proposed rule-Judicial Advisory Council/CJAD; location of future board meetings; and prior pending business.

Contact: Susan J. Power, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 2, 1990, 2:08 p.m.

TRD-9011674

◆ ◆ ◆
Texas State Board of Dental Examiners

Saturday-Sunday, November 17-18, 1990, 8 a.m. The Texas State Board of Dental Examiners will meet at the Radison Plaza Hotel, 700 San Jacinto Street, Austin. According to the agenda summary, on Saturday the examiners will approve settlement conference orders; requests for modification of board orders; interview candidates for staff attorney; approval of goals and job descriptions for licensing and administration; report on TDA board meeting; discussion on Dental Practice Act; revision of rules and regulations; discussion on speciality licensure president's report; committee reports; and executive director's report. On Sunday, an appearance by Dr. Paul Stubbs, President of TDA; executive session to discuss personnel and litigative matters; reports from Ad Hoc committees; approval of minutes from previous board meeting(s); discussion of format of Dallas mid-winter

meeting and greater Houston meeting; and reservations for San Antonio exams.

Contact: Crockett Camp, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

Filed: November 6, 1990, 10:44 a.m.

TRD-9011791

Interagency Council on Early Childhood Intervention

Wednesday, November 14, 1990, 9 a.m. The Interagency Council on Early Childhood Intervention will meet at the Texas Department of Health, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the council will hear public comments; approve minutes of previous meeting; review and approve revisions to Human Resources Code, Chapter 73; consider update on medicaid application; approve Chapter I funding to private early childhood intervention programs; review and approve in executive and open sessions performance evaluation of ECI administrator; and consider fiscal year 1990 expenditure report.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673.

Filed: November 1, 1990, 3:54 p.m.

TRD-9011641

Texas Education Agency

Saturday, November 10, 1990, 8:30 a.m. The State Board of Education of the Texas Education Agency met at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete revised agenda, the board will discuss opening of textbook bids.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 2, 1990, 3:54 p.m.

TRD-9011700

Wednesday, November 14, 1990, 9 a.m. The Minority Recruitment Advisory Committee 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 give an overview of the law implementing the engineering and science recruitment fund (TEC Chapter 51 Subchapter M); discussion of the request for proposal and review process used to select eligible applicant organizations and programs; and results of the proposal reviews will be addressed; election of chairperson and discussion of proposed charter for their meetings; recommendation of eligible programs for funding to the commis-

sioner of education; and other unscheduled but related matters may be discussed.

Contact: Dr. Philip Gehring, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9823.

Filed: November 6, 1990, 9:54 a.m.

TRD-9011778

Thursday, November 15, 1990, 9:30 a.m. The Commission on Standards for the Teaching Profession, Committee on Recruiting and Training Members of Visiting Teams of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will hold a work session to develop timeline and procedures for the approval process for teacher education institutions.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:12 p.m.

TRD-9011909

Thursday, November 15, 1990, 1 p.m. The Commission on Standards for the Teaching Profession, Committee on Certification Programs and Requirements of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the agenda summary, the committee will hear a report on certification testing; discussion of requirements of Senate Bill 1 with regard to preservice training in the use of technology and effective teaching practices; request for appearance by Dr. William Sikes concerning team visit procedures; update on proposed revisions in business teacher certification; individual programs (1987 Standards) from the following colleges and universities: East Texas State University, Texarkana; Hardin-Simmons University, Abilene; McMurry University, Abilene; St. Mary's University, San Antonio; Stephen F. Austin State University, Nacogdoches; Texas A&M University, College Station; University of Houston, Clear Lake; and Wayland Baptist University, Plainview.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:12 p.m.

TRD-9011908

Thursday, November 15, 1990, 2:45 p.m. The Commission on Standards for the Teaching Profession, Committee on Standards and Procedures for Institutional Approval of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will hear a request for pilot program for student teaching in Canada from Texas Christian University; and a pro-

gress report on pilot program in generic special education from the University of Houston, Victoria.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:12 p.m.

TRD-9011907

Thursday, November 15, 1990, 3:30 p.m. The Commission on Standards for the Teaching Profession, Committee on Membership of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will recommend nominees for commission membership.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:11 p.m.

TRD-9011905

Thursday, November 15, 1990, 4:15 p.m. The Commission on Standards for the Teaching Profession, Teacher Education Conference Planning Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will recommend site for 1993 conference.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:11 p.m.

TRD-9011904

Friday, November 16, 1990, 8:10 a.m. The Commission on Standards for the Teaching Profession, Executive Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will review agenda items with committee chairmen.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:10 p.m.

TRD-9011903

Friday, November 16, 1990, 9 a.m. The Commission on Standards for the Teaching Profession of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the commission will take roll call; adoption of agenda; approval of minutes of September 21, 1990, meeting; information items; report from the following committees: committee on recruiting and training members of visiting teams; certification programs and requirements; standards and procedures for

institutional approval; committee on membership; teacher education conference planning committee; and executive committee.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 7, 1990, 4:10 p.m.

TRD-9011902

◆ ◆ ◆
**Advisory Commission on
State Emergency Commu-
nications**

Thursday, November 15, 1990, 9:30 a.m. The Resource Committee of the Addressing Subcommittee of the Advisory Commission on State Emergency Communications will meet at the United States Postal Service Building, Room G-117, 8225 Cross Park Drive, Austin. According to the complete agenda, the committee will make introductions; working group organization; determine group issues on standards/procedures and resources; discuss issues and timeline to report to subcommittee on November 29; hear public comment; and consider any new business.

Contact: Darla Parker, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: November 6, 1990, 11:38 a.m.

TRD-9011800

◆ ◆ ◆
**Texas Employment Commis-
sion**

Thursday, November 15, 1990, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will approve prior meeting notes; meet in executive session to consider Davis-Lynch, Inc. versus Texas Employment Commission and Jesus C. Banuelos; actions, if any, resulting from executive session; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 46; and set date of next meeting.

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

Filed: November 6, 1990, 4:09 p.m.

TRD-9011838

Thursday, November 15, 1990, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will approve prior meeting notes; meet in executive session to consider Davis-Lynch, Inc. versus Texas Employment Commission and

Jesus C. Banuelos; actions, if any, resulting from executive session; discussion of an action on a possible amendment to 40 TAC §301.32 regarding timeliness; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 46; and set date of next meeting.

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

Filed: November 7, 1990, 4:11 p.m.

TRD-9011906

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**Texas Public Finance Au-
thority**

Friday, November 9, 1990, 9:30 a.m. The Board of the Texas Public Finance Authority met at 105 West 15th Street, Reagan Building, Room 105, Austin. According to the complete agenda, the board will consider payment of fees to bond counsel and financial advisor; request for financing for master equipment lease program; policy concerning 1988A G.O. bond issue fund 617; policy on project changes and funding reallocations; and billing form trustee 1985A revenue bonds.

Contact: Julie Jones, 1201 Brazos Street, Austin, Texas 78701, (512) 463-5544.

Filed: November 1, 1990, 4:02 p.m.

TRD-9011642

Friday, November 9, 1990, 9:30 a.m. The Board of the Texas Public Finance Authority met at the Reagan Building, 105 West 15th Street, Room 104, Austin. According to the complete emergency revised agenda, the board considered request for financing from State Purchasing and General Services Commission to finance the purchase and renovation of buildings; considered payment of fees to bond counsel and financial advisor; request for financing for master equipment lease program; policy concerning 1988A G.O. bond issue fund 617; policy on project changes and funding reallocations; and considered billing from trustee 1985A revenue bonds. The emergency status was necessary as request for financing from SPGSC included requirement for expedited funding by December 31, 1990.

Contact: Julie Jones, 1201 Brazos Street, Austin, Texas 78701, (512) 463-5544.

Filed: November 7, 1990, 3:51 p.m.

TRD-9011895

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Texas Department of Health

Thursday, November 8, 1990, 8:30 a.m. The Maternal and Child Health Advisory Committee of the Texas Department of Health met at the Texas Department of Health, 1100 West 49th Street, Room T-

607, Austin. According to the emergency revised agenda summary, the only change on the agenda was the time, from 10 a.m. to 1 p.m. to 8:30 a.m. to 1 p.m. The emergency status was necessary due to unforeseeable circumstances.

Contact: Walter P. Peter, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: November 5, 1990, 10:35 a.m.

TRD-9011742

Wednesday, November 14, 1990, 10 a.m. The Ad Hoc Abortion Facility Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room T-604, Austin. According to the complete agenda, the committee will review and respond to comments concerning the final adoption of proposed abortion facility licensing rules; hear announcements; and discuss items not requiring committee action.

Contact: Nance Kerrigan, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: November 6, 1990, 4:19 p.m.

TRD-9011848

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**Texas Health and Human
Services Coordinating
Council**

Tuesday, November 13, 1990, 9 a.m. The Texas Information and Referral Task Force of the Texas Health and Human Services Coordinating Council will meet at the Texas Department on Aging, Board Room, 1949 South IH-35, Austin. According to the complete agenda, the council will approve minutes; draft plan discussion and revision; and hear public comment.

Contact: Carol Price, 9101 Burnet Road, Austin, Texas 78758, (512) 873-2400.

Filed: November 5, 1990, 8:15 a.m.

TRD-9011709

Wednesday, November 14, 1990, 7:30 a.m. The Human Services Interagency Committee of the Texas Health and Human Services Coordinating Council will meet at the Texas Department of Mental Health and Mental Retardation, Board Room, 909 West 45th Street, Austin. According to the complete agenda, the committee will approve minutes; update and discussion on CORE Project; smoking policy; and regional interagency workgroups final report.

Contact: Carol Price, 9101 Burnet Road, Austin, Texas 78758, (512) 873-2400.

Filed: November 6, 1990, 2:01 p.m.

TRD-9011814

Wednesday, November 14, 1990, 9 a.m. The Commission on Children, Youth and

Family Services Community Resources Workgroup of the Texas Health and Human Services Coordinating Council will meet at the Texas Juvenile Probation Commission, Board Room, 2015 South IH-35, Austin. According to the complete agenda, the commission will review and discuss CRCG training content; CRCG training funding; biennial report review; and old and new business.

Contact: Louis Worley, 9101 Burnet Road, Austin, Texas 78758, (512) 873-2400.

Filed: November 5, 1990, 8:16 a.m.

TRD-9011710

Friday, November 16, 1990, 8:30 a.m. The Commission on Children, Youth and Family Services of the Texas Health and Human Services Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete agenda, the commission will review and approve minutes; workgroup reports from Community Resources; Drug Exposed Infants; Policy Coordination; Prevention and Intervention; Treatment and Child Abuse Program Evaluation; discuss old business; and new business.

Contact: Louis Worley, 9101 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400.

Filed: November 6, 1990, 2:01 p.m.

TRD-9011813

Friday, November 16, 1990, 10 a.m. The Legal Advisory Group of the Texas Health and Human Services Coordinating Council will meet at the Texas Rehabilitation Commission, Room 3501, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the group will review mission; review and comment on draft legislation; review of existing legislation; discussion of plan for federal waivers; and task assignments.

Contact: George Schneider, 9101 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400.

Filed: November 6, 1990, 2:01 p.m.

TRD-9011812

Texas Department of Human Rights

Thursday, November 8, 1990, 11 a.m. The Texas Commission on Human Rights met at the John H. Reagan Building, Room 105, 105 West 15th Street, Austin. According to the emergency revised agenda summary, the commission discussed unfinished business (discussion of participation in the Texas Business Council sponsored by the Texas Employment commission). The emergency status was necessary as the item under unfinished business needed to be defined as the subject could possibly be voted on.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: November 5, 1990, 10:36 a.m.

TRD-9011743

Texas Department of Human Services

Friday, November 9, 1990, 9 a.m. The Medical Care Advisory Committee of the Texas Department of Human Services met at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the emergency revised agenda summary, the committee reviewed and discussed supplemental disproportionate share program for state owned teaching hospitals. The emergency revised agenda was necessary because of a need to take formal agency action within this federal fiscal quarter.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: November 7, 1990, 4:13 p.m.

TRD-9011913

Monday-Tuesday, November 12-13, 1990, 8:30 a.m. The Texas Council of Child Welfare Boards of the Texas Department of Human Services will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the complete agenda, the council will welcome guests and make introductions; approve minutes; make announcements; hear subcommittee meetings reports; issues committee report on state-paid foster care in for profit facilities; regional reports; and discuss old business.

Contact: Melodye Fleming, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3412.

Filed: November 2, 1990, 4:18 p.m.

TRD-9011707

Tuesday, November 13, 1990, 1:30 p.m. (rescheduled from Tuesday, October 16, 1990). The Adolescent Pregnancy and Parenthood Advisory Council of the Texas Department of Human Services will meet at the Texas Department of Health, 1100 West 49th Street, First Floor, Auditorium, Main Building, Austin. According to the complete agenda, the council will hear opening remarks; approve minutes; by-law revision; election of co-chair elect; APPAC legislative report on action planning; presentation of attorney general's teen pregnancy programs; program updates; annual advisory council report forum; and wrap-up on establishing meeting dates.

Contact: Liz Silbernagel, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4163.

Filed: November 2, 1990, 4:17 p.m.

