

Texas Register

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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



Texas Register Publications

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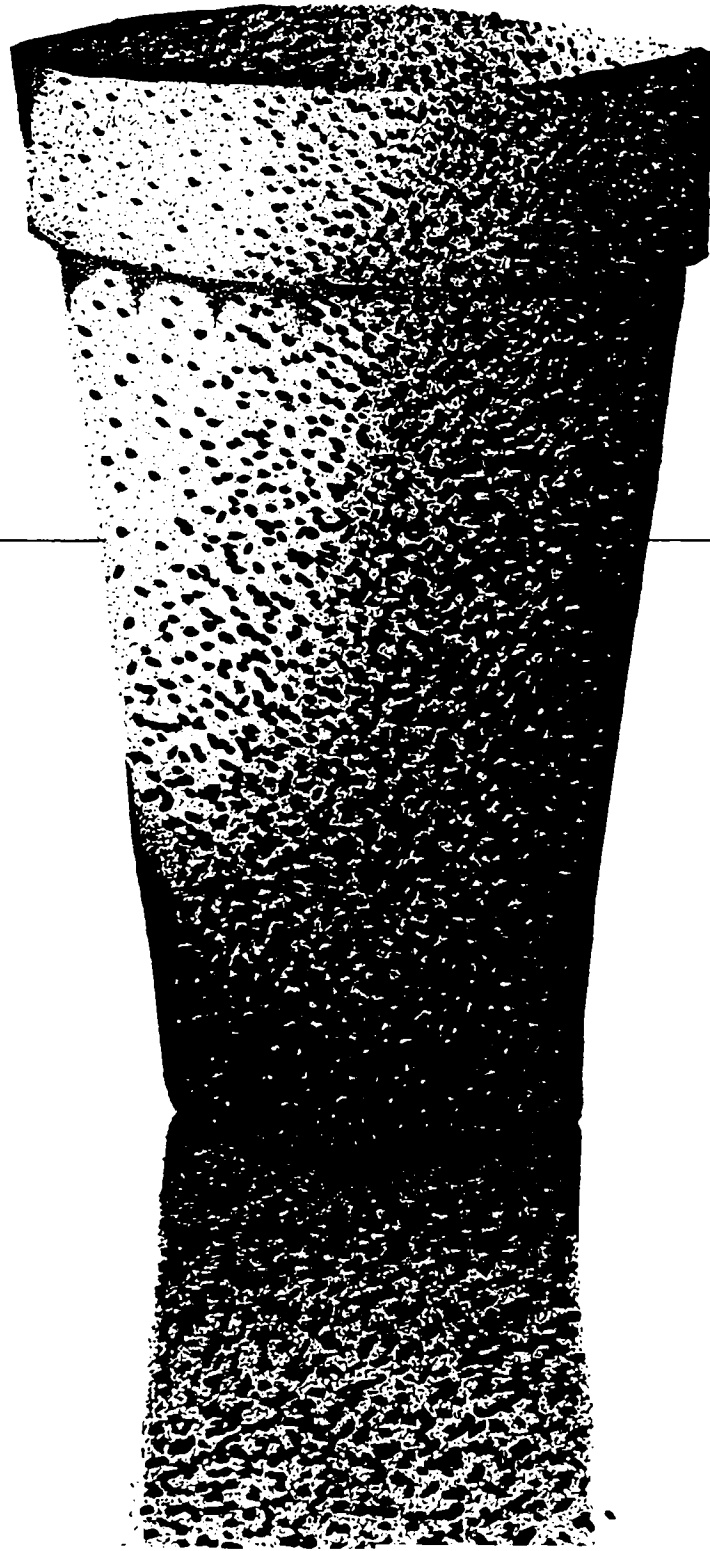
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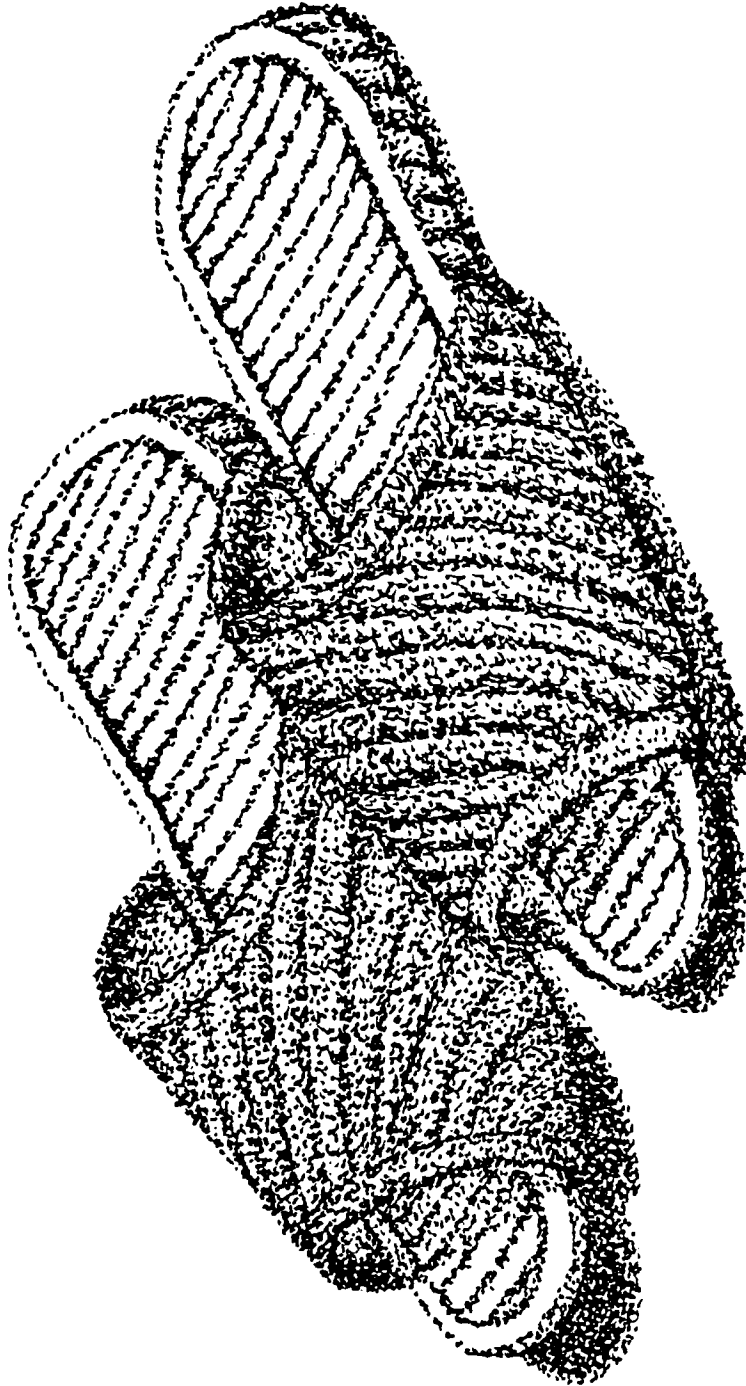
Texas Register
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Emergency Sections

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

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

TITLE 28. INSURANCE

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Chapter 11. Health Maintenance Organizations

Subchapter I. Financial Requirements

• 28 TAC §§11.803, §11.804

The State Board of Insurance adopts on an emergency basis the repeal of §11.803 and §11.804, concerning financial requirements for health maintenance organizations (HMOs). An imminent threat to the public welfare requires adoption of the repeals on an emergency basis in order to sustain the financial integrity of these companies. Section 11.803 concerns investments, loans, and other assets of HMOs, and §11.804 concerns liabilities. The repeal on an emergency basis is necessary to allow the board to adopt on an emergency basis a new, modified, and expanded §11.803, concerning investments, loans, and other assets, and a new §11.804, concerning investment management by affiliate companies. The board has also adopts on an emergency basis a modified and expanded §11.806, concerning liabilities. Notification of emergency adoption of the new sections appears elsewhere in this issue of the *Texas Register*.

The repeals are adopted on an emergency basis under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state; and under the Texas Health Maintenance Organization Act, §22, which authorizes the board to promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Act.

§11.803. Investments, Loans, and Other Assets.

§11.804. Liabilities.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012217 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: November 14, 1990

Expiration date: March 14, 1990

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

• 28 TAC §§11.802-11.807

The State Board of Insurance adopts on an emergency basis an amendment to §11.802 and new §§11.803-11.807, concerning financial requirements for health maintenance organizations (HMOs). The amendment and new sections are necessary to conform this subchapter to legislative revisions to the Texas HMO Act. Adoption of new §11.803 and §11.804 is simultaneous with the repeal of old §11.803 and §11.804. Notification of the repeals appears elsewhere in this issue of the *Texas Register*. An imminent threat to the public welfare requires adoption of the amendment and new sections on an emergency basis in order to sustain the financial integrity of HMOs. The amendment to §11.802 amplifies requirements concerning the deposit provided for in the Texas HMO Act, §13. For the purpose of complying with amended §11.802, the board adopts by reference Deposit Report Form Number 120 and Withdrawal Form Number 121. Copies of the forms have been filed with the Secretary of State's Office, Texas Register Section, and other copies of the forms may be obtained from the Bond and Securities Custodian, State Board of Insurance, Mail Code 014-4, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. New §11.803 establishes requirements governing admitted assets of an HMO, specifically with respect to investment of minimum surplus, investment of excess surplus, valuation, evidence of ownership, and other assets. New §11.804 provides procedures concerning investment management by affiliated companies under certain conditions. New §11.805 sets forth standards of fiduciary responsibility for directors, committee members, officers, or representatives of a domestic HMO who are charged with the duty of handling or investing its funds. New §11.806 replaces and amplifies repealed §11.804, concerning liabilities. New §11.807 provides that dividends may be declared by an HMO at any time from any and all admitted assets in excess of all liabilities, as long as that HMO meets or exceeds its deposit and minimum surplus requirements.

The amendment and new sections are adopted on an emergency basis under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state; under the Texas Health Maintenance Organization Act, §22(a), which authorizes the State Board of Insurance to promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Act; and under the Texas Health Maintenance Organization Act, §22(b), which authorizes the board to promulgate rules prescribing authorized investments for HMOs for all investments for which provision is not otherwise made in the Act.

§11.802. Deposit Requirements.

(a) The deposit must be either in cash, United States Treasury bonds or notes, at the lesser of the fair market value or discounted purchase price, or certificates of deposit. United States Treasury bonds and notes must be obtained through a Texas bank subject to examination by the Board of Governors of the Federal Reserve System. Certificates of deposit must be issued by a Texas bank or savings and loan association [company] insured by the Federal Deposit Insurance Corporation and made payable to the HMO. No certificate of deposit, when taken into consideration with other funds deposited in the same depository, may exceed the greater of:

(1) the limits of federal insurance coverage pertaining to such deposit; or

(2) 10% of the issuing financial institution's net worth, provided that such net worth is in excess of \$25 million.

(b) The HMO may evidence its deposit of cash in the form of paper money of the United States or by a cashier's check drawn on a solvent bank domiciled in Texas or may deposit acceptable evidence of any certificates of deposit or United States Treasury bonds or notes. Acceptable evidence to be deposited shall constitute an issued certificate if any, and a pledge of the security, described therein, to the State Board of Insurance, executed by the appropriate officers of both the HMO and the bank or savings and loan association. In addition to describing the form of the security the pledge must also disclose the terms of that security. The pledge shall also provide that said pledge will continue to be in force for any renewal or roll-over of funds from the original security pledged into any succeeding security, but any such renewal or roll-over of funds shall be in the same form as the original security.

(c)(b) The procedures described in this subsection shall be followed with respect to an HMO'S [Arrangements for the] initial deposit [must be documented during the public hearing prior to the issuance of a certificate of authority].

(1) Upon receiving notification of the commissioner's hearing on the ap-

plication for a certificate of authority to operate as an HMO, the HMO shall submit cash or evidence of cash or securities, as described in subsection (b) of this section with two completed originals of the Deposit Report Form Number 120, which the board adopts and incorporates herein by reference, which must be delivered to the bond and securities custodian for the State Board of Insurance. This form is published by the State Board of Insurance and copies of the form may be obtained from the Bond and Securities Custodian, State Board of Insurance, Mail Code 014-4, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998 [The original deposit must be available for inspection at the hearing, and a copy must be presented as an exhibit].

(2) Evidence of the deposit of the cash or securities, as described in paragraph (1) of this subsection, constituting the original deposit, must be available for inspection at the hearing, and a copy must be presented as an exhibit [Upon receiving notification of the commissioner's approval of the application for a certificate of authority to operate an HMO, before the certificate of authority will be delivered, the deposit and two originals of the required declaration of trust and four originals of the deposit report forms must be delivered to the HMO coordinator for transmittal to the bond custodian].

(d)[(c)] Annually, each HMO must recalculate [add] the amount required to be deposited as specified in the Texas Health Maintenance Organization Act, (the Act), §13, and add any additional amounts required. Additional deposits shall be in the form as described in subsection (b) of this section, and shall be accompanied by four completed originals of the Deposit Report Form Number 120. For any pledged securities maturing that are to be renewed or funds rolled over to a like security, the HMO must submit within 10 days of the new issue date a letter notifying the bond custodian of the State Board of Insurance the new terms of the security. Said letter must be accompanied by four original completed Withdrawal Forms Number 121, which the board adopts and incorporates herein by reference, and four original completed Deposit Forms Number 120. Withdrawal Form Number 121 is published by the State Board of Insurance, and copies of the form may be obtained from the Bond and Securities Custodian, State Board of Insurance, Mail Code 014-4, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. For any HMO wishing to replace cash, cashier's checks, or a pledge with another acceptable deposit the HMO must submit the new deposit in the form of cash, cashier's check, or a pledge, as previously described, with four completed original Withdrawal Forms Number 121 and four completed original Deposit Forms Number 120 to the bond

custodian of the State Board of Insurance. Upon receipt and acceptance of the new deposit, all cash or cashier's checks withdrawn shall be released to the HMO, and the commissioner or his designated representative shall execute a release of any pledge to be withdrawn and return same to the HMO. If any deposit is to be released without substitution, such request for release must be accompanied by four completed original Withdrawal Forms Number 121. If the commissioner orders such release, cash or cashier's check requested released shall be returned to the HMO, and the commissioner or his designated representative shall execute a release of any pledge, so requested and approved, and return same to the HMO [to the deposit. For the purpose of calculating this amount, collected premium shall include all premiums actually received by the HMO during the previous calendar year, regardless of the period covered by such premiums].

(e)[(d)] If an HMO wishes to request a waiver of all or part of the requirements of the Act, §13(b) and (c) [§13(a)-(c)], as permitted by the Act, §13(f) [§13(d)], it must present the request to the commissioner no less than 60 days prior to the deposit due date. Such request must provide adequate information to justify the request, including at least the following:

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

(f)[(e)] An HMO for which additional deposits have been waived may request the return of all or part of the amount previously deposited. Such request must include adequate documentation to justify the request.

(g)[(f)] Whenever conditions upon which a waiver was granted change such that the HMO is no longer able to qualify for the waiver, the HMO must submit a deposit adequate to comply with the requirements of the Act, §13. Failure to present such deposit within 30 days of the date of the commissioner's order withdrawing approval of the waiver of the deposit will be considered grounds for suspension or revocation of the HMO's certificate of authority.

(h)[(g)] All income from the deposit belongs to the HMO.

§11.803. *Investments, Loans, and Other Assets.* The admitted assets of a domestic and a foreign HMO must comply with the provisions of this section.

(1) Investment of minimum surplus. A health maintenance organization must maintain assets in an amount equivalent to its required minimum surplus in accordance with the Texas Health Maintenance Organization Act, §13, in the form of:

(A) cash and demand deposits, which cash may be in the form of legal

tender of the United States of America, demand deposits, or savings or time deposits, including certificates of savings and certificates of deposit, of the type that are federally insured in solvent banks and savings and loan associations and branches thereof, which are organized under the laws of the United States of America or under the laws of any state of the United States of America, provided that the amount of the total deposit in any one bank, savings and loan association, or credit union does not exceed the greater of:

(i) the amount of federal deposit insurance coverage pertaining to such deposit; or

(ii) 10% of the issuing financial institution's net worth, provided that such net worth is in excess of \$25 million;

(B) United States government bonds, notes, bills, and evidences of indebtedness or obligations issued by the United States Treasury, at the fair market value or discounted purchase price, whichever is less;

(C) securities and other direct obligations issued by any agency or instrumentality of the United States of America guaranteed by the full faith and credit of the United States of America;

(D) loans to, or purchases of securities from, a solvent bank which is a member of the Federal Deposit Insurance Corporation under an agreement (commonly called repurchase agreement) which provides for the purchase by the HMO of securities and which agreement matures in 90 days or less and provides for the repurchase by such bank of the same or similar securities purchased by the HMO, provided that:

(i) such loan collateral or securities are direct obligations of the United States of America or an agency or instrumentality of the United States of America or are obligations for the payment of money guaranteed by the full faith and credit of the United States of America; and

(ii) the total market value of such securities shall equal or exceed the amount of such loan or purchase when the loan or purchase is made;

(E) State of Texas bonds; or

(F) shares of mutual funds with at least \$1 million of net assets, doing business under the Investment Company Act of 1940 (15 United States Code, §80a-1, et. seq.), provided that such mutual funds invest solely in securities which are direct obligations of the United States of America or of any agency or instrumentality of the United States of America and that all such

investments are guaranteed by the full faith and credit of the United States of America.

(2) Investments of excess surplus. An HMO may invest its excess surplus only in the following:

(A) any investments allowed in subsection (1) of this section;

(B) direct general obligations of any state of the United States of America for the payment of money, or obligations for the payment of money, to the extent guaranteed or insured as to the payment of principal and interest by any state of the United States of America, provided:

(i) such state has the power to levy taxes for the prompt payment of the principal and interest of such obligations; and

(ii) such state shall not be in default in the payment of principal or interest on any of its direct, guaranteed, or insured general obligations at the date of such investment;

(C) bonds, interest-bearing warrants, or other obligations issued by authority of law by any county, city, town, school district, or other municipality or political subdivision which is now or hereafter may be construed or organized under the laws of any state in the United States of America and which is authorized to issue such bonds, warrants, or other obligations under the constitution and laws of the state in which it is situated, provided:

(i) legal provision has been made by a tax to meet said obligations or a special revenue or income to meet the principal and interest payments as they accrue upon such obligations has been appropriated, pledged, or otherwise provided; and

(ii) such county, city, town, school district, or other municipality or political subdivision shall not be in default in the payment of principal or interest on any of its obligations at the date of such investment;

(D) bonds, interest-bearing warrants, or other obligations issued by authority of law by any educational institution which is now or hereafter may be construed or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the constitution and laws of the state in which it is situated, provided:

(i) legal provision has been made by a tax to meet said obligations or a special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged, or otherwise provided; and

(ii) such educational institution shall not be in default in the payment of principal or interest on any of its obligations at the date of such investment;

(E) investments issued by insurers or HMOs subject to the following conditions.

(i) An HMO may not make an investment under this paragraph in any other HMO or insurer unless such other HMO or insurer is duly licensed to do business in its domestic state and at the time of such investment is in compliance with the minimum capital and surplus requirements then applicable under the provisions of that state's statutes and regulations; provided, however, an HMO may make an investment pursuant to this paragraph in another HMO which has not yet received its certificate of authority to conduct the business of an HMO in its domestic state or which does not yet possess the minimum capital and surplus required by its domestic state if such investment will be sufficient to give the investing HMO at least 50% control in such other HMO, as the term "control" is defined in §11.1201(1) of this title (relating to Definitions).

(ii) An HMO may not invest, except as provided in subparagraphs (F) and (G) of this paragraph, in any other HMO or insurer unless such investment with subsequent investments shall result within 180 days of the first investment in the investing HMO having control in such other HMO or insurer, as the term "control" is defined in §11.1201(1) of this title (relating to Definitions).

(iii) In no event may an HMO invest more than 50% of its excess surplus in any one other HMO or insurer.

(iv) In no event may the total investments made by an HMO in all other HMOs or insurers pursuant to this subparagraph exceed 75% of the investing HMO'S excess surplus as defined in §11.2 of this title (relating to Definitions).

(v) The restrictions of clauses (iii) and (iv) of this subparagraph shall not apply if the HMO is purchasing 100% of the stock of another HMO for the purpose of merger, which is anticipated to take place no later than three months from the purchase date, unless said period is extended by the commissioner of insurance, and the resulting assets of the surviving HMO meet the requirements set forth in this subchapter within three months after said merger, unless said period of time is extended by the commissioner of insurance.

(vi) The commissioner of insurance may require to be sold any investment which would otherwise be authorized under the provisions of this section if the commissioner finds that such investment would cause the investing HMO to operate in a condition which is hazardous to its enrollees, creditors, or the general public.

(F) bonds, debentures, bills of exchange, commercial notes, or any other bills and obligations of any corporation incorporated under the laws of any state of the United States of America or of the United States of America, which issuing corporation has an investment grade rating according to Standard and Poors or Moody's;

(G) stocks issued by any business corporation incorporated under the laws of the United States of America or of any state of the United States, provided:

(i) the corporation is solvent, with a net worth of at least \$1 million;

(ii) if the corporation is a dividend paying corporation, no cumulative dividends are in arrears;

(iii) the restrictions of clauses (i) and (ii) of this subparagraph shall not apply if the corporation of which the HMO wishes to purchase the stock is, or is to be, a contracted provider of services;

(H) shares of mutual funds doing business under the Investment Company Act of 1940 (15 United States Code, §80a-1, et seq.) and shares in real estate investment trusts as defined in the Internal Revenue Code of 1954 (25 United States Code §856), provided that such mutual funds and real estate investment trusts must be solvent with at least \$1 million of net assets as of the date of its latest annual, or more recent, certified audited financial statement;

(I) loans by an HMO that are secured by valid first liens on improved real estate, provided that:

(i) there is a title insurance policy or attorney's opinion that the borrower owns the real estate;

(ii) there is an appraisal of the real estate and the loan does not exceed 75% of such appraised value;

(iii) there is an executed note evidencing the loan;

(iv) there is a deed of trust; and

(v) if any part of the value of buildings is included in the value of the real estate:

(I) each such building is insured against casualty loss in a company authorized to do business in Texas or in the state in which the real estate is located;

(II) the insurance policy is made payable to the HMO and is in an amount equal to at least 50% of the value of such building, provided that such

insurance coverage need not exceed the outstanding balance owed to the HMO when the outstanding balance falls below 50% of the value of such building; and

(III) the commissioner has the right to obtain his own appraisal, at the HMO's expense, of real estate securing any loan;

(J) loans to individuals secured by collateral, specified in subsection (1) and subparagraphs (A)-(D) of this section, but the amount loaned may not exceed the value of the securities held as collateral;

(K) loans, without limit, whether secured or unsecured, to medical and other health care providers under contract with the HMO for the provision of health care services, but in no event shall the value of any such loan or loans made under this paragraph exceed the maker's ability to repay the loan or loans; the maker's ability to repay the loan or loans shall be determined by allowing only assets that an HMO may hold to be considered toward determining any excess of assets over all liabilities of the maker;

(L) real estate acquired by way of security for loans previously contracted or for moneys due; all such real property not qualifying under any other provisions of this section shall be sold and disposed of within five years after the HMO has acquired title to same unless the time for disposal is extended by the commissioner;

(M) investments in improved, income-producing real estate, the value of which real estate and improvements shall be depreciated cost or market value as determined by the Insurance Code, Article 1.15, §2;

(N) additional investments which are not otherwise specified by this section, provided:

(i) the amount of any one such investment shall not exceed 10% of the excess surplus of the HMO; and

(ii) the total amount of investments authorized by this paragraph shall not exceed the lesser of the HMO's net worth or 50 of the HMO'S excess surplus.

(3) Valuation. Except where elsewhere specifically provided, investments and loans are valued in accordance with the National Association of Insurance Commissioners' Valuation Standards.

(4) Evidence of ownership. A domestic HMO may own certificated and uncertificated securities as evidenced by book entry of banks and securities brokerage firms limited as follows.

(A) Banks must be members of the Federal Deposit Insurance Corporation.

(B) Securities brokerage firms are incorporated securities brokers and dealers that:

(i) are subject to the regulations of the Securities and Exchange Commission of the United States of America;

(ii) are members of the Securities Investor Protection Corporation; and

(iii) have a tangible net worth of not less than \$100 million.

(C) Amounts invested in uncertificated securities through a securities brokerage firm may not exceed that amount of insurance protection provided by the Securities Investor Protection Corporation except that additional amounts may be invested whenever a securities brokerage firm has in effect additional coverage through an excess securities bond issued by an insurance company licensed in Texas and having a statutory net worth of at least 30 times the face amount of the excess securities bond, but in no event having a statutory net worth of less than \$100 million according to its last filed annual statement, and then the limit on the amount that may be invested in uncertificated securities through one securities brokerage firm shall be extended to the total amount covered by the Securities Investor Protection Corporation and the excess securities bond, combined. The HMO shall be responsible for maintaining in its files a copy of the excess securities bond with a letter or copy of a letter furnished by its securities brokerage firm from the insurance company verifying the date through which premium is paid that the excess securities bond is in effect. The letter shall also reflect the excess bond number, face amount, company, and address of insuring company and the name and title of person signing the letter. Whenever the date is exceeded, the HMO shall be responsible for obtaining a similar letter updating the information. Certificated and uncertificated securities may be evidenced by transaction records such as receipts, invoices, and statements issued by banks and securities brokerage firms evidencing that the records of the bank or securities brokerage firm reflect the HMO's or its nominee's ownership of said securities. In addition, certificated securities shall be maintained in the possession of the HMO as its nominee, subject to obtaining any required approval under the Insurance Code, Article 1.28, if located outside the State of Texas, and registered securities shall be in the name of the HMO or its nominee. An HMO may designate a depository where certificated securities are to be held, provided access to said

securities is under the control of officers and employees of the HMO or its nominee as designated by the HMO's board of directors. Certificated securities purchased in transit from the vendor need not be in the HMO's or nominee's possession within a period of 45 days from the purchase date. Certificated securities in transit for the purpose of sale within 45 days of the shipping date also are exempted from the requirement that they be in the possession of the HMO or its nominee.

(5) Other assets. An HMO may have assets beyond those required to be held for its minimum surplus which are either necessary for its operations or invested as permitted by this section. Assets an HMO may find necessary in its operations include, but are not limited to, the following:

(A) uncollected premiums or subscriptions with an adequate provision for uncollectible premiums or subscriptions;

(B) advances to medical, health care, and other service providers under contract with the HMO; the amount advanced may not exceed the amount expected to be payable to the provider under contract for services to be rendered, provided that no termination of the contract may take place prior to the end of the period for which advances were paid;

(C) equipment, vehicles, furniture, office equipment, and other labor saving devices used both directly and indirectly for the provision of medical services and the administration of the HMO, provided a detailed inventory is maintained with each item marked by an identifying number and a proof of cost is maintained, the items being required to be valued at depreciated costs, depreciation being based on a method permitted in accordance with generally accepted accounting principles;

(D) inventories of necessary supplies, but it shall be the duty of the HMO to sufficiently prove the value of such inventories; and

(E) real estate and leasehold estates, including buildings and improvements, and leasehold improvements on rented space, for the accommodation of the HMO's current or expected business operations used in the provision or support of health care services, including space for rent to any health care provider under contract with the HMO which property shall be used in the provision of health care services to members of the HMO by that provider.