TRD-9011706

Thursday-Friday, November 15-16, 1990, 2 p.m. The Children's Trust Fund Council of the Texas Department of Human Services will meet at the CTF Office, 8140 Mopac Expressway, Building Four, Suite 400, Austin. According to the complete agenda, the council will discuss long-range planning session; welcome and overview of agenda; policy academy on families and children at risk report; chairperson's report; director's report; contract specialist's report; legislative report; FY93 request for proposal calendar; and enhancing CTF programs' sensitivity toward and responsiveness to multi-ethnic, multi-cultural populations.

Contact: Janie Fields, 8140 MoPac Expressway, Building Four, Suite 200, Austin, Texas 78759, (512) 345-9218.

Filed: November 7, 1990, 4:13 p.m.

TRD-9011912

State Board of Insurance

Monday, November 12, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance met at 1110 San Jacinto Street, Room 414, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Conseco, Inc. and Conseco Partnership Management, Inc., Indiana Corps., Conseco Partnership Management Company, L.P., an Indiana limited partnership, and JNL Acquisition Corporation and JNL Holding Corporation, Delaware corps., to acquire control of First Continental Life and Accident Insurance Company of Texas, Houston, and Western Reinsurance Company, San Antonio, pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §5; the investment in 100% of the outstanding common capital stock of Lomas Life Group, Inc., an Arkansas Corporation, by Jefferson National Life Insurance Company of Texas pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §§4 and 6(b)(4); and, the issuance of surplus debentures in the principal amounts of \$119 million and \$25.6 million, respectively, by Jefferson National Life Insurance Company of Texas to JNL Holding Corporation pursuant to the provisions of Texas Insurance Code Article 21.49-1 §4(d).

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 2, 1990, 4:23 p.m.

TRD-9011708

Tuesday, November 13, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken

against Jacob Cardwell Young, Jr., Midland, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Variable Contract Agent's license. Docket Number 11017.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 5, 1990, 4:38 p.m.

TRD-9011775

Wednesday, November 14, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Anita Darneal Gibson, Palestine, who holds a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 10982.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 5, 1990, 4:38 p.m.

TRD-9011777

Wednesday, November 14, 1990, 9 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 414, Austin. According to the agenda summary, the board will consider adoption of closed claim reconciliation form; report from General Liability Advisory Committee; consideration of emergency adoption and of authorization for publication as proposal of a rule as 28 TAC 7.60 concerning forms and instructions for tax preparation; an amendment to 28 TAC 11.802 and new 28 TAC 11.803-11.807 concerning financial requirements for health maintenance organizations; repeal of 28 TAC 11.803 and 1.804 concerning investments, loans and other assets and liabilities of health maintenance organizations; consideration of bid specifications for servicing carriers; consideration of amendments to Article XII of the by-laws of the Texas Workers' Compensation Assigned Risk Poll concerning transfer within a holding company group; consideration of proposed amendment to the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employers' Liability Insurance concerning premium incentives for Small Employers; consideration of petition by surplus lines companies and agents for amendment of 28 TAC 5.201(c) concerning the Texas Automobile Insurance Plan; consideration of adoption of amendment to rule VII of the rules and regulations of the Texas Workers' Compensation Assigned Risk Pool; personnel matters; board orders on several matters; motion for dismissal of Doug Going; consideration of appointment of additional member to the Agents' Conduct Advisory Committee and appointments to fill vacancies on the Health Maintenance Organiza-

tion Solvency Surveillance Committee; discuss pending litigation; and solvency matters.

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

Filed: November 6, 1990, 3:23 p.m.

TRD-9011834

Wednesday, November 14, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Terry Lee Gingell, Houston, who holds a Local Recording Agent's license. Docket Number 10985.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 5, 1990, 4:38 p.m.

TRD-9011776

Thursday, November 15, 1990, 1:30 p.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the board will conduct a public hearing to consider an appeal from Commissioner's Order 90-1469 and Request to Stay Order by Fronze Franklin Myatt.

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

Filed: November 6, 1990

TRD-9011783

Friday, November 16, 1990, 8:30 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 414, Austin. According to the complete agenda, the board will hold a public hearing to consider the appeal of Commissioner's Orders 90-1190 and 90-1385 and motion for stay of revocation of licenses pending appeal by Larry Vanderwoude.

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

Filed: November 2, 1990, 2:23 p.m.

TRD-9011682

Friday, November 16, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Henry Joe Henke, Jr., Hallettsville, who holds a Local Recording Agent's license, a Group I, Legal Reserve Life Insurance Agent's license, and a Group II, Insurance Agent's license. Docket Number 11021.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 7, 1990, 3:22 p.m.

TRD-9011887

Friday, November 16, 1990, 10 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Austin. According to the complete agenda, the board will hold a prehearing conference for the Title Insurance Hearing scheduled for December 10, 1990.

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

Filed: November 2, 1990, 2:24 p.m.

TRD-9011683

Friday, November 16, 1990, 1:30 p.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the board will hold a public hearing to consider an appeal by Travelers Indemnity Company of Rhode Island from action of the governing committee of the Texas Workers' Compensation Assigned Risk Pool.

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

Filed: November 2, 1990, 2:24 p.m.

TRD-9011684

Friday, November 16, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against William Eugene Thomas, Augusta, Georgia, who holds a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11016.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 7, 1990, 3:23 p.m.

TRD-9011888

Friday, November 16, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 414, Austin. According to the complete agenda, the section will conduct a public hearing to consider the proposed plan of merger of USAA Casualty Insurance Company, San Antonio, into USAA Casualty Insurance Company of Florida, Tampa, Florida, with USAA Casualty Insurance Company of Florida being the survivor. Docket Number 11023.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 7, 1990, 3:23 p.m.

TRD-9011889

Monday, November 19, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Zina Denice Womble, Austin, who holds a Group II, Insurance Agent's license. Docket Number 11018.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 7, 1990, 3:22 p.m.

TRD-9011886

Monday, November 26, 1990, 9:30 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the board will consider proposals from staff for needed changes in existing law and for new laws.

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

Filed: November 2, 1990, 2:24 p.m.

TRD-9011685

Wednesday, November 28, 1990, 9:30 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the board will consider a request by Tri-Starr Services, Inc. for a hearing on calculation of experience modifier applicable to Workers' Compensation Insurance.

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

Filed: November 6, 1990, 10:41 a.m.

TRD-9011784

Monday, December 10, 1990, 1 p.m. The State Board of Insurance will meet at the Hearing Room, DeWitt Greer Building, 125 East 11th Street, Austin. According to the agenda summary, the board will hold a public hearing to consider promulgation of title insurance premium rates and amendments to the basic manual of rules, rates and forms for the writing of title insurance in the State of Texas.

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

Filed: November 2, 1990, 2:24 p.m.

TRD-9011686

Lamar University System, Board of Regents

Thursday, November 8, 1990, 3 p.m. The Liaison Committee of the Lamar University System Board of Regents met at Lamar-Orange Student Center/Gymnasium, 410 Front Street, Orange. According to the complete agenda, the committee heard the chairman's remarks; reviewed bookstore operation and policies; campus food service operations; and held an open forum.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: November 5, 1990, 9:19 a.m.

TRD-9011732

Texas State Library and Archives Commission

Thursday, November 15, 1990, 2 p.m. The Records Management and Preservation Advisory Committee of the Texas State Library and Archives Commission will meet at the William B. Travis Building, 1701 North Congress Avenue, State Board Room, Texas Education Agency, Austin. According to the complete agenda, the committee will approve minutes of August 23, 1990 meeting; review legislative proposal for coordinating reports from institutions of higher learning-Phil Diebel, Vice President for Fiscal Affairs, University of North Texas; other legislative proposals for next session-Nick Schuessler; report of the status of retention schedule submissions-Steve Adams; other business brought before the committee; and roster of members and supporters.

Contact: Nick Schuessler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9149.

Filed: November 6, 1990, 10:43 a.m.

TRD-9011788

Texas Department of Licensing and Regulation

Friday, November 16, 1990, 10 a.m. The Air Conditioning and Refrigeration Contractors Advisory Board will meet at the E. O. Thompson Building, 920 Colorado Street, 10th Floor Conference Room, Austin. According to the agenda summary, the board will call meeting to order; take roll call; adoption of agenda; approval of minutes of September 19, 1990; hear public comment; staff reports; task group reports; discuss old business; new business; and set next meeting.

Contact: George Bynog, P.O. Box 12157, Austin, Texas 78711, (512) 463-5522.

Filed: November 5, 1990, 3:46 p.m.

TRD-9011770

Tuesday, November 13, 1990, 9 a.m. The Business and Occupational Programs, Auctioneer of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, 8th Floor Conference Room, Austin. According to the complete agenda, the department will consider denial of application for a license for violation of Texas Civil Statute, Article 8700 and 9100 for Robert J. Greer.

Contact: Imelda Martinez Escobar, 920 Colorado Street, Austin, Texas 78711, (512) 463-7332.

Filed: November 5, 1990, 4:23 p.m.

TRD-9011774

Midwestern State University

Thursday, November 8, 1990, 4 p.m. The Board of Regents Finance Committee of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee made recommendations for financial disclosure statements; annual operating budget amended for 1990-1991; adjunct faculty budget for spring 1991; scholarships for 1991-1992; emergency tuition and fee loans late fees; collection agency charges; and fee waiver for WFISF advanced placement program; ratification of the Daniel Building Change Order; HEAF allocation for 1990-1991 and items \$15,000 and under.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:13 p.m.

TRD-9011754

Thursday, November 8, 1990, 3:30 p.m. The Board of Regents Executive Committee of Midwestern State University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee heard the SACS accreditation self study report; nominating committee appointment; facilities master plan; internal audit plan, recommendation concerning fountain; ratification of Continental Basketball Association contract and warranty deed to City of Wichita Falls; and recommendations concerning auditorium repair and a new parking lot.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:13 p.m.

TRD-9011753

Thursday, November 8, 1990, 4:30 p.m. The Board of Regents Personnel and Curriculum Committee of Midwestern State University met at the Hardin Administration Building, MSU, Wichita Falls. According to

the complete agenda, the committee discussed position changes in FY 1989-1990 budget and FY 1990-1991 budget; enrollment and small class reports for 1990 fall semester; last day enrollment report for summer 1990 semesters; NOTIS computer software agreement; MSU Language Institute; and policy manual revisions.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:14 p.m.

TRD-9011758

Thursday, November 8, 1990, 4:45 p.m. The Board of Regents Student Affairs Committee of Midwestern State University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee discussed information concerning Marchman Hall renovations; housing, and homecoming.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:14 p.m.

TRD-9011757

Thursday, November 8, 1990, 5 p.m. The Board of Regents University Development Committee met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee discussed summary of gifts, grants, and pledges, September 1, 1989-August 31, 1990 and September 1, 1990-October 12, 1990; and resolution of appreciation for former Senator John Tower.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:13 p.m.

TRD-9011755

Thursday, November 8, 1990, 5:15 p.m. The Board of Regents Athletics Committee of Midwestern State University met at the Hardin Administration Building, MSU, Wichita Falls. According to the complete agenda, the committee made recommendation concerning rifle team and TIAA update.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:14 p.m.

TRD-9011756

Friday, November 9, 1990, 9 a.m. The Board of Regents of Midwestern University met at the Hardin Administration Building, MSU, Wichita Falls. According to the agenda summary, the board approved minutes; accepted financial reports; accepted recommendations and reports from executive, finance, personnel and curriculum and university development and athletics committees; and reports presented by student

affairs committee and president. The MSU Board of Regents reserves the right to discuss any items in executive session whenever legally justified under the Texas Open Meetings Act.

Contact: Deborah L. Barrow, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: November 5, 1990, 2:11 p.m.

TRD-9011752

Board of Nurse Examiners/Board of Vocational Nurse Examiners

Friday, November 9, 1990, 10 a.m. The Joint Committee on Mandatory Continuing Education of the Board of Nurse Examiners/Board of Vocational Nurse Examiners held an emergency meeting at the Ramada Inn-Airport, 5660 North IH-35, Austin. According to the agenda summary, the committee received the minutes from the previous meeting; considered group comments/questions; reviewed charges; and broke into groups for implementation, approval and received audience comments. The public was invited. The emergency status was necessary as decision needed to be made prior to November board meeting.

Contact: Cady Crismon, P.O. Box 140466, Austin, Texas 78714, (512) 835-8668.

Filed: November 2, 1990, 9:07 a.m.

TRD-9011646

State Preservation Board

Monday, November 12, 1990, 10 a.m. The Museum Task Force Subcommittee of the State Preservation Board held an emergency meeting at the Library and Archives Building, 1201 Brazos Street, Room 205, Austin. According to the agenda summary, the subcommittee discussed options for Thematic content of First Floor exhibit in restored Old General Land Office Building. The emergency status was necessary as agenda was not finalized in time to meet regular filing deadline.

Contact: Bonnie Campbell, P.O. Box 13286, Austin, Texas 78701, (512) 463-5495.

Filed: November 6, 1990, 2:06 p.m.

TRD-9011817

Texas State Board of Examiners of Professional Counselors

Thursday, November 15, 1990, 1 p.m. The Compliers Committee of the Texas State Board of Examiners of Professional

Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the complete agenda, the committee will consider action on order to revoke the license of F.M. C.; and report on complaints; investigations; and pending hearings.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:19 p.m.

TRD-9011847

Friday, November 16, 1990, 8:15 a.m. The Texas State Board of Examiners of Professional Counselors will meet at the Bayfront Convention Center, 1901 North Shoreline, Corpus Christi. According to the agenda summary, the board will hear announcements; have dialogue with attendees at the annual Texas Association for Counseling and Development (TACD) professional growth conference.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:18 p.m.

TRD-9011846

Friday, November 16, 1990, 1 p.m. The Rules, Supervisors, Specialties and Reciprocity Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the complete agenda, the committee will consider action on specialty designations of addiction disorders counselors, rehabilitation counselors, and art therapists; and action on proposed amendments to board rules.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:15 p.m.

TRD-9011839

Friday, November 16, 1990, 1 p.m. The Applications, Ethics, Suspensions and Revocations Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the agenda summary, the committee will consider action regarding applications of various individuals.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:16 p.m.

TRD-9011840

Friday, November 16, 1990, 1 p.m. The Licensed Professional Counselor Board Ad Hoc Committees of the Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the

complete agenda, the committees will consider action regarding December 1989 ad hoc policy committee; and action regarding Texas Association for Counseling and Development (TACD) Liaison Committee.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:16 p.m.

TRD-9011841

Friday, November 16, 1990, 1 p.m. The Public Relations Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the complete agenda, the committee will consider a report on press releases concerning disciplinary actions; action on next newsletter; news columns and other public relations projects.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:17 p.m.

TRD-9011842

Friday, November 16, 1990, 1 p.m. The Testing, Licensing, Continuing Education and Renewals Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the complete agenda, the committee will consider reports on results of October 27, 1990 examination and status of renewals.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:17 p.m.

TRD-9011843

Friday, November 16, 1990, 1 p.m. The Fees and Budget Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the complete agenda, the committee will consider financial reports through August 31, 1990 and September 30, 1990; and actions regarding expenditures.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:17 p.m.

TRD-9011844

Friday, November 17, 1990, 9 a.m. The Texas State Board of Examiners of Professional Counselors will meet at the Wyndham Hotel, 900 North Shoreline, Corpus Christi. According to the agenda summary, the board will hear announcements; approve minutes of August and October, 1990 meetings; hear announcements; public comments; administrative report; consider financial reports; expenditures; results of October 27, 1990 examination; status of

renewals; applications; appeals; revocation of a license; complaints; investigations; pending hearings; press releases concerning disciplinary actions; next newsletter, news columns, and other public relations projects; addiction disorders counselors; rehabilitation counselors; art therapists; proposed amendments to board rules; December 1989 ad hoc policy committee; Texas Association for Counseling and Development Liaison Committee; other matters not involving board action; and set future meeting dates.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 6, 1990, 4:18 p.m.

TRD-9011845

Public Utility Commission of Texas

Wednesday, November 7, 1990, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the emergency revised agenda summary, the commission also considered the appeal of Examiner's Order Number Five in Docket Number 9201-application of the City of Bartlett for order directing refund of patronage capital account. The emergency status was necessary as prompt commission action was needed to preserve jurisdiction over the subject matter of the appeal.

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

Filed: November 6, 1990, 3:15 p.m.

TRD-9011828

Monday, November 12, 1990, 10:30 a.m. The Hearings Division of the Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the division held a prehearing conference in Docket Number 9230-Houston Lighting and Power Company's standard avoided cost calculation for purchase of capacity and energy from qualifying facilities, pursuant to Subchapter Rule 23.66(h)(3).

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

Filed: November 1, 1990, 3:23 p.m.

TRD-9011640

Monday, November 19, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the division will hold a prehearing conference in Docket Number 9497-application of Tex-La Electric Cooperative, Inc. for a certificate of convenience and necessity for proposed transmission line within Shelby and San Augustine Counties.

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

Filed: November 6, 1990, 3:16 p.m.

TRD-9011830

Monday, November 19, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the division will hold a prehearing conference in Docket Number 9638-application of Upshur Rural Electric Cooperative, Inc. for a certificate of convenience and necessity for a proposed transmission line within Camp County.

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

Filed: November 6, 1990, 3:16 p.m.

TRD-9011831

Monday, November 19, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the division will hold a prehearing conference in Docket Number 9597-application of Deep East Texas Electric Cooperative, Inc. to amend certificate of convenience and necessity for transmission line within Shelby and San Augustine Counties.

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

Filed: November 6, 1990, 3:16 p.m.

TRD-9011832

Thursday, November 29, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 9808-application of GTE Southwest, Inc. to change rules and regulations of the Texas general exchange tariff to allow GTE Southwest, Inc., to charge customers at rates appropriate for upgraded service when the customers' service is upgraded as a result of GTE Southwest, Inc. equipment upgrades.

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

Filed: November 5, 1990, 3:42 p.m.

TRD-9011762

Thursday, November 29, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 9824-application of GTE to establish rates for a central office digital

interface to work exclusively with GTD-5 Centranet service and GTE's featurephone.

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

Filed: November 7, 1990, 3:29 p.m.

TRD-9011890

Monday, December 3, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Numbers 8776, 8778 and 8779-petition of the general counsel to inquire into the reasonableness of the rates of Sugar Land, Sweeny-Old Ocean and Peoples Telephone Companies.

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

Filed: November 7, 1990, 3:31 p.m.

TRD-9011893

Tuesday, December 18, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits in Docket Number 9750-application of Southwestern Electric Service Company for emergency approval of addendum to purchased power cost recovery factor.

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

Filed: November 7, 1990, 3:30 p.m.

TRD-9011892

Monday, January 14, 1991, 10:30 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits in Docket Number 9760-application of Southwestern Bell Telephone Company to introduce operator services in section 17 of the intrastate access service tariff.

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

Filed: November 5, 1990, 3:42 p.m.

TRD-9011763

Friday, January 25, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9746-notice of agreement to combine Lone Wolf Electric Cooperative, Inc. and Cap Rock Electric Cooperative, Inc.

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

Filed: November 2, 1990, 3:20 p.m.

TRD-9011691

Thursday, February 14, 1990, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the division will conduct a hearing on the merits in Docket Number 9633-application of Central Telephone Company of Texas to revise meet point billing for Feature Group B (FGB).

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

Filed: November 6, 1990, 3:15 p.m.

TRD-9011829

Monday, February 25, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits in Docket Number 9667-application of GTE Southwest, Inc. to modify 911 service tariff and to add new service offerings.

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

Filed: November 6, 1990, 3:30 p.m.

TRD-9011891

State Purchasing and General Services Commission

Thursday, November 29, 1990, 1 p.m. The Texas School Bus Committee of State Purchasing and General Services Commission will meet at the Central Services Building, 1711 San Jacinto Street, Conference Room 402, Austin. According to the complete agenda, the committee will discuss school bus bodies; chassis; engines; options; safety items; various accessories; and the approved products list.

Contact: Troy C. Martin, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3415.

Filed: November 2, 1990, 9:05 a.m.

TRD-9011644

Railroad Commission of Texas

Monday, November 12, 1990, 9 a.m. The Railroad Commission of Texas met at the William B. Travis Building, Room 12-126, 1701 North Congress Avenue, Austin. Agendas follow.

The commission considered and acted on the Administrative Services Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: November 2, 1990, 10:19 a.m.

TRD-9011655

The commission considered and acted on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: November 2, 1990, 10:20 a.m.

TRD-9011656

The commission considered and acted on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: November 2, 1990, 10:20 a.m.

TRD-9011657

The commission considered and acted on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission met in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: November 2, 1990, 10:22 a.m.

TRD-9011658

The commission considered and acted on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: November 2, 1990, 10:22 a.m.

TRD-9011659

The commission considered and acted on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters; personnel and staffing; state and federal legislation; and contracts and grants. Considered reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors and considered reorganization of the well plugging program. The commission met in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Brenda Loudermilk, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: November 2, 1990, 10:23 a.m.

TRD-9011660

The commission considered category determinations under sections 102(c)(1)(B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: November 2, 1990, 10:23 a.m.

TRD-9011661

The commission considered various matters within the jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including but not limited to scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedure status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission met in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7033.

Filed: November 2, 1990, 10:24 a.m.

TRD-9011662

Monday, November 12, 1990, 9 a.m. The Railroad Commission of Texas met at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor, Conference Room 12-126, Austin. According to the complete revised agenda, the commission met in executive session to receive legal advice regarding Palm Beach Utilities Corporation bankruptcy proceedings and commission regulatory authority.

Cue D. Boykin, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: November 2, 1990, 4:08 p.m.

TRD-9011703

Tuesday, November 20, 1990, 10 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 12th Floor Conference Room, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a state-wide hearing on oil and gas.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: November 2, 1990, 10:19 a.m.

TRD-9011654

Texas Rehabilitation Commission

Thursday-Friday, November 15-16, 1990, 1:30 p.m. and 9 a.m. respectively. The Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet at the Holiday Inn Northwest, Ballroom, 8901 Business Park Drive, Austin. According to the complete agenda, on Thursday, the council will introduce council members, staff and guests; hear public comments; approval of minutes of August 23-24, 1990 meeting; Advocacy and Public Information Committee Reports; federal policy/legislation; community supported living services medicaid option; state policy/legislation; additions to the legislative platform; membership in disability policy consortium; other discussion items; planning and evaluation committee report; legislative network/consortium project; TEA challenge grant discussion; FY 1992-1994 state plan; other discussion items; executive committee report; Saturday meetings; committee composition; budget status review/revisions; NADDC membership; other discussion items; chairman's report; NADDC reports; committee chair appointments; and executive director's report. On Friday, the council will introduce council members, staff and guests; hear public comments; continuation of unfinished business from first day agenda; and hear announcements.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: November 7, 1990, 10:42 a.m.

TRD-9011869

Center for Rural Health Initiatives

Thursday, November 15, 1990, 1 p.m. The Center for Rural Health Initiatives will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the center will hear executive director's report; report on federal legislation; and preliminary discussion of findings and recommendations for report to the legislature.

Contact: Bryan Sperry, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7776.

Filed: November 2, 1990, 3:47 p.m.

TRD-9011699

Senate and House

Tuesday, November 13, 1990, 9:30 a.m. The Special Joint Committee on Insurance Regulation of the Senate and House will meet at the Old Supreme Court Room, Cap-

itol Building, Austin. According to the complete agenda, the committee will hear report and public testimony on regulatory issues: reinsurance; Lloyd's insurance; catastrophe property insurance pool (CATPOOL); legislative proposals by the State Board of Insurance; and report on territorial rating for property insurance.

Contact: John Opperman, Room 325, Capitol, Austin, Texas 78701, (512) 463-0128.

Filed: November 2, 1990, 9:06 a.m.

TRD-9011645

Sunset Advisory Commission

Monday-November 12, 1990 at 10 a.m. and Tuesday-Wednesday November 13-14 at 9 a.m. The Sunset Advisory Commission will meet at the State Capitol Building, Senate Chamber, Austin. According to the complete agenda, on Monday, November 12, the commission will approve minutes; commission decisions on: State Purchasing and General Services Commission; Board of Law Examiners; and State Bar of Texas. On Tuesday, November 13, the commission will hold a public hearing on staff reports for: State Pension Review Board; Office of Fire Fighters' Pension Commissioner; Texas Turnpike Authority; Texas Board of Irrigators; State Aircraft Pooling Board and Texas Housing Agency. On Wednesday, November 14, the commission will hold a public hearing on staff reports for: Texas Real Estate Commission; Texas National Research Laboratory Commission; Texas Health and Human Services Coordinating Council; Council on Disabilities; Long-term Care Coordinating Council for the Elderly; Commission on Jail Standards; and set next meeting date.

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

Filed: November 2, 1990, 3:55 p.m.

TRD-9011701

The Texas A&M University System

Thursday, November 8, 1990, 10:30 a.m. The Board of Regents Committee to Search for the Chancellor of the Texas A&M University System met at the D/FW Airport Hyatt Hotel, East Tower, D/FW International Airport, Dallas. According to the complete agenda, the committee considered any and all things leading to the selection of the Chancellor of the Texas A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 1, 1990, 10:40 a.m.

TRD-9011632

Wednesday, November 14, 1990, 1 p.m. The Board of Regents Committee for Academic Campuses of the Texas A&M University System will meet at the Board of Regents Annex, College Station. According to the complete agenda, the committee will be meeting jointly with the Advisory Panel to receive reports and further discuss undergraduate education at Texas A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843-1123, (409) 845-9603.

Filed: November 7, 1990, 9:43 a.m.