§11.804. Investment Management By Affiliate Companies. Subject to compliance with the provisions of the HMO Act, as

amended, nothing in this section shall prevent a domestic HMO, which is a member of an HMO holding company system with assets in an aggregate amount in excess of \$1 billion and a tangible net worth of at least \$100 million and having affiliates licensed in this state, from authorizing an affiliated corporation, which, if other than the ultimate parent holding company, is solvent with at least \$10 million tangible net worth and its performance and obligations under a written agreement with the HMO is guaranteed by the ultimate holding company, to invest, hold, and administer as agent or nominee on behalf of such domestic HMO those bonds, notes, or other evidences of indebtedness and repurchase agreements that are authorized and permissible investments under the HMO Act and rules promulgated thereunder, and which mature within one year of the date of acquisition thereof; provided that such securities are invested, held, and administered pursuant to a written agreement authorized by the board of directors of the HMO or an authorized committee thereof, and which is submitted to the commissioner for prior approval, such approval to be based upon satisfactory evidence that such agreement will facilitate the operations of the domestic HMO and will not unreasonably diminish the service to or protection of the domestic HMO'S enrollees within this state. The agreement must comply with the provisions of paragraphs (1)-(8) of this section.

(1) The affiliate shall specify in which office location it shall maintain records adequate to identify and verify the securities (or proportionate interest therein) belonging to the HMO organization.

(2) The affiliate shall allow the commissioner or the commissioner's designee to examine all records relating to those securities held subject to the agreement and shall agree to furnish these records at the principal office of the HMO within 10 business days of a request by the commissioner of insurance or any one of his commissioned examiners.

(3) The HMO may authorize the affiliate to:

(A) hold the securities of the HMO in bulk, in certificates issued in the name of the affiliate or its nominee, and to commingle them with securities owned by other affiliates of the affiliate;

(B) provide for such securities to be held by a custodian, including the custodian of securities of the affiliate, or in a clearing corporation or the Federal Reserve Book Entry System as provided in this subchapter; and

(C) purchase, sell, or otherwise dispose of the securities in accordance with instructions received from the HMO.

(4) The HMO shall report annually, if required by the commissioner, to the State Board of Insurance:

(A) all investments with the affiliate pursuant to this subsection;

(B) the market value of all securities held by the affiliate on behalf of the HMO as of December 31 of the year next preceding (or other date as the commissioner may require); and

(C) the financial condition of the affiliate which may include, at the commissioner's discretion, balance sheets, income statements, and supporting schedules with an opinion as to those financial statements by an independent certified public accountant for the most recent fiscal year.

(5) All of such investments and transactions between or among affiliates and the HMO must otherwise comply with all other applicable provisions of the HMO Act, as amended, or applicable rules adopted thereunder by the State Board of Insurance.

(6) If the HMO or the affiliate does not comply with the HMO Act, as amended, and this chapter promulgated thereunder, or does not comply with the written agreement governing such investing, holding, and administering of securities, then the commissioner's approval will be withdrawn after reasonable notice and ample opportunity to cure the noncompliance, and any further desire to continue such arrangement must be submitted for approval.

(7) At the instance of withdrawal of approval of the agreement, the HMO shall undertake to obtain, and the affiliated corporation shall undertake to return, those investments or funds resulting from the sale or maturity of those investments of which the affiliated corporation invested, held, and administered on behalf of the HMO and which return shall be accomplished within 90 days unless:

(A) the commissioner determines that such period of time creates a hazard to the public, in which case the commissioner may designate that the period may not exceed 30 days from the date of determination; or

(B) the commissioner may extend the period of time in regards to specific investments upon request by the HMO and affiliated corporation, but in no event to exceed one year from the date of the withdrawal of approval.

(8) As used herein, the term "affiliated corporation" means a corporation or other legal entity:

(A) that is organized under the laws of one of the states of the United

States of America or of the District of Columbia; and

(B) that is a wholly-owned subsidiary of a domestic HMO; is under common control with such HMO, such that the affiliated corporation and the HMO are wholly owned subsidiaries, either direct or indirect of a controlling corporation; or is the corporation that wholly owns, directly or indirectly, the HMO.

§11.805. Fiduciary Responsibility. Any director, member of a committee, officer, or any representative of a domestic HMO, who is charged with the duty of handling or investing its funds, shall not intentionally:

(1) deposit or invest such funds, except in the corporate name of said HMO or in the name of nominee of said HMO as may be allowed elsewhere in this subchapter; or

(2) take or receive to his own use any fee, brokerage, or commission, on account of a loan made by or on behalf of such HMO, except reasonable interest may be received on amounts loaned to the HMO.

§11.806. Liabilities.

(a) Each HMO must establish and maintain records identifying and supporting each and every liability the HMO incurs. A liability shall be incurred from the date a service was performed, a product was delivered, or the title was transferred, or a contractual obligation entered into for an amount that is specified and unconditionally owed. Each HMO must segregate its liabilities in accordance to whether a liability is classified as "covered" or "uncovered." Agreements to loan money or to make future capital or surplus contributions do not, in themselves, cause liabilities to be covered. Any guarantee of future contributions to surplus which are directed and based on the payment of a debt will allow that debt to be reflected as a covered liability. A liability, for which provision is made other than by the assets of the HMO may qualify as a covered liability if the amount owed:

(1) is based on a provider contract with a hold-harmless clause as provided in §11.1102 of this title (relating to Hold-Harmless Clause)

(2) is subordinated in writing to the uncovered health care liabilities of the HMO; or

(3) is unconditionally guaranteed by a sponsoring organization which has a tangible net worth of at least \$5 million in excess of all amounts that sponsoring organization has guaranteed.

(b) Liabilities shall include, but are not limited to, the following:

(1) gross premiums received in payment for all or any part of medical and

other health care services to be provided by the HMO subsequent to that financial reporting period (unearned premiums);

(2) the present amount due under any promissory note or other obligation evidencing amounts owed by the HMO without any adjustment for unrealized gains or losses due to an assumption of a loan or note payable at interest rates different from the prevailing rate at the time of assumption;

(3) capital leases in an amount equal to the value of the admitted assets hypothecated by the lease or the present value of the total amounts owed under the remaining term of the lease in accordance with generally accepted accounting principles; in determining the present value of the lease payments, the rate of interest should be equivalent to the rate of interest on

United States of America Treasury Notes as of December 31st of the preceding calendar year; and

(4) incurred claim liabilities.

(c) An HMO may cede by contract any part of its claim liability as set forth in subsection (b)(4) of this section to a physician, physician association, or other provider of health care services. A claim liability is considered ceded to a physician, physician association, or provider when that physician, physician association, or provider, in consideration for a compensation by means of a capitation, percentage of premium, or some other method other than fee for service, assumes the risk of paying other physicians and/or other providers for services they render.

§11.807. Dividends. Dividends may be declared by an HMO at any time from any and all admitted assets in excess of all liabilities, as long as that HMO meets or exceeds its deposit and minimum surplus requirements.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012218

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 14, 1990

Expiration date: March 14, 1991

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

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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 I. Texas Department of Agriculture

Chapter 1. General Practice and Procedure

• 4 TAC §§1.1-1.33

The Texas Department of Agriculture (the department) proposes the repeal of §§1.1-1.33, concerning general practice and procedure. The sections are repealed to that the department may adopt new rules of practice and procedure which will be more efficient and will be consistent with the requirements of the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

David Bolduc, deputy general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Bolduc also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a more efficient and uniform system of processing of administrative proceedings filed before the department and license applications filed with the agency. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

The repeals are proposed under Texas Civil Statutes, Article 6252-13a, which provide the Texas Department of Agriculture with the authority to adopt rules of practice setting forth the nature and requirement of all formal and informal administrative procedures available; the Texas Agriculture Code, §12.001 and §12.006, which gives the department the authority to adopt rules necessary to the administration of the Texas Agriculture Code; and Texas Civil Statutes, Article 6252-13(c) and (d), which provide the department with the authority to issue guidelines on the eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses.

§1.1. Definitions.

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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 19, 1990.

TRD-9012362

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest possible date of adoption: December 24, 1990

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

◆ ◆ ◆ • 4 TAC §§1.1-1.30

The Texas Department of Agriculture (the department) proposes new §§1.1-1.30, concerning general rules of practice and procedure. The new sections are proposed in order to establish uniform and efficient procedures for the conduct of administrative proceedings before the agency, and for licensing by the agency. The new sections supplement procedural requirements of the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), formalize existing procedures, and provide special provisions regarding the eligibility and process for obtaining licensure with the department.

David Bolduc, deputy 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. Bolduc, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient and uniform system for the processing of administrative proceedings filed with the department, and applications for licensure with the department. 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 Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, which provide the Texas Department of Agriculture with the authority to adopt rules of practice setting forth the nature and requirements of all formal and informal administrative procedures available; the Texas Agriculture Code, §12.001 and §12.006, which gives the department the authority to adopt rules necessary to the administration of the Texas Agriculture Code; and Texas Civil Statutes, Article 6252-13(c) and (d), which provide the department with the authority to issue guidelines on the eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses.

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

Act—Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Applicant—Any person who applies for or is granted a license.

Code—The Texas Agriculture Code.

Commissioner—The Commissioner of Agriculture of the State of Texas or the commissioner's designee.

Complainant—Any party who has filed a complaint with the department against any party whose activities are subject to the jurisdiction of the department.

Contested Case—Unless otherwise provided herein, the meaning given contested case in the Act, §3.

Department—Texas Department of Agriculture.

Hearing examiner—The commissioner or his designee who shall be assigned to conduct a hearing before the department.

Intervenor—Any party in interest or other person with a justiciable or administratively cognizable interest in a pending proceeding before the department who petitions the commissioner for permission to be received as a party to such proceeding.

License—Unless otherwise provided herein, the meaning given license in the Act, §3.

Licensing—Unless otherwise provided herein, the meaning given licensing in the Act, §3.

Party—Unless otherwise provided herein, the meaning given party in the Act, §3.

Party in interest—Any person who, in the determination of the hearing examiner,

is actually and substantially interested in the subject matter of a proceeding before the department as distinguished from one who has only a nominal, formal, or technical interest in or connection with such proceeding.

Person—Unless otherwise provided herein, the meaning given person in the Act, §3.

Petitioner—Any person who has by written petition applied for or sought an available remedy from the department.

Pleading—Any written petition, complaint, request for discovery, response to a request for discovery, protest, answer, motion, or other written instrument filed with the department with respect to a contested case.

Respondent—A person against whom any complaint or proceeding has been filed before the department.

Rule—Unless otherwise provided herein, the meaning given rule in the Act, §3.

Texas Register—The official publication of the Secretary of State's Office created by the Act, §6.

T.R.C.P.—The Texas Rules of Civil Procedure.

T.R.C.E.—The Texas Rules of Civil Evidence.

§1.2. Purpose. The purpose of these rules is to provide for a simple and efficient system of procedure, by establishing uniform standards of practice and procedure for actions before the department, thereby encouraging public participation and notice of agency actions. The department's rules are designed to supplement procedures established by the Administrative Procedure and Texas Register Act, or other applicable statute, and therefore any statutory procedure not specifically included in Chapter 1 of this title (relating to General Practice and Procedure), shall be applicable to practice before the department. These rules shall be liberally construed, with a view towards the purpose for which they were adopted.

§1.3. Scope And Construction Of Rules.

(a) These rules shall govern the procedure for the institution, conduct, and determination of all causes, licensing, and proceedings before the department, as well as the procedure for the adoption of all rules promulgated by the department. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, authority, or the substantive rights of any person or the department.

(b) When references are made to the Administrative Procedure and Texas Register Act (the Act), the words "agency," "an agency," or "the agency" used therein shall be taken to mean the department. When references are made to the Texas Rules of Civil Procedure, or the Texas

Rules of Civil Evidence, the word "court" used therein shall be taken to mean the department and the word "clerk" shall mean the hearings administrator. Any reference to provisions of the Act or rules shall mean the provision cited as currently in force or as it shall be hereafter amended.

§1.4. Procedure for Adoption of Rules.

(a) All department rules shall be promulgated in accordance with the provisions of the Administrative Procedure and Texas Register Act (the Act).

(b) All comments concerning a proposed rule submitted to the department pursuant to the provisions of the Act, §5, shall:

(1) clearly identify the party or parties wishing the comment to be registered with the department;

(2) concisely address the proposed rule(s) upon which comment is made;

(3) be filed with the commissioner no later than 30 days from the date the proposed rule is published in the *Texas Register*; and

(4) contain the party's name, mailing address, and telephone number.

(c) These rules shall be applied in the absence of other rules to the contrary promulgated by any board, commission, or committee, where such board, commission, or committee is expressly authorized to adopt such rules under the Texas Agriculture Code, and insofar as may be applicable and practicable.

(d) Any interested person may petition the department for the adoption of a proposed rule. Such petition shall:

(1) be in writing;

(2) be addressed to the commissioner and dated;

(3) give a brief explanation of the proposed rule;

(4) set out the precise text of the proposed rule;

(5) give the reasons or policy for the proposed rule;

(6) give the statutory or other authority for the proposed rule;

(7) give applicable fiscal information concerning the rule's impact upon state and local government, if adopted, separately stated for the first five years of the rules operation;

(8) give the public benefit to be expected from the proposed rule in the first five years of its operation;

(9) give the probable economic cost to persons required to comply with the rule during the first five years of its operation;

(10) contain a request that the rule be adopted; and

(11) be signed by the petitioner with his name, mailing address, and telephone number set out thereunder.

§1.5. Filing And Service Of Documents.

(a) All pleadings relating to any contested proceeding pending or to be instituted before the department shall be filed with the department's hearings administra-

tor. They shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or applicable rules.

(b) A copy of any pleading filed by any party in any proceeding subsequent to the institution thereof shall be filed and served on all other parties not less than five days before the time specified for the hearing and as provided in the Texas Rules of Civil Procedure, Rule 21.

(c) The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the commissioner, striking the protest, reply, answer, motion, or other pleading from the record.

(d) A certificate by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection.

"I hereby certify that I have this
_____ day of _____,
19____, served copies of the
foregoing pleading upon all other
parties to this proceeding, by
(here state the manner of service).

"Signature."

§1.6. Computation And Enlargement Of Time. Unless otherwise provided by statute, time periods provided for in these rules shall be computed and enlarged as provided in the Texas Rules of Civil Procedure, Rules 4 and 5.

§1.7. Agreements Between Parties. No agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceedings before the department shall be enforced unless it complies with the provisions of the Texas Rules of Civil Procedure, Rule 11. This rule does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by Chapter 1 of this title (relating to General Practice and Procedure), unless precluded by law.

§1.8. Published Service In Nonrulemaking Proceedings.

(a) Where published service of notice is prescribed by statute or otherwise, it shall be made by incorporating it in a printed memorandum of notices circulated by the department to those persons entitled

by law to receive such notices and published in the *Texas Register*.

(b) All published service of notice for nonrulemaking proceedings before the department shall contain:

(1) the name and address of the applicant, petitioner, or other party filing such notice;

(2) the name and address of the party's attorney or other representative, if any;

(3) the docket number of the proceeding, if any;

(4) a statement of the time, place, and nature of the proceeding;

(5) a statement of the legal authority and jurisdiction under which the proceeding is being held;

(6) a reference to the particular section of the statute or rules involved;

(7) a concise statement of the action sought in the proceeding;

(8) a statement that any person who desires to appear in such proceeding must file notice of protest with the commis-

sioner within 15 days after the publication of said notice in the *Texas Register*; and

(9) all other matters required by law.

(c) The date of publication of all such notices shall be the date on which they were published.

(d) If no notice of protest has been received by the commissioner within 15 days after publication of notice pursuant to the terms of this section, that fact shall operate to assign such proceeding to the uncontested docket.

(e) Nothing in this section shall be construed as to allow published service of notice for any proceeding in which personal service of notice is required by law.

§1.9. Effect Of Signing Of Pleadings, Sanctions. The signatures of parties, representatives, or attorneys shall constitute a certificate as provided in the Texas Rules of Civil Procedure, Rule 13, and sanctions may be imposed for violations of that rule as provided therein.

§1.10. Parties.

(a) Parties to proceedings before the department shall be classified as applicants, petitioners, complainants, respondents, or intervenors. Parties to a proceeding shall have the right to present a direct case, cross-examine all witnesses, file requests for information, make legal arguments, and otherwise fully participate as a party to the proceeding.

(b) Regardless of errors as to the designation of parties in their pleadings, the parties shall be accorded their true status in a department proceeding.

(c) Any party in interest may appear in any proceeding before the department at the commissioner's discretion. All appearances shall be subject to a motion to strike upon a showing that the party has no justiciable or administratively cognizable interest in the proceeding. A petition to intervene in a proceeding before the department will be denied if the inclusion of the intervenor in the proceeding would cause unjustifiable delay or substantially change the nature of the proceeding.

(d) Any party may appear pro se, by a licensed attorney, or by authorized representative.

(e) Any notice, order, decision, or other communication required by statute or otherwise to be directed at a party to a proceeding before the department may be served upon that party's attorney of record or authorized representative with equal effect. A party represented by more than one attorney or representative in a matter before the department may be required by the commissioner to designate a lead counsel or representative who shall have control in the management of the matter, but all attorneys or representatives for the party may take part in the proceeding in an orderly manner.

(f) A person appearing in a representative capacity may be required to prove his authority.

(g) Withdrawals of attorneys and representatives shall be governed by the provisions of the Texas Rules of Civil Procedure, Rule 10.

§1.11. Pleadings.

(a) All pleadings shall be typewritten or printed, double-spaced, upon paper 8 1/2 inches wide and 11 inches long with an inside margin at least one inch wide, and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Pleadings shall state their object, and shall contain a concise statement of the facts in support of the same, and shall be signed by the party filing same or his authorized representative.

(c) The original of every pleading shall be signed in ink by the party filing it,

or by such party's authorized representative. Pleadings shall contain the name, mailing address, and telephone number of the party filing the pleading or the name, mailing address, telephone number, and business address of the representative.

(d) All official forms, if any, for use in certain department proceedings are available upon request from the department. Such forms shall be printed when appropriate, under the supervision of the commissioner. All pleadings which are the subject of an official form shall contain the information, allegations, and other matter designated in such official form and shall conform substantially to the form thereof.

(e) All pleadings for which no official form is prescribed shall contain:

(1) the name, mailing address, and telephone number of the party seeking to bring about or prevent action by the department;

(2) the names of all other known parties in interest;

(3) a concise statement of the facts relied upon by the pleader;

(4) a prayer stating the type of relief, action, or order desired by the pleader;

(5) any other matter required by statute or otherwise; and

(6) a certificate of service, as required by §1.5 of this title (relating to Filing of Documents).

(f) Any pleading filed pursuant to a proceeding before the department may be amended up to seven days prior to the hearing thereon if such amendment does not operate to surprise or otherwise prejudice another party to such proceeding or broaden the scope thereof. Amendments filed after such time may be allowed at the discretion of the hearing examiner.

(g) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the department.

§1.12. *Motions.* Any motion relating to a pending proceeding shall, unless made during a hearing, be written, set forth the relief or order sought and the specific reasons and grounds therefor, and be timely filed with the hearings administrator. A reply to such motion may be filed by any other party to the proceeding. If based upon matters which do not appear of record, the motion or reply shall be supported by affidavit. When necessary in the judgment of the commissioner or the hearing examiner, a hearing may be held to consider any motion.

§1.13. Docketing And Numbering Of Cases; Filing of Answer.

(a) Upon receipt of a pleading which is intended to institute a proceeding

before the department and complies with Chapter 1 of this title (relating to General Practice and Procedure) as to form and content, the hearings administrator shall docket the same as a pending proceeding, number it in accordance with any established docket numbering system of the department, assign a hearing examiner to the action, and serve notice to parties in accordance with §1.5 of this title (relating to Filing and Service of Documents). Such notice shall be in the form of a citation and shall include notification of receipt of the pleading and of the date for filing of an answer to the pleading.

(b) An answer filed by a party in response to an original petition filed to initiate a proceeding before the department shall be filed within 30 days from the date of receipt of service of citation from the department.

§1.14. Licenses.

(a) When licensing is required by statute to be preceded by notice and opportunity for a hearing, the action shall be administered as a contested case as provided for in the Administrative Procedure and Texas Register Act (the Act) and this chapter.

(b) For licenses covered by Texas Civil Statutes, Article 6252-13b.1, when licensing is not required by statute to be preceded by notice and opportunity for hearing, the following shall apply.

(1) An applicant for an initial license or renewal of a license shall submit to the department in timely fashion all applications, forms, bonds, tests, data, fees, and other material required by law to precede the issuance of such initial license or renewal license.

(2) The department shall, within 15 days of the receipt of all such submissions, issue a written notice to the applicant which states that the application is complete and accepted or that the application is deficient. If such license is denied, the written notice shall set forth in detail the reasons for the denial and specify what additional information is required.

(3) An applicant may contest the determination made by the department or the department's failure to comply with the time period established in subsection (b)(2) of this section by filing a notice of protest. A notice of protest shall be filed with the commissioner within 15 days of receipt by the applicant of the notice of such determination, or in the case of a contest of the time for processing, within 30 days of the department's receipt of an application.

(4) Notice of protest being timely filed, the application shall be administered as a contested case as provided for in the Act and this chapter.

(5) If notice of protest is not timely filed, such determination shall become final.

(6) In the case of a protest as to the time for processing, if the commissioner determines that the specified time periods for processing have been exceeded and that there is no good cause to exceeding the deadline, the license or permit filing fee shall be reimbursed in full to the applicant.

(7) The term "good cause" as used in this section shall be found if:

(A) the number of permits to be processed exceeds by 15% or more the number of permits processed in the same calendar quarter of the preceding year;

(B) TDA must rely on another public or private entity for all or part of its permit processing, and the delay is caused by the other entity; or

(C) any other conditions exist giving the agency good cause for exceeding the period established for processing a permit: i.e. time delays due to public hearings and related matters.

(8) When a licensee has made a timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been acted upon by the department, except as otherwise provided by applicable statute.

(9) If timely and sufficient application for the renewal of a license is not made, the department may terminate the effectiveness of such license at the end of its stated term without notice or opportunity for a hearing.

(10) Except as provided for by applicable statute, a license may not be revoked, suspended, annulled, or amended, but upon notice to the licensee and an opportunity for a hearing, unless the revocation, suspension, annulment, or amendment is made upon motion of the licensee. Actions for the revocation, suspension, annulment, or amendment of a license shall be administered as a contested case as provided for in the Act and Chapter 1 of this title (relating to General Practice and Procedure).

(c) The commissioner may revoke, suspend, annul, or amend an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or a misdemeanor, if the crime directly relates to the performance of the occupation or activity for which the license is issued and the prior criminal conviction directly affects such person's present fitness to perform such occupation or activity.

(1) In determining whether a criminal conviction directly relates to the performance of a licensed occupation or

activity, the commissioner shall consider the factors listed in Texas Civil Statutes, Article 6252-13C, §4(b).

(2) Those crimes which the department considers as directly related to the performance of a licensed occupation or activity include, but are not limited to:

(A) any felony or misdemeanor of which fraud, dishonesty, or deceit is an essential element;

(B) any criminal violation of the Texas Agriculture Code or predecessor statutes;

(C) any criminal violation of statutes regulating the particular occupation or activity for which licensing is sought; and

(D) any crime involving moral turpitude.

(3) In determining whether a criminal conviction directly affects a person's present ability to perform a licensed occupation or activity, the commissioner shall consider the factors listed in Texas Civil Statutes, Article 6252-13c, §4(C)(1)-(6).

(4) It shall be the responsibility of the applicant, to the extent possible, to secure and provide to the department the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant shall also furnish proof in such form as may be required by the department that he or she has maintained a record of steady employment, has supported his or her dependents, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§1.15. Prehearing Conference.

(a) In an appropriate proceeding, to assist in the disposition of the proceeding without expense or burden to the parties or the department, the hearing examiner may in his discretion, direct the parties, their attorneys, or representative to appear before the hearing examiner for a conference to consider any matter which may be considered under the Texas Rules of Civil Procedure, Rule 166, using the procedures set out therein.

(b) The hearing examiner, in his or her discretion, may order that the conference provided for in these rules be conducted by telephone conference call.

§1.16. Consolidation or Separation of Matters. Consistent with notices required by law, the department may consolidate or sep-

arate matters following the provisions of the Texas Rules of Civil Procedure, Rule 174.

§1.17. Motions For Continuance Or Withdrawal. Motions for continuance or withdrawal regarding matters which have been set for hearing, shall be in writing, shall be filed with the hearings administrator, and shall be served on parties not less than five days prior to the designated date that the matter is to be heard. Such motions shall set forth under oath the specific grounds upon which the movant seeks such action and shall make reference to all prior motions of the same nature filed in the proceeding. The movant shall include a statement that the other party or parties have been contacted and whether they have opposition to it. The movant shall also provide an agreed list of suggested future dates for consideration by the hearings examiner. Except for good cause, failure to comply with the provisions of this section may be construed as lack of diligence on the part of the movant, and at the discretion of the commissioner, may result in the denial of the motion or other requested relief with prejudice to refileing.

§1.18. Hearing Examiners. Every hearing before the department shall be conducted by a hearing examiner, who shall be the commissioner or his designee. The hearing examiner presiding shall have the authority to do the following:

(1) set hearing dates, times, and locations;

(2) convene the hearing at the date, time, and location specified in the notice for such hearing;

(3) establish the jurisdiction of the department concerning the matter under consideration;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate parties and establish the order for presentation of evidence;

(6) administer oaths to all persons presenting testimony;

(7) examine witnesses;

(8) issue subpoenas when required to compel the attendance of witnesses, or the production of papers and documents relating to the hearing;

(9) commission and require the taking of depositions;

(10) insure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing any rights of parties to the proceeding;

(11) conduct hearings in an orderly manner in accordance with the Administrative Procedure and Texas Register Act and Chapter 1 of this title (relating to General Practice and Procedure);

(12) recess any hearing from time to and from place to place; and

(13) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

§1.19. Reporters and Transcript.

(a) All contested case hearings shall be recorded by electronic means. Upon request, any person may be provided a copy of this recording.

(b) Transcripts shall be prepared by the hearings administrator when an order is appealed to district court.

(c) A party may elect to preserve the proceedings by stenographic or electronic means, or by use of a certified shorthand reporter. Such record may be designated as the official record by the hearings administrator upon notice and hearing. The cost of such record shall be borne by the party requesting the same.

(d) Any party wishing to provide an independent means of recording any contested case shall file a motion requesting permission no later than five days before the hearing. The hearings administrator shall grant, deny, or prescribe conditions governing such recordings as justice and hearings decorum may require.

(e) Nothing in this section shall be construed so as to limit the authority of the hearings administrator to control the orderly conduct and decorum of the hearing.

§1.20. Rules Of Evidence. In addition to those provided for in the Administrative Procedure and Texas Register Act, §14, the following rules of evidence will apply to proceedings before the department.

(1) When a large number of similar documents is offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; however, before making this requirement, the hearing examiner shall see that all parties of record or their representatives are given an opportunity to examine the documents from which the abstracts are made.

(2) The prepared testimony of a witness upon direct examination may be incorporated in the record as if read or received as an exhibit, upon the witness' being sworn and identifying same. Copies of the testimony shall be given to all parties to the proceeding. The witness identifying the testimony shall be subject to cross-examination, and the testimony shall be subject to a motion to strike in whole or in part.

(3) When testimony is excluded by ruling of the hearing examiner, the party

offering such testimony shall be permitted to make an offer of proof by dictating it into the record or submitting the substance of the proposed testimony in writing, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself 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.

§1.21. Conduct And Decorum.

(a) Every party, witness, attorney, or other representative shall comport himself in all department proceedings with dignity, courtesy, and respect for the department, the hearing examiner, and all other parties and participants. Attorneys shall observe and practice the standards of ethical behavior prescribed for the profession by the Code of Professional Responsibility.

(b) Upon violation of subsection (a) of this section, any party, witness, attorney, or other representative may be excluded by the hearing examiner from any hearing for such period and upon such conditions as are just, or may be subject to such other just, reasonable, and lawful disciplinary action as the examiner may prescribe.

§1.22. Rules Of Discovery And Sanctions. In addition to the rules of discovery provided in the Administrative Procedure and Texas Register Act, §14 and §14a, the Texas Rules of Civil Procedure, 166b, 167-169, and 200-215 will apply to proceedings before the department. True copies of requests for discovery, responses to such requests, and depositions shall be filed with the hearings administrator.

§1.23. Subpoenas. Subpoenas may be issued by the department, the commissioner, or the hearing examiner as provided by the Administrative Procedure and Texas Register Act.

§1.24. Witness Fees. A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding may be entitled to the following compensation:

(1) mileage and lodging costs in the same amount as is allowed state employees traveling on state business; and

(2) a per day witness fee of not more \$20 for each day or part of a day the person is necessarily present as a witness or a deponent.

§1.25. Filing of Exceptions, Briefs, and Replies.

(a) After the department has issued a proposal for decision, any party of record may, within 15 days after the date of service of such proposal, file exceptions and briefs to the proposal with the hearings administrator. Replies to such exceptions and briefs may be filed with the hearings administrator within 15 days after the date for filing of such exceptions and briefs. Notwithstanding any provision of these rules to the contrary, for purposes of this section, the term "filed" means actually received by the hearings administrator. Any exceptions, briefs, or replies filed shall be directed to the commissioner. A request for extension of time within which to file exceptions, briefs, or replies shall be directed to the commissioner and filed with the hearings office. A copy thereof shall be served on all other parties of record by the party making such request. The commissioner shall promptly notify the parties of the department's action upon the same and shall allow additional time only in extraordinary circumstances where the interests of justice so require. A party may submit, and at the request of the hearings examiner shall submit, proposed findings of fact to be considered by the examiner in the preparation of the proposal for decision.

(b) The points involved in such exceptions, briefs, and replies shall be concisely stated. The evidence in support of each point shall be abstracted or summarized, and/or briefly stated in the form of proposed findings of fact. Complete citations to the page number of the record or exhibit referring to evidence shall be made. The specific purpose for which the evidence is relied upon shall be stated. The argument and authorities shall be organized and directed to each point properly proposed as a finding of fact in a concise and logical manner. Briefs shall contain a table of contents and authorities. Briefs, prior to the issuance of a proposal for decision, may be filed only when requested or permitted by the examiner.

§1.26. Decisions And Orders. A final decision or order issued by the department in a contested case shall comport with all of the requirements of the Administrative Procedure and Texas Register Act, §16.

§1.27. Texas Rules Of Court To Apply. Unless otherwise provided for in the Administrative Procedure and Texas Register Act, or Chapter 1 of this title (relating to General Practice and Procedure), the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence may be applied to govern procedural matters in proceedings before the department where, in the determination of the commissioner, such rules are practicable.

§1.28. Availability and Cost Of Records.

(a) The cost to any person requesting noncertified photographic reproductions of any department records, which records are subject to public examination pursuant to the provisions of the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall be, for readily available information, \$.10 per page if 50 pages or less, and, if over 50 pages \$.85 for the first page copied, and \$.15 for each additional page copied. For information not readily available, the cost shall be \$.70 for the first page and \$.15 for each additional page, plus labor costs incurred in locating, preparing, and providing the information.

(b) The cost of information gathered from the department's automated files has the following three components:

(1) an automated record charge per record of \$.05 per record for the first 1,000 records and \$.01 for each additional record;

(2) a media charge to recover the cost of media which shall be \$10 for each magnetic tape and \$2.00 for each diskette furnished by the department, \$.01 for each page of printout, \$.01 for each pressure-sensitive label, and \$2.00 for each microfiche; and

(3) actual labor costs incurred in locating, preparing, and providing the information, if it is not readily available or requires extra time and effort to produce and/or prepare the documentation.

(c) The cost for requests involving visual media will be \$15 for each 3/4 inch videotape, \$5.00 for each VHS videotape, the actual cost of labor and materials for each photograph or slide, plus labor costs incurred in locating, preparing, and providing the information if it is not readily available.

(d) If the information requested is not covered by the pricing structure provided in subsections (a)-(c) of this section, the cost will be the labor and material cost of providing the information.

(e) The labor costs incurred in locating, preparing, and providing information shall be charged at the following rates:

- (1) program director/supervisor—\$35/hr;
- (2) legal counsel—\$35/hr;
- (3) programmer/analyst—\$35/hr;
- (4) video editor/operator—\$35/hr;
- (5) MIC operations staff—\$20/hr;
- (6) clerical/support staff—\$20/hr.

(f) Any applicable sales tax and postage or delivery costs shall be charged in addition to the costs set out in this section.

(g) Records requested under this section may be examined and/or edited to

exclude material exempted from the Open Records Act or deemed confidential by statute. In the event of such editing, labor costs incurred in editing shall be charged in addition to costs set out in this section.

§1.29. Suspension Of Rules. In any case in which a public emergency or imperative public necessity so requires, the department may suspend the operation of these rules.

§1.30. Effect Of Invalidity Of A Rule. If any provision of any rule contained in this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of any rule are severable.

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

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 19, 1990.

TRD-9012363

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest proposed date of adoption: December 24, 1990

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

◆ ◆ ◆
Chapter 7. Pesticides

• 4 TAC §§7.10, 7.11, 7.16, 7.32

The Texas Department of Agriculture (TDA) proposes amendments to §§7.10, 7.11, 7.16, and 7.32, concerning license requirements for the use of the livestock protection collar. The purpose of the amendments is to integrate the livestock protection collar licensing and recertification program into the general pesticide licensing and recertification program, which will result in the reduction of administrative costs to the agency and a reduction in costs to applicators using the collar. Amendments are also made to conform with changes authorized by the Environmental Protection Agency.

In addition to integration of the livestock protection collar licensing and recertification program into the agency's general pesticide licensing and recertification program, the amendments terminate the reporting requirements of the three-year monitoring program, add monthly reporting requirements, increase the number of agents authorized to distribute the collars, and allow for applicators licensed as commercial, noncommercial, or private applicators, or certified private applicators to be certified in the livestock protection collar category by training and testing in that category.

Murray Walton, predator management and certification/training specialist, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect is an estimated reduction in cost of \$8,000 per year and an estimated loss in revenue of \$5,000 per year. There will be no fiscal implications for local government or for local employment as a result of enforcing or administering the sections.

Mr. Walton also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a savings to the public from a reduction in administrative costs and a more effective and safer use of the livestock protection collar due to the additional training and testing to be required of applicators. The effect on small and large businesses will be a reduction of 50% or more in the cost of licensing their livestock protection collar applicators. The anticipated economic cost to persons who are required to comply with the sections as proposed will be a decrease in cost of at least \$50 per year for the first five years for all applicators wishing to use the collar, except for some private applicators. The cost to private applicators licensing solely for the use of the livestock protective collar would be an increase of \$54 for the first year, a decrease of \$12 in the second year, a decrease of \$50 in the third year, and a decrease of \$12 in the fourth and fifth years.

Comments may be submitted to Susan Rieff, Assistant Commissioner, Agricultural Resources Protection Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The TDA plans to hold five regional public hearings to receive public comment on the proposed amendments in accordance with the Texas Agriculture Code, §76.004. Notice of these hearings will be published in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §76.003, which provides TDA with the authority to regulate the time and conditions of use and purchase and establish recordkeeping requirements for state-limited use pesticides; §76.004, which authorizes TDA to establish rules to carry out Chapter 76; §74.104, which authorizes TDA to adopt rules regarding the manner and method of pesticide application; and §§7.101-103 and 76.105-113, which provides TDA with the authority to establish requirements for the licensing and certification of pesticide applicators.

§7.10. Applicator Recertification.

(a) Each [Except for licenses issued under §7.32 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements), each] commercial, non-commercial, and private applicator must meet certain recertification requirements periodically, including continuing education.

(b)-(p) (No change.)

§7.11. Applicator Certification.

(a) The Texas Department of Agriculture will certify commercial and non-commercial applicators in the following license use categories and subcategories:

(1) Agricultural pest control:

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

(G) animal pest control including:

(i) (No change.)

(ii) fly control; [and]

(H) citrus pest control and ;
[.]

(I) livestock protection collar application.

(2)-(10) (No change.)

(b) The Texas Department of Agriculture will certify commercial and non-commercial livestock protection collar (LPC) applicators upon training and testing on the use of the sodium fluoroacetate (Compound 1080) livestock protection collar in accordance with §7.32 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements), and issue a separate license for the use of the livestock protection collar for livestock predation control].

(c)-(f) (No change.)

§7.16. Private Applicators.

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

(h) Licensed or certified private applicators may [not] certify to purchase or apply the state-limited-use pesticide sodium fluoroacetate (Compound 1080) for livestock predation control in accordance with §7.32 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements).

§7.32. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements.

(a) (No change.)

(b) Definitions. In addition to the definitions set out in the Texas Agriculture Code, §76.001(1981), and §7.1 of this title (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) LPC applicator—A person who has obtained a license from the department as a private, commercial, or noncommercial [certified livestock protection col-

lar] applicator or who has obtained a private applicator certificate and has fulfilled the requirements for [the use of the] livestock protection collar certification as set forth in this section. Private applicators [applicator authorization will not be given by the department for the use of the livestock protection collar. Persons desiring a license] may certify to use the livestock protection collar on property owned, leased, or rented by the person or the person's employer or under the person's general control [should apply for a noncommercial LPC applicator license]. Employees of government agencies who apply collars in administration of official duties or persons that apply collars on their own or employers property may obtain a livestock protection collar certification under a noncommercial [LPC] license. Persons operating a business or employed by a business to apply livestock protection collars on the property of another for hire must obtain livestock protection collar certification under [should apply for] a commercial [LPC] applicator license.

(2) (No change.)

(3) Agent—A representative of a registrant. Each agent must be a licensed pesticide dealer, a licensed private commercial or noncommercial applicator certified in the livestock protection collar subcategory [applicator] and approved by the department to distribute livestock protection collars to approved LPC applicators.

(c) Sale or transfer requirements. Registrants and agents selling or transferring livestock protection collars must meet the following requirements.

(1) (No change.)

(2) Each registrant and agent who sells or transfers livestock protection collars must obtain a license as a private, commercial, or noncommercial [LPC] applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Collars shall be sold or transferred only by registrants or their agents and only to certified livestock protection collar applicators.

(3) (No change.)

(4) Each registrant may designate [have no more than 15] agents and [at any one time. Each registrant] shall file with the department written notice of the name, home address, address of distribution site, and telephone number of each agent. The registrant shall notify the department of any change in this information within 10 days. The department shall notify the registrant in writing if the agent is approved or disapproved.

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

(8) [Registrants and agents may sell or transfer livestock protection collars only to LPC applicators for whom a site review and sales data report has been exe-

cuted for each sale or transfer on a form prescribed by the department.]

(9) Registrants and agents shall report to the department any incident or complaints of misuse involving a livestock protection collar.

(d) Certification [Licensing] of LPC applicators.

(1) A person may obtain certification [an LPC applicator license] as either a private, commercial, or noncommercial applicator. [An LPC applicator license is separate from other pesticide licenses and will require the payment of a separate license fee.]

(2) In order to obtain certification as a licensed [a] commercial LPC applicator [license], a person shall comply with the licensing requirements of §7.13 and §7.14 of this title (relating to Commercial Applicator License and Commercial Applicator Proof of Financial Responsibility), complete livestock protection collar training, pass a test prescribed by the department, and pay the fee prescribed by §7.13 of this title (relating to Commercial Applicator License). The license expiration and renewal requirements of §7.17 of this title (relating to Expiration and Renewal of License), apply to commercial LPC applicators.

(3) In order to obtain certification as a licensed [a] noncommercial LPC applicator [license], a person shall comply with the licensing requirements of §7.15 of this title (relating to Noncommercial Applicator License), complete livestock protection collar training, pass a test prescribed by the department, and submit an application prescribed by the department [along with an initial annual license] and pay the fee prescribed by §7.15 of this title (relating to Noncommercial Applicator License). [of \$50 within 12 months of training. Retraining and retesting will be required if a license is not acquired within 12 months of initial training. Pursuant to §7.12 of this title (relating to Classification of Commercial and Noncommercial Licenses), a testing fee will be collected. No fee will be charged for a license issued to employees of a governmental entity for applying collars as part of their official duties. An annual renewal fee of \$50 shall be paid prior to the time of the annual license renewal on March 1 of each year. Failure to renew a license by the due date will result in the assessment of late fees as required by the Texas Agriculture Code, §12.024. A person who fails to renew within one year of the due date is not eligible to renew a license and must retrain, retest, and reapply.]

(4) In order to obtain certification as a private LPC applicator, a person must possess a valid private applicator certificate or obtain a private applicator license in accordance with §7.16 of this title and (relating to private applica-

tors) and complete the livestock protection collar training program and pass a test prescribed by the department. No testing fee will be collected from private applicators.

(5) All LPC applicators must recertify [every three years] as required by §7.10 of this title (relating to Applicant Recertification). Each LPC applicator is responsible for giving written notice to the department of any change of address. Government employees who hold a current fee exempt noncommercial license must surrender the license within 30 days of termination of government employment and may convert to a fee paid license if the certification is in force by making application to the department within six months of the termination date. Retraining and retesting may be required by the department for any LPC applicator who fails to comply with the use, recordkeeping, or other requirements of the department.

(e) (No change.)

(f) LPC applicator use restrictions. All LPC applicators shall comply with the label, including the use restrictions, when using the livestock protection collar. Copies of the label and applicator record [reporting] forms shall be obtained with the purchase of any collar from a registrant or agent. Additional copies of the label and [reporting] forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(g) Recordkeeping and reporting.

(1) Each registrant shall maintain records for the registrant and all agents on forms prescribed by the department for at least two years which include:

(A) (No change.)

(B) the information on all sales to applicators or agents [required on the department's site review and sales data report in each registrant's records], including:

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

(C) a record of all sales or transfers of collars by a registrant or agent which shall be submitted [One copy of each site review and sales data report that is completed by registrant or an agent shall be submitted by the registrant] to the department monthly.

(2) Each LPC applicator shall maintain [file with the department] records on the use of the collar on forms prescribed by the department [quarterly by the 10th day of January, April, July, and October for each quarter when collars have been issued]. The records shall include:

(A)-(H) (No change.)

(3) Each LPC applicator shall maintain a copy of collar use records [the reports that are required to be submitted to the department] for at least two years.

(4) Each registrant, agent, or LPC applicator shall report accidents involving [a livestock protection collar to the department on forms prescribed by the department within 30 days of the accident. In addition, accidents involving] any suspected or actual poisoning of threatened or endangered species, humans, domestic animals, or nontarget wild animals [must be reported] to the department immediately (within one working day) by telephone.

(h) (No change.)

(i) Instructions to noncertified applicators working under the supervision of a licensed LPC applicator. The licensed LPC applicator shall give appropriate verifiable instructions on the use of the collar to a noncertified person as required by §7.34 of this title (relating to Supervision) before the noncertified person [he/she] may handle the collar [without the direct physical supervision of the LPC applicator]. Licensed commercial LPC applicators must be physically present to supervise use of collars by noncertified applicators. Private applicators possessing a private applicator certificate and certification to apply collars may not supervise noncertified applicators. [At a minimum, such instruction shall include the reading of the label by the noncertified person. To verify that appropriate instructions have been given, the LPC applicator and the noncertified person shall sign and date a copy of the LPC label. The LPC applicator shall maintain the signed and dated label for at least two years after the last date of supervision.]

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 15, 1990.

TRD-9012302

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest proposed date of adoption: December 24, 1990

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



TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Powers of Credit Unions

• 7 TAC §91.402

The Credit Union Commission proposes an amendment to §91.402, concerning the retention of records. The current requirements have become somewhat obsolete and need to be updated to accommodate current statutory and regulatory requirements, as well as new technology available for copying documents. The proposed change will provide greater flexibility in recognizing ongoing changes in retention requirements and should provide some relief to credit unions in the burden of preserving essential records.

John R. Hale, commissioner, has determined that there will not be fiscal implications as a result of enforcing or administering the section.

Mr. Hale, also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that records retention requirements will be updated to meet statutory and regulatory requirements. There will be no effect on small businesses.

The anticipated economic cost to persons who are required to comply with the section as proposed will likely not be greater than presently required.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of Texas Civil Statutes, Article 2461-11.07, which provides the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.402. Records Retention.

(a) General. Except for those records described in subsection (b) of this section the requirement to retain any records under this rule may be satisfied by retention of the original or a copy. Upon expiration of the applicable retention period, the records may be destroyed. Destruction of any records under this rule is permissive and not mandatory or directed. The destruction of any record of a credit union, regardless of how inconsequential it may seem or how old it has become, is a matter that requires careful consideration. Such consideration should include not only the requirements of the department, the Act, and this rule, but other applicable laws, rules, regulations, or government agency directives which expressly, or implicitly im-

pose records retention requirements. As a general rule, no record related to a particular accounting period may be destroyed (unless it is an original replaced by a copy) until the comprehensive annual audit and a supervisory examination by the Credit Union Department have been made for that period. Further consideration toward the destruction of a record will involve whether or not that record may be needed to support the credit union's position in pending, threatened, anticipated, or unanticipated legal actions or proceedings. This necessarily involves potential retention for the minimum period or periods prescribed by applicable statutes of limitations under state and federal law. Accordingly, to be consistent with this rule and the requirements of other applicable law, the board of directors shall approve a written policy authorizing the destruction of specified records on a continuing basis upon expiration of specified retention periods. This policy shall provide a systematic method for destruction of records under a continuing authority in order to eliminate the necessity for the board to give unnecessary repeated consideration to destruction of the same types of records merely because they relate to different accounting periods. The officer or person responsible for destruction of records shall make and retain a listing of such records permanently.

(b) Originals retained. The following records must be retained permanently in their original form:

(1) charter, bylaws, articles of incorporation, and amendments thereto; and

(2) currently effective certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of United States savings bonds.

(c) Permanent records. Records which are significant to the continuing operation of the credit union must be retained permanently. Such records are:

(1) currently effective membership applications, joint membership agreements, payable on death agreements, share draft agreements, signature cards, and any other account agreements;

(2) minutes of meetings of the members and board of directors;

(3) journal and cash record;

(4) general ledger and subsidiary ledgers;

(5) for active accounts, one copy of each individual share and loan ledger or its equivalent;

(6) comprehensive annual audit reports including evidence of account verification; and

(7) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

(d) Retaining records. The following records must be retained until the expiration of five years following the making of the record or the last entry thereon, or the expiration of the applicable statute of limitations, whichever is later:

(1) records related to closed accounts including membership applications, joint membership agreements, payable on death agreements, signature cards, share draft agreements, and any other account agreements;

(2) for an active account, any account agreement which is no longer in effect;

(e) Method of copying. Credit unions must use a copying process which produces a means to retrieve the information in a readable and usable format.

(f) Data processing records. Provisions of this rule apply to records produced by a data processing system. Output reports that substitute for standard conventional records, or that provided the only support for entries in the journal and cash record, should be retained for the minimum period specified in this rule or by the board. As with most other records, retention of the original or a copy of the original satisfies the requirements of this rule.

(g) Records preservation. All state chartered credit unions are required to maintain a records preservation program to identify and store vital records in order that they may be reconstructed in the event the credit union's records are destroyed. Storage of vital records is the responsibility of the board but may be delegated to the responsible persons. A vital records storage center should be established at some location that is far enough from the credit union office to avoid the simultaneous loss of both sets of records in the event of a disaster. Records must be stored every calendar quarter within 30 days following quarter-end at which time records stored for the previous quarter may be destroyed. Stored records may be in any form which can be used to reconstruct the credit union's records. This includes machine copies, microfilm, or any other usable copy. The records to be stored shall be for the most recent month-end and are:

(1) a list of all shares and/or deposits and loan balances for each member's account. Each balance on the list is to be identified by an account name or number. Multiple balances of either shares or loans to one account shall be listed separately;

(2) a financial statement/statement of financial condition which lists all the credit union's assets and liability accounts;

(3) a listing of the credit union's banks, insurance policies and investments. This information may be marked perma-

nent" and updated only when changes are made.

(h) Compliance. Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance so long as the processor meets the minimum requirements of this section. Credit unions that have in-house capabilities shall make the necessary provisions to safeguard the backup of data on a continuing basis.

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 14, 1990.

TRD-9012323

John R. Hale
Commissioner
Credit Union Department

Earliest proposed date of adoption: December 24, 1990

For further information, please call: (512) 837-9236

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter A. Scope; Definitions

• 22 TAC §1.5

The Texas Board of Architectural Examiners proposes an amendment to §1.5, concerning the definition of terms used in the rules. The amendment adds three new definitions and amends one existing definition to be more consistent with the wording in the architects' registration law.

Robert H. Norris, AIA, 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. Norris 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 to the public of terms used in the rules. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.5. Terms Defined Herein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Architectural plans—Graphic floor plans which describe the functional relationships and intended use of space, exitways, and the control of architectural barriers in habitable buildings.

Architecturally related documents—Supplemental instructions; change orders; graphic exterior elevations which describe the form, aesthetics, and appearance of habitable buildings; and construction of details describing the assembly and installation of construction components of habitable buildings, excluding structural, mechanical, and electrical systems.

Architectural specifications—Written descriptions of materials, and construction features in relation to quality, color, pattern, performance characteristics, and workmanship requirements for components involved in the construction of habitable buildings, excluding structural, mechanical, and electrical systems.

Contract documents—Documents issued for [bidding, permit] permits, or construction purposes, consisting of architectural plans [drawings], specifications, and related documents [addenda, or change orders].

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 16, 1990.

TRD-9012310 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter B. Registration

• 22 TAC §1.21, §1.25

The Texas Board of Architectural Examiners proposes amendments to §1.21 and §1.25, concerning the eligibility of applicants for examination and deadlines for filing applications for examination. The amendments will make language consistent with that of Article 249a, §7(c), and delete obsolete application deadline dates.

Robert H. Norris, AIA, executive director, 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. Norris 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 clarification of

language by elimination of deadlines for examinations which are nonexistent. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.21. Eligibility.

(a) (No change.)

(b) The board shall also [may] accept applications for registration from persons who are not graduates as required in subsection (a) of this section (but otherwise qualifying) who furnish evidence acceptable to the board of having completed any combination of acceptable schooling and experience totaling eight years as noted in the table of equivalents for education and experience.

(c) (No change.)

§1.25. Processing.

(a) All applications and supporting documentation for examinations shall be submitted to the board no later than the following dates:

(1) (No change.)

[(2) Spring computer administered C/ARE: October 1;

[(3) Fall computer administered C/ARE: June 1;]

2][(4)] December administered graphic site and building design divisions of the ARE: August 1.

(b)-(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 16, 1990.

TRD-9012311 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter C. Examinations

• 22 TAC §§1.43, 1.46, 1.48

The Texas Board of Architectural Examiners proposes amendments to §§1.43-1.46, 1.48, concerning the examination for registration as

an architect in the State of Texas. The amendments will remove reference to the discontinued computer administered divisions of the examination, and change the cost to candidates for purchase of copies of their graphic examination solutions.

Robert H. Norris, AIA, executive director, 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. Norris 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 notice to the public that the computer administration of certain divisions of the examination has been discontinued, and that the cost to candidates requesting copies of graphic examination solutions has been reduced. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.43. Format.

(a) (No change.)

[(b) The C/ARE, will be the computer administered version of the written divisions of the ARE, developed by the NCARB Examination Committee, and as approved by the board for administration on specified dates.]

(b)[(c)] The ARE format may be obtained from the board office. A candidate must achieve a passing score in each division of the examination; score from the individual divisions CANNOT be averaged to achieve a passing score.

§1.46. Scoring.

(a) (No change.)

(b) There will be no board review of examinations. Candidates may obtain a copy of his/her graphic portions of Division B and Division C upon written request and payment of \$3.00 [\$5.00] for Division B, \$7.00 [\$25] for Division C. (Checks should be made payable to the Texas Board of Architectural Examiners.)

§1.48. Reexamination. Candidates will have unlimited opportunities to retake individual divisions of the ARE [and C/ARE] they have failed.

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 16, 1990.

TRD-9012312

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter D. Certification and Annual Registration

• 22 TAC §1.69

The Texas Board of Architectural Examiners proposes an amendment to §1.69, concerning the reinstatement of licensure. The amendment will establish the conditions under which the board may exercise its statutory authority to examine a former license applying for reinstatement of licensure.

Robert H. Norris, AIA, 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. Norris 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 better protection of the public as a result of the board's ability to reexamine the qualifications of former licensees who have been inactive for a period of time and who are applying for reinstatement of licensure. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be the cost of the architect registration examination for affected applicants.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.69. Reinstatement.

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

(c) A registrant whose license has been revoked for a period greater than three years shall be reexamined prior to reinstatement.

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 16, 1990.

TRD-9012313

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter F. Architect's Seal

• 22 TAC §§1.102-1.104

the Texas Board of Architectural Examiners proposes amendments to §§1. 102-1.104, concerning the affixation of the architect's seal to documents issued for use in this state. The amendments will clarify which documents must bear an architect's seal; the type of seal to be used; delete obsolete mandatory date; and, require that an architect provide his client (consumer) with a written statement of certification.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the sections are in effect there will not be fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Norris 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 as proposed will be a clear understanding of which documents must bear an architect's seal when issued for use in this state, and the type seal to be used. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.102. Type and Design.

(a) The seal required for use on opaque original contract documents not intended for duplication shall be of a type which will produce [make] an impression facsimile [on] of the seal, [surface of original documents and duplications of original documents. The use of] or a rubber stamp which will produce [produces] an [accurate and legible] ink facsimile [image] of the seal. The seal required for use on transparent original contract documents intended for duplication shall be of a type which will produce an ink facsimile of the seal such as a rubber stamp, decal, or computer generated type. The use of pre-printed documents bearing a pre-printed facsimile of the seal is prohibited [is permissible and encouraged when duplicate copies of originals are required].

(b) (No Change)

[(c) Use of the described seal design shall be mandatory as of January 1, 1989.]

§1.103. Use of Seal.

(a) Architects shall affix their seal, actual signature, and date of affixation to all

original contract documents, including index sheets identifying all drawings covered; specification cover and index pages identifying all specification pages covered; [addenda; and] change orders and supplemental instructions which are developed and issued under the direct supervision or authorship of the architect as contract documents. Presentation documents (renderings, drawings used to communicate conceptual information only) are not required to be sealed, signed, or dated.

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

[(h) Preprinting of blank forms bearing an architect's seal is prohibited. Any misuse of such seal reproductions shall be charged against the responsible architect.]

(h) [(i)] The use of signature reproductions such as rubber stamps or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.

(l) [(j)] If, in the course of his or her work on a project, an architect becomes aware of a course of action taken against the architect's advice, which may violate applicable state or local building laws and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall:

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

(j) [(k)] Authorized use of the prescribed seal is an individual act whereby the architect must personally inscribe the seal. The architect is responsible for its security when not in use.

§1.104. Statement of Certification.

(a) For client (consumer) information, each architect shall provide the client with the following written statement: "The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1363, has jurisdiction over individuals licensed under the Architects' Registration Law, Texas Civil Statutes, Article 249a."

(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 16, 1990.