TRD-9011860

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Texas State Technical Institute

Friday, November 16, 1990, 1 p.m. The Board of Regents of the Texas State Technical Institute will meet at the Woodlands Conference Center, Crockett Room, The Woodlands. According to the agenda summary, the board will hear the Committee of the Whole with chancellor's comments; policy committees will review the following minute orders: agreement with Aeronautical Council for Sixth Annual Air Show; annexation of property by the City of Waco; easements to TU Electric Company; construction of an Aerospace Technologies; authority to seek coordinating board approval to construct an Aerospace Technologies Center; plans and specifications and authorization to take sealed bids for construction of engineering graphics building at Harlingen; acceptance of student center building at Harlingen; acceptance of the gym at Harlingen; authorization for City of Harlingen to build a parking lot and lease from Harlingen; approval of final plans and specifications and authorization to take bids for renovation of buildings at Amarillo; selection of carrier for officers and directors omission and oversight liability insurance; approval of prior lease agreements; requests for budget change; policy for chief fiscal officer to maintain records and monitor progress of all pre-litigation concerning TSTI; ground lease agreement with Elsinore; recovery of animal technical department operating expense costs by assessing fees for animal care; recovery of floriculture and ornamental horticulture technical and floral design operating expense costs through sale of student lab projects; lease agreement with Village Park Church at Amarillo; lease agreement with Palo Duro Mattress, Inc. at Amarillo; lease agreement with Highland Park Village at Amarillo; lease agreement with RPT Corporation doing business as Roth Products of Texas at Amarillo; compensation for overtime; and various committee reports will be presented.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: November 6, 1990, 9:55 a.m.

TRD-9011780

Saturday, November 17, 1990, 9 a.m. The Board of Regents of the Texas State Technical Institute will meet at the Woodlands Conference Center, The Woodlands. According to the agenda summary, the board will approve reviewed minute orders for policy committee for fiscal affairs; policy committee for facilities; and policy committee for human resources and development. The board will meet in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2, Subsections (f) and (g), to discuss real estate matters and matters relating to personnel at TSTI.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: November 6, 1990, 9:56 a.m.

TRD-9011781

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Texas Turnpike Authority

Monday, November 12, 1990, 3 p.m. The Board of Directors of the Texas Turnpike Authority met at the Texas Turnpike Authority Administration Building, 3015 Raleigh Street, Dallas. According to the agenda summary, the board took roll call of directors; introduced guests; and conducted an executive session. The board of directors considered adoption of Texas Turnpike Authority response to the Texas Sunset Advisory Commission staff report on Texas Turnpike Authority.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: November 2, 1990, 10:50 a.m.

TRD-9011664

◆ ◆ ◆
Texas Water Commission

Tuesday, November 13, 1990, 10 a.m. (rescheduled from November 9, 1990). The Texas Water Commission will meet at the Stephen F. Austin Office Building, 1700 North Congress Avenue, Room 1111A, Austin. According to the complete agenda, the commission will hold a public hearing on an appeal filed by Donald G. Engleskirchen protesting Able Springs Water Supply Corporation's charge for service connections, Docket Number 8550-X.

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

Filed: October 31, 1990, 3:42 p.m.

TRD-9011595

Wednesday, November 14, 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 revised agenda summary, the

commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in 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: November 5, 1990, 4:05 p.m.

TRD-9011771

Wednesday, November 14, 1990, 1:30 p.m. The Texas Groundwater Protection Committee of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1149, Austin. According to the agenda summary, the committee will discuss problems associated with agricultural chemicals in groundwater and to hear reports by the Agricultural Chemicals Subcommittee and the Groundwater Classification Subcommittee. Additionally, proposed rules pursuant to §26.406, Texas Water Code, defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in applicable agency files and the committee's joint report with the commission to the legislature will be presented for committee discussion and approval for publication in the Texas Register for public comment. The joint report to the legislature will also be discussed.

Contact: Bruce Fink, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7898.

Filed: November 5, 1990, 9:31 a.m.

TRD-9011734

Wednesday, November 14, 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 revised agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in 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: November 5, 1990, 4:05 p.m.

TRD-9011772

Wednesday, December 12, 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 request for approval of standby fees for Fort Bend County Municipal Utility District Number 46.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 7, 1990, 3:54 p.m.

TRD-9011899

Wednesday, December 12, 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 an application by Harris County Municipal Utility District Number 119 for adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 7, 1990, 3:54 p.m.

TRD-9011900

Wednesday, December 12, 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 an application by Montgomery County Municipal Utility District Number 56 for adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 7, 1990, 3:55 p.m.

TRD-9011901

Texas Water Development Board

Wednesday, November 14, 1990, 3 p.m.
The Audit Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the committee will consider approval of the minutes of the February 15, 1990 and October 17, 1990 audit committee meetings; be briefed on the State Auditor's interim management letter comments for the fiscal year ended August 31, 1990; briefed on the internal auditor annual plan, and procedure for preparing and adopting the plan; and consider adopting a plan for regularly scheduled and as needed audit committee meetings.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 6, 1990, 3:27 p.m.

TRD-9011837

Wednesday, November 14, 1990, 4 p.m.
The Finance Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the com-

mittee will consider approval of the minutes of the October 17, 1990 finance committee meeting; discuss setting the lending rate for current and future bond proceeds; discuss the new format of the Development Fund Manager's report; and discuss items on the agenda of the November 15, 1990 board meeting.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 6, 1990, 3:27 p.m.

TRD-9011836

Thursday, November 15, 1990, 9 a.m.
The Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the board will consider minutes; resolution honoring Glen Roney; hear development fund manager's report; amendment of 1968 bond resolution for Guadalupe-Blanco River Authority; establishing interest rate and payment schedule for Sabine River Authority to purchase board interest in Toledo Bend and amendments to master agreement; amendment of loan conditions pertaining to \$24,700,000 City of El Paso commitment; City of Blossom increase of \$75,000 to existing commitment; requests for financial assistance from City of Ovilla and Lower Colorado River Authority; approving facility engineering phase I applications from City of Edinburg and El Paso County Lower Valley Water District Authority; and recess into executive session to consider appointment of deputy administrator.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 7, 1990, 2:45 p.m.

TRD-9011882

Texas Workers' Compensation Commission

Tuesday, October 30, 1990, noon.
The Special Advisory Committee on Chiropractic Care of the Texas Workers' Compensation Commission met at the Bevington A. Reed Building, 200 East Riverside Drive, Room 202, Austin. According to the agenda summary, the committee will review and discuss parameters of treatment protocol; draft of new proposed guidelines; and set new meeting date.

Contact: Nancy J. Kozak, 200 East Riverside Drive, Austin, Texas 78704, (512) 440-3515.

Filed: November 2, 1990, 9:54 a.m.

TRD-9011652

Wednesday, November 7, 1990, 9 a.m.
The Texas Workers' Compensation Commission met at 200 East Riverside Drive, Room 255, Austin. According to the agenda

summary, the commission approved minutes; discussed rules process; discussed and considered proposed rules: Chapter 112, scope of liability for compensation; Chapter 133, General Medical Provisions; Chapter 134, Guidelines for Medical Services, Charges, and Payments; Chapter 150, Qualifications for Representatives; discussion and consideration of rules for adoption: Chapter 110, Employer's Notices Posted in Workplace; notice of noncoverage to commission; Chapter 156 Carrier's Austin representative; Chapter 132 Death and Burial benefits; report on rules to Texas Register; progress report on the implementation of Senate Bill 1; and discussion of future meetings and agenda.

Contact: George E. Chapman, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: November 2, 1990, 1:22 p.m.

TRD-9011670

Regional Meetings

Meetings Filed November 1, 1990

The Dallas Area Rapid Transit Business Development Ad Hoc Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, November 6, 1990, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9011639.

The Dallas Area Rapid Transit Board/Staff Function Ad Hoc Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, November 7, 1990, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9011638.

The Dallas Area Rapid Transit Planning and Development Committee met at 601 Pacific Avenue, Board Room, Dallas, November 7, 1990, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9011637.

The Edwards County Appraisal District Appraisal Review Board will meet at the New County Annex Building, Rocksprings, November 28, 1990, at 10 a.m. Information may be obtained from Natalie McNealy, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189. TRD-9011628.

The Hunt County Tax Appraisal District Appraisal Review Board met at the Hunt County Tax Appraisal District Board Room, 4801 King Street, Greenville, November 7-8, 1990, at 9 a.m. Information may be obtained from Mildred Compton/Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510. TRD-9011631.

The Scurry County Appraisal District Board of Directors met at 2612 College Avenue, Snyder, November 6, 1990, at 8 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9011635.

The Tarrant Appraisal District Appraisal Review Board met at 2309 Gravel Road, Fort Worth, November 7, 1990, at 8:30 a.m. Information may be obtained from William E. Roberts, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884. TRD-9011643.

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Meetings Filed November 2,
1990

The Carson County Appraisal District Board of Directors met at 102 Main Street, Panhandle, November 7, 1990, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068-0970, (806) 537-3569. TRD-9011651.

The Dallas Central Appraisal District Board of Directors met at 1420 West Mockingbird Lane, #500, Dallas, November 7, 1990, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, #500, Dallas, Texas 75247, (214) 631-0520. TRD-9011653.

The Deep East Texas Council of Governments Executive Committee met at the Diboll City Hall, Diboll, November 7, 1990, at 10 a.m. Information may be obtained from Paula Farley, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9011702.

The Fort Bend Parkway Association met at 11111 Brooklet Drive, Suite 100, Houston, November 8, 1990, at 4 p.m. Information may be obtained from Robert R. Randolph, 2801 First City Tower, 1001 Fannin Street, Houston, Texas 77002-6760, (713) 758-2380. TRD-9011665.

The Golden Crescent Regional Review Committee met at the GCRPC Board Room, Regional Airport, Building 102, Victoria, November 8, 1990, at 1 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9011648.

The Hays County Appraisal District Board of Directors met at 632 "A" East Hopkins Street, Municipal Building, San Marcos, November 8, 1990, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins Street, San Marcos, Texas 78666, (512) 754-7400. TRD-9011667.

The Hays County Appraisal District Appraisal Review Board will meet at 632 "A" East Hopkins Street, Municipal Building, San Marcos, November 13, 1990, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins Street, San

Marcos, Texas 78666, (512) 754-7400. TRD-9011668.

The Hickory Underground Water Conservation District Number One Board and Advisors met at 2023 South Bridge Street, Brady, November 8, 1990, at 7 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9011649.

The Hunt County Appraisal District Board of Directors met at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, November 8, 1990, at 7 p.m. Information may be obtained from Mildred Compton/Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510. TRD-9011669.

The Kendall County Appraisal District Board of Directors met at the Kendall Appraisal Office, 207 East San Antonio Street, Boerne, November 8, 1990, at 8 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9011672.

The Nueces-Jim Wells-Kleberg-Kenedy Soil and Water Conservation District Board of Directors will meet at 710 East Main Street, Robstown, November 20, 1990, at 2 p.m. Information may be obtained from Joan D. Rumfield, 710 East Main Street, Robstown, Texas 78380, (512) 668-8363. TRD-9011673.

The Texas Municipal Power Agency Personnel Committee met at the College Station Hilton, Cottonwood Room, 801 University Drive East, College Station, November 7, 1990, at 7 p.m. Information may be obtained from Cal Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9011671.

The Texas Municipal Power Agency (TMPA) Audit and Budget Committee met at the Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 Miles North of Carlos, FM-244, Carlos, November 8, 1990, at 7:30 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9011675.

The Texas Municipal Power Agency (TMPA) Board of Directors met at the Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 Miles North of Carlos, November 8, 1990, at 9 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9011676.

The Lower Colorado River Authority Retirement Benefits Committee met at 3700 Lake Austin Boulevard, Austin, November 8, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250. TRD-9011666.

Meetings Filed November 5,
1990

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, November 12, 1990, at 7 p.m. Information may be obtained from Bob Young, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9011738.

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 South Treadaway Street, Abilene, November 14, 1990, at 3:30 p. m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9011761.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, November 13, 1990, at 9 a.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904. TRD-9011749.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, November 15, 1990, at 4 p.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904. TRD-9011748.

The Eastland County Appraisal District Appraisal Review Board will meet at the Commissioners Courtroom, Eastland County Courthouse, Main Street, Eastland, November 15, 1990, at 10 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9011731.

The Garza County Appraisal District Board of Directors met at the Appraisal Office, 124 East Main Street, Post, November 8, 1990, at 9 a.m. Information may be obtained from Billie Windham, P.O. Drawer F, Post, Texas 79356. TRD-9011740.

The Gregg Appraisal District Board of Directors met at 2010 Gilmer Road, Longview, November 9, 1990, at 10 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015. TRD-9011739.

The Hansford County Appraisal District Board will meet at 709 West Seventh Street, Spearman, November 14, 1990, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575. TRD-9011730.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, November 13, 1990, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9011760.

The Leon County Central Appraisal District Appraisal Review Board met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, November 8, 1990, at 8:30 a.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252. TRD-9011759.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, Third Floor, Sweetwater, November 13, 1990, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9011733.

The Region IV Education Service Center Board of Directors met at the Region IV Education Service Center, Board Room, 7145 West Tidwell Street, Houston, November 8, 1990, at 5 p.m. Information may be obtained from W. L. McKinney, 7145 West Tidwell Street, Houston, Texas 77092-2096, (713) 462-7708. TRD-9011747.

The Swisher County Appraisal District Board of Directors met at 130 North Armstrong, Tulia, November 8, 1990, at 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9011741.

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**Meetings Filed November 6,
1990**

The Lavaca County Central Appraisal District Agricultural Appraisal Advisory Board will meet at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, November 20, 1990, at 8 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9011815.

The West Central Texas Council of Governments Executive Committee will meet at the Abilene Civic Center, 1100 North Sixth Street, Abilene, November 15, 1990, at 6 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9011807.