TRD-9012314

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest proposed date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter G. Titles and[,] Firm Names [, and Assumed Names]

• 22 TAC §§1.123-1.127

The Texas Board of Architectural Examiners proposes the repeal of §§1. 123-1.127, concerning the filing of documents with the board which identify the architect-of-responsibility for certain organizations which offer or perform architectural services in this state. The repeals will eliminate the filing requirement.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Norris, also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be knowledge that certain organizations offering or performing architectural services in the state are no longer required to file documentation with the board identifying the architect-of-responsibility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The repeals are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.123. Firm Names.

§1.124. Assumed Names.

§1.125. Engineering Firms.

§1.126. Others.

§1.127. Corporate Resolutions.

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 16, 1990.

TRD-9012315 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363



Subchapter H. Rules of Conduct

• 22 TAC §1.143, §1.146

The Texas Board of Architectural Examiners proposes amendments to §1.143, and §1.146, concerning the rules of conduct for architects who are aware of violation of statute or rules by others; and, for responding to experience verification of applicants for licensure.

Robert H. Norris, AIA, executive director, 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. Norris 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 clarification of conduct expected of licensees. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.143. Grounds for Suspension, Revocation, or Denial. The board may deny an applicant's eligibility and suspend or revoke an architect's certificate of registration upon proof satisfactory to the board the applicant or architect is guilty of:

- (1)-(2) (No change.)
- (3) recklessness; [or]
- (4) dishonest practice, or [.]
- (5) mental incompetence.

§1.146. Dishonest Practice Defined.

- (a) (No change.)
- (b) An architect possessing knowledge of a violation of these rules by another architect, person, or firm shall report such knowledge in writing to the board **under the signature of the architect [TBAE].** [Failure to report such knowledge may be cause for disciplinary action.]
- (c) An architect possessing knowledge of an applicant's qualifications for licensure shall cooperate with the board by responding in writing to the board with those qualifications when requested to do so by the applicant or the board.

(d)[(c)] The following practices, among others, are permissible:

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

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

Issued in Austin, Texas, on November 16, 1990.

TRD-9012316 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter J. Violations By Unregistered Persons

• 22 TAC §1.191

The Texas Board of Architectural Examiners proposes an amendment to §1.191, concerning alleged violations of the law or rules by unregistered persons and those persons exempt from provisions of the architects' registration law. The amendment will make language consistent with that in the law, Article 249a, §14, by eliminating the words "or firms."

Robert H. Norris, AIA, 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. Norris 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 language referring to the law. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.191. Authority.

[(a)] The Texas architects' registration law is specific in its provisions, authorizing the lawful practice of architecture. It is equally specific in charging the Texas Board Architectural Examiners with responsibility for enforcement of the architects' registration law. The statute exempts certain persons from provisions of the architects' registration law, but otherwise, unregistered persons are liable for violations.

[(b)] Persons [or firms] offering or performing services under an exception as permitted under the architects' registration law, §14, should be aware that this board has authority to seek fines up to \$1,000 for

each day of each offense as defined in the architects' registration law, §13.

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 16, 1990.

TRD-9012317

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Chapter 3. Landscape Architects

Subchapter G. Titles and[,] Firm Names[, and Assumed Names]

• 22 TAC §3.123

The Texas Board of Architectural Examiners proposes an amendment to §3. 123, concerning firm names for landscape architects in individual or group practice of landscape architecture. The amendment will delete reference to a rule that is being repealed.

Robert H. Norris, AIA, 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. Norris 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 landscape architectural firms' authority for engaging in individual or group practice of landscape architecture. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.123. Firm Names. Landscape architects holding current certificates of registration may organize or engage in any form of individual or group practice of landscape architecture allowed by statutes in this state, and may entitle such practice accordingly.

[(1)] The surname or any combination of surnames of a person or persons registered to practice landscape architecture in this state may be used to entitle a firm practicing landscape architecture. Given names and/or initials are not required to

accompany a surname in such firm entitlement.

[(2) Firm names which include other than those in paragraph (1) of this section (i.e., surnames of nonlandscape architects, initials only, acronyms, etc.) are permissible provided that the landscape architect(s) responsible to this board is properly identified in accordance with §3.124 of this title (relating to Assumed Names).]

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 16, 1990.

TRD-9012305

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter G. Titles, Firm Names, and Assumed Names

• 22 TAC §§3.124-3.127

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

The Texas Board of Architectural Examiners proposes the repeal of §§3. 124-3.127, concerning the filing of documents with the board which identify the landscape architect-of-responsibility for certain organizations which offer or perform landscape architectural services in this state. The repeals will eliminate the filing requirement.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Norris also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be knowledge that landscape architectural firms no longer need to submit an assumed name certificate to the board office. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The repeals are proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.124. Assumed Names.

§3.125. Architectural and/or Engineering Firms.

§3.126. Others.

§3.127. Corporate Resolutions.

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 16, 1990.

TRD-9012307

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Subchapter H. Rules of Conduct

• 22 TAC §3.143, §3.146

The Texas Board of Architectural Examiners proposes amendments to §3.143 and §3.146, concerning the rules of conduct for landscape architects and applicants for examination as landscape architects in this state. The amendments clarify the standards of practice required of both applicants and landscape architects.

Robert H. Norris, AIA, executive director, 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. Norris 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 clarification of conduct expected of licensees. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.143. Grounds For Suspension, Revocation, or Denial. The board may deny an applicant's eligibility and suspend or revoke a landscape architect's certificate of registration upon proof satisfactory to the board the applicant or landscape architect is guilty of:

- (1)-(2) (No change.)
- (3) incompetency; [or]
- (4) misconduct; or [.]
- (5) mental incompetence.

§3.146. Misconduct Defined.

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

(c) A landscape architect possessing knowledge of an applicant's qualifications for licensure shall cooperate with the board by responding in writing to the board with those qualifications when requested to do so by the applicant or by the board.

(d)[(c)] The following practices, among others, are permissible:

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

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

Issued in Austin, Texas, on November 16, 1990.

TRD-9012306 Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 458-1363

Part XV. Texas State Board of Pharmacy

Chapter 295. Pharmacists

• 22 TAC §295.1, §295.5

The Texas State Board of Pharmacy proposes amendments to §295.1 and §295.5, concerning change of address and pharmacist license or renewal fees.

The proposed amendments specify that pharmacists must be licensed under the name in which they are practicing, but allows a pharmacist to retain his/her original license certificate which bears the original license name.

Fred S. Brinkley, Jr., R.Ph., executive director/secretary has determined that there will not be fiscal implications for state or local government as a result of enforcing these sections.

Mr. Brinkley also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing these sections, as proposed, will be the protection of the health and welfare of the citizens of Texas by assuring that pharmacists practice under the name that appears on agency records. There will be no effect on small businesses.

The cost for persons who are required to comply with these sections will vary, since the rule allows a pharmacist the option of maintaining his/her original license certificate or obtaining a new certificate with his/her

current name. Cost will range from \$20 for changing the name in agency records and issuance of a new renewal certificate to \$35 for changing the name in agency records, issuance of a new renewal and license certificate.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The amendments are proposed under the Texas Pharmacy Act, (Texas Civil Statutes, Article 4542a-1) §24 and §16. Section 24 provides the Texas State Board of Pharmacy with the authority to issue duplicate copies of either the license to practice pharmacy or the renewal certificate, on request from the holder, and payment of a fee as determined by the board. Section 16 provides the Texas State Board of Pharmacy with the authority to adopt rules necessary to enforce the Act.

§295.1. Change of Address and/or Name.

(a) Change of address. A pharmacist shall notify the board in writing within 10 days of [immediately upon] a change of address, giving old and new address and license [certificate] number.

(b) Change of name.

(1) A pharmacist shall notify the board in writing within 10 days of a change of name by:

(A) sending a notarized copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc;

(B) returning the current renewal certificate which reflects the previous name; and

(C) paying a fee of \$20.

(2) Pharmacists who change their name may retain the original license to practice pharmacy (wall certificate). However, if the pharmacist wants an amended certificate issued which reflects the pharmacist's name change, the pharmacist must:

(A) return the original certificate; and

(B) pay a fee of \$35.

(3) An amended license and/or certificate reflecting the new name of the pharmacist will be issued by the board.

§295.5. Pharmacist License or Renewal Fees.

(a)-(c) (No change)

(d) The fee for issuance of an amended pharmacist's license renewal certificate shall be \$20.

(e) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be \$35.

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 19, 1990.

TRD-9012351 Fred S. Brinkley, Jr., R.Ph.
Executive
Director/Secretary
Texas State Board of
Pharmacy

Earliest possible date of adoption: December 24, 1990

For further information, please call: (512) 832-0661.

Part XXI. Texas State Board of Examiners of Psychologist

Chapter 461. General Rulings

• 22 TAC §461.17

The Texas State Board of Examiners of Psychologists proposes new §461.17, concerning timely filing of complaints. The board is establishing a time frame for persons who need to file a complaint against a psychologist which coincides with the psychologists record retention schedule.

Patricia S. Bizzell, executive director, has determined that for the first five-year period the section is in effect there will not be fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Bizzell, 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 as proposed will be to allow the board to respond to a complaint in a timely manner because information will be available from the psychologist. 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 Patricia S. Bizzell, M.P.A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The new section is proposed under Texas Civil Statutes, Article 4512c, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

§461.17. Timeliness of Complaints. In the absence of unusual circumstances, as determined by the board, a complaint is timely filed if it is received by the board, in proper form, within five years of the date of the termination of the professional services. Untimely complaints shall be returned to

the complainant without action 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 13, 1990.

TRD-9012195

Patricia S. Bizzell
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest proposed date of adoption: December 24, 1990

For further information, please call: (512) 835-2036

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 27. State Fire Marshall

Subchapter A. Fire Extinguisher Rules

• 28 TAC §27.16

The State Board of Insurance proposes an amendment to §27.16, concerning license fees for firms and individuals engaging in the fire extinguisher business. The amendment was adopted on an emergency basis and became effective on July 17, 1990. Notice of the emergency adoption appeared in the July 24, 1990, issue of the *Texas Register* (15 TexReg 4150). The amendment is necessary to increase fees because the current fees are generating revenue far less than the cost of administration and enforcement necessary for this licensing program. The amendment increases initial and renewal fees for all types of licenses and certificates of registration.

Ernest Emerson, state fire marshal, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for local government. There will be a fiscal implication for state government and for small businesses consisting of an increase in revenue to state government and a corresponding cost to

small businesses in the amount of the fee increases, which are listed in subsection (c) of this section. On the basis of cost per hour of labor, there is no difference in the cost of compliance for small businesses and large businesses. There will be no effect on local employment or local economy.

Mr. Emerson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the cost of administration and enforcement of the fire extinguisher licensing program will be borne by the fire extinguisher industry. Other than the amount of the increased fees, 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 Ernest Emerson, State Fire Marshal, Mail Code 017-1, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 5.43-1, §2 and §8, which provides the board with the authority to adopt rules necessary for the protection and preservation of life and property, in controlling the registration of firms engaged in the business of planning, selling, installing, maintaining, or servicing fire extinguisher systems and equipment.

§27.16. Fees.

(a) Every fee required in accordance with the provisions of the Insurance Code, Article 5.43-1, and the sections of this subchapter [subsection] must be paid by cash, money order, or check. Money orders and checks must be made payable to the State Board of Insurance.

(b) Fees must [shall] be paid at the Office of the State Fire Marshal in Austin, or mailed to an address specified by the state fire marshal.

(c) Fees are as follows:

(1) Certificates of registration (Type A, B, and PL):

(A) initial fee-\$450 [-\$2751;

(B) renewal fee (for two years)-\$600 [-\$200];

(C) branch office initial fee [or renewal]-\$100 [\$75];

(D) branch office renewal fee (for two years) -\$200;

(2) certificate of registration (Type C):

(A) initial fee-250 [-\$125];

(B) renewal fee (for two years) -\$300 [-\$75];

(3) fire extinguisher license (Type A and B): [, initial or renewal-\$30]

(A) initial fee-\$50;

(B) renewal fee (for two years)-\$100;

(4) fire extinguisher license (Type PL): [, initial or renewal-\$40]

(A) initial fee-\$50;

(B) renewal fee (for two years) -\$100;

(5) apprentice permit fee-\$30 [-\$20];

(6) (No change.)

(7) initial examination fee-\$20;

(8) reexamination fee-\$20.

(d) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the [their] expiration of the certificate or license [dates].

(e) Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees and must be determined in accordance with the following schedule:

Expired 1 day to 90 days

Renewal Fee	Late Fee	Total Fee
Certificate (Type A, B, and PL) <u>\$600</u> [\$200.00] (2 years)	<u>\$225</u> [\$137.50]	<u>\$825</u> [\$337.50]
Branch office certificate <u>\$200</u> [\$ 75.00] (2 years)	<u>\$ 50</u> [\$ 37.50]	<u>\$250</u> [\$112.50]
Hydrostatic testing certificate (Type C) <u>\$300</u> [\$ 75.00] (2 years)	<u>\$125</u> [\$ 62.50]	<u>\$425</u> [\$137.50]
License (Type A and B) <u>\$100</u> [\$ 30.00] (2 years)	<u>\$ 25</u> [\$ 15.00]	<u>\$125</u> [\$ 45.00]
License (Type PL) <u>\$100</u> [\$ 40.00] (2 years)	<u>\$ 25</u> [\$ 20.00]	<u>\$125</u> [\$ 60.00]

[Expired 91 days to 365 days

Renewal Fee	Late Fee	Total Fee
[Certificate (Type A, B, and PL)	\$200.00	\$275.00
[Branch office certificate	\$ 75.00	\$ 75.00
[Hydrostatic testing certificate (Type C)	\$ 75.00	\$125.00
[License (Type A and B)	\$ 30.00	\$ 30.00
[License (Type PL)	\$ 40.00	\$ 40.00

Expired 91 [366] days to two years

Renewal Fee	Late Fee	Total Fee
Certificate (Type A, B, and PL) <u>\$600</u> [\$400.00] (2 years)	<u>\$450</u> [\$275.00]	<u>\$1,050</u> [\$675.00]
Branch office certificate <u>\$200</u> [\$150.00] (2 years)	<u>\$100</u> [\$ 75.00]	<u>\$ 300</u> [\$225.00]
Hydrostatic testing certificate (Type C) <u>\$300</u> [\$150.00] (2 years)	<u>\$250</u> [\$125.00]	<u>\$ 550</u> [\$275.00]
License (Type A and B) <u>\$100</u> [\$ 60.00] (2 years)	<u>\$ 50</u> [\$ 30.00]	<u>\$ 150</u> [\$ 90.00]
License (Type PL) <u>\$100</u> [\$ 80.00] (2 years)	<u>\$ 50</u> [\$ 40.00]	<u>\$ 150</u> [\$120.00]

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 14, 1990.

TRD-9012263 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest proposed date of adoption: December 24, 1990

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

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Subchapter B. Fire Alarm Rules

• **28 TAC §27.215**

The State Board of Insurance proposes an amendment to §27.215, concerning license fees for firms and individuals engaging in the fire alarm business. The amendment was adopted on an emergency basis and became effective on July 17, 1990. Notice of the emergency adoption appeared in the July 24, 1990, issue of the *Texas Register* (15 TexReg 4153). The amendment is necessary to increase fees because the current fees are generating revenue far less than the cost of administration and enforcement necessary for this licensing program. The amendment increases initial and renewal fees for all types of licenses and certificates of registration.

Ernest Emerson, state fire marshal, 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. Emerson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the cost administration and enforcement of the five alarm licensing program will be borne by the five alarm industry. Other than the amount of the increased fee, 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 Ernest Emerson, State Fire Marshal, Mail Code. 017-1, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 5. 43-2 §4§6, which provides the board with the authority to adopt rules necessary to administration of regulation controlling fire alarm and detection devices and systems thought the state fire marshal for the protection and preservation of life and property.

§27.215. Fees.

- (a) (No change.)
- (b) Fees **must** [shall] be paid at the Office of the State Fire Marshal in Austin, Texas, or mailed to an address specified by the state fire marshal.

- (c) Fees are as follows:
 - (1) **fire alarm certificate** [certificate] of registration:

- (A) initial fee--\$500 [\$250];
- (B) renewal fee (for two years)--\$1,000 [\$5000];

- (C) branch office initial fee--\$150 [\$75]; and

- (D) renewal fee (for two years)--\$300 [\$150];

- (2) fire alarm technician license:
 - (A) initial fee--\$100 [\$50];

- (B) renewal fee (for two years)--\$200 [\$100];

- (3) fire alarm planning superintendent license:

- (A) initial fee--\$100 [\$75];

- (B) renewal fee (for two years)--\$200 [\$150];

- (4) duplicate or revised certificates or licenses or other requested changes to certificates or licenses--\$20 [\$10];

- (5) examination fee --\$20 [\$15];
- (6) reexamination fee--\$20 [\$10];

- (d) Late fees are required of all certificate or license holders who fail to submit **complete** renewal applications before the [their] expiration of the certificate or license [dates].

- (e) Fees for certificates and licenses which have been expired for less than two years include both renewal and late fees and **must** [shall] be determined in accordance with the following schedule:

Expired 1 day to 90 days:

	<u>Renewal Fee</u>		<u>Late Fee</u>		<u>Total Fee</u>	
Certificate						
	<u>\$1,000</u>	[\$500.00] (2 years)	<u>\$250</u>	[\$125.00]	<u>\$1,250</u>	[\$625.00]
Branch office certificate						
	<u>300</u>	[150.00] (2 years)	<u>75</u>	[37.50]	<u>375</u>	[187.50]
Licenses						
(Technician)						
	<u>200</u>	[100.00] (2 years)	<u>50</u>	[25.00]	<u>250</u>	[125.00]
(Planning Superintendent)						
	<u>200</u>	[150.00] (2 years)	<u>50</u>	[37.50]	<u>250</u>	[187.50]

Expired 91 days to 2 years:

	<u>Renewal Fee</u>		<u>Late Fee</u>		<u>Total Fee</u>	
Certificate						
	<u>\$1,000</u>	[\$500.00] (2 years)	<u>\$500</u>	[\$250.00]	<u>\$1,500</u>	[\$750.00]
Branch office certificate						
	<u>300</u>	[150.00] (2 years)	<u>150</u>	[75.00]	<u>450</u>	[225.00]
Licenses						
(Technician)						
	<u>200</u>	[100.00] (2 years)	<u>100</u>	[50.00]	<u>300</u>	[150.00]
(Planning Superintendent)						
	<u>200</u>	[150.00] (2 years)	<u>100</u>	[75.00]	<u>300</u>	[225.00]

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 14, 1990.

TRD-9012264 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest proposed date of adoption: December 24, 1990

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

Part II. Texas Workers' Compensation Commission

Chapter 42. Medical Benefits

Subchapter B. Medical Cost Evaluation

• 28 TAC §42.105

The Texas Workers' Compensation Commission proposes an amendment to §42.105, concerning "Official Medical Fee Guideline for Services Rendered Under the Texas Workers' Compensation Act."

The amendment updates the medical fee guidelines for medical services, and adds new guidelines and new CPT codes for medical procedures not specifically covered in the previous guideline. The amendment also adds guidelines for the allowable charges for purchase or rental of certain durable medical equipment. The amendment incorporates the publication of a new fee guideline manual, which will supercede the fee guideline presently being used.

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 medical cost containment measures provided by the Workers' Compensation Act. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will include the cost of the new guideline, estimated at \$15 per copy, final published version. Also there will be undeterminable costs to participating health care providers to update their billing systems to include new codes and amounts. There may be an increase or decrease in costs to carriers in the revision of fees, as well as possible decreases in revenues to health care providers as a result of the revision of fees. There may be a decrease to employers in the cost of providing medical benefits to injured workers as a result of the implementation of the new fee schedule.

The medical fee guideline manual identifies procedure codes by number, as published in the 1990 CPT, a publication of the American Medical Association. The fee guideline is divided into sections, e.g. medicine, surgery, anesthesia, radiology, pathology, durable medical equipment, and pharmacy. A relative value for each procedure is identified in the medicine, surgery, anesthesia, pathology, and radiology sections. The durable medical equipment section identifies actual reimbursement for purchase or rental of equipment or supplies. The pharmacy section identifies a reimbursement formula for pharmaceuticals (oral medicines, ointments) and utilizes average wholesale prices as published in *Prescription Pricing Guide* or *Generic Buying and Reimbursement Guide*, published by Medispan's. Copies of the guideline may be obtained from the Division of Medical Review, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. The proposed guideline may be inspected at the Commission; a reasonable charge will be assessed for requested copies. Because the guideline is not yet in final published version, the copying charge is the regular per-page charge for open records, which may be greater than the anticipated cost of the final published guideline, if the entire guideline is copied. A copy of the proposed guideline is filed with the *Texas Register* along with this proposed amendment.

Comments on the proposed amendment and guideline 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 amendment is proposed under Texas Civil Statutes, Article 8306, §7(b) (1990), which specifically authorizes the board to adopt rules to implement medical cost containment; Article 8308, §17.12(b) which authorize the commission to delegate appropriate powers and duties to the executive director to administer the workers' compensation law in effect prior to the effective date the new Texas Workers' Compensation Act (which delegation was made by the commission on April 1, 1990); and Article 8307, §4(a) (1990), which authorize the board to make rules to carry out and enforce the Workers' Compensation Act.

§42.105. Official Medical Fee Guideline [Guidelines].

(a) The [Official] Medical Fee Guideline for Services Rendered Under the Texas Workers' Compensation Act is the lesser of:

- (1) the provider's usual fees and charges; or
- (2) the fees and charges established by use of a relative value scale adopted under subsection (b) of this section. [the relative value scale, a subsection of the Official Medical Fee Guideline].

[(b) The relative value scale is adapted from the 1988 Official Medical Fee

Schedule for Services Rendered under the California Workers' Compensation Laws, and is adopted by reference.]

(b)[c] The commission [board] will publish and adopt by reference herein a [the] relative value scale used in conjunction with the 1990 CPT (*Physicians' Current Procedural Terminology*) as part of [as] the [Official] Medical Fee Guideline for Services Rendered Under the Texas Workers' Compensation Act. The guideline may be obtained from the Division of Medical Review, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. [The guideline will be reviewed and revised periodically, as necessary.]

(c) The allowable charge for the purchase or rental of durable medical equipment is the lesser of:

(1) the provider's usual fees and charges: or

(2) the fees and charges established in the durable medical equipment section of the Medical Fee Guideline which is incorporated herein by reference.

[(d) Copies of the Guideline will be available upon written request for the Administrator, Medical Cost Evaluation Division; Industrial Accident Board; 200 East Riverside Drive, 1st Floor; Austin, Texas 78704-1287.

[(e) The charge for the guideline shall be \$12.50. This charge may be revised periodically, as necessary.]

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 19, 1990.

TRD-9012355 George E. Chapman
Executive Director
Texas Workers' Compensation Commission

Earliest proposed date of adoption: December 24, 1990

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

• 28 TAC §42.115

The Texas Workers' Compensation Commission proposes an amendment to §42.115, titled *Official Pharmaceutical Fee Guidelines*.

The amendment updates the pharmacy fee guidelines for medical services. The amendment tells the provider how to compute the allowable charge for brand name and generic pharmaceuticals. This guideline will supercede the fee guideline presently being used.

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 medical cost containment measures provided by the Workers' Compensation Act. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will include undeterminable costs to participating pharmaceutical providers to update their billing systems to include the new calculation.

There may also be an increase or decrease in costs to carriers in the revision of fees. There may also be decreases in revenues to pharmaceutical drug providers as a result of the revision of fees, with an expected correlating decrease to employers in the cost of providing medical benefits to injured workers as a result of implementing the new fee schedule.

Comments on the proposed amendment and guideline 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 amendment is proposed under Texas Civil Statutes, Article 8306, §7(b) (1990), which specifically authorize the board to adopt rules to implement medical cost containment; Article 8308, §17.12(b) which authorizes the commission to delegate appropriate powers and duties to the Executive Director to administer the workers' compensation law in effect prior to the effective date the new Texas Workers' Compensation Act (which delegation was made by the commission on April 1, 1990); and Article 8307, §4(a) (1990), which authorize the board to make rules to carry out and enforce the Workers' Compensation Act.

§42.115. [Official] Pharmaceutical Fee Guideline [Guideline].

(a) The [Official] Pharmaceutical Fee Guideline[s] for Services Rendered Under the Texas Workers' Compensation Act is the lesser of:

(1) the provider's usual charge;

or
(2) the fees established by the formulas for brand-name and generic pharmaceuticals as described in subsection (c) of this section. [charges established in the brand-name and generic formulas adopted by the board].

(b) This rule applies to the dispensing of all pharmaceuticals excluding the inpatient health care facility setting.

(c)[(b)] The formulas [adopted by the board] for establishing fair and reasonable fees and charges for brand-name and generic pharmaceuticals are:

(1) brand-name pharmaceutical formula: average wholesale price (AWP) times 1.09 [1.1] plus \$4.00;

(2) generic pharmaceutical formula: AWP times 1.38 [1.4] plus \$7.50.

(d) The AWP shall be determined with the monthly publication of Medispan. The publication that shall be used for the calculation shall be the same month that includes the date of service. When an AWP is changed during the month, the provider shall still use the AWP from the monthly publication. The two Medispan publications to be used are:

(1) *Prescription Pricing Guide*;

or
(2) *Generic Buying and Reimbursement Guide*.

[(c) The board will determine the average wholesale price (AWP) for brand-name and generic pharmaceuticals through the monthly Medispan publications, *Prescription Pricing Guide*, and *Generic Buying and Reimbursement Guide*.]

(e) When a generic pharmaceutical costs more than a brand-name pharmaceutical according to the formulas described in subsection (c) of this section, the commission will consider the fair and reasonable price to be the brand-name equivalent as calculated under subsection (c) (1) of this section.

(f) When there is no national drug code (NDC) number listed in the *Medispan Generic Buying and Reimbursement Guide* for a manufacturer or when the provider fails to list the NDC number for each generic pharmaceutical on the bill submitted to the insurance carrier, the commission will determine the fair and reasonable reimbursement for generic pharmaceuticals by the following formula: generic equivalent average price (GEAP) times 1.38 plus \$7.50.

[(d) The charge for the Pharmaceutical Fee Guideline shall be \$1.00. This charge may be revised periodically, as necessary.]

[(e) The board encourages the prescription of generic equivalents to brand-name drugs when such prescription is medically appropriate and available.]

[(f) All injured employees entitled to benefits under the Texas Workers' Compensation Act are entitled to immediate access to pharmaceutical goods and services.]

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 19, 1990.

TRD-9012356

George E. Chapman
Executive Director
Texas Workers'
Compensation
Commission

Earliest proposed date of adoption: December 24, 1990

For further information, please call: (512) 440-3873

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Department of Criminal Justice

Chapter 161. Community Justice Assistance Division

Role of the Judicial Advisory Council

• 37 TAC §161.21

The Texas Board of Criminal Justice proposes new §161.21, concerning role of the Judicial Advisory Council; to define the role of the council and its relationship to the Department of Criminal Justice.

Ed Peterson, director fiscal services—community Justice Assistance Division, has determined that for the first five-year period the section is in effect there will not be fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Peterson, also has determined that for each year of the first five years the sections as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be to provide a structure to fulfill the critical and valuable role of the judiciary in the growth, development, and implementation of community corrections policies and programs in Texas. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Deborah Churchill, in care of Susan Power, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711.

The new section is proposed under the Code of Criminal Procedure, §2(a), Article 42.13, which provides the Texas Board of Criminal Justice with the authority to adopt reasonable rules establishing minimum standards for programs, facilities, equipment, and other aspects of the operation of departments.

§161.21. Role of the Judicial Advisory Council.

(a) Policy. The Texas Board of Criminal Justice (board) acknowledges the valuable and critical role of the judiciary in the growth, development, and implementation of community corrections policies and programs in Texas. The Judicial Advisory Council (Council) is intended to provide a structure for fulfilling that role.

(b) State-level role of the council. In accordance with Texas Civil Statutes, Article 4413 (401), §1.12(b), the function of

the Judicial Advisory Council is to advise the board and the Director of the Community Justice Assistance Division (CJAD) on matters of interest to the judiciary. To accomplish this purpose, the council shall:

(1) act as an information exchange and provide expert advise to the board when requested;

(2) report to the board annually during the third quarter of the fiscal year on the status and needs of the community corrections component of the criminal justice system; and

(3) conduct a review of requests for funding of community corrections programs and projects to CJAD, and make recommendations to the Director of CJAD on the funding of reviewed requests, subject to the review ratification, and final judgment by the board.

(c) Local-level role of the council. In addition to the duties set out in subsection (b) of this section, the council shall:

(1) inform and educate, in an appropriate manner, the constituencies that their members represent about issues and procedures that are affecting the corrections system of Texas;

(2) coordinate its activities with the Community Justice Liaison members of the board, the Director of CJAD, the local Community Supervisor and Corrections Departments, and any other significant entities identified by the Director of CJAD or the executive director of the department;

(3) provide a forum for exchange of information and a dialogue with the network of local Community Supervision and Corrections Department on matters involving community corrections programs.

(d) Additional authority of the council. The chair of the council may appoint committees of council members or advisory groups of non-council members to achieve the purposes of this section.

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

Issued in Austin, Texas, on November 16, 1990.

TRD-9012326 Deborah Churchill
Assistant General Counsel,
P.P.D.
Texas Department of
Criminal Justice

Earliest proposed date of adoption: December 24, 1990

For further information, please call: (512) 834-8188

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part X. Texas Employment Commission

Chapter 301. Unemployment Insurance

• **40 TAC §301.17**

The Texas Employment Commission proposes an amendment to §301.17, concerning administrative appeals and hearings; setting out standards to be applied in granting motions for rehearing in benefits appeals.

J. Ferris Duhon, legal counsel, has determined that for the first five-year period the section is in effect there will not be fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Duhon also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be a more open, understandable appeals system, through setting out the standards for granting motions for rehearing. 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 Carolyn Calhoun, Office of Special Counsel, T.E.C. Building, 101 East 15th, Room 660, Austin, Texas 78778 (512) 463-2291.

The amendment is proposed under Texas Civil Statutes, Article 5221b, which provide the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

§301.17. Appeals to the Commission from Decisions on Entitlement to Benefits.

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

(g) Motion for rehearing.

(1) A motion for rehearing may be filed by writing directly to the Texas Employment Commission in Austin, or such motion may be filed in person at any local commission office.

(2) A motion for rehearing will not be granted unless each of the following three criteria are met.

(A) There must be an offering of new evidence which was unavailable at the appeal tribunal level.

(B) There must be a compelling reason why the evidence was not present earlier.

(C) There must be a specific explanation of how consideration of the evidence would change the outcome of the case.

(3) Notwithstanding the provisions of the paragraph (2) of this subsection, a rehearing may be granted in the following two situations.

(A) When a party did not appear before the Appeal Tribunal, nevertheless won at that level, and then received an adverse ruling at the commission level, a rehearing will be granted to consider whether there was good cause for the non-appearance. If such good cause is found, the rehearing will address the merits of the case.

(B) When a solely jurisdictional or procedural problem is not detected or recognized until after a commission decision has been issued, the commission may take appropriate action to correct the problem at the motion for rehearing level.

(4) A request for rehearing will be denied unless it can be shown there are substantial reasons for the commission to grant the rehearing.

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

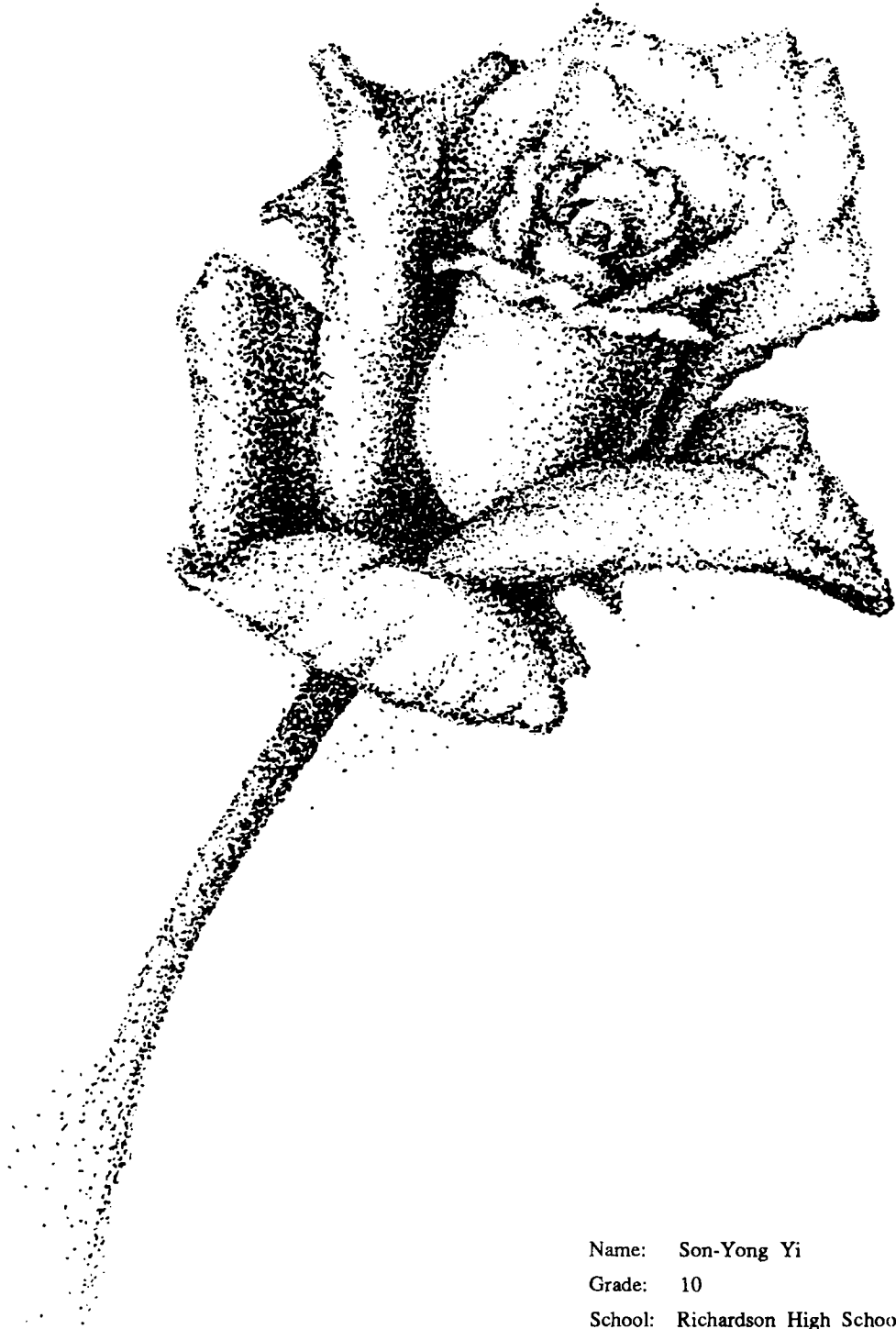
Issued in Austin, Texas, on November 15, 1990.

TRD-9012293 Carolyn Calhoun
Administrative Technician
IV
Texas Employment
Commission

Earliest proposed date of adoption: December 24, 1990

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





Name: Son-Yong Yi

Grade: 10

School: Richardson High School, Richardson ISD



Name: Stephen Doyle

Grade: 10

School: Richardson High School, Richardson ISD

Withdrawn Sections

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

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Powers of Credit Unions

• 7 TAC §91.402

The Credit Union Department has withdrawn from consideration for permanent adoption a proposed new §91.402 which appeared in the September 4, 1990, issue of the *Texas Register* (15 TexReg 5054). The effective date of this withdrawal is November 16, 1990.

Issued in Austin, Texas, on November 16, 1990.

TRD-9012322 Harry L. Elliott
Staff Services Officer
Credit Union Department

Effective date: November 16, 1990

For further information, please call: (512) 837-9236



TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 9. Program for the Blind and Physically Handicapped

• 13 TAC §§9.1-9.14

The Texas State Library and Archives Commission has withdrawn from consideration for permanent adoption a proposed new §§9.1-9.14 which appeared in the July 31, 1990, issue of the *Texas Register* (15 TexReg 4363). The effective date of this withdrawal is November 14, 1990.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012200 Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission

Effective date: November 14, 1990

For further information, please call: (512) 463-5440



• 13 TAC §§9.21-9.31

The Texas State Library and Archives Commission has withdrawn from consideration for permanent adoption a proposed new §§9.21-9.31 which appeared in the July 31, 1990, issue of the *Texas Register* (15 TexReg 4364). The effective date of this withdrawal is November 14, 1990.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012201 Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission

Effective date: November 14, 1990

For further information, please call: (512) 463-5440



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter J. Transporting, Shipping, and Exporting Bobcat Pelts

• 31 TAC §§65.251-65.254

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption a proposed repeal of §§65.251-65.254 which appeared in the September 28, 1990, issue of the *Texas Register* (15 TexReg 5664). The effective date of this withdrawal is November 14, 1990.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012207 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife Department

Effective date: November 14, 1990

For further information, please call: (512) 389-4772



• 31 TAC §§65.251-65.255

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption a proposed new §§65.251-65.255 which appeared in the September 28, 1990, issue of the *Texas Register* (15 TexReg 5664). The effective date of this withdrawal is November 14, 1990.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012208 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife Department

Effective date: November 14, 1990

For further information, please call: (512) 389-4772





Name: LaShanda Smith

Grade: 12

School: Richardson High School, 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 4. AGRICULTURE

Part VII. Texas Agricultural Resources Protection Authority

Chapter 105. Chlordane Regulations

• 4 TAC §105.12

The Texas Agriculture Resources Protection Authority (the authority) adopts new §105.12, without changes to the proposed text as published in the May 15, 1990, issue of the *Texas Register* (15 TexReg 2721).

New §105.12 is adopted in order to reduce potential risks to public health, the environment, and the waters of the state, which are created by the use of the pesticide chlordane or any pesticide containing chlordane as an active ingredient.

New §105.12 prohibits the use of the pesticide chlordane or any pesticide containing chlordane as an active ingredient; requires adequate storage of current stocks as to prevent release of the pesticide into the environment; and requires the Texas Water Commission to enforce the provision of §105.12 and, subject to the approval of the authority, adopt a comprehensive plan for the collection and disposal of the pesticide chlordane and any pesticide containing chlordane as an active ingredient.

The Lower Colorado River Authority, the Chemical Connection and the National Audubon Society all commented in favor of the proposed new section. The Texas Water Commission generally supported the proposed new section. The commission did suggest that the enforcement authority should be with the Texas Department of Agriculture, but stated that the commission would assume the enforcement role. The commission also disagreed with the fiscal implication, but did not suggest what the exact implication would be.

The Texas Consumers Union commented in support of the new section, but expressed concerns about the lack of provisions for safe disposal of existing stocks of chlordane. Public citizen commented in favor of the proposed new section, but also suggested that the new section, as proposed, inadequately addressed the issue of safe disposal of existing supplies.

The authority acknowledges that there is a need for specific provisions for safe disposal of existing supplies. The authority has requested that the Texas Water Commission develop a recommended comprehensive plan for collection and safe disposal of existing supplies of chlordane, or any pesticide containing chlordane as an active ingredient, and

present such plan to the authority for its review.

The new section is adopted under the Texas Agriculture Code, §76.009, which provides the Texas Agriculture Resources Protection Authority with the authority to promulgate rules and regulations not inconsistent with the Texas Agriculture Code, Chapter 76, as may be necessary to carry out the activities set out within Chapter 76 with respect to pesticides.

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 15, 1990.

TRD-9012250

Richard M. Lannen
Legal Counsel
Texas Agriculture
Resources Protection
Authority

Effective date: December 6, 1990

Proposal publication date: May 15, 1990

For further information, please call: (214) 969-0090

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.25

The Public Utility Commission of Texas adopts an amendment to §23.25, with changes to the proposed text as published in the May 18, 1990, issue of the *Texas Register* (15 TexReg 2789).

The amendments grant additional rate-setting flexibility to dominant interexchange telecommunications carriers regulated by the commission. The amendments are adopted in response to the legislative finding in Texas Civil Statutes, Article 1446c, §18(a), that the telecommunications industry is a competitive industry and that the public interest requires that new rules, policies, and principles be formulated to protect the public interest and to provide equal opportunity in a competitive marketplace. The amendments allow the regulated interexchange carrier (RIXC) to revise its rates in response to competition from unregulated competitors while also protecting the public interest.

The amendments revise the range of rates that the RIXC may charge for its various

telecommunications services. For message telecommunications service (MTS) the bench-mark price is redefined as the price charged for such service on May 1, 1990, and is made the maximum rate the RIXC may charge for each rate band of MTS. The minimum rate for MTS is \$.04 below the bench-mark price for all rate bands of 81 miles or less, and \$.03 below the bench-mark price for all rate bands of more than 81 miles. The amendments clarify that the bench-mark price can be changed to reflect access charge changes pursuant to other provisions of the section. The amendments also allow the setting of discrete charges for evening and night/weekend MTS service instead of basing such charges on a percentage of the day charges. Notice of an increase in rates must be provided by notice to customers or by publication in newspapers at least 30 days in advance of the increase, but advance notice of a decrease in rates is not required. The amendments authorize the RIXC to offer promotional MTS and operator services rates for up to 124 days each calendar year provided the rates yield revenues in excess of 105% of the access, billing and collection expense associated with the service. For 800 services the amendments allow the RIXC to restructure its rates and establish minimum rates for each service offered and maximum rates for each service group with the provision that the maximum rate limitation will be eliminated when the Regional Bell Operating Company 800 service database becomes available. For operator services the bench-mark price is set at the rates actually charged on May 1, 1990, and minimum and maximum rates are established for the various types of operator service. The per-minute charge for the usage-sensitive portion of conference services is based upon the appropriate MTS schedule for mileage band and time of day. The amendments reaffirm that the RIXC shall comply with prohibitions against unreasonable discrimination. The amendments allow any information submitted to the commission pursuant to the requirements of the rules to be treated as proprietary and confidential and not subject to disclosure under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a. The amendments provide that pricing by the RIXC pursuant to this section does not exempt the RIXC from antitrust laws. Finally, the amendments indicate that the Commission staff shall review each price change filed by the RIXC and that information will be made available to the Office of Public Utility Counsel.

During the 30-day comment period specified in the May 18, 1990, issue of the *Texas Register*, comments in opposition to the proposed amendments were received from American Telco, Inc.; ATC; TransNet; MCI; Office of Public Counsel; Texas Association of Long Distance Telephone Companies and

Internation Telecharge, Inc. Comments in support of the amendments were received from AT&T Communications of the Southwest, Inc. (AT&T). Additional comments in opposition to the proposed amendments were received after the expiration of the specified comment period from Action Telecom Company; American Telco, Inc.; Metromedia ITT; NTI; International Telecharge, Inc.; United States Operators, Inc.; Operator Service Company; Intellcall, Inc.; Southwest Telecommunications Association, Inc.; Valu-Line Long Distance; Texas Pay Phone Association, Inc.; Stenocall; North American InTeleCom; Texas Association of Long Distance Telephone Companies; Consumers Union; Gray Panthers of Austin; the Antitrust Division of the Texas Attorney General's Office; and the American Association of Retired Persons. Additional comments in support of the proposed amendments were submitted by Senator Bill Haley and by AT&T following the expiration of the comment period. A summary of the comments and the agency's response is provided below.

Several comments objected to provisions of the amendments giving greater flexibility to the RIXC at this time because of a recent commission decision in Docket Number 8218 which eliminated the WATS prorate credit. These comments argued that the RIXC should not be allowed to lower its rates for MTS at a time when its competitors would have to raise their rates due to the elimination of the credit. The commission acknowledges that the elimination of the WATS prorate credit may affect the costs of IXCs in Texas. The commission determined in Docket Number 8218 that the WATS prorate credit was an illegal and discriminatory rate and that it constituted a barrier to entry into the market by new IXCs. The elimination of the WATS prorate credit is not a sufficient basis to delay consideration of granting additional flexibility to the RIXC. However, in response to these concerns, the commission agrees that it would be appropriate to limit the flexibility granted to the RIXC. The commission believes that by granting the RIXC the ability to offer discrete day, evening, and night/weekend schedules and by revising the rate flexibility for MTS to allow the RIXC the ability to lower its current rates by \$.04 per minute for rate bands of 81 miles or less and by \$.03 per minute for rate bands of more than 81 miles it is allowing the RIXC sufficient flexibility to respond to competition while adequately protecting competition in the MTS market.

Several comments asserted that the language of the proposed amendments resulted in the virtual deregulation of the RIXC. Additionally, they noted barriers to entry into the 800 services and operator services markets and argued that the RIXC should not be regulated the same as other IXCs, as originally proposed, because of these market barriers. The commission disagrees that the amendments would result in the deregulation of the RIXC but is concerned about the market barriers in 800 services and operator services. As a result, the commission has deleted the language allowing the RIXC to be regulated the same as all other IXCs. Instead, the commission is amending the sections to allow the RIXC to restructure its rates and to establish a range of rates for 800 services and operator services. This change is in response to the concerns expressed in the comments and is

in accordance with the commission's decision in Docket Number 7790 which found that the services were regulated competitive and that it was in the public interest to utilize a range of rates for such services.

Several comments asserted that the minimum rate limitation stated in the proposed amendments was inadequate because it did not require the RIXC to recover all costs for each service and that, as result, the RIXC could subsidize some services by allocating costs to other services. The commission disagrees that the minimum rate standard is inadequate. Access, billing, and collection costs are an adequate proxy for the incremental costs of telecommunications services. Rates that produce revenue in excess of access, billing, and collection expenses are sufficient to allow the RIXC to respond to competitors' prices without allowing the RIXC to engage in predatory pricing. In response to concerns about cross-subsidization, the commission is amending the section to specify maximum rates for every service for which additional pricing flexibility is granted, thereby limiting the RIXC's ability to subsidize one service with revenue generated by a different service.

Three comments objected to allowing the RIXC to establish discrete day, evening, and night/weekend MTS schedules because it would allow the RIXC to reduce day rates primarily used by business customers while increasing night/weekend rates primarily used by residential customers. The commission disagrees that the RIXC could raise any of its MTS rates because the rates are capped at the rates in effect on May 1, 1990. The commission agrees that allowing the use of discrete schedules would allow the RIXC to reduce day rates more than night/weekend rates. However, such action is appropriate because many evening and night/weekend rates currently are priced below the minimum rate established for MTS. Requiring the RIXC to continue to establish evening and night/weekend rates as a percentage of day rates would require such rates to remain priced below the cost of access, billing, and collection.

Two comments asserted that adoption of the proposed amendments as published would result in regulation of the RIXC as a non-dominant carrier in violation of Texas Civil Statutes, Article 1446c. The commission disagrees with these comments because PURA §18(r), specifically authorizes the Commission to regulate the RIXC the same as a non-dominant carrier. However, in response to other comments and in order to avoid any confusion concerning the regulatory treatment to be afforded the RIXC, the commission is amending the section to remove language stating that the RIXC will be regulated the same as all other IXCs. For all services the RIXC remains a regulated competitive utility as found by the commission in Docket Number 7790. Although the Commission ruled in Docket Number 8971 and 8972 that the RIXC would be regulated the same as all other IXCs in the provision of all other services, that ruling did not encompass MTS, 800 services, and operator services. It is not the intent of these amendments to authorize the RIXC to be treated the same as all other IXCs in the provision of MTS, 800 services and operator services.

One comment suggested that the Commission must hold an evidentiary hearing to determine and allocate the RIXC's total costs before establishing a minimum rate standard. The commission disagrees. There is no provision of the Public Utility Regulatory Act (PURA), Texas Civil Statutes, Article 1446c, which requires an evidentiary hearing prior to the adoption of a rule governing the RIXC.

One comment argued that the language of the proposed amendments would allow the RIXC to raise its MTS rates either to cross-subsidize its other services or in response to extended area service provided by local exchange companies. The commission disagrees. AT&T's original petition for rulemaking contained the provisions referenced above. However, prior to publication, AT&T amended its petition to delete these provisions. The version of the amendments published in the Texas Register did not contain these provisions, so the comment is not relevant. As published, the amendment establishes the MTS rates in effect on May 1, 1990 as the bench-mark price and the maximum rate, thereby preventing the RIXC from raising its existing MTS rates.

One comment argued that using the May 1, 1990 rates as the bench-mark price and the maximum rate would result in MTS rates significantly above cost in the future since it is anticipated that access costs will be reduced in the future. The commission disagrees because other provisions of the section require that reductions in access costs be used to reduce the bench-mark price, thus also reducing the maximum rate for MTS.

One comment argued that the definition of bench-mark price for MTS could not be changed from "the rates in effect on July 1, 1987" to "the rates in effect on May 1, 1990" without a contested case. The commission disagrees. Pursuant to Texas Civil Statutes, Article 6252-13a, the appropriate procedure for amending the commission's rules is the publish-and-comment procedure authorized by §5, not the contested case evidentiary hearing procedure authorized by §§13-18.

One comment objected to the provisions concerning optional calling plans, arguing that regulating the RIXC the same as all other IXCs would allow the RIXC to package its services on a customer-specific basis. The commission agrees and has amended the section to remove the language allowing the RIXC to offer optional calling plans on an expedited basis. The RIXC may continue to offer optional calling plans under the new services provision and may amend its existing optional calling plans pursuant to other sections of the commission's substantive rules. Additionally, a provision was added to the rule to reaffirm that the RIXC shall comply with PURA prohibitions against unreasonable discrimination.

One comment objected to the provision allowing the offering of temporary promotional rates because the section does not provide any limits on how often or for how long the promotional rates may be offered. The commission agrees and has added language limiting the RIXC to six promotional offerings for a maximum of 124 days each during any calendar year.

One comment suggested that the Commission should not amend §23.25 without first

evaluating the impact of prior amendments to §23.25 which gave the RIXC greater flexibility in pricing for WATS and private line service. The commission disagrees. The commission's ability to conduct detailed evaluation of the effect of the prior amendments has been greatly hampered by the failure or refusal of other IXC's to file Interexchange Carrier Data Reports as required by the Commission. The RIXC should not be punished by delaying consideration of its request for additional flexibility because its competitors (IXCs) have failed to comply with commission rules and reporting requirements.

One comment urged the commission to address other issues raised in Docket Number 7790, such as the definition of "statewide average rates" and establishment of service standards for IXC's before granting additional flexibility to the RIXC. Although the commission agrees that these other issues are important, they are entirely separate from the issues addressed in §23.25 and should not be a basis to delay consideration of the granting of additional flexibility to the RIXC. The other issues will be considered in a separate rulemaking at a later date and will be applicable to all IXC's.

The proposed amendments were published in response to a petition for rulemaking submitted by AT&T Communications of the Southwest, Inc. (AT&T) on March 14, 1990. After the publication, AT&T submitted comments in support of the amendments as proposed. The comments asserted that the commission has systematically reduced regulatory restrictions on the RIXC pursuant to its authority under PURA Section 18 and that there is sufficient competition at the present time to allow the RIXC to be regulated the same as all other IXC's in Texas in the provision of 800 services and operator services. Although the commission agrees that additional flexibility for the RIXC is warranted, it does not agree that the RIXC should be regulated the same as other IXC's in the 800 services and operator services markets. For this reason the section has been amended to establish a range of rates in those service markets.

AT&T argues that the RIXC should be allowed to offer discrete day, evening and night/weekend MTS rates instead of basing evening and night/weekend rates on a percentage of day rates. The commission agrees that discrete rate schedules should be utilized by the RIXC, but only if each per-minute-of-use rate element is expressed in one-hundredths of a penny to avoid additional charges caused by rounding rates to the next highest penny. The section has been amended to add this provision.

AT&T urged that the commission adopt the proposed amendments which would allow the RIXC to flow through access charge reductions without prior notice and which would provide that such reductions did not have to be flowed through to prices which are below the cost of access, billing and collection. The Commission agrees with AT&T's proposal, but only if the time period for flow-through of access charge reductions of more than \$2 million is reduced from six months to 90 days. This provision is needed to insure that consumers receive the benefit of access charge reductions in a shorter time period. The section has been amended to incorporate this change. Additionally, in order to insure that

access charge reductions are passed on to customers, the commission has amended provisions related to access charge reductions to require such reductions to be reflected in both bench-mark prices and the prices actually charged to customers. Access charge reductions applicable to MTS must be reflected in each of the discrete time of day schedules in elements prices above the minimum rate. If any amount attributable to MTS remains undistributed, it must be used to reduce elements in other MTS time of day schedules.

Following the commission's Final Order Meeting of September 19, 1990, a copy of the commission staff's recommended changes to the proposed amendments was provided to interested parties and those who had provided comments on the proposed amendments. Additional comments in response to the staff's recommendation were received from AT&T; American Telco, Inc.; the Antitrust Division of the Texas Attorney General's Office; Consumers Union; MCI; ITI; Office of Public Utility Counsel; U.S. Sprint; and Texas Association of Long Distance Telephone Companies. Most of these comments merely restated objections that had been raised concerning the original publication and did not address the staff's proposed revisions. A summary of the comments on the staff's proposal and the agency's response is provided below.

Several of the comments objected that the proposed minimum rate provisions contained in the section would allow the RIXC to engage in predatory pricing and would exempt the RIXC from liability for antitrust law violations. The commission disagrees with these comments. The proposed minimum rate would require that the RIXC recover revenues per minute in excess of the access, billing, and collection expenses associated with the service. The access, billing, and collection expenses constitute an adequate proxy for the incremental costs of providing the service. Predatory pricing is not established unless the price is set below the incremental or average variable cost. However, in order to provide additional assurances that the RIXC will not engage in predatory pricing, the commission has amended the section to raise the minimum rate in various services to 105% of the associated access, billing, and collection expenses. Although the commission does not believe that the proposed minimum rate authorizes predatory pricing, additional language has been added to the section to clarify that the section does not exempt the RIXC from compliance with, or immunize the RIXC from liability under state or federal law. By adopting this rule, the commission is not intending to shield the RIXC from federal or state antitrust laws, but is granting the RIXC additional flexibility in the pricing of its services in accordance with the state policy, expressed in Texas Civil Statutes, Article 1446c, §18(a), favoring equal opportunity in a competitive market place.

One comment objected that the provision allowing the RIXC to provide temporary promotional rates included language requiring the RIXC to notify the commission of "the locations covered by the promotional rates". The comment suggested that this language implies that the RIXC could offer rates which did not comply with the requirement of statewide average rates contained in Texas Civil

Statutes, Article 1446c. The Commission agrees with this comment and has added a provision to clarify that the RIXC must offer promotional rates in all parts of the state except where local equipment limitations interfere. The RIXC must identify the locations where the promotional rates would not be available. Additionally, the RIXC must make cost information available to the staff to insure compliance with the cost standard for promotional offerings. The commission will provide a description of the promotional filings in its Weekly Events Update so that persons may be aware of the filings the commission receives.