The West Central Texas Council of Governments Board of Directors/General Membership will meet at the Abilene Civic Center, 1100 North Sixth Street, Abilene, November 15, 1990, at 7 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79601, (915) 672-8544. TRD-9011806.

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**Meetings Filed November 7,
1990**

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, November 16, 1990, at 9 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9011881.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite 100, Austin, November 14, 1990, at 1:30 p.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9011857.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District, 502 North Main Street, Linden, November 12, 1990, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9011877.

The Education Service Center Region XI Board of Directors will meet at the Education Service Center, Region XI, 3001 North Freeway, Fort Worth, November 20, 1990, at noon. Information may be obtained from R. P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9011880.

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Board Room, Stephenville, November 14, 1990, at 9:30 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9011878.

The Gillespie Central Appraisal District Board of Directors will meet at the City Hall Assembly Room, Fredericksburg, No-

ember 15, 1990, at 9 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (512) 997-9807. TRD-9011875.

The Guadalupe-Blanco River Authority Board of Directors will meet at the Authority's Offices, 933 East Court Street, Seguin, November 15, 1990, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822. TRD-9011879.

The Hunt County Appraisal District Board of Directors met at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, November 8, 1990, at 7 p.m. Information may be obtained from Mildred Compton/Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510. TRD-9011872.

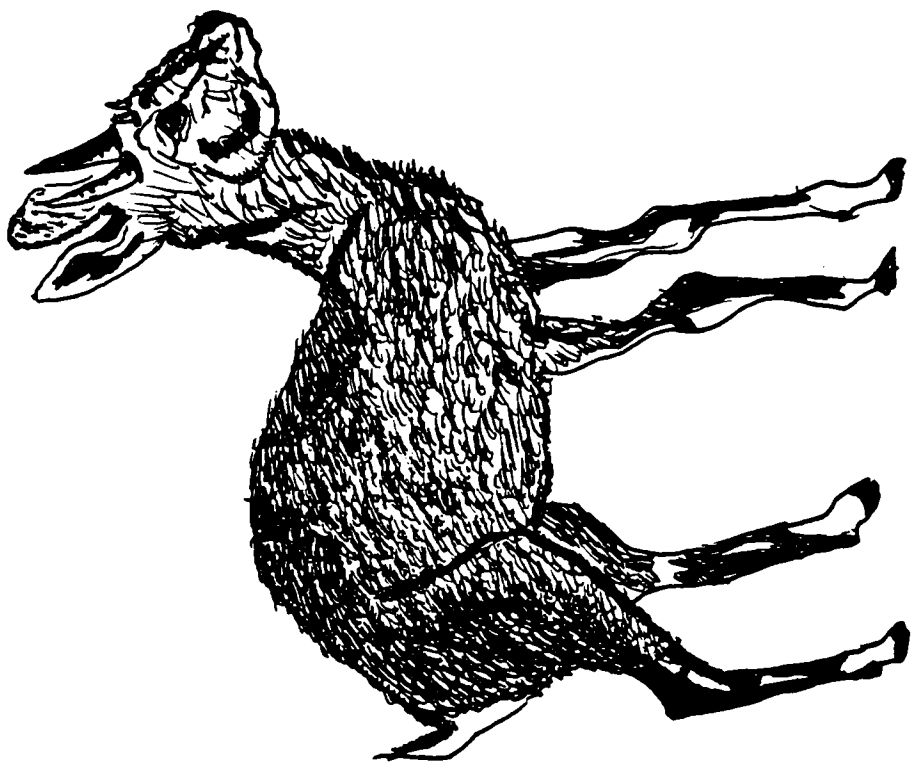
The Limestone County Appraisal District Board of Directors will meet at the Limestone County Courthouse Basement, Meeting Room, Groesbeck, November 14, 1990, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9011876.

The Tarrant Appraisal District Appraisal Review Board will meet at 2309 Gravel Road, Fort Worth, November 15, 1990, at 8:30 a.m. Information may be obtained from William E. Roberts, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884. TRD-9011874.

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**Meetings Filed November 8,
1990**

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, November 13, 1990, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9011914.

The South Plains Association of Governments Board of Directors will meet at 1323 58th Street, Lubbock, November 13, 1990, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9011915.



Lisa Davenport 7th RJHS
RICHARDSON JR. HIGH

Name: Lisa Davenport

Grade: 7

School: Richardson Junior High, Richardson ISD

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 Agriculture Consultant Contract Award

The Texas Department of Agriculture (TDA) has awarded a consultant contract under Texas Civil Statutes, Article 6252-11c. Notice of the proposed request was published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4591) and an amendment to that notice was published in the August 24, 1990, issue of the *Texas Register* (15 TexReg 4917).

Description. A consultant has been selected by the department to design alternative solutions to TDA's immediate information resource needs and in developing a long range plan to meet TDA's future information systems management needs.

Consultant Name. The name and address of the consulting firm is Andersen Consulting, 710 Brazos Street, Suite 1020, Austin, Texas 78701.

Terms. The maximum value of this contract is \$49,500, with the beginning date being October 31, 1990, and the ending date being January 31, 1991.

Report Dates. The following reporting dates have been established: assessment of department's current systems and resources, December 21, 1990; recommendations for development of alternative hardware, software, and application solutions, December 21, 1990; systems integration plan, December 21, 1990; determination and prioritization of critical areas needing improved automation capabilities, December 21, 1990; recommendations regarding infrastructural changes including the development of standards that improve TDA's information systems manageability, December 21, 1990; recommended application software direction, December 21, 1990; implementation plan January 4, 1991; funding request documentation, January 4, 1991; long range information systems management plan including recommended work plan and schedule to improve performance, reliability, and productivity in all system areas, January 31, 1991.

In addition to the items listed preceding, the consultant shall also provide the department with weekly status reports beginning November 9, 1990.

Issued in Austin, Texas, on November 6, 1990.

TRD-9011835 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: November 6, 1990

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

Texas Air Control Board Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act (TCAA), §382.017(a); 40 Code of Federal Regulations §51.102 of the United States Envi-

ronmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIPs); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Procedural Rules of the Texas Air Control Board (TACB), §103.11(4), the TACB will conduct public hearings to receive testimony concerning revisions to its rules.

The TACB proposes amendments to §101.6, concerning notification requirements for major upsets, and to §101.7, concerning notification requirements for maintenance. The amendments add specifications which clarify the purposes of the two rules, emphasize the differences between the two rules, and improve the source operator's understanding of actions required following a major upset ordering preparation for scheduled maintenance.

The hearings will be held as follows: December 4, 1990, 10 a.m., Texas Air Control Board, Auditorium, 6330 Highway 290 East, Austin, and December 4, 1990, 7 p.m., City of Houston Pollution, Control Building Auditorium, 7411 Park Place Boulevard, Houston.

The hearings are structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted, however, a TACB staff member will be available to answer questions informally.

Written comments not presented at the hearings may be submitted to the TACB central office in Austin prior to and including December 5, 1990. Material received by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the central office of the TACB located at 6330 U. S. Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. For further information, call Barry Irwin at (512) 451-5711.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011628 Lane Hartsock
Director, Planning and Development
Program
Texas Air Control Board

Filed: November 1, 1990, 9:13 a.m.

For further information, please call: (512) 451-5711, Ext. 433

Texas Department of Aviation Professional Engineering Services Contract Award

The following consultant proposal request for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultants request for professional engineering services was published in the *Texas Register* on May 25, 1990 (15 TexReg 2823).

The consultant proposals will be for professional engineering services for the design and construction administration phases for the following TDA Projects: 01/08-4-1 Gladewater Municipal Airport.

The engineering firm for these services is: Bucher Willis & Ratliff, 3620 Old Bullard Road, #206, Tyler, Texas 75701.

The total value of the contract is \$22,500 and the contract period starts on October 30, 1990, until the completion of the project.

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

TRD-9011745 Lydia Scarborough
Director, Support and Services
Texas Department of Aviation

Filed: November 5, 1990

For further information, please call: (512) 476-9262

Request for Proposals

The following request for proposals for providing professional engineering services is filed under the provision of Texas Civil Statutes, Article 6252-11c.

The Texas Department of Aviation will solicit and receive proposals for professional engineering services for the design and construction administration phases at the Pecos Municipal Airport, TDA Project Number 92/20-2-1, for rehabilitating and remarking runway, rehabilitating taxiway and terminal apron, reconstructing apron, and installing runway lighting.

Those interested consulting engineers should submit four copies of brief proposals consisting of the minimum number of pages sufficient to provide necessary information to: Texas Department of Aviation, Attention: Wayne Travis, TDA Project Number 92/20-2-1, Mailing Address: P.O. Box 12607, Austin, Texas 78711, (512) 476-9262; Delivery Address: Anson Jones State Building, 410 East 5th Street, Austin, Texas 78701.

Proposals must be received by 5 p.m., November 26, 1990.

Procedures for award-Procedure for award will be in accordance with FAA Advisory Circular AC 150/5100-14B.

The total estimated project cost is approximately \$487,500.

The City of Pecos reserves the right to reject any or all proposals received and to conduct new consulting engineer selection procedures for future projects.

The proposal shall include: firm name, address, phone number, and person to contact regarding the proposal; proposed project management structure identifying key personnel and subconsultants (if any); qualifications and recent experience of the firm, key personnel and subconsultants relative to the performance of similar services for FAA or TDA (TAC) projects; proposed project schedule, including major tasks and target completion dates; technical approach-a brief discussion of the tasks or steps to accomplish the project; list of in-state references including the name, address and phone number of the person most closely associated with the firm's prior project performance; statement regarding an Affirmative Action Program.

For projects with an estimated cost of \$250,000 or more, plans to utilize Disadvantaged Business Enterprises (DBEs) in contracting, subcontracting and procurement efforts associated with this project including: the names and addresses of DBE firms that will participate in the contract; a description of the work each named DBE firm will perform; and

a percentage of the contract amount to be contracted by each named DBE;

certification that all franchise taxes are paid or that consultant is not subject to franchise taxes.

Proposals will be reviewed by a consultant selection committee in order to identify from three to five consultants who will be interviewed by the committee. The final consultant selection will be made following completion of interviews.

Issued in Austin, Texas on November 5, 1990.

TRD-9011790 Lydia Scarborough
Director, Support and Services
Texas Department of Aviation

Filed: November 6, 1990

For further information, please call: (512) 476-9262



The following request for proposals for providing professional engineering services if filed under the provision of Texas Civil Statutes, Article 6252-11c.

The Texas Department of Aviation will solicit and receive proposals for professional engineering services for the design and construction administration phases at Scholes Field, Galveston, Texas, TDA Project Number 92/19-1-1, for replacing electric cables, vault and regulators, replacing taxiway and apron lights, rehabilitating lighted wind cone and segmented circle, installing guidance signs, and replacing runway lights.

Those interested consulting engineers should submit four copies of brief proposals consisting of the minimum number of pages sufficient to provide necessary information to Texas Department of Aviation, Attention: John Wepryk, TDA Project Number 92/19-1-1, Mailing Address: P.O. Box 12607, Austin, Texas 78711, (512) 476-9262; Delivery Address: Anson Jones State Building, 410 East 5th Street, Austin, Texas 78701.

Proposals must be received by 5 p.m., November 26, 1990.

Procedures for award-Procedure for award will be in accordance with FAA Advisory Circular AC 150/5100-14B.

The total estimated project cost is approximately \$558,000.

The City of Galveston reserves the right to reject any or all proposals received and to conduct new consulting engineer selection procedures for future projects.

The proposal shall include: firm name, address, phone number, and person to contact regarding the proposal; proposed project management structure identifying key personnel and subconsultants (if any); qualifications and recent experience of the firm, key personnel and subconsultants relative to the performance of similar services for FAA or TDA (TAC) projects; proposed project schedule, including major tasks and target completion dates; technical approach-a brief discussion of the tasks or steps to accomplish the project; list of in-state references including the name, address, and phone number of the person most closely associated with the firm's prior project performance; statement regarding an Affirmative Action Program.

For projects with an estimated cost of \$250,000 or more, plans to utilize Disadvantaged Business Enterprises (DBEs) in contracting, subcontracting and procurement efforts associated with this project including: the names and addresses of DBE firms that will participate in the contract; a description of the work each named DBE firm will perform; and

A percentage of the contract amount to be contracted by each named DBE;

certification that all franchise taxes are paid or that consultant is not subject to franchise taxes.

Proposals will be reviewed by a consultant selection committee in order to identify from three to five consultants who will be interviewed by the committee. The final consultant selection will be made following completion of interviews.

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

TRD-9011789 Lydia Scarborough
Director, Support and Services
Texas Department of Aviation

Filed: November 6, 1990

For further information, please call: (512) 476-9262



Texas Department of Commerce Notice of Amendment to 1990 Final Statement

The Texas Department of Commerce (Commerce) announces a proposed amendment to the State of Texas' federal fiscal year 1990 final statement which governs the expenditure of 1990 Texas Community Development Program funds. The final statement is being amended to make prisons and racetracks ineligible activities under Texas Community Development Program. The section entitled "Ineligible Activities" in Part 1 on page 1 of the 1990 Final Statement is amended to read hereafter as follows.

Ineligible Activities. In general, any type of activity not described or referred to in §105(a) of the federal Housing and Community Development Act 1974, as amended, is

ineligible. Specific activities ineligible under the Texas Community Development Program include: construction of buildings and facilities used for the general conduct of government (e.g. city halls, courthouse, ect.); new housing construction, except as described in the Housing Development Fund; the financing of political activities; purchases of construction equipment; income payments, such as housing allowances; most operation and maintenance expenses; prisons; and racetracks.

Written comments concerning these amendments will be accepted through November 20, 1990. Comments should be submitted to Ruth Cedillo, Manager, Texas Community Development Program, Texas Department of Commerce, Post Office Box 12728, Austin, Texas 78711.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011689 William D. Taylor
Executive Director
Texas Department of Commerce

Filed: November 2, 1990

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



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>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)	11/05/90-11/11/90	18.00%	18.00%
Monthly Rate - Art. 1.04 (c) ⁽¹⁾	11/01/90-11/30/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	10/01/90-12/31/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	10/01/90-12/31/90	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) ⁽³⁾	10/01/90-12/31/90	15.02%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	10/01/90-12/31/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	10/01/90-12/31/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail and Lender Credit Card Balances with Annual Implementation Dates from:	10/01/90-12/31/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	11/01/90-11/30/90	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 October 29, 1990.

TRD-9011583 Al Endsley
Consumer Credit Commissioner

Filed: October 31, 1990

For further information, please call: (512) 479-1280



Texas Education Agency Request for Proposal

This notice is filed pursuant to the Texas Civil Statutes, Article 6252-11c. Data collection to support the development of an inventory for public school facilities in Texas.

Description. The Texas Education Agency invites proposals for data collection to support the development of an inventory for public school facilities in Texas. The purpose of this request (RFP #701-91-037) is to collect facilities and educational technology data in order to develop a comprehensive inventory of the educational and instructional facilities in the Texas public school system according to the provisions of Senate Bills 1019 and 650, 71st Legislature, Regular Session, and Senate Bill 11, 71st Legislature, Sixth Called Session. The contractor(s) chosen for this project must demonstrate expertise in the areas of facility analysis and assessment, including architectural, structural and mechanical, electrical and plumbing systems; be able to inventory educational technology and have knowledge of the Texas public school system. A methodology for data collection has been established. The state will be divided into geographic regions for data collection and proposers are invited to bid on any combination of regions or all of the regions. The budget for data collection for the entire state is \$3,391,000. Each geographic region will have a fixed budget and completion date. The statewide data collection must be completed no later than August 31, 1991. This will be a fixed price contract.

Dates of Project. The planned contract starting date is December 19, 1990. The contract ending date will vary by region.

Evaluation Procedure. The proposals will be evaluated by a review team consisting of agency staff and selected external reviewers. Proposers receiving the most favorable ratings during the first round of selection may be asked to make an oral presentation. Proposals may be rated again after oral presentations. The recommendations of the review panel will be assembled and presented to the commissioner of education, or his designee who will, as authorized by the State Board of Education, either approve the proposal in whole or in part, disapprove the proposal, or defer action on the proposal for such reasons as a requirement for further evaluation.

Closing Date. Proposals are due in the Document Control Center at the address below by 5 p.m. on Tuesday, December 11, 1990.

Further Information. A copy of the complete Request for Proposal may be obtained by writing or calling: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

For further information about the Request for Proposal, please contact Joe Wisnoski, Director, Resource Planning, Texas Education Agency, (512) 463-9704.

Issued in Austin, Texas on November 5, 1990.

TRD-9011779 W. N. Kirby
 Commissioner of Education

Filed: November 6, 1990

For further information, please call: (512) 463-9701

Governor's Energy Division Notice of Consultant Contract Award

In compliance with the provisions of Texas Civil Statutes, Article 6252-11c, the Governor's Energy Division furnishes this notice of a consultant award.

Publication Date. The consultant proposal request was published in the August 24, 1990, issue of the *Texas Register* (15 TexReg 4919).

Description of Services. The request was for a consultant to provide technical assistance to the Institutional Conservation Grant Program in the following areas: providing desk audits of grant applications, monitoring program grantees, and processing grant claims for reimbursement.

Name and Address. The consultant contract has been awarded to Elizabeth Harrington, 1831 Wells Branch Parkway, Austin, Texas 78728.

Value and Dates of Contract. The total dollar value of the contract is \$20,940. The contract period extends from October 8, 1990 - August 31, 1991, by which date all work associated with the contract must be completed.

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

TRD-9011627 Auburn L. Mitchell
 Director
 Energy Division

Filed: November 1, 1990

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

Texas Department of Health Consultant Proposal Request

Notice of Invitation for Proposal. Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Health (TDH) invites offers from management firms for purpose of obtaining a comprehensive management study of TDH. Organizationally, TDH is divided into five major service programs: community and rural health services, special health services, family health services, disease prevention, environmental and consumer health protection, in addition to Departmental Administration. There are eight public health regions with regional headquarters located in Temple, Lubbock, Midland, Houston, Arlington, San Antonio, Tyler, and Harlingen. There are 71 local health departments affiliated with TDH. Administration activities for TDH are centralized in Austin.

Description of Project. All analysis and recommendations should be designed toward a more efficient service delivery system without decline in the quality of client services. The proposal should include a general description of the methodology to be employed by the offeror to achieve the following study objectives: to review and analyze the operations using plans including goals and objectives, performance audit reports, annual financial statements, and related audits and management letters; to review the relationship between central program management and regional program implementation; to recommend a methodology for statewide allocation of funds building upon the Rider 41 study; to analyze major automation applications to determine the adequacy of the automation system and process (hardware, software, and staffing levels) to meet future program needs as established by the goals and objectives in the strategic plan, legislative appropriations request, and Department of Information Resources plan, electronic data services performance audit reports of the state auditor; to identify barriers to the efficient and effec-

tive management; to evaluate current methods to assess effectiveness and efficiency of the programs; and to recommend improvements in the areas noted preceding to ensure that the public health goals set forth by the legislature and the Texas Board of Health are achieved in an effective and efficient manner.

Contact Person/RFP Instructions. Detailed specifications will be made available in proposal preparation instructions, which may be obtained on or after November 13, 1990, by submitting a written request to TDH 1100, West 49th Street, Austin, Texas 78756, ATTN: Jimmy J. Helm, Manager. In order to ensure that all offerors have the same information and instructions concerning the preparation of proposals, all communication between offerors and the TDH prior to the submission of proposals shall be in writing.

Closing Date for Receipt of Offers. Written proposals offering to provide the requested consulting services may be hand-delivered between the hours of 8 a.m.-5 p.m., Monday-Friday, or sent by certified mail to Jimmy J. Helm, Manager, at the address specified preceding. Proposals must be received by TDH no later than 5 p.m. on November 30, 1990.

Selection Process. A Selection Committee composed of a representative of the State Auditor's Office, two board members, commissioner, deputy commissioner, and assistant deputy commissioner for administration will review proposals submitted by offerors and select a firm. In making the selection, the Selection Committee will consider: The demonstrated competence, knowledge, and qualifications of each individual who will work on the project and of the management firm as a whole; the extent to which the proposed management study accomplishes the purpose and specifications of the RFP; the reasonableness of the proposed fee for the proposed performance management study; and When other considerations are equal, a management firm whose principal place of business is within the State of Texas, or who will manage the engagement wholly from one of its offices within the State of Texas, will be given preference. Final selection will be made by the Selection Committee in its sole discretion.

Project Timing and Cost. Contingent upon the negotiation of a contract with the offeror selected, the period of performance for the management study is anticipated to be December 15, 1990-April 30, 1991. The management firm selected to conduct the management study will be required to submit periodic progress reports to the Selection Committee, according to a schedule and format to be specified by the contract manager. Offers in excess of \$250,000 in professional fees and expenses will not be considered.

General Information. The TDH reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired. Additional terms and conditions relating to this proposal request will be provided in the proposal preparation instructions. The Selection Committee intends to use responses hereto as a basis for further negotiation of specific project details with offerors. Issuance of this consultant proposal request creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

Issued in Austin, Texas, on November 7, 1990.

TRD-9011854 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 7, 1990

For further information, please call: (512) 458-7738

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Carrollton	Ybarrondo & Associates - Scientech, Inc.	L04435	Carrollton	0	10/17/90
Channelview	ARCO Chemical Company	L04439	Channelview	0	10/29/90
Midland	Isotech Laboratories, Inc.	L04283	Midland	0	10/18/90
Throughout Texas	Ellerbee-Walczak, Inc.	L04440	Fort Worth	0	10/17/90
Throughout Texas	City of Victoria	L04425	Victoria	0	10/22/90
Throughout Texas	APAC - Texas, Inc.	L04434	Beaumont	0	10/17/90

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Amarillo	Northwest Texas Hospital	L02054	Amarillo	34	10/24/90
Athens	East Texas Medical Center-Athens	L02470	Athens	15	10/25/90
Austin	Texas Department of Health	L01155	Austin	46	10/16/90
Austin	Brackenridge Hospital	L00268	Austin	49	10/19/90
Bridgeport	Bridgeport Hospital	L03232	Bridgeport	6	10/18/90
Bryan	Atochem North America, Inc.	L04202	Bryan	1	10/22/90
Corpus Christi	Gulf Coast Imaging Center	L04126	Corpus Christi	1	10/17/90
Corpus Christi	Valero Refining Company	L03360	Corpus Christi	3	10/19/90
Corpus Christi	Petroleum Equipment Tools Co.	L02756	Houston	8	10/25/90
Dallas	R. H. D. Memorial Medical Center	L02314	Dallas	22	10/19/90
Dallas	Texas Instruments, Inc.	L00946	Dallas	56	10/23/90
Deer Park	Soltex Polymer Corporation	L00088	Deer Park	36	10/16/90
Deer Park	Quantum Chemical Corporation	L00204	Deer Park	23	10/25/90
Houston	Offenhauser Company	L03109	Houston	11	10/16/90
Houston	River Oaks Imaging and Diagnostic	L04342	Houston	2	10/08/90
Jasper	Jasper Memorial Hospital	L03075	Jasper	23	10/09/90
Orange	Ausimont Incorporated	L03968	Orange	3	10/25/90
Palestine	Trinity Valley Medical Center	L04137	Palestine	6	10/18/90
San Antonio	National Health Laboratories	L02112	San Antonio	10	10/16/90
San Antonio	Saint Rose Catholic Hospital	L03983	San Antonio	5	10/30/90

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Seadrift	Union Carbide Chemicals and Plastics Company Inc.	L00051	Port Lavaca	53	10/16/90
Texas City	Marathon Petroleum Company	L04431	Texas City	1	10/12/90
Throughout Texas	Baker, Shiflett and Associates	L02906	Fort Worth	11	10/12/90
Throughout Texas	Young Brothers, Inc., Contractors	L04095	Waco	3	10/12/90
Throughout Texas	Wrenco Wireline Services, Inc.	L04411	Kilgore	1	10/15/90
Throughout Texas	T U Electric	L04357	Dallas	3	10/15/90
Throughout Texas	G & G X-Ray, Inc.	L03326	Corpus Christi	22	10/18/90
Throughout Texas	Basin Industrial X-Ray, Inc.	L02280	Corpus Christi	30	10/18/90
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	58	10/17/90
Throughout Texas	Southwestern Laboratories, Inc.	L00299	Houston	66	10/15/90
Throughout Texas	Via NDT Engineering and Testing	L04322	Channelview	4	10/15/90
Throughout Texas	Trinity Testing Laboratories, Inc.	L04190	Laredo	3	10/15/90

Throughout Texas	Midwest Inspection Service	L03120	Perryton	27	10/18/90
Throughout Texas	Lower Colorado River Authority	L02738	Austin	8	10/17/90
Throughout Texas	Component Sales and Service, Inc.	L02243	Houston	14	10/17/90
Throughout Texas	HIS, Inc. Consultants	L02757	Houston	6	10/22/90
Throughout Texas	Tenneco Gas	L00180	Houston	19	10/18/90
Throughout Texas	Allen Engineering and Testing, Inc.	L02863	Friendswood	7	10/25/90
Throughout Texas	Tuboscope, Inc.	L00287	Houston	87	10/25/90
Throughout Texas	Coastal Testing Laboratories, Inc.	L01945	Houston	21	10/25/90
Throughout Texas	Sharp Radiation Services	L03731	Corpus Christi	7	10/17/90
Throughout Texas	Jobe Concrete Products, Inc.	L04021	El Paso	3	10/26/90
Throughout Texas	GCI Inspection, Inc.	L02378	South Houston	32	10/19/90
Throughout Texas	AnAid, Inc.	L03171	Dickinson	15	10/19/90
Throughout Texas	Independent Testing Labs., Inc.	L03795	Houston	14	10/22/90
Throughout Texas	X-Cel NDE, Inc.	L03548	Odessa	16	10/24/90
Throughout Texas	Mississippi X-Ray Services of Texas, Inc.	L03246	Mont Belvieu	28	10/24/90
Throughout Texas	Kooney X-Ray Inc.	L01074	Barker	50	10/24/90
Waller	Progressive Metals, Inc.	L02831	Waller	21	10/18/90

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Denver City	Yoakum County Hospital	L03719	Denver City	2	10/18/90
Pasadena	Pasadena Bayshore Medical Center	L00153	Pasadena	37	10/05/90
Throughout Texas	Trinity Testing and Inspection Co.	L03628	Victoria	4	10/15/90

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Throughout Texas	Resource Technology Corporation	L03698	Houston	3	10/12/90
Throughout Texas	Chen and Associates Inc.	L03839	San Antonio	3	10/24/90
Throughout Texas	Meador Construction Co., Inc.	L03701	San Antonio	1	10/25/90
Winters	North Runnels Hospital	L03861	Winters	3	10/08/90

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in

land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

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

TRD-9011744 Robert A. MacLean, M.D.
Deputy Commissioner

Filed: November 5, 1990

For further information, please call (512) 458-7236

Minority Health Public Hearing

The department will hold a public hearing on the status of minority health in the State of Texas as follows:

Friday, November 16, 1990, 1:15 p.m.-4:30 p.m., University of Texas Institute of Texan Cultures, 801 South Bowie at Durango, San Antonio, contact Linda Lopez at (512) 567-5837.