One comment suggested that the maximum rate for directory assistance would be inadequate if access charges increased so that the cost exceeded the maximum rate. The commission agrees and has revised the provision to state that the maximum rate for directory assistance is 50 cents or 105% of the average access, billing, and collection expense associated with directory assistance, whichever is greater. This change allows the maximum price to be increased if access charges increase in the future.

One comment suggested that the range of rates for operator services was too great. As it pertains to person-to-person calls the Commission agrees and has revised the provision so that the minimum rate for that service may not be less than 90% of the bench-mark price. For all other operator services, the Commission feels that the range is appropriate.

One comment suggested that the provision that requires the commission to treat as confidential information submitted pursuant to the rules violates the Open Records Act. The commission disagrees. The Open Records Act specifically exempts from disclosure material which contains privileged or confidential trade secrets and commercial or financial information.

In response to comments concerned about the enforcement of the price standards contained in the rule, the commission has added language to the rule requiring the staff to review all price changes to ensure that they conform to the minimum price floors contained in the rule. Even though the staff presently reviews all filings by the RIXC to ensure that they comply with the rules, the language is added as assurance to other parties that the practice will continue in the future. Additionally, the RIXC is required to make available to the Office of Public Utility Counsel any information which is provided to staff.

The amendments are adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §18 which grants the Commission the authority and power to carry out the public policy requiring new rules, policies, and principles to protect the public interest and to provide equal opportunity to all telecommunication utilities in a competitive marketplace.

§23.25. Long Distance Rates.

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

(c) **Rate flexibility.** After the effective date of these rules, the RIXC may have maximum and minimum rates established by this commission in accordance with this subsection. For all services for which switched access services are utilized, distance-sensitive rates will be calculated on the basis of the airline mileage between the rate center at which a message is originated and the rate center at which a message is terminated. The airline mileage shall be calculated by using the "V and H" coordinates established in the relevant tariffs.

(1) The charges for message telecommunications service and operator service in effect on May 1, 1990, shall be the bench-mark price. The bench-mark price may be changed pursuant to procedures set forth in the Public Utility Regulatory Act (PURA), §42 and §43, and pursuant to subsection (d) of this section concerning access charge changes. Except as expressly provided in this subsection and subsections (e), and (g), of this section the RIXC shall be allowed to restructure its rates for all Wide Area Telecommunications Services (WATS), analog private line services, digital private line services, virtual private network services and 800 services

without further commission action. The maximum and minimum rate for each service shall be as follows.

(A) For message telecommunications service, the maximum rate shall be the bench-mark price for each rate band. The minimum rate shall be \$.04 below the bench-mark price for all rate bands of 81 miles or less, and \$.03 below the bench-mark price for all rate bands of more than 81 miles. The RIXC may restructure its current message telecommunications service tariffs to establish discrete price schedules for its day, evening, and night/weekend offerings in lieu of pricing evening and night/weekend calls by applying a percentage discount to the day rate bands; however, if the RIXC so restructures, the initial bench-mark prices and minimum rates for evening and night/weekend calls shall be the prices determined by applying the RIXC's respective tariffed discounts in effect at the time of restructure to the day bench-mark prices and minimum rates then in effect. In establishing the discrete schedules, the RIXC shall express each per-minute rate element in one-hundredths of a penny. Except as provided in subsection (d)

of this section, after the initial establishment of separate price schedules for day, evening, and night/weekend offerings, the RIXC may not revise a minimum rate to below 105% of the associated access, billing, and collection expenses.

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

(E) For 800 services (as, for example, ReadylineR dedicated and ReadylineR/common), the minimum rate for each service offered shall yield average revenues per minute in excess of 105% of the access, billing, and collection expenses associated with the provision of that service. The maximum rate for each service group offered (as, for example, traditional 800 service or MegacomR 800) shall yield average revenue per minute no greater than 140% of the access, billing, and collection expenses associated with the provision of that service group, except that 90 days after the Regional Bell Operation Company 800 service database offering is approved by the Commission, there shall be no maximum rate.

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(F) For surcharges for operator services other than directory assistance, person-to-person calls, and conference services, the minimum rate shall be 75% of the bench-mark price. For person-to-person calls the minimum rate shall be 90% of the bench-mark price. For surcharges for operator services other than directory assistance and dialed station-to-station and calling card services, the maximum rate shall be 120% of the bench-mark price. For surcharges for dialed station-to-station and calling card services, the maximum rate shall be the bench-mark price.

(G) For directory assistance, the maximum rate per call shall be 50 cents or 105% of the average access, billing and collection expense associated with directory assistance, whichever is greater. No RIXC shall be obligated to provide an allowance for free directory assistance calls.

(H) For usage-sensitive conference services, the rates shall be as follows.

(i) For automated and operator-assisted conference services, the

per-minute charge for each service point shall be obtained from the appropriate message telecommunications rate schedule applicable for mileage band and time of day.

(ii) For automated conference bridging services, the maximum and minimum port charges per minute of use shall be established respectively \$.05 above and below the bench-mark price.

(I) The RIXC may offer promotional message telecommunications service or operator service offerings (special rate incentives), for purposes such as increasing long-term demand for a service or utilizing unused capacity of the RIXC's network, by reducing the charges for and/or increasing the benefits of a service to which the promotional rate applies. No more than six promotional offerings may be made in any calendar year, and each such promotional offering may remain in effect for no longer than 124 days in any calendar. Before implementing or extending promotional rates under this subsection, the RIXC shall notify the commission by filing a letter no less than five business days prior to the proposed effective date containing descriptions of the service or services affect-

ed, the terms of the promotion, the locations, if any, where the promotional rates are not available, and the dates of each promotional period and shall make available to the commission staff a detailed cost justification demonstrating compliance with the cost standard set out below. The commission shall provide descriptions of all new promotional rate filings under this section in its Weekly Events Update. Promotional rates shall be offered in every area of the state unless the access, switching or billing equipment of a local exchange company does not have the technical capability to handle the rate or service. Proposed promotional rates for message telecommunications service shall yield revenues in excess of 105% of the associated access, billing and collection expenses; proposed promotional rates for operator services must not be less than the minimum rates for the affected services. The requirements of subsection (g) of this section shall also apply.

(2) The RIXC shall file tariffs for each of its service offerings containing its current prices on the effective date of this section and the minimum and maximum requirements of this section, where applicable. For analog private line service, the tariffs shall be accompanied by informa-

tion showing the access cost associated with each access-related rate element for which minimum rates are to be set.

(3) For message telecommunications services and operator services, if the RIXC desires to charge a price different from its current price, but within the maximum and minimum rates, it shall file a revised price schedule for each service or group of services. The RIXC may change one or more than one price within a service. The price schedule shall be in the form prescribed by the commission and shall make reference to the tariff section, sheet number and USOC code for each affected service. The revised price schedule shall have a stated effective date, which shall not be less than 30 days after the filing date. If a revised price schedule for message telecommunications service increases the rate charged to a customer, notification of the revised price schedule shall be provided to the affected customers of the affected service through bill information notices, mail, or such other notification mechanisms as approved in the procedure contemplated in §23.25 of this title (relating to Form and Filing of Tariffs) at least 30 days prior to the effective date of the revised price schedule, or by publication once in each week for four successive weeks prior to the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change. If affected customers are notified by means of bill information notices issued by local exchange companies, the cost of such notices shall be borne by the RIXC.

(4) Within 90 days of the effective date of this section, the RIXC shall file a price schedule for each 800 service offering specifying rates in compliance with this section. If the RIXC desires to charge a price different from its current price, but between the minimum and maximum rates allowed by this section, it shall file a revised price schedule for each service or group of services on or before the effective date of the rate change.

(5) Within 30 days of the effective date of this section, the RIXC shall file a tariff for each operator service offering showing the minimum and maximum rate for each offering. At the same time, the RIXC shall also file a price schedule specifying its current rates in effect. If a rate is in effect on the effective date of this section which is below the minimum or above the maximum price, the RIXC shall, within 30 days of the effective date of this section, file a revised price schedule bringing that rate within the permissible range. Such a rate change shall take effect immediately upon filing of the revised price schedule.

(d) Access charge changes. If the commission changes the access charges charged to the RIXC by two million dollars or more, the RIXC shall revise its benchmark prices and its prices charged to cus-

tomers that are affected by such changes and file the revised prices within 90 days after the order of the commission. If the commission changes the access charges charged to the RIXC by less than two million dollars, the RIXC shall revise its benchmark prices at its prices charged to customers that are affected by such changes and file the revised prices within six months after the order of the commission. The revised prices shall at minimum recover 105% of the access, billing, and collection expenses for the subject service as a whole and filings shall include detailed cost justification so demonstrating. The RIXC shall not change the price relationships among the rate elements within a subject service, nor may it alter those rate elements; except, however, the benchmark price for a rate element shall not be revised downward to reflect access charge changes to the extent such revision would price the rate element below 105% of its associated access, billing, collection expenses. When access charge reductions affect message telecommunications service, reductions shall be made to the day, evening and night/week-end schedules in proportion to minutes of use. In the event that the full amount of access charge reduction for the night/week-end rate schedule cannot be made without lowering some rate element below 105% of the associated access, billing, and collection expenses, the excess access charge reduction shall be applied to elements in the evening rate schedule. In the event that the full amount of access charge reduction for the evening rate schedule cannot be made without lowering some rate element below 105% of the associated access, billing, and collection expenses, the excess access charge reduction shall be applied to elements in the day rate schedule. During the first 90 days of the commission's order revising access charges, the RIXC may implement revised benchmark prices which flow through to each respective service all or part of the access charge changes related to that specific service. Ninety days after the effective date of any commission ordered changes in access charges, the commission may review the flow-through methodology and the benchmark prices. The revised benchmark prices shall have a stated effective date which shall not be less than 30 days after the filing date. The filing shall include detailed workpapers showing the access charge inputs, the calculations and the results for each affected benchmark price. The filing shall also contain a detailed narrative explanation of each step in the calculation. If the revised benchmark price(s) causes an increase in a rate charged to a customer, notification of the filing shall be provided to the affected customers of the affected service through bill information notices, mail, or such other notification mechanisms as approved by the procedures contemplated in §23.25 of this title (relating to Form and Filing of Tariffs) at least 30 days prior to the effective date of the revised benchmark prices, or by publica-

tion once in each week for four successive weeks prior to the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change. If affected customers are notified by means of bill information notices issued by local exchange companies, the cost of such notice shall be borne by the RIXC.

(e) (No change).

(f) Prohibitions. No tariffed offering in effect prior to January 1, 1987, may be withdrawn or limited without the prior approval of the commission. Rates shall not be deaveraged on a geographic basis. The RIXC shall comply with the PURA prohibitions against unreasonable discrimination.

(g) (No change).

(h) If any local exchange company or interexchange company, including the RIXC, claims that information submitted in any report, or otherwise submitted in response to a requirement of these sections, is proprietary or a trade secret, such information shall be treated as is information submitted pursuant to §23.61(1)(6) of this title (relating to Telephone Utilities).

(i) Pricing by the RIXC at or above the minimum price floors provided herein is not sufficient to exempt the RIXC from compliance with, or immunize the RIXC from liability under, state or federal anti-trust law.

(j) The commission staff shall review each price change filed by the RIXC to determine whether the rates and price schedules filed pursuant to this section cover the minimum price floors provided herein. The information provided to Staff shall be made available to the Office of Public Utility Counsel simultaneously.

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 15, 1990.

TRD-9012269

Jo Campbell
Commissioner
Public Utility Commission
of Texas

Earliest possible date of adoption: December 6, 1990

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



TITLE 22. EXAMINING

BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions

• 22 TAC §281.24

The Texas State Board of Pharmacy adopts an amendment to §281.24, with changes to the proposed text as published in the June 8, 1990, issue of the *Texas Register* (15 TexReg 3313).

The amendment more clearly defines the act of dispensing prescription drugs not in the usual course of professional practice and adds default on a loan through the Texas Guaranteed Student Loan Corporation, as an action which constitutes unprofessional conduct.

Comments were received at a September 18, 1990, public hearing. The Texas Pharmaceutical Association and Texas Society of Hospital Pharmacists commented against portions of the proposed section. The Texas Federation of Drug Stores commented that it was not opposed to the adoption of the section. Most of the comments focused on subsection (a)(2)(A).

The commenters suggested deleting subsection (a)(2)(A)(ii) of this section because they believed that the conduct described in subsection (a)(2)(A)(i) was encompassed in the conduct described in clause (ii). The board disagrees with these comments since clauses (i) and (ii) address different types or patterns of unprofessional dispensing conduct. The board believes that both sections are necessary for proper enforcement of the Act, and are necessary to clarify the intent of the section, as suggested by the Texas Court of Civil Appeals in a recent decision remanding a case back to the board for rehearing.

Suggestions were also made to delete the phrase "... or with reasonable diligence." The board disagreed with these comments, but did amend the section by replacing the phrase in question with the word "reasonably," so that portion of the section now reads: "...the pharmacist knows or reasonably should have known..." The board disagreed with deleting the reference to "reasonable" because the board believes that the "reasonable man" standard is fair and is also currently applied and used by the judicial system.

The amendment is adopted under Texas Civil Statutes, Article 4542a-1, §16 and §26, which provide the Texas State Board of Pharmacy with the authority to adopt rules necessary to enforce the Act and define acts which constitute unprofessional conduct.

The amendment regarding default on a loan guaranteed through the Guaranteed Student Loan Corporation is also authorized by the Texas Education Code, §57.491, which authorizes a licensing board to deny the renewal of a state professional or occupational license to persons who are in default on a guaranteed student loan.

§281.24. Grounds for Discipline for a Pharmacist License.

(a) For the purposes of the Act, §26(a), "unprofessional conduct" shall include, but not be limited to:

(1) (No change.)

(2) dispensing a prescription drug order pursuant to a prescription from a practitioner as follows.

(A) The dispensing of a prescription drug order not issued for a legitimate medical purpose or in the usual course of professional practice shall include the following:

(i) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the Federal Food and Drug Administration, or the guidelines published in professional literature; or

(ii) dispensing controlled substances or dangerous drugs when the pharmacist knows or reasonably should have known that the controlled substances or dangerous drugs are not necessary or required for the patient's valid medical needs or for a valid therapeutic purpose.

(B) The provisions of subparagraph (A)(i) and (ii) of this paragraph are not applicable for prescriptions dispensed to persons with intractable pain or to a narcotic drug dependent person in accordance with the requirements of Title 21, Code of Federal Regulations, 1306.07.

(3)-(22) (No change.)

(23) failure to establish or maintain effective controls against the diversion or loss of controlled substances or dangerous drugs, loss of controlled substance or dangerous drug records, or failure to ensure that controlled substances or dangerous drugs are dispensed in compliance with state and federal laws or rules, by a pharmacist who is:

(A) (No change.)

(B) a sole proprietor or individual owner of a pharmacy;

(C) (No change.)

(D) a managing officer of a corporation, association, or joint-stock company owning a pharmacy. A pharmacist, as set out in subparagraphs (B)-(D) of this paragraph, is equally responsible with an individual designated as pharmacist-in-charge of such pharmacy to ensure that employee pharmacists and the pharmacy are in compliance with all state and federal laws or rules relating to controlled substances or dangerous drugs;

(24)-(25) (No change.)

(26) being the subject of civil fines imposed by a federal or state court as a result of violating the controlled substances act or dangerous drug act;

(27) buying, selling, trading, bartering, or exchanging:

(A)-(E) (No change.)

(F) prescription drugs beyond the manufacturer's expiration date; or

(28) failure to repay a guaranteed student loan, as provided in the Texas Education Code §57.491.

(b) For the purposes of the Act, §26(a)(3), the term "gross immorality" shall include, but not be limited to:

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

(c) For the purposes of the Act, §26(a)(5), the terms "fraud," "deceit", or "misrepresentation" in the practice of pharmacy or in seeking a license to act as a pharmacist shall be defined as follows:

(1)-(3) (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 19, 1990.

TRD-9012352

Fred S. Brinkley, Jr., R.Ph.
Executive
Director/Secretary
State Board of Pharmacy

Effective date: December 10, 1990

Proposal publication date: June 8, 1990

For further information, please call: (512) 832-0661

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 102. General Provisions-Practice and Procedures

• 28 TAC §102.2

The Texas Workers' Compensation Commission adopts new §102.2, without changes to the proposed text as published in the September 7, 1990, issue of the *Texas Register* (15 TexReg 5097).

The new section appoints the executive director to receive grants or contributions made to the commission or the crime victims compensation fund, to forward money to the comptroller for deposit, to convert donated property to cash, and to report all gifts to the commission.

The new section is necessary to provide procedures for the acceptance of gifts, grants, and donations by the commission and to implement the Texas Civil Statutes, Article 8308, §2.09(d).

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8308, §2.09(d), which provide the Texas Workers' Compensation Commission with the authority to accept gifts, grants, and donations as provided by rules adopted by the commission, and §2.09(a), which provide the commission with the authority necessary to implement and enforce the Texas Workers' Compensation 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 16, 1990.

TRD-9012297 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: January 1, 1991

Proposal publication date: September 7, 1990

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

◆ ◆ ◆
• 28 TAC §102.3

The Texas Workers' Compensation Commission adopts new section §102.3 without changes to the proposed text as published in the August 31, 1990, issue of the *Texas Register* (15 Tex Reg 5000).

The new section incorporates into the rules certain sections of the Government Code that apply to the filing of documents and makes clear that these provisions do not apply to computation of eligibility for benefits.

No comments were received regarding adoption of the section.

The new section is adopted under Texas Civil Statutes, Article 8308, §2.09(a) which provide the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of the Workers' Compensation 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 16, 1990.

TRD-9012296 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: January 1, 1991

Proposal publication date: August 31, 1990

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

Chapter 126. Benefits-General Provisions Applicable To All Benefits

• 28 TAC §126.2

The Texas Workers' Compensation Commission adopts new §126.2 without changes to the proposed text as published in the August 31, 1990, issue of the *Texas Register* (15 Tex Reg 5003).

The new section is necessary in order to clarify the conditions under which workers' compensation benefits are to be paid to a minor.

The new section requires that benefits will be paid to the parent, guardian, or other court ordered custodian, for the benefit of a minor until the minor is 18. A parent, guardian, or managing conservator may agree that a minor be paid directly, or the minor may ask for direct payment by a commission order.

Concerning the new section, one commenter stated that subsection (c) should require commission approval of a parent's agreement, prior to implementing direct payment to a minor, in order to prevent forged agreements. The commission disagrees, on the basis that the problem could be relieved by carrier's verification, and that too much agency time would be consumed in approving or investigating the agreements.

No comment specifically favorable to the section was received. American Insurance Association commented against the rule.

The new section is adopted under Texas Civil Statutes, Article 8308, §3.13, which provide the Texas Workers' Compensation Commission with the authority to adopt by rule procedures relating to the method of payment of benefits to legally incompetent employees, including minors.

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 16, 1990.

TRD-9012298 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: January 1, 1991

Proposal publication date: August 31, 1990

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

◆ ◆ ◆
• 28 TAC §126.3

The Texas Workers' Compensation Commission adopts new section §126.3, without changes to the proposed text as published in the August 31, 1990, issue of the *Texas Register* (15 TexReg 5003).

The new section is required in order to clarify the conditions under which workers' compensation benefits are to be paid to legally incompetent persons.

The new section requires benefits to be paid to a court ordered guardian of an incompetent

adult unless the beneficiary's competency is restored.

One commenter stated that subsection (b) should be limited to instances where the employee has previously been declared incompetent. The commission disagrees, responding that it is clear by implication that the rule applies only to persons previously declared incompetent.

American Insurance Association commented against the section as proposed. No comments specifically favoring the section as proposed were received.

The new section is adopted under Texas Civil Statutes, Article 8308, §2.09(a), which provide the Texas Workers' Compensation Commission with the authority to adopt by rule procedures relating to the payment of benefits to legally incompetent employees.

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 16, 1990.

TRD-9012295 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: January 1, 1991

Proposal publication date: August 31, 1990

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

◆ ◆ ◆
TITLE 34. Public Finance
Part I. Comptroller of
Public Accounts

Chapter 3. Tax Administration

Subchapter A. General Rules

• 34 TAC §3.5

The Comptroller of Public Accounts adopts an amendment to §3.5, without changes to the proposed text as published in the September 28, 1990, issue of the *Texas Register* (15 TexReg 5666).

The purpose of the amendment is to provide a procedure for requesting penalty and interest waiver in non-audit situations, in particular where there is a concurrent hearing on tax liability.

Comments were received from the Attorney General's office asking under what circumstances a taxpayer would seek a hearing on a tax return liability. No changes were made to the section in response to this comment.

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

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

Issued in Austin, Texas, on November 16, 1990.

TRD-9012279 Bob Bullock
Comptroller of Public
Accounts
Public Finance

Effective date: December 6, 1990

Proposal publication date: September 28, 1990

For further information, please call: (512) 463-4004

Subchapter O. State Sales and Use Tax

• 34 TAC §3.290

The Comptroller of Public Accounts adopts an amendment to §3.290, with changes to the proposed text as published in the August 24, 1990, issue of the *Texas Register* (15 TexReg 4875).

The change involves re-inserting language in subsection (b)(2) of this section that addresses the status of a person who makes repairs to motor vehicle components or accessories.

The amendment would cause the removal and replacement of defective, worn, or unsafe shock absorbers, tires, mufflers, or batteries to be treated as a repair of a motor vehicle instead of as sale and installation of those parts. The labor to repair a motor vehicle is not taxable.

Comments were received from the Texas Retailers Association that the amended section left unclear the taxability of certain charges such as balancing of newly installed or existing tires. Balancing or other service charges connected with installation of tires or on existing tires is considered a repair of the motor vehicle.

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

§3.290. Automotive Repair and Maintenance Shops.

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

(1) Accessories—Nonessential tangible personal property attached to a motor vehicle for the convenience or comfort of the operator or passengers, or to assist or aid in the transportation, loading, or unloading of tangible personal property. Examples include car radio, air conditioner, refrigerator on a meat van, or a concrete mixer.

(2) Component—A part of a motor vehicle such as tires, batteries, shock absorbers, and mufflers or a motor vehicle system such as the suspension, electrical, or cooling systems necessary to the proper operation of a motor vehicle and includes any

part of the chassis or body.

(3) Equipment attachment—A part attached to a motor vehicle which is neither a component, nor an accessory but which may be cargo that the vehicle transports, such as a welder, crane, compressor, or other type equipment.

(4) Installation—To put tangible personal property into place for use or service but does not include the removal and replacement of a defective or worn part under subsection (b)(2) of this section which constitutes repair.

(b) A person engaged in the sale and installation of motor vehicle component parts and accessories must collect sales tax on the price charged for the parts, accessories, and installation. The removal and replacement of defective, worn, or unsafe accessories or components is a repair and not a sale and installation.

(1) The total charge for the sale and installation of an accessory or a component is subject to tax regardless of whether the charge is lump-sum or separated.

(2) The replacement of a defective or inoperative component or accessory is a repair of a motor vehicle. The tax responsibility of the repairman is covered under §3.292(b) of this title (relating to Repairmen). The repair of a motor vehicle component or of an accessory is considered the repair of a motor vehicle.

(3) The repair of equipment attachments is considered the repair of tangible personal property and is taxed according to §3.292(c) of this title (relating to Repairmen).

(c) The repair and rebuilding of motor vehicle component parts to be sold is manufacturing and the labor charged is subject to tax whether included in the selling price or stated separately.

(d) A person may repair a motor vehicle component or accessory for the general repairman who is performing general repair work on a motor vehicle.

(1) If the person repairing the component or accessory separates the price charged for parts from the repair labor, the general repairman may issue a resale certificate for the parts. The repair labor is not taxable.

(2) If the person repairing the component or accessory charges one lump-sum amount for the repair of the component or accessory, the person is a lump-sum repairman under §3.292(b) of this title (relating to Repairmen).

(e) The sales price upon which the tax is based must include any manufacturer's federal excise tax.

(f) Gasoline, L.P. gas, diesel, and kerosene are exempt from the sales tax.

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 14, 1990.

TRD-9012187 Bob Bullock
Comptroller of Public
Accounts

Effective date: December 5, 1990

Proposal publication date: August 24, 1990

For further information, please call: (512) 463-4004

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 16. Intermediate Care Facilities/Skilled Nursing Facilities (ICF-SNF)

Definitions

The Texas Department of Human Services (DHS) adopts the repeal of §§16.1101, 16.1502, 16.1503, 16.1510, 16.1514, 16.1601, 16.1902, 16.1905, 16.1908, 16.1909, 16.3010, 16.3806, 16.3903, 16.6112, 16.7103, and 16.9801, without changes to the proposed text as published in the October 16, 1990, issue of the *Texas Register* (15 TexReg 6062).

The purpose for the repeals is to delete the remaining sections in old Chapter 16, Intermediate Care Facilities/Skilled Nursing Facilities (ICF-SNF). Chapter 16 has been replaced with new Chapter 19, Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification. Chapter 19 became effective October 1, 1990.

The repeals will function by deleting remaining sections in old Chapter 16 which have been replaced by new Chapter 19.

No comments were received regarding adoption of the repeals.

• 40 TAC §16.1101

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

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 19, 1990.

TRD-9012338 Cathy Rossberg
Agency liaison, Policy and
Document Support
Department
Texas Department of
Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990
For further information, please call: (512) 450-3765

Compliance with State and Local Laws

• 40 TAC §§16.1502, 16.1503, 16.1510, 16.1514

The repeals are 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.

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 19, 1990.

TRD-9012337 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Special Programs

• 40 TAC §16.1601

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

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 19, 1990.

TRD-9012336 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Governing Body and Management

• 40 TAC §§16.1902, 16.1905, 16.1908, 16.1909

The repeals are 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.

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 19, 1990.

TRD-9012335 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Nursing Services

• 40 TAC §16.3010

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

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 19, 1990.

TRD-9012334 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Services and Supplies Included in the Vendor Payment

• 40 TAC §16.3806

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

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 19, 1990.

TRD-9012333 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Medical Records

• 40 TAC §16.3903

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

§16.3903. Content.

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 19, 1990.

TRD-9012332 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Recipient Rights

• 40 TAC §16.6112

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

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 19, 1990.

TRD-9012331 Cathy Rossberg
Agency liaison, Policy and Document Support Department
Texas Department of Human Services

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Medical Review and Re-evaluation

• 40 TAC §16.7103

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

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 19, 1990.

Effective date: December 15, 1990

Proposal publication date: October 16, 1990

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

Support Documents

• 40 TAC §16.9801

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

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 19, 1990.

Effective date: December 15, 1990.

Proposal publication date: October 16, 1990

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

State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has adopted amendments to the **Texas Automobile Manual**.

The board has adopted physical damage rating symbols for certain 1990 model Private Passenger automobiles and adjusted 1989 and 1990 model Private Passenger automobiles. The symbols adopted were developed from Manufactures List Price Data and adjusted in accordance with the prescribed Vehicle Series Rating Rule contained in the Symbol and Identification Section of the *Texas Automobile Manual* for 1990 models, subsequent models and 1982-1989 models. The amendments are to be effective on the 60th day after notice of this action is published in the adopted rule section of the *Texas Register*.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

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

Effective date: January 22, 1991

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

The State Board of Insurance has adopted amendments to the Texas Automobile Manual (the manual), and the Texas Standard Provisions for Automobile Policies (the Standard Provisions), and has implemented a change in regulation of garage insurance.