Issued in Austin, Texas, on November 7, 1990.

TRD-9011853 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 7, 1990

For further information, please call: (512) 458-7323

Permit Applications for Municipal Solid Waste Site

Notice is hereby given that Bell Processing, Inc. presently holds Solid Waste Permit Number 1827 as heretofore issued by the Texas Department of Health for the operation of a Type IV municipal solid waste site located 7,770 feet northwest of the intersection of U.S. Highway 277 and F.M. 1634, in Wichita County. Said permit holder has now filed with the Texas Department of Health an application to amend the aforesaid permit to upgrade the landfill to a Type I facility.

The site covers approximately 60.32 acres of land, and is to daily receive approximately five tons of solid waste under the regulatory jurisdiction of the Texas Department of Health for disposal or other processing in accordance with the said department's "Municipal Solid Waste Management Regulations." A technical review of the application is being made by the department's Bureau of Solid Waste Management and various state and local agencies which have a jurisdictional interest.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, or if the Bureau of Solid Waste Management determines that a public hearing should be held, notice of such hearing will be provided to the requester and will also be published in a newspaper regularly published or circulated in the county in which the site is located at least 30 days prior to the date of such hearing.

Requests for a public hearing and/or requests for a copy of the application shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271. A copy of the complete application may be reviewed at the Bureau of Solid Waste Management.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011823 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 6, 1990

For further information, please call: (512) 458-7271

Notice is hereby given that V. M. Crow & Sons, Inc. presently holds Solid Waste Permit Number 208 as heretofore issued by the Texas Department of Health for the operation of a Type I municipal solid waste site located at 7701 Confederate Park Road approximately 3.5 miles west of State Highway 199 and 1.5 miles west of the City of Lakeside, in Tarrant County.

Said permit holder has now filed with the Texas Department of Health an application to amend the aforesaid permit by adding 17.1 acres and increasing the height of the aerial fill.

The site covers approximately 95.81 acres of land, and is to daily receive approximately 350 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health for disposal or other processing in accordance with the said department's "Municipal Solid Waste Management Regulations." A technical review of the application is being made by the department's Bureau of Solid Waste Management and various state and local agencies which have a jurisdictional interest.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, or if the Bureau of Solid Waste Management determines that a public hearing should be held, notice of such hearing will be provided to the requester and will also be published in a newspaper regularly published or circulated in the county in which the site is located at least 30 days prior to the date of such hearing.

Requests for a public hearing and/or requests for a copy of the application shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011824 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 6, 1990

For further information, please call: (512) 458-7271

Notice is hereby given that the City of Brownfield presently holds Solid Waste Permit Number 1500 as heretofore issued by the Texas Department of Health for the operation of a Type I municipal solid waste site located approximately 1.2 miles east of the intersection of FM 137 and FM 385 (Seagraves Road), Terry County.

Said permit holder has now filed with the Texas Department of Health an application to amend the aforesaid permit as follows: to use two additional locations for trench fill as well as aerial fill above the existing landfill grade.

The site covers approximately 19.3 acres of land, and is to daily receive approximately 31 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health

Health for disposal or other processing in accordance with the said department's "Municipal Solid Waste Management Regulations." A technical review of the application is being made by the department's Bureau of Solid Waste Management and various state and local agencies which have a jurisdictional interest.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, or if the Bureau of Solid Waste Management determines that a public hearing should be held, notice of such hearing will be provided to the requester and will also be published in a newspaper regularly published or circulated in the county in which the site is located at least 30 days prior to the date of such hearing.

Requests for a public hearing and/or requests for a copy of the application shall be submitted in writing to the chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271. A copy of the complete application may be reviewed at the Bureau of Solid Waste Management.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011825 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 6, 1990

For further information, please call:(512) 458-7271

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Industrial Disposal Service Company, Inc. has filed Application Number 2099 with the Texas Department of Health for a permit to operate an existing Type V municipal solid waste site (transfer station) located in the Wharton city limits, in the southwest part of the city at 820 South Sheppard Street, in Wharton County.

The site covers approximately 5.90 acres of land, and is to daily receive approximately 27.5 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health.

The Bureau of Solid Waste Management, Texas Department of Health, has evaluated the application in coordination with other state and local agencies. The application adequately addresses land use, ground and surface water protection, site development and operation, and other regulatory requirements. The Bureau of Solid Waste Management is of the opinion that, based on the information provided in the application and comments received from other review agencies, the solid waste site will not pose a reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, notice of such hearing will be provided to the requester and will also be published in a newspaper regularly published or circulated in

the county in which the site is located at least 30 days prior to the date of such hearing. If no request for a hearing is received within 30 days of the date of publication of this notice, the department will make a decision. If a hearing is requested, both the hearing and the final decision will be in accordance with the applicable rules contained in the department's "Municipal Solid Waste Management Regulations" as of May 10, 1988.

Requests for a public hearing and/or requests for a copy of the application shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete application may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 4 Office located at 10500 Forum Place, Suite 200, Houston, Texas 77036, (713) 995-1112.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011826 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 6, 1990

For further information, please call: (512) 458-7271

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The City of Brownfield has filed Application Number 2170 with the Texas Department of Health for a permit to operate a proposed Type I municipal solid waste site to be located approximately one mile east of the intersection of State Highway 137 and US Highway 62, in Terry County.

The site covers approximately 139.77 acres of land, and is to daily receive approximately 75 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health for disposal or other processing in accordance with the department's "Municipal Solid Waste Management Regulations." A technical review of the application is being made by the department's Bureau of Solid Waste Management and various state and local agencies which have a jurisdictional interest.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, or if the Bureau of Solid Waste Management determines that a public hearing should be held, notice of such hearing will be provided to the requester and will also be published in a newspaper regularly published or circulated in the county in which the site is located at least 30 days prior to the date of such hearing.

Requests for a public hearing and/or requests for a copy of the application shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete application may be reviewed at the Bureau of Solid Waste Management.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011827 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 6, 1990

For further information, please call: (512) 458-7271

Texas Higher Education Coordinating Board

Notice of Bond Sale

The Texas Higher Education Coordinating Board is requesting proposals to serve as underwriters in the sale of approximately \$25,000,000 State of Texas Student Loan Bonds, Series 1991. First Southwest Company serves as financial adviser and McCall, Parkhurst & Horton serve as bond counsel.

In accordance with Chapter 52 of the Texas Education Code, the bonds are being offered as "college savings bonds" which are compound interest bonds issued in denominations of \$1,000 in maturity amount or multiples thereof. According to statute, the Coordinating Board shall emphasize the use of the bonds to finance the costs of higher education.

Bond counsel has determined the bonds will be subject to a 2.0% limit on issuance costs and that interest on the bonds will be subject to the alternative minimum tax (ATM) for some investors.

It is anticipated that Underwriters will be selected by December 7, the Item will be considered by the Texas Bond Review Board on December 20 and the bonds will be sold on January 10. Requests for qualification are to be returned no later than 4 p.m., on Wednesday, November 21, 1990.

Information about the bonds and the underwriters proposals can be obtained from the following: James McWhorter, Assistant Commissioner, Texas Higher Education Coordinating Board, 7745 Chevy Chase Drive, Suite 5.140, Austin, Texas 78752, (512) 483-6160; or Don Grimes, Senior Vice President, First Southwest Company, 500 First City Center, Dallas, Texas 75201, (214) 953-4000.

Issued in Austin, Texas, on October 30, 1990.

TRD-9011588 Suzanne Ortiz
Special Projects Director
Texas Higher Education Coordinating Board

Filed: October 31, 1990

For further information, please call: (512) 483-6160



Notice of Meeting

The Family Practice Residency Advisory Committee will meet on Friday, November 16, 1990, at 10 a.m. The meeting will be held in Building I, Room 1. 100A of the Chevy Chase Office Complex at 7700 Chevy Chase Drive in Austin. The committee will discuss Family Practice Residency Program Updates, Reports on rural Rotations; Report on Annual Survey of all Family Practice Residency Programs; and Review of Resident Physician Compensation Committee Report. For further information please contact Claudia Siegel at (512) 483-6116.

Issued in Austin, Texas, on November 1, 1990.

TRD-9011816 Suzanne Ortiz
Special Projects Director
Texas Higher Education Coordinating Board

Filed: November 6, 1990

For further information, please call: (512) 483-6160



State Department of Highways and Public Transportation

Public Hearing Notice

Pursuant to the Texas Coastal Waterway Act of 1975, Texas Civil Statutes, Article 5415e-2, §6(g), the State Highway and Public Transportation Commission will conduct a public hearing to receive data, evidence, comments, views, and/or testimony concerning the acquisition of land or interest therein by donation, lease, purchase, or condemnation which is environmentally suitable for use as disposal sites for materials dredged from the main channel of the Gulf Intracoastal Waterway. The location of the individual proposed sites to be considered by the commission are near Baffin Bay in the vicinity of Point of Rocks in Kleberg County, and adjacent to Point Penascal in Kenedy County and are more specifically described in each county as follows.

Kleberg County, concerning three sites north of Baffin Bay in the vicinity of Point of Rocks. Point of Rocks "A" being approximately 140 upland acres located along the western edge of the Laguna Madre at the intersection of the Laguna and Baffin Bay in the immediate vicinity of the Point of Rocks. More specifically identified by the United States Army Corps of Engineers as between their station numbers 151+000 and 154+500; and Point of Rocks "B" being approximately 160 upland acres located along the western edge of the Laguna Madre approximately 7,000 feet north of Point of Rocks "A". More specifically identified by the United States Corps of Engineers as between their station numbers 141+000 and 144+000; and Point of Rocks "C" being approximately 200 upland acres located along the western edge of the Laguna Madre approximately 13,000 feet north of Point of Rocks "B". More specifically identified by the United States Army Corps of Engineers as between their station numbers 123+000 and 128+000.

Kenedy County, concerning one site being approximately 250 upland acres located along the western edge of the Laguna Madre on the southern side of Baffin Bay adjacent to Point Penascal. More specifically identified by the United States Army Corps of Engineers as between their station numbers 175+000 and 185+000.

The public hearing will be held at 10:30 a.m., Thursday, November 29, 1990, in the first floor meeting room, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin.

Any interested person may appear and offer either oral or written testimony or evidence; however, questioning will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent evidence or testimony will be granted an opportunity to present it during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content.

Maps, environmental impact statements, and other displays concerning the proposed sites will be exhibited at the public hearing. Prior to the public hearing, information about the proposed sites will be on file and available for inspection at the State Department of Highways and Public Transportation, Building #1, 40th and Jackson Streets, Austin, with B. C. Gersch, P. E., (512) 467-3832.

The state's Relocation Assistance Program concerning the benefits and services for displacees, and information about the site acquisition process are available at the previously noted office.

For further information, please contact Alvin R. Luedecke, Jr., P. E., State Transportation Planning Engineer, P.O. Box 5051, Austin, Texas 78763-5051, (512) 465-7346; or Marcus L. Yancey, Jr., P. E., Deputy Director, Planning and Policy, (512) 463-8627.

Issued in Austin, Texas, on November 6, 1990.

TRD-9011858 Diane L. Northam
Legal Administrative Assistant
State Department of Highways and Public
Transportation

Filed: November 7, 1990

For further information, please call: (512) 463-8630

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State Board of Insurance
Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas of First Centennial Life Insurance Company, a foreign life insurance company. The home office is in Fort Collins, Colorado.
2. Application for admission to do business in Texas of Caledonian Insurance Company of America, a foreign casualty insurance company. The home office is in New York, New York.
3. Application for admission to do business in Texas of The Green Tree Insurance Company, a foreign casualty insurance company. The home office is in Philadelphia, Pennsylvania.
4. Application for admission to do business in Texas of USAA Casualty Insurance Company of Florida, a foreign casualty insurance company. The home office is in Tampa, Florida.
5. Application for admission to do business in Texas of Landcar Life Insurance Company, a foreign life insurance company. The home office is in Murray, Utah.
6. Application for admission to do business in Texas of Templeton Funds Annuity Company, a foreign life insurance company. The home office is in St. Petersburg, Florida.
7. Application for name change by Washington Square Life Insurance Company, a foreign life insurance company. The home office is in Philadelphia, Pennsylvania. The proposed new name is Providentmutual Life and Annuity Company of America.
8. Application for admission to do business in Texas of Benefits I Agency, Inc., a foreign third party administrator. The home office is in Columbus, Ohio.
9. Application for admission to do business in Texas of RBH Direct Group, Inc., a foreign third party administrator. The home office is in Trevese, Pennsylvania.