In Board Order Number 56057, issue March 15, 1990, the board adopted amendments to the Manual and the Standard Provisions, effective February 1, 1991, and the board also appointed an advisory committee to consider the question of whether, under the Insurance Code, Article 5.81, certain coverages other than basic auto coverages should be governed by procedures under the Insurance Code, Chapter 5, Subchapter B, while other garage coverages would continue to be governed by procedures under the Insurance Code Chapter 5, Subchapter A. After studying that committee's affirmative response on the above issue, the board found that such action should be implemented under the Insurance Code, Article 5.81.

In order to provide as much clarity as possible, the words "auto only", where used in the Manual and Standard Provisions, include all coverages that will remain subject to the provisions of the Insurance Code, Chapter 5, Subchapter A, when the recent garage order becomes effective. The words "other than auto" refer only to general liability coverages not included in the basic Garage Coverage Form, and include broadened garage coverages that are being approved under the Insurance Code, Chapter 5, Subchapter B, both in the future and by another order being issued on the same date, and captioned, "Miscellaneous Liability Coverages-Garage Coverage Form-Rules, Rates and Forms." That latter board order includes a different endorsements that may be attached to the garage policy, and those same six endorsements are being removed from the Manual and the Standard Provisions. Four of those endorsements, which would have become effective February 1, 1991, under Board Order Number 56057, issue March 15, 1990, and the two previously approved endorsements, are all identified in the paragraph below. The recent garage order (mentioned first in this paragraph) rescinds Board Order Number 56057 to the extent it is in conflict therewith.

The numbers and titles of the four endorsements (that were approved under Board Or-

der Number 56057) discussed in the paragraph immediately above, are: TE 25 01A, "Broad Form Products Coverage"; TE 25 08B, "Personal Injury Liability Coverage - Garages"; TE 25 10, "Fire Legal Liability Coverage - Garages"; TE 25 14, "Broadened Coverage - Garages". The other two endorsements (mentioned above) that are remove from the Manual and the Standard Provisions are: TE 03 03, "\$100 Deductible for Completed Operations Does Not Apply", and TE 25 09, "Owners of Garage Premises".

The recent garage order also amends Rule 97 of the Manual in a manner consistent with the above changes. Specifically, Rule 97 is amended to read as follows:

"97. AUTOMOBILE DEALERS, SERVICE OPERATIONS OR TRAILER SALES-ADDITIONAL PROVISIONS (BROADENED COVERAGES)

(A) For broadened coverages, being general liability coverages such as "Broad Form Products Coverage"; "Personal Injury Liability Coverage-Garages"; "Fire Legal Liability Coverage-Garages"; "Broadened Coverage-Garages"; "\$100 Deductible for Completed Operations Does Not Apply"; "Owners of Garage Premises"; and any other general liability coverages that may be approved under the Insurance Code, Chapter 5, Subchapter B, for attachment to the Garage Coverage Form, refer to the rules and procedure for general liability.

(B) The premiums for coverages under this rule shall not be subject to modification under the provisions of any experience rating plan or automobile rule."

The amendments to the Manual and the Standard Provisions are adopted for all policies effective on and after 12:01 a.m., February 1, 1991.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on November 14, 1990.

TRD-9012267

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: January 1, 1991

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



The State Board of Insurance in open meeting on November 14, 1990, adopted an amendment to Rule VII of the Rules and Regulations Governing Pool and Servicing Companies of the Texas Workers' Compensation Assigned Risk Pool pertaining to when an employer is not in good faith entitled to insurance.

The adopted section provides that an employer is not in good faith entitled to insurance if certain circumstances exist at the time of application or thereafter, or if other evidence exists that such employer is not in good faith entitled to insurance. In addition, if after the issuance of a policy the servicing carrier determines that an employer is not in good faith entitled to insurance, or has failed to comply with reasonable health and safety requirements, or has violated any of the terms and conditions under which the policy was issued, the carrier shall initiate cancellation immediately upon finding an insured ineligible or not in good faith entitled to insurance by filing the reason with the Pool for approval prior to issuing the cancellation. Any insured so canceled must reestablish eligibility or

demonstrate entitlement before any further assignment can be made by the Pool.

The amended section is effective 12:01 a.m. December 15, 1990.

The board adopted the amended section under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.77, 5.78, and 5.96.

This notification is filed pursuant to the Texas Insurance Code, Article 5.96 which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on November 14, 1990.

TRD-9012266 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 15, 1990

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



The State Board of Insurance in open meeting on November 14, 1990, adopted an amendment to Rule XXII of the By-Laws of the Texas Workers' Compensation Assigned Risk Pool pertaining to the Small Premium Policy by adding §4g.

The adopted rule provides that the board may approve the transfer of designated insurer status from one affiliate in a holding company group to another affiliate in the same holding group upon the filing of a petition with the board of by the two affiliates. To approve such a transfer the board must find that the affiliate to which designated insurer status is being transferred is capable of fulfilling the obligations of a designated insurer.

The amended section is effective 12:01 a.m. December 15, 1990.

The board adopted the amended section under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.77, 5.78, and 5.96.

This notification is filed pursuant to the Insurance Code, Article 5.96 which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

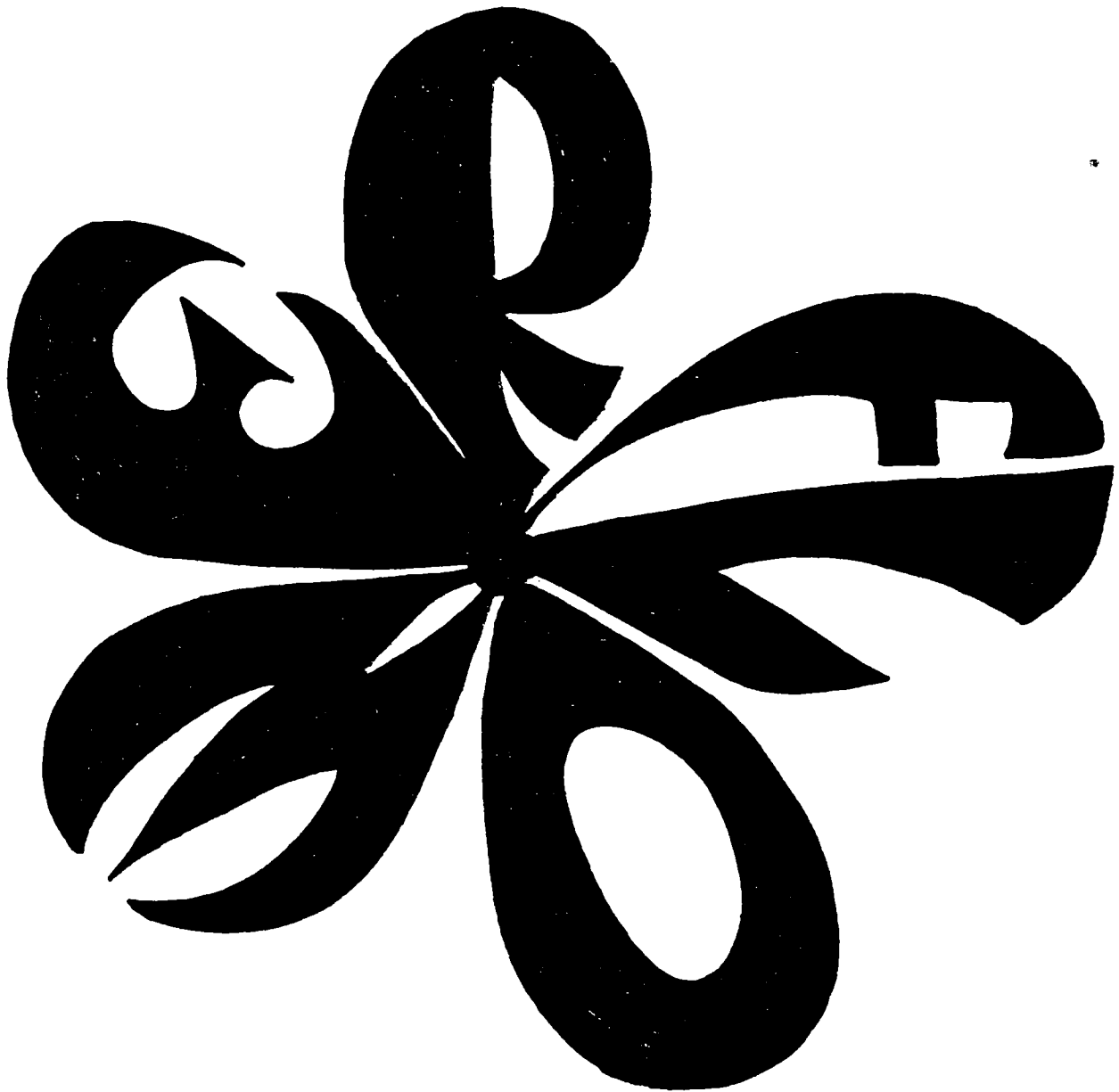
Issued in Austin, Texas, on November 14, 1990.

TRD-9012265 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 15, 1990

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





Name: Helen Wassen

Grade: 12

School: Richardson High School, 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

Monday-Tuesday, November 26-27, 1990, 9:30 a.m. The Texas Agriculture Diversification Program Board of the Texas Department of Agriculture will meet at the Stephen F. Austin Building, Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. According to the complete revised agenda, the board will discuss and act on acceptance of summary proposals for full development for diversification grants for 1991; disposition of previously-awarded grants; microenterprise loan program rules, timetable, and financing; legislative proposals for diversification grants, microenterprise, and linked deposit loan program; discussion on review process of 1991 grant awards; and other administrative matters.

Contact: Brian Muller, P.O. Box 12947, Austin, Texas 78711, (512) 463-7583.

Filed: November 16, 1990, 1:33 p.m.

TRD-9012301

Thursday, December 6, 1990, 8:30 a.m. The Texas Rice Producers Board of the Texas Department of Agriculture will meet at the Harris County Extension Service Auditorium, #2 Abercrombie Drive, Houston. According to the complete agenda, the board will approve minutes; discuss budget; and other business.

Contact: Curtis Leonhardt, 6699 Rookin, Houston, Texas 77074, (713) 270-6699.

Filed: November 16, 1990, 10:12 a.m.

TRD-9012294

Texas Commission on the Arts

Tuesday, December 4, 1990, 8 a.m. The Education Committee of the Texas Commission on the Arts will meet at the Embassy Suites Hotel, Baja Room, 4250 Ridgmont Drive, Abilene. According to the complete agenda, the committee will introduce guests; hold a public hearing; approve minutes for December 13, 1989 edu-

cation committee meeting; Arts Education Initiative, FY 1990 report and FY 1991 plan; Arts Education Initiative, FY 1990 report and FY 1991 plan; Arts Education Initiative FY 1992-1993; Arts Education Task Force; and discuss other business.

Contact: Connie R. Green, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: November 15, 1990, 11:31 a.m.

TRD-9012247

Tuesday, December 4, 1990, 9 a.m. The Multi-Cultural Committee of the Texas Commission on the Arts will meet at the Embassy Suites Hotel, Baja Room, 4250 Ridgmont Drive, Abilene. According to the agenda summary, the committee will introduce guests; hold a public hearing; approve minutes for December 13, 1989 and April 12, 1990; multi-cultural committee meetings; multi-cultural committee goals; cultural diversity committee; statistical update on FY 1991 grant awards; cultural diversity initiatives; information items; Texas TAAC update; and discuss other business.

Contact: Connie R. Green, P.O. Box 13405, Austin, Texas 78711, (512) 463-5535.

Filed: November 15, 1990, 11:31 a.m.

TRD-9012248

Tuesday, December 4, 1990, 10:45 a.m. The Texas Commission on the Arts will meet at the Embassy Suites Hotel, Baja Room, 4250 Ridgmont Drive, Abilene. According to the agenda summary, the commission will introduce guests; hold a public hearing; review items for commission consent; items for individual consideration; items for information only; and meet in executive session.

Contact: Connie R. Green, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: November 15, 1990, 11:32 a.m.

TRD-9012249

Bond Review Board

Tuesday, November 20, 1990, 10 a.m. The Bond Review Board met at the State Capitol, Sergeant's Committee Room, Austin. According to the emergency revised agenda summary, the board discussed the application for proposed issue-Texas Finance Authority for purchase and renovation of Republic Plaza State Office Building and Guaranty Federal Savings State Office Building and purchase of the Old Courthouse Block. The emergency status was necessary to allow timely consideration by Bond Review Board of proposed issue.

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

Filed: November 19, 1990, 4:47 p.m.

TRD-9012418

Texas Department of Commerce

Monday, November 26, 1990, 1 p.m. The Product Commercialization Fund advisory Board of the Texas Department of Commerce will meet at the Texas Department of Commerce, 816 Congress Avenue, 11th Floor Board Room, Austin. According to the complete agenda, the board will hear opening remarks by Chairman Whaley; introductions of Advisory Committee members; at 1:30 p.m. an overview of Product Commercialization Fund program history, progress to date, and plan of action presented by commerce staff; discussion period; and action on scheduling of advisory board meetings through 1991.

Contact: Mike Klonsinski, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9678.

Filed: November 19, 1990, 9:53 a.m.

TRD-9012358

Tuesday, November 27, 1990, 9 a.m. The Product Development Fund Advisory Board of the Texas Department of Commerce will meet at Vinson & Elkins, 816 Congress Avenue, Suite 1700, Conference Room

17A, Austin. According to the complete agenda, the board will discuss product development rules; adoption of rules; break at 9 a.m. and reconvene for discussion of rules.

Contact: Mike Klonsinski, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9678.

Filed: November 19, 1990, 9:54 a.m.

TRD-9012361

Friday, December 7, 1990, 8:30 a.m. The Texas/Mexico Authority of the Texas Department of Commerce will meet at the Westin Hotel, El Paso. According to the complete agenda, the authority will hear introductory remarks; discuss U.S. and Mexico free trade agreement; 11:30-1 p.m., discuss the Texas Mexico Authority Charter; the Bi-State Regional Commissions; legislative proposals; and review of TMA activities.

Contact: Marlene Creel, P.O. Box 12728, Austin, Texas 78711, (512) 320-9669.

Filed: November 19, 1990, 9:54 a.m.

TRD-9012360

Wednesday-Thursday, December 12-13, 1990, 1:30 p.m. and 9 a.m. respectively. The State Community Development Review Committee of the Texas Department of Commerce will meet at the John H. Reagan Building, 105 West 15th Street, Room 109, Austin. According to the complete agenda, the committee, on Wednesday, will have presentation of minutes; funding recommendations on the Planning/Capacity Building Fund applications; funding recommendations on the special impact fund; funding recommendations on the housing development fund; community development fund; appeals for the community development fund; special impact fund, planning/capacity building fund; housing development fund; and Thursday will continue discussion of appeals for community development fund, special impact fund, planning/capacity building fund; and housing development fund.

Contact: Ruth Cedillo, P.O. Box 12728, Austin, Texas 78711, (512) 320-9507.

Filed: November 19, 1990, 9:53 a.m.

TRD-9012359

Texas Education Agency

Wednesday-Friday, November 28-30, 1990, 8 a.m. The Textbook Proclamation 69 Advisory Committee for Science of the Texas Education Agency will meet at the Learning Center, Austin Airport Hilton Hotel, 6000 Middle Fiskville Road, Austin. According to the complete agenda, the committee will provide suggestions on the specifications for content of textbooks and on the criteria used to evaluate textbooks submitted for consideration.

Contact: Larry Perry, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9560.

Filed: November 19, 1990, 10:47 a.m.

TRD-9012372

Thursday-Friday, December 6-7, 1990, 8:30 a.m. The Elementary and Secondary Education Act, Chapter Two Advisory 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 the formula to be used to flow the 80 percent portion of Chapter Two funds to local school districts; review the status of 1990-1991 projects; review the recommendations of Texas Education Agency staff regarding enrichment projects for the 1991-1992 school year; and discuss preliminary evaluations for the 1989-1990 school projects.

Contact: Earin Martin, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269.

Filed: November 19, 1990, 10:48 a.m.

TRD-9012373

Employees Retirement System of Texas

Tuesday, November 27, 1990, 8:30 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet at the ERS Auditorium, ERS Building, 18th and Brazos Streets, Austin. According to the complete agenda, the board will review and approve the minutes of the board of trustees for October 30, 1990; consideration of action on final report from Alexander and Alexander consulting group regarding the strategic plan of the Texas Employees Uniform Group Insurance Program; contractual provisions for health maintenance organizations for fiscal year 1992; appointment to the Employees Retirement System of Texas' Medical Board and designation of a chairman; flexible benefits (cafeteria plan) program general consultant services request for proposal; funding adjustment in the retirement annuity reserve account; hear executive director's report; and set date of next trustee meeting.

Contact: William S. Nail, 18th and Brazos Streets, Austin, Texas 78701, (512) 867-3213.

Filed: November 15, 1990, 1:50 p.m.

TRD-9012255

Texas Employment Commission

Tuesday, November 27, 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 discuss possible litigation involving the tax liability of Relief Services, Inc.; actions, if any, resulting from executive session; consideration and approval of final adoption of amendment to 40 TAC §301.22 to facilitate the filing of unemployment benefits claims in certain emergency situations; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 48; and set date of next meeting.

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

Filed: November 19, 1990, 4:18 p.m.

TRD-9012411

Texas State Board for Professional Engineers

Wednesday, November 28, 1990, 10 a.m. The Ad Hoc Committee of the Texas State Board of Registration for Professional Engineers will meet at 1917 IH-35 South, Board Room, Austin. According to the complete agenda, the committee will convene by Chairman Wilhelm; take roll call; recognize and welcome visitors; and discuss additional board rule changes regarding registration.

Contact: Charles F. Nemir, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: November 19, 1990, 9:27 a.m.

TRD-9012349

Interagency Council for Genetic Services

Wednesday, November 21, 1990, 9:30 a.m. The Interagency Council for Genetic Services held an emergency meeting at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the council discussed response to the Texas Department of Mental Health and Mental Retardation regarding its position on the council's resource allocation plan. The emergency status was necessary as unforeseeable circumstances required quick response for legislative budget board and governor's office of budget and planning.

Contact: William E. Moore, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: November 19, 1990, 2 p.m.

TRD-9012387

Texas Department of Health

Wednesday, November 28, 1990, 10:30 a.m. The Hospital Data Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete revised agenda, the committee will conduct an overview of the department and the Bureau of State Health Data and Policy Analysis; committee's statutory function and responsibility; hospital data collection hospital financial and utilization data; hospital discharge abstract data; committee accomplishments; bylaws; and travel reimbursement policy and procedures.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: November 15, 1990, 1:51 p.m.

TRD-9012256

Wednesday, November 28, 1990, 1 p.m. The Hospital Data Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete agenda, the committee will approve minutes of previous meeting; hear a report from the chief of the department's Bureau of State Health Data and Policy Analysis; review and act on 1990 cooperative survey of hospital and department supplement formats by the department, American Hospital Association and Texas Hospital Association; approve reporting and collection systems for hospitals in Texas in 1988 and progress on 1989 report; consider status of discharge data collection and analysis activities; hear report on National Association of Health Data Organizations annual meeting; and set next meeting date.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: November 15, 1990, 1:49 p.m.

TRD-9012254

Wednesday, November 28, 1990, 7:30 p.m. The Trauma Technical Advisory Committee of the Texas Department of Health will meet at 1016 La Posada Drive, One La Costa Building, Suite 159, Austin. According to the complete revised agenda, the committee will discuss the Texas Trauma System with interested associations.

Contact: Nance Kerrigan, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 2 p.m.

TRD-9012386

Thursday, November 29, 1990, 8 a.m. The Trauma Technical Advisory Committee, Hospital Designation Process Subcommittee of the Texas Department of Health will meet at the Texas Department of

Health, 1100 West 49th Street, Room T-610, Austin. According to the complete agenda, the subcommittee will consider its charge; outline its plan of action for work; and review designation process flow chart.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 2:01 p.m.

TRD-9012389

Thursday, November 29, 1990, 8 a.m. The Trauma Technical Advisory Subcommittee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the agenda, the subcommittee will consider triage criteria and by-pass protocols.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 1:59 p.m.

TRD-9012384

Thursday, November 29, 1990, noon. The Trauma Technical Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will approve minutes from previous meeting; hear chairman's report; coalition meeting report; formulate legislation plan; consider trauma awareness week planning; subcommittee reports on triage criteria and designation process; trauma definition; trauma rule development; and other business not requiring committee action.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 2:01 p.m.

TRD-9012388

Friday, November 30, 1990, 10 a.m. The Coordinating Committee on Poison Control of the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete agenda, the committee will approve minutes of previous meeting; discuss committee plan framework; establish goals for committee work during fiscal year 1991; discuss position paper; designation of north central poison center and Texas poison center boundaries; and other business requiring committee action.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 2 p.m.

TRD-9012385

Thursday, December 6, 1990, 10 a.m. The Home Health Services Advisory Council of the Texas Department of Health, 1100 West 49th Street, Room T-604, Austin. Accord-

ing to the complete agenda, the council will approve minutes of previous meeting; review and respond to comments for the final adoption of the proposed rules concerning home health aide training and testing; announcements and discussion without council action.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 2:02 p.m.

TRD-9012391

Friday, December 7, 1990, 9 a.m. The Texas Emergency Medical Services Advisory Council of the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the council will approve minutes of previous meeting; review comments received on certification rules and make recommendation to Board of Health; on final adoption; consider appointments to appointments to licensure committee and nominating committee; her reports from chairman; department's associate commissioner for community and rural health; department's bureau of emergency management; committees; consider messages and communications to the council; and other business not requiring council action.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: November 19, 1990, 2:01 p.m.

TRD-9012390

Texas Health and Human Services Coordinating Council

Monday, November 26, 1990, 10 p.m. The Commission on Children, Youth and Family Services Policy Coordination Workgroup of the Texas Health and Human Services Coordinating Council will meet at the State Bar of Texas, Room 204, 1414 Colorado Street, Austin. According to the complete agenda, the commission will approve the October 29, 1990 minutes; hear report on federal funds "Areas to Target"; TDHS briefing on federal funds initiatives; prioritization of federal funds; discuss old business and new business.

Contact: Rick Reynolds, 9201 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400.

Filed: November 16, 1990, 9:05 a.m.

TRD-9012290

State Department of Highways and Public Transportation

Thursday, November 29, 1990, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet at the Dewitt C. Greer State Highway Building, 11th and Brazos Streets, First Floor, Room 101 and 101-A, Austin. According to the agenda summary, the commission will hold a public hearing on highway matters in Collin, Dallas, Denton, Delta, and Hunt Counties, and on Gulf Intracoastal Waterway matters in Kenedy and Kleberg Counties; approve minutes; execute contract awards, rejections and defaults; routine minute orders; authorize bridge, rehabilitation and construction projects/programs; contract claim funds; highway safety improvement program; eminent domain proceedings; consider public transportation discretionary projects; construction overrun; final adoption of Texas Highway Trunk System and internal audit policy; receive and discuss staff reports, including Paris District and status on Superconducting Super Collider; rulemaking: 43 TAC §§21.150, 25.91, 11.80-11.90, 25.901-25.920; awards and recognitions; meet in executive session with legal counsel on litigation, real property transactions and staff conference to receive information; and additional rulemaking: 43 TAC §§11.1-11.3.

Contact: Myrna Klipple, State Department of Highways and Public Transportation, Dewitt C. Greer Highway Building, Room 203, Austin, Texas 78711, (512) 463-8616.

Filed: November 19, 1990, 2:46 p.m.

TRD-9012400

Texas Housing Agency

Monday, November 19, 1990, 1 p.m. The Low Income Tax Credit Committee of the Texas Housing Agency met at the Doubletree Hotel (Allcenter), 400 Dallas Street, Houston. According to the emergency revised agenda summary, the committee will have the same agenda as previously filed with the Secretary of State on November 9, 1990. The meeting place was changed from the Hyatt Regency, Downtown, to the Doubletree Hotel, Houston. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: November 15, 1990, 4:21 p.m.

TRD-9012281

Tuesday, November 20, 1990, 9 a.m. The Board of Directors of the Texas Housing Agency met at the Airport Hilton (Hobby Hilton), 500 North Belt (East), Houston. According to the emergency revised agenda summary, the board considered and/or possibly acted on the status and applications for the Low Income Tax Credit Program. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: November 15, 1990, 4:21 p.m.

TRD-9012280

Department of Information Resources

Friday, November 30, 1990, 9 a.m. The Board of the Department of Information Resources will meet at the John H. Reagan Building, 105 West 15th Street, Room 106, Austin. According to the complete agenda, the board will take roll call and witness registration; discussion and vote on approval of September 24, 1990 minutes; executive director's report; discussion and vote to adopt LAR/2nd submission; discussion and vote to adopt agency strategic plan; to adopt previously published emergency rules and regular rules; legislative initiatives; discussion of future quarterly board meeting dates; and discuss other business.

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

Filed: November 19, 1990, 12:29 p.m.

TRD-9012378

State Board of Insurance

Tuesday, November 27, 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 Professional Investors Life Insurance Company, Tulsa, Oklahoma, should be ordered to rectify a hazardous financial condition. Docket Number 11027.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 19, 1990, 4:40 p.m.

TRD-9012417

Tuesday, November 27, 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. Ac-

ording to the complete agenda, the section will conduct a public hearing to consider whether Thurston Fire and Casualty Insurance Company, Tulsa, Oklahoma, should be ordered to rectify a hazardous financial condition. Docket Number 11028.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 19, 1990, 4:40 p.m.

TRD-9012416

Wednesday, November 28, 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 Albert Ravelo doing business as Talon Insurance Agency, Plano/Garland, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license. Docket Number 11035.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 19, 1990, 4:40 p.m.

TRD-9012415

Wednesday, November 28, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Enterprise Life Insurance Company, Arlington, to acquire control of First American Southwest Life Insurance Company, Bedford, pursuant to the provisions of Texas Insurance Code Article 21.49-1 §§5 and 6(b). Docket Number 11043.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 19, 1990, 4:39 p.m.

TRD-9012414

Friday, November 30, 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 Terry Carl Denny, Houston, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II, Insurance Agent's license. Docket Number 11009.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 19, 1990, 4:39 p.m.

TRD-9012413

Friday, November 30, 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 Jose Louis Barriga, Fort Worth, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license. Docket Number 11036.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 19, 1990, 4:40 p.m.

TRD-9012412

Texas Board of Private Investigators and Private Security Agents

Tuesday, November 27, 1990, 10 a.m. The Texas Board of Private Investigators and Private Security Agents will meet at the Holiday Inn Centre, Meeting Room "C", 6201 East Highway 80, Odessa. According to the complete agenda, the board will approve minutes; approval of staff action of new licenses; suspension orders; reinstatement orders; certificates for replacement managers; license terminations; revocations; denials; reprimands; requests for waiver of board rule; requests for rehearings; other proposals for decision and related issues; discussion and possible adoption of Brinks request regarding armed guards; update on agency activities; and discussion and possible adoption of Amendment to 1991 operating budget.

Contact: Clema D. Sanders, 313 East Anderson Lane, Austin, Texas 78752, (512) 463-5545.

Filed: November 19, 1990, 9:27 a.m.

TRD-9012350

Texas Board of Irrigators

Thursday, November 29, 1990, 9 a.m. The Texas Board of Irrigators will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the agenda summary, the board will hear and consider 16 outstanding complaints. review and consider the L.I. examination of A. Walluk, candidate of the September 25, 1990 examination; approval of the minutes; review a policy on Leaky Pipe; report on various items of interest to the board; and consider suggestions for procedures and possible revisions of Article 8751.

Contact: Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 463-7990.

Filed: November 16, 1990, 1:54 p.m.