Issued in Austin, Texas, on October 31, 1990.

TRD-9011847 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: November 2, 1990

For further information, please call: (512) 463-6327
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Public Utility Commission of Texas

Notice of Applications to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 29, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of Texas Utilities Electric Company for a certificate of convenience and necessity for a proposed transmission line within Tarrant County, Docket Number 9828 before the Public Utility Commission of Texas.

The Application. In Docket Number 9828, Texas Utilities Electric Company requests approval of its application to relocate approximately 1.23 miles of 345kV transmission line within Tarrant County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9011766 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1990

For further information, please call: (512) 458-0100
◆ ◆ ◆

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 29, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of Wood County Electric Cooperative, Inc. for a certificate of convenience and necessity for a proposed transmission line within Wood and Hopkins Counties, Docket Number 9829 before the Public Utility Commission of Texas.

The Application. In Docket Number 9829, Wood County Electric Cooperative requests approval of its application to construct approximately 11.2 miles of 69kV transmission line within Wood and Hopkins Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9011767 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1990

For further information, please call: (512) 458-0100

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 29, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of McLennan County Electric Cooperative, Inc. to amend certificated service area boundary within Coryell County, Docket Number 9830 before the Public Utility Commission of Texas.

The Application. In Docket Number 9830, McLennan County Electric Cooperative requests approval of its application to amend an existing boundary with Hamilton County Electric Cooperative's service area in order to provide service to a single customer.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9011768 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1990

For further information, please call: (512) 458-0100



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 29, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of Bandera Electric Cooperative, Inc. for a certificate of convenience and necessity for a proposed transmission line within Real County, Docket Number 9831 before the Public Utility Commission of Texas.

The Application. In Docket Number 9831, Bandera Electric Cooperative requests approval of its application to construct approximately 17.8 miles of 69kV transmission line in Real County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9011769 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1990

For further information, please call: (512) 458-0100



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 12, 1990, to amend a Certificate of Convenience and

Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of Texas Utilities Electric Company for a certificate of convenience and necessity for a proposed transmission line within Dallas County, Docket Number 9800 before the Public Utility Commission of Texas.

The Application. In Docket Number 9800, Texas Utilities Electric Company requests approval of its application to construct approximately 2.68 miles of 69kV transmission within Dallas County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9011764 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1990

For further information, please call: (512) 458-0100



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 23, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of Texas Utilities Electric Company for a certificate of convenience and necessity for a proposed transmission line within Mitchell County, Docket Number 9827 before the Public Utility Commission of Texas.

The Application. In Docket Number 9827, Texas Utilities Electric Company requests approval of its application to relocate approximately 1.82 miles of 345kV transmission line to accommodate the construction of the Mitchell County Reservoir.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9011765 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1990

For further information, please call: (512) 458-0100



State Purchasing and General Services Commission

Consultant Contract Award

The following consultant award is filed under the provi-

sions of Texas Civil Statutes, Article 6252-11c.

The State Purchasing and General Services Commission entered into a contract for investigative consultant services with Ben C. Nix Associates, 1308 West Abram, Suite 203, P.O. Box 121127, Arlington, Texas 76012, to study the recruiting, hiring, promotion, and related management practices of the Capitol Security Department and to prepare a written report of the study, effective August 7, 1990.

The contract requires the study to be completed within five calendar weeks. At the time the contract was established, the total contract amount was not reasonable anticipated to exceed \$10,000; however, it is now reasonable foreseeable that a contract amendment is required to increase the contract amount to \$14,983.54.

The consultant presented a written report of the study on or before September 19, 1990.

Issued in Austin, Texas, on November 6, 1990.

TRD-9011833 John R. Neel
 General Counsel
 State Purchasing and General Services
 Commission

Filed: November 6, 1990

For further information, please call: (512) 463-3446

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Railroad Commission of Texas

Notice of Hearing

The public hearing on the proposed amendments to State-wide Rules 28, 30, 31, and 34 (16 TAC §§3.28, 3.30, 3.31, and 3.34), Docket Number 20-95, 193, and proposed new Statewide Rules 88 and 89 (16 TAC §3.88 and §3.89), Docket Number 20-95, 194, will be held on November 26, 1990, at 9 a.m. in Room 12-126 of the William B. Travis State Office Building, 1701 North Congress Avenue, Austin. If all comments cannot be heard on November 26, 1990, the hearing will continue on subsequent working days. The proposed amendments were published on October 12, 1990, in the *Texas Register* (15 TexReg 5987). The proposed new sections were published on October 12, 1990, in the *Texas Register* (15 TexReg 5994).

Any member of the public may appear and offer comments at the public hearing. Cross-examination of witnesses will not be allowed, although the presiding examiners may ask questions of any person testifying.

Please direct your written comments to the attention of David Garlick, Interim Director, Oil and Gas Division, and to Stephen Pacey, Assistant Director, Legal Division. All comments must be in writing in order to insure consideration and a place in the record.

Issued in Austin, Texas, on November 6, 1990.

TRD-9011859 Brenda Loudermilk
 Hearings Examiner, Legal Division, General
 Law
 Railroad Commission of Texas

Filed: November 7, 1990

For further information, please call: (512) 463-6941

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Texas Water Commission

Notice of Application For Waste Disposal Permit

Attached are Notices of Applications for waste disposal permits issued during the period of October 29, -November 2, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Dar Anderson; Dublin; a dairy; approximately four miles southeast of the intersection of FM Road 2823 and FM Road 1702 in Comanche and Erath Counties; 03279; new.

City of Ballinger; wastewater treatment facilities; approximately 4,000 feet east of the intersection of U.S. Highways 67 and 83, approximately 3,000 feet southeast of U.S. Highway 67 and 83 crossing over Elm Creek in Runnels County; 10325-03; renewal.

Beltway 90 Business Park, Inc.; New York City, New York; and industrial business park; approximately 3,000 feet west of the intersection of U.S. Highway 90 and State Loop 8 (East Belt Drive), northeast of the City of Houston, Harris County; 03206; new.

Bob's Texas Style Potato Chips, Inc.; Brookshire; a potato chip manufacturing facility; approximately 4,200 feet east of the intersection of FM 529 and FM 359, Waller County; 02816; renewal.

Corinthian Point Municipal Utility District Number 2; Willis; wastewater treatment facilities; approximately six miles northwest of the intersection of FM Road 1097 and Interstate Highway 45 and adjacent to the east side of Lake Conroe, approximately 9,000 feet north of FM Road 1097 in Montgomery County; 11285-01; renewal.

Richard Famin; DeKalb; a dairy; approximately three miles west of the intersection of FM Road 3165 and State Highway 259 in Bowie County; 03250; new.

General American Transportation Corporation; Chicago, Illinois; a Class I hazardous waste storage facility; approximately 1 1/4 miles southwest of the intersection of U.S. Highways 79 and 190 and immediately southeast of the City of Hearne, Robertson County; HW-50278, EPA I.D. Number TXD-000835207; new 45-day notice.

Grimes County Municipal Utility District Number 1; Houston; wastewater treatment facilities; approximately 2.5 miles west of the intersection of FM Road 2445 and FM Road 1774, 0.2 mile north of FM 2445, 11 miles east northeast of the City of Navasota in Grimes County; 11437-01; renewal.

City of Hico; wastewater treatment facilities; approximately 3/4 mile east of U.S. Highway 281 and 1/4 mile south of State Highway 6 in Hamilton County; 10188-01; renewal.

Dennis Kennedy; Rusk; a dairy; approximately one mile

north of the intersection of Bagley Road and FM Road 110 in Cherokee County; 03261; new.

Lamar Consolidated Independent School District; Rosenberg; wastewater treatment plant; approximately 3.5 miles generally south of the City of Rosenberg and approximately 1,300 feet east of the intersection of J. Meyer Road and State Highway 36 in Fort Bend County; 13006-01; renewal.

Lamar consolidated Independent School District; Rosenberg; wastewater treatment facilities; approximately 4.5 miles east-southeast of the City of Rosenberg in Fort Bend County; 13007; renewal.

Mike Lloyd doing business as Mike Lloyd Dairy; Stephenville; a dairy; approximately 2.5 miles south of the intersection of FM Road 219 and FM Road 8 in Erath County; 03301; new.

Lochinvar Golf Club; Houston; sewage treatment plant; approximately 2,100 feet east-southeast of the intersection of Hardy Road and Farrell Road, and 2.3 miles east northeast of the intersection of Interstate Highway 45 and Kuykendahl road in Harris County; 12141-01; renewal.

McGinnes Industrial Maintenance Corporation; Houston; a sludge disposal facility; plant site is adjacent to Carancahua Lake and the Intracoastal Canal on Hall Bayou Ranch property in the L.T. Yowell Survey, Galveston County; 01221; renewal;

Richards Independent School District; wastewater treatment facilities; approximately 550 feet north of FM Road 149 and 1,800 feet west of the Chicago, Rock island and Pacific Railroad in Grimes County; 13527-01; new.

Jackson Smith; Mount Pleasant; a dairy; approximately two miles due north of the intersection of U.S. Highway 281 and FM 913 and approximately four miles south-southeast of the intersection of U.S. Highway 281 and State Highway 108 in Erath County; 03238; new.

Jannes Stoker; Stephenville; a dairy; approximately two miles due north of the intersection of U.S. Highway 281 and FM 913 and approximately four miles south-southeast of the intersection of U.S. Highway 281 and State Highway 108 in Erath County; 03238; new.

Texas Parks and Wildlife Department; Austin; wastewater treatment facilities; approximately 0.4 mile due west of the intersection of FM Road 316 and Goshen Road in Henderson County; 12190-01; renewal.

Walker Wood Preserving, Inc.; Livingston; Class I Hazardous Non-Commercial Facility; approximately four miles south of Livingston on a 28.5-acre tract of land which is approximately 1,000 feet north of the northeast side of State Highway 146 at a point approximately one-half mile north of the intersection of State Highway 146 and FM Road 1988, in an unincorporated portion of Polk County; HW-50308, EPA I.D. Number TXD-026042168; new; 45-day notice.

Warren Independent School District; wastewater treatment plant; approximately 0.7 mile southwest of the intersection of U.S. Highway 69 and FM Road 1943 in Tyler County; 11308-01; renewal.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, telephone (512) 463-7905.

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

TRD-9011773	Brenda W. Foster Chief Clerk Texas Water Commission
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Filed: November 5, 1990

For further information, please call: (512) 463-7906

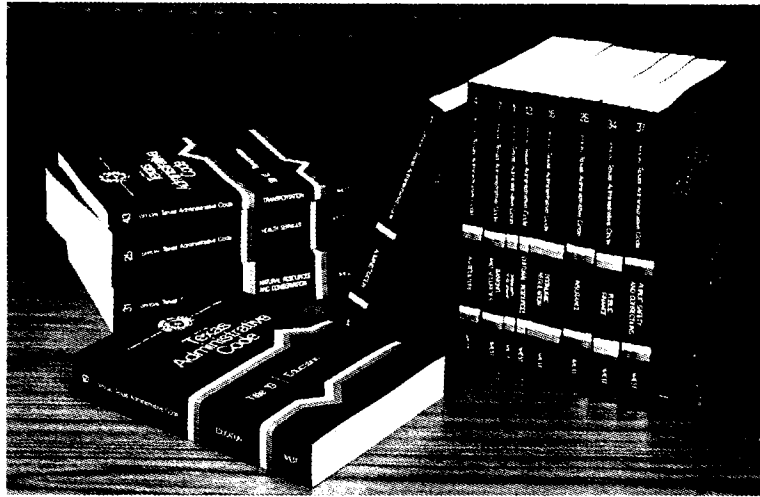


1990 Publication Schedule for the *Texas Register*

listed below are the deadline dates for the October-December 1990 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
Friday, November 2	Monday, October 29	Tuesday, October 30
Tuesday, November 6	Wednesday, October 31	Thursday, November 1
*Friday, November 9	NO ISSUE PUBLISHED	
Tuesday, November 13	Wednesday, November 7	Thursday, November 8
Friday, November 16	Monday, November 12	Tuesday, November 13
Tuesday, November 20	Wednesday, November 14	Thursday, November 15
Friday, November 23	Monday, November 19	Tuesday, November 20
*Tuesday, November 27	NO ISSUE PUBLISHED	
Friday, November 30	Monday, November 26	Tuesday, November 27
Tuesday, December 4	Wednesday, November 28	Thursday, November 29
Friday, December 7	Monday, December 3	Tuesday, December 4
Tuesday, December 11	Wednesday, December 5	Thursday, December 6
Friday, December 14	Monday, December 10	Tuesday, December 11
Tuesday, December 18	Wednesday, December 12	Thursday, December 13
Friday, December 21	Monday, December 17	Tuesday, December 18
Tuesday, December 25	Wednesday, December 19	Thursday, December 20
*Friday, December 28	NO ISSUE PUBLISHED	

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