TRD-9012308

Texas Department of Licensing and Regulation

Friday, November 30, 1990, 9:30 a.m. The Manufactured Housing Division of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 10th Floor, Conference Room, 920 Colorado Street, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the denial of any application and an assessment of an administrative penalty for violation of Texas Civil Statutes, Articles 5221f and 9100 for John Scroggins doing business as Allied Service and Sales.

Contact: Imelda Martinez Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: November 19, 1990, 1:11 p.m.

TRD-9012381

Monday, December 3, 1990, 9:30 a.m. The Business and Occupational Programs, Personnel Employment of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 10th Floor, Conference Room, 920 Colorado Street, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the assessment of an administrative penalty and denial of any application for a license for violation of Texas Civil Statutes, Articles 5221a-7 and 9100 for Preston Childers doing business as Career Network Service.

Contact: Imelda Martinez Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: November 19, 1990, 1:11 p.m.

TRD-9012382

Thursday, December 6, 1990, 9 a.m. The Manufactured Housing Division of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, Eighth Floor, Conference Room, 920 Colorado Street, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the denial, suspension or revocation of the respondent's license and an administrative penalty for violation of Texas Civil Statutes, Articles 5221f and 9100 for Guadalupe (Lupe) Vela, Jr.

Contact: Imelda Martinez Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: November 19, 1990, 1:10 p.m.

TRD-9012379

Monday, December 10, 1990, 9:30 a.m. The Business and Occupational Programs, Vehicle Storage of the Texas Department of Licensing and Regulation will meet at the

E. O. Thompson Building, 10th Floor, Conference Room, 920 Colorado Street, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the denial, suspension or revocation of the respondent's license and an administrative penalty for violation of Texas Civil Statutes, Articles 6687-9a and 9100 for Mid Cities Wrecker Service.

Contact: Imelda Martinez Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: November 19, 1990, 1:11 p.m.

TRD-9012380

Wednesday, December 12, 1990, 9 a.m. The Business and Occupational Programs, Boxing of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, Eighth Floor, Conference Room, 920 Colorado Street, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the assessment of an administrative penalty and denial, suspension or revocation of the respondent's license for Lester Bedford for violation of Texas Civil Statutes, Articles 8501-1 and 9100.

Contact: Imelda Martinez Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: November 19, 1990, 1:11 p.m.

TRD-9012383

Texas Department of Mental Health and Mental Retardation

Thursday, November 29, 1990, 8:15 a.m. The Board Planning and Policy Development Committee of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will give an update on legislative initiatives; status of the CPAC subcommittee reports; single portal concept; adoption of new subchapter governing standards of the Texas Department of Mental Health and Mental Retardation (including MH community standards); and discussion on accountability and relationship of community mental health and mental retardation centers to TDMHMR. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 15, 1990, 4:10 p.m.

TRD-9012278

Thursday, November 29, 1990, 2:30 p.m. The Board of the Texas Department of Mental Health and Mental Retardation will

meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the agenda summary, the board will hear citizens' comments (limited to three minutes); and issues to be considered. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 15, 1990, 4:10 p.m.

TRD-9012277

Texas Municipal Retirement System

Saturday, December 8, 1990, 9 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet at 1200 North IH-35, Austin. According to the agenda summary, the board will hear and approve minutes of the September 15, 1990 regular meeting, and the November 10, 1990 special meeting; review and approve service retirements; disability retirements; review and approve supplemental death benefits payments; consider extended supplemental death benefits; review and act on financial statements; transfer of inactive accounts and unclaimed refunds; consideration of changes in benefit structure by member cities; proposed budget for 1991; consider adoption of resolution transferring monies from interest reserve fund to expense fund; consider adoption of resolution granting distributive benefits to annuitants and supplemental interest to certain funds and accounts; consider designation of depositories; consider merger agreement between City of Alamo Heights and employees' variable contribution retirement plan and trust into the system; report of legal counsel; report by the director; election of officers for 1991; and consider any other business to come before the board.

Contact: Jimmie L. Mormon, P.O. Box 2225, Austin, Texas 78768, (512) 476-7577.

Filed: November 16, 1990, 2:54 p.m.

TRD-9012325

State Preservation Board

Tuesday, November 20, 1990, 10 a.m. (re-scheduled from November 12, 1990) 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 will discuss new business of options for thematic content on 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 15, 1990, 10:36 a.m.

TRD-9012245

Division of Emergency Management (DPS)

Wednesday, November 28, 1990, 1 p.m. The Division of Emergency Management and the State Emergency Management Council of the Texas Department of Public Safety will meet at the DPS Headquarters, Emergency Operations Center, 5805 North Lamar Boulevard, Austin. According to the complete agenda, the council will hold LEPC nominations; border workshops; Hazard Communication: Where is it Going?-Texas Health Department Conference review; and other council business.

Contact: David D. Haun, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2138.

Filed: November 15, 1990, 3:15 p.m.

TRD-9012270

Texas Department of Public Safety

Thursday, November 29, 1990, 9 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet at the DPS Headquarters, Commission Room, 5805 North Lamar Boulevard, Austin. According to the complete agenda, the commission will approve minutes; discharge appeal hearing of employee Ronald Butler; discuss personnel matters; pending and contemplated litigation; and miscellaneous and other unfinished business.

Contact: Joe E. Milner, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2000, Ext. 3700.

Filed: November 19, 1990, 10:16 a.m.

TRD-9012367

Public Utility Commission of Texas

Tuesday, November 27, 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 9749-application of GTE Southwest, Inc. to revise tariff to provide its local calling plans.

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

Filed: November 19, 1990, 3:14 p.m.

TRD-9012403

Tuesday, November 27, 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 9495-petition of the City of Buda, Hays, and Dripping Springs for extended area service to the Austin Metro calling area.

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

Filed: November 19, 1990, 3:14 p.m.

TRD-9012404

Friday, December 14, 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 9643-application for sale, transfer, or merger of the assets of Byers-Petrolia Telephone Company, Inc. to North Texas Telephone Company.

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

Filed: November 15, 1990, 3:10 p.m.

TRD-9012268

Monday, February 4, 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 conduct a hearing on the merits in Consolidated Docket Numbers 9251, 9088, 9249, and 9298: Docket Number 9088-application of GTE Southwest Incorporated for approval of revisions to the Centranet service tariff; Docket Number 9088-application of GTE Southwest Inc. to establish Centranet rates for Exxon Chemical Company; Docket Number 9249-application of GTE Southwest Inc. to establish Centranet rates for Texas Instruments; and Docket Number 9298-application of GTE Southwest Inc. for approval of Centranet service for Williamson County and San Felipe Del Rio Consolidated Independent School District.

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

Filed: November 19, 1990, 3:15 p.m.

TRD-9012405

State Purchasing and General Services Commission

Wednesday, November 28, 1990, 9 a.m. The State Purchasing and General Services Commission will meet at the Central Services Building, 1711 San Jacinto Street, Conference 402, Austin. According to the

agenda summary, the commission will hear internal audit status report; monthly construction project report; monthly 3.09 report; monthly operating budget report; monthly division activity report; meet in executive session to consider the status of the potential purchase of real property; and to receive a report from counsel concerning the status of all pending litigation.

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

Filed: November 20, 1990, 9:57 a.m.

TRD-9012425

Railroad Commission of Texas

Monday, November 19, 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 emergency revised agenda, the commission considered whether to use state funds to plug a leaking well: unidentified operator, City of Sour Lake easement, Well "A"; Sour Lake Field, Hardin County. The emergency status was necessary as the well was an open wellbore leaking water and oil to the surface, causing an imminent threat to the public's health and safety.

Contact: Kinder Chambers, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6831.

Filed: November 16, 1990, 12:04 p.m.

TRD-90122300

Texas National Research Laboratory Commission

Thursday, November 15, 1990, 2 p.m. The Texas National Research Laboratory Commission held an emergency meeting at the Capitol Building, Room 220, Austin. According to the emergency agenda summary, the commission took a roll call of members; approved the October 18, 1990 meeting minutes; heard chairman's report-J. Fred Bucy; executive director's report-Edward C. Binger; met in executive session to discuss land acquisition; reconvened; hear committee reports: budget and finance; regional planning; land acquisition; selection of construction management firm and hear commissioner reports research and development. The emergency status was necessary due to scheduling conflicts, unsuitability of original meeting site, and unanticipated agenda revision, this meeting was re-posted as an emergency meeting.

Contact: Karen L. Chrestay, 1801 North Hampton Street, DeSoto, Texas 75115, (214) 709-3811.

Filed: November 15, 1990, 11:06 a.m.

TRD-9012246

Texas Savings and Loan Department

Tuesday, November 27, 1990, 9 a.m. The Texas Savings and Loan Department will meet at 2601 North Lamar Boulevard, Suite 201, Austin. According to the agenda summary, the department will hold a hearing to accumulate a record of evidence in regard to the application of First American Savings Association, North Richland Hills, to relocate its home office from 8555 Airport Freeway, North Richland Hills, to 1903 Central Drive, Bedford, from which record the commissioner will determine whether to grant or deny the application.

Contact: Mark H. Holland, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 470-1250.

Filed: November 16, 1990, 1:35 p.m.

TRD-9012304

Tuesday, November 27, 1990, 9:30 a.m. The Texas Savings and Loan Department will meet at 2601 North Lamar Boulevard, Suite 201, Austin. According to the agenda summary, the department will hold a hearing to accumulate a record of evidence in regard to the application of First American Savings Association, North Richland Hills, to relocate a branch office from 1903 Central Drive, Bedford, to 8555 Airport Freeway, North Richland Hills, from which record the commissioner will determine whether to grant or deny the application.

Contact: Mark H. Holland, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 470-1250.

Filed: November 16, 1990, 1:34 p.m.

TRD-9012303

State Securities Board

Thursday, November 29, 1990, 10 a.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda summary, the commissioner will hold a hearing to determine whether the registration of Momentum Securities, Inc. should be revoked or suspended.

Contact: Denise Voight Crawford, P.O. Box 13167, Austin, Texas 78711, (512) 474-2233.

Filed: November 16, 1990, 2:44 p.m.

TRD-9012324

The Texas A&M University System

Monday, November 19, 1990, 9:30 a.m.

The Board of Regents of the Texas A&M University System met at the Board of Regents Meeting Room, College Station. According to the complete revised agenda, the board added the following item to the agenda for the special telephonic board meeting: consideration of appropriation of funds for scope change in IBT, Texas Medical Center, Houston.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843-1123, (409) 845-9603.

Filed: November 15, 1990, 4:39 p.m.

TRD-9012282

Texas Southern University

Monday, November 19, 1990, 5 p.m. The Board of Regents Academic Affairs and Personnel Committees met at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committees considered a report on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 15, 1990, 1:52 p.m.

TRD-9012258

Tuesday, November 20, 1990, 4 p.m. The Finance Committee of Texas Southern University met at Texas Southern University, University Library -Fifth Floor, Houston. According to the complete agenda, the committee considered matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments; and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 15, 1990, 1:53 p.m.

TRD-9012259

Wednesday, November 21, 1990, 4 p.m. The Board of Regents Building and Grounds Committee of Texas Southern University met at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committees considered construction change orders; payment to architects contractors and engineers; authorization and ratification of contracts and awards; review of on going construction; and current contractual relations.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 15, 1990, 1:54 p.m.

TRD-9012261

Friday, December 7, 1990, 8:30 a.m. The Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the board will consider minutes; budget changes; investments; budgets for restricted and/or grants and projects funds; construction change orders; authorization and ratification of contracts and awards; review of on going construction and current contractual relations; personnel action; report on progress of academic activities and programs; report of the president; and meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 15, 1990, 1:53 p.m.

TRD-9012260

University Interscholastic League

Tuesday, November 20, 1990, 2:30 p.m. The UIL Appellate Committee of the University Interscholastic League held an emergency meeting at the Radisson Plaza Hotel, 7th and San Jacinto Streets, Austin. According to the agenda summary, the committee held an organizational committee meeting to study ways to determine under what circumstances appeals from district executive committees should be allowed; what body should hear appeals; to study the concerns related to district executive committees composed of a majority of participant schools from a multi-high school district; formulate guidelines to assist the commissioner of education with implementation of 2.20 Section 21.920 Education Code (e) as amended in 1990 By Senate Bill 1. The emergency status was necessary due to late acceptance of committee appointments.

Contact: Bonnie Northcutt, P.O. Box 8028, Austin, Texas 78713, (512) 471-5883.

Filed: November 16, 1990, 11:25 a.m.

TRD-9012299

Texas Veterans Commission

Friday, December 7, 1990, 10 a.m. The Texas Veterans Commission will meet at the E. O. Thompson Building, Sixth Floor, 10th and Colorado Streets, Austin. According to the complete agenda, the commission will consider reports of the commission; consider the adoption of rules concerning implementation of the provisions set forth in 434.038 Government Code as amended by Senate Bill 282, 71st Legislature, regular session; and make decisions regarding administrative matters pertaining to Texas' veterans' programs.

Contact: Doug Brown, P.O. Box 12277,

Austin, Texas 78711, (512) 463-5538.

Filed: November 19, 1990, 10:39 a.m.

TRD-9012368

Texas Council on Vocational Education

Thursday-Friday, December 6-7, 1990, at 10:30 a.m. and 8 a.m. respectively. The Texas Council on Vocational Education will meet at the Westin Paso Del Norte Hotel, Board Room, 101 South El Paso Street, El Paso. According to the agenda summary, on Thursday, the council will tour twin plants in Juarez, Mexico (Delco Remy Plant and RCA Plant). On Friday, the council will hold a regular meeting to discuss council recommendations regarding the new Carl D. Perkins Vocational and Applied Technology Education Act of 1990 and the Texas State Plan for Vocational Education. The council will also receive a status report on the new federal vocational legislation, the proprietary school issue, and 1989-1990 council expenditures. Beginning at 10:45 a.m., the council will tour the El Paso Community College Rio Grande Campus, EPISD Technical High School, and Valle Verde Campus of El Paso Community College.

Contact: Will Reece, P.O. Box 1886, Austin, Texas 78703, (512) 463-5490.

Filed: November 19, 1990, 10:40 a.m.

TRD-9012369

Texas Water Commission

Wednesday, November 14, 1990, 3 p.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary to protect against an imminent threat to public health and safety.

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

Filed: November 14, 1990, 3:39 p.m.

TRD-9012230

Thursday, January 7, 1991, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According

to the agenda summary, the office will consider an application by the City of Georgetown for a water CCN to allow it to expand the area to which it provides water utility service. Docket Number 8539-C.

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

Filed: November 19, 1990, 3:49 p.m.

TRD-9012410

Thursday, January 17, 1990, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the commission will consider an application by Coe Utilities, Inc. to amend CCN Number 10342 to allow it to expand the area to which it provides water utility service. Docket Number 8612-C.

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

Filed: November 19, 1990, 3:46 p.m.

TRD-9012408

Thursday, January 25, 1990, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the commission will consider an application by Raymond Reed doing business as Kinsland Estates Water System for a water CCN to allow it to expand the area to which it provides water utility service in Llano County. Docket Number 9394-C.

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

Filed: November 19, 1990, 3:43 p.m.

TRD-9012406

Monday, January 28, 1991, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1111A, Austin. According to the agenda summary, the commission will consider an application by 439 Water Supply Corporation to amend CCN Number 10001 to allow it to expand the area to which it provides water utility service. Docket Number 8658-C.

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

Filed: November 19, 1990, 3:47 p.m.

TRD-9012409

Monday, January 28, 1991, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the commission will consider an application by the City of Three Rivers for CCNs to allow it to expand the area to which it provides water and sewer

utility service in Live Oak County. The applications are docket numbers 8581-c and 8582-c respectively. P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Contact: Carol Wood

Filed: November 19, 1990, 3:44 p.m.

TRD-9012407

Wednesday, January 19, 1991, 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 complete revised agenda, the commission will consider an application by the Lower Colorado River Authority-Application Number 14-5474 for an extension of time to commence ad complete construction of Baylor Creek Dam and Reservoir authorized by Certificate Number 14-5474, tributary of the Colorado River, Colorado River Basin, seven miles east of LaGrange, Fayette County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 371-6384.

Filed: November 15, 1990, 3:43 p.m.

TRD-9012275

Wednesday, January 9, 1991, 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 complete revised agenda, the commission will consider an application by Shelby Koshler and wife, Marjorie Koehler and Calvin Koehler, Application Number 5320 for an 11.121 water use permit to divert 200 acre-feet of water per annum from the San Antonio River, San Antonio River Basin for irrigation purposes in Wilson County, approximately 3.5 miles south of Floresville.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 371-6384.

Filed: November 15, 1990, 3:43 p.m.

TRD-9012276

Texas Workers' Compensation Commission

Wednesday, November 28, 1990, 6 p.m. The Texas Workers' Compensation Commission will meet at 200 East Riverside Drive, Austin. According to the agenda summary, the commission will hold a hearing to review proposed rules 110.105 and 110.106 (Required Notices of Coverage), rules 124.1-124.6 (Compensation Procedures/Carriers), rules 126.4-126.6 (Benefits/General Provisions), rules 129.1-129.5 (Income Benefits), rules 133.200-133.205 (Medical Benefits), rule 160.1 (Workers' Health and Safety/General Provisions), and rules 166.2 and 166.111 (Workers' Health and Safety/Accident Prevention Services).

Contact: Susan Kelley, 200 East Riverside Drive, Austin, Texas 78704, (512) 440-3973.

Filed: November 19, 1990, 9:50 a.m.

TRD-9012354

Regional Meetings

Meetings Filed November 15, 1990

The Dallas Area Rapid Transit Bylaws Ad Hoc Committee met at 601 Pacific Avenue, Conference Room 7A, Dallas, November 20, 1990, at 11 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9012283.

The Dallas Area Rapid Transit Budget and Finance Committee met at 601 Pacific Avenue, Board Room, Dallas, November 20, 1990, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9012284.

The Dallas Area Rapid Transit Art and Design Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, November 20, 1990, at 1:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9012286.

The Dallas Area Rapid Transit Art and Design and Planning and Development Committees met at 601 Pacific Avenue, Board Room, Dallas, November 20, 1990, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9012287.

The Dallas Area Rapid Transit Planning and Development Committee met at 601 Pacific Avenue, Board Room, Dallas, November 20, 1990, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9012285.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, November 20, 1990, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5559. TRD-9012257.

The Houston-Galveston Area Council Natural Resources Advisory Committee met at 3555 Timmons Lane, Fourth Floor Board Room, Houston, November 15, 1990, at 3 p.m. Information may be obtained from R. Ballas, 3555 Timmons Lane, Houston, Texas 77027, (713) 627-3200. TRD-9012251.

The Houston-Galveston Area Council Projects Review Committee met at 3555 Timmons Lane, Fourth Floor Board Room, Houston, November 20, 1990, at 9:30 a.m. Information may be obtained from R. Ballas, 3555 Timmons Lane, Houston,

Texas 77027, (713) 627-3200. TRD-9012252.

The Houston-Galveston Area Council Board of Directors met at 3555 Timmons Lane, Fourth Floor Board Room, Houston, November 20, 1990, at 10 a.m. Information may be obtained from Marjorie Baker, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9012244.

Meetings Filed November 16, 1990

The Dallas Central Appraisal District Board of Directors met at 1420 West Mockingbird Lane, Suite 500, Dallas, November 21, 1990, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520. TRD-9012288.

The Gray County Appraisal District Appraisal Review Board will meet at 815 North Sumner Street, Pampa, November 27, 1990, at 9 a.m. Information may be obtained from W. Pat Bagley, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9012289.

The Lamb County Appraisal District Board of Directors will meet at 330 Phelps Avenue, Littlefield, December 3, 1990, at 6 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339-0552, (806) 385-6474. TRD-9012309.

The Nortex Regional Planning Commission Private Industry Council will meet at the Activity Center, 10th and Indiana Streets, Room 215, Wichita Falls, November 28, 1990, at 12:15 p.m. Information may be obtained from Fritz Taylor, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281. TRD-9012291.

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, November 28, 1990, at 7 p.m. Information may be obtained from Jackie Voce, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9012319.

The Tax Appraisal District of Bell County Board of Directors will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, November 28, 1990, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9012318.

The Tyler County Appraisal District Board of Directors met at 806 West Bluff, Woodville, November 21, 1990, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9012327.

The Wood County Appraisal District Appraisal Review Board met at the Wood

County Appraisal District, Conference Room, 217 North Main Street, Quitman, November 21, 1990, at 9 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 951, Quitman, Texas 75783, (903) 763-4891. TRD-9012292.

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Meetings Filed November 19,
1990

The Dallas Central Appraisal District Appraisal Review Board will meet at 1420 West Mockingbird Lane, Suite 500, Dallas, November 30, 1990, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520. TRD-9012370.

The Deep East Texas Council of Governments Grants Application Review Committee will meet at the Rayburn Country Club, FM Road 1007, Sam Rayburn, November 29, 1990, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9012343.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, November 27, 1990, at noon. Information may be obtained from Sandy Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9012394.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, November 27, 1990, at 3:30 p.m. Information may be obtained from Sandy Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9012395.

The Gregg Appraisal District Appraisal Review Board will meet at 2010 Gilmer Road, Longview, November 27, 1990, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015. TRD-9012342.

The Leon County Central Appraisal District Board of Directors will meet at the Leon County Central Appraisal District Office, Centerville, November 26, 1990, at 7 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9012392.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250, South, Hughes Springs, November 26, 1990, at 10 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9012398.

The Region V Education Service Center Board of Directors will meet at 2295 Delaware, Board Room, Beaumont, November 30, 1990, at 9 a.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9012397.

The Nortex Regional Planning Commission Executive Committee will meet at the Wichita Falls Activities Center, Room 214, 10th and Indiana Streets, Wichita Falls, November 29, 1990, at noon. Information may be obtained from Dennis Wilde, 2101 Kemp Boulevard, Wichita Falls, Texas 76307, (817) 322-5281. TRD-9012345.

The Nortex Regional Planning Commission North Texas State Planning Region Consortium will meet at the Wichita Falls Activities Center, Room 214, 10th and Indiana Streets, Wichita Falls, November 29, 1990, at noon. Information may be obtained from Fritz Taylor, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281. TRD-9012344. TRD-9012344.

The San Jacinto River Authority Board of Directors will meet at the Woodlands Inn and County Club, Evergreen Room, The Woodlands, November 28, 1990, at 1 p.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9012396.

The South Texas Development Council Board of Directors will meet at the Commissioners Courtroom Courthouse Annex, Zapata, November 29, 1990, at 11 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (512) 722-3995. TRD-9012348.

The San Antonio-Bexar County Metropolitan Planning Organization Steering Committee met at the San Antonio City Hall, Basement Conference Room, San Antonio, November 22, 1990, at 1:30 p.m. Information may be obtained from Rose Mesa, Room 101, Bexar County Courthouse, San Antonio, Texas 78205, (512) 227-8651. TRD-9012347.

The STED Corporation Board of Trustees will meet at the Commissioners Courtroom, Courthouse Annex, Zapata, November 29, 1990, at 10 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 78044-2187, (512) 722-3995. TRD-9012346.

The Upper Leon River Municipal Water District Board of Directors will meet at the General Office of the Filter Plant, Comanche County, Proctor Lake, November 29, 1990, at 6:30 p.m. Information may be obtained from Zollie D. Skaggs, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9012353.

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Meetings Filed November 20,
1990

The Heart of Texas Council of Governments Heart of Texas Private Industry Council will meet at 300 Franklin Avenue, HOTCOG Board Room, Waco, December 11, 1990, at 5:30 p.m. Information may be obtained from Mary McDow, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9012420.

The Kendall Appraisal District Appraisal Review Board will meet at 207 East San Antonio Street, Boerne, November 28, 1990, at 9 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9012422.

The Kendall County Appraisal District Board of Directors will meet at 128 West Blanco, Ye Kendall Inn, Boerne, November 29, 1990, at 6 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9012421.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, November 28, 1990, at 9 a.m. Information may be obtained from Ames L. Dunham, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9012419.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Correction Of Error

The Texas Air Control Board submitted an adopted repealed section which contained a publication error in the November 2, 1990, *Texas Register* (15 TexReg 6317).

In the repeal of §111.129, the effective date of the repeal should be November 14, 1990. Also the effective date for the adoption of an amendment to §101.1 should be November 14, 1990.



Texas Department of Banking

Notice of Hearing

The Hearing Officer of the Texas Department of Banking will conduct a hearing to determine whether The Circle K Corporation's License Number 205 to sell checks in the State of Texas should be revoked pursuant to the Sale of Checks Act, Texas Civil Statutes, Article 489d. The hearing will be held on November 29, 1990, at 9 a.m. at the Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Additional information may be obtained from: Robert W. Potts, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on November 14, 1990.

TRD-9012196 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 14, 1990

For further information, please call: (512) 479-1200



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

[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	\$16,870	\$17,714	\$18,557	\$19,401	\$20,244	\$21,088
2	22,061	23,164	24,267	25,370	26,473	27,576
3	27,252	28,615	29,977	31,340	32,702	34,065
4	32,442	34,064	35,686	37,308	38,930	40,553
5	37,633	39,515	41,396	43,278	45,160	47,041
6	42,823	44,364	47,105	49,246	51,388	53,529

FOR ADDITIONAL MEMBERS ADD 3% TO 135% AND MULTIPLY NEW PERCENT BY 4 PERSON FAMILY

For additional member, add: \$ 1,960 \$ 2,058 \$ 2,156 \$ 2,254 \$ 2,352 \$ 2,450

Maximum Copayment Amount 0 \$ 720 \$ 1,440 \$ 2,160 \$ 2,880 \$ 3,600

*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	\$21,931	\$22,775	\$23,618	\$24,462	\$25,305
2	28,679	29,782	30,885	31,988	33,092
3	35,428	36,790	38,153	39,515	40,878
4	42,175	43,797	45,419	47,041	48,663
5	48,923	50,805	52,686	54,568	56,450
6	55,670	57,811	59,952	62,093	64,235

For additional member, add: \$ 2,548 \$ 2,646 \$ 2,744 \$ 2,842 \$ 2,940

Maximum Copayment Amount \$ 4,320 \$ 5,040 \$ 5,760 \$ 6,480 \$ 7,200

*For annual income that falls between the amounts listed use the lower copayment percentage.]

Issued in Austin, Texas, on November 13, 1990

TRD-9012262 Al Endsley
Consumer Credit Commissioner

Filed: November 15, 1990

For further information, please call: (512) 479-1280

Credit Union Department

Notice of Hearing

The Credit Union Department will conduct a hearing pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c). A public hearing was requested for the substantive rule changes proposed by the Texas Credit Union Commission for the Texas Credit Union Act §§5.01(b)(1), (2), and (3); 5.09(h); and 7.08(b); the and §91.503(c), (d), and (e), and §95.308, of the Texas Rules for Credit Unions.

Time and Place of Hearing. The hearing will be held on Monday, December 10, 1990, at 10 a.m. at the Westin Hotel Galleria Dallas, 13340 Dallas Parkway, Dallas.

Authority. Texas Civil Statutes, Articles 6252-13a, §5(c), 2461-11. 10, and 2461-12.01 (Vernon Supplement 1989); 7 Texas Administrative Code, §93. 221.

Nature of Hearing. This hearing is based upon a petition submitted by twenty-five persons under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c), requesting a public hearing on the substantive rule changes proposed by the Texas Credit Union Commission. Substantive rule changes cited in the petition were the Texas Credit Union Act, §§5.01(b)(1), (2), and (3); 5.09(h); and 7.08(b), and 91.503(c), (d), and (e); and §95.308 of the Texas Rules for Credit Unions.

Hearing. The hearing will be conducted by the Texas Credit Union Commission.

Public Attendance and Testimony. Members of the general public may attend the hearing. Those wishing to speak during the hearing should notify the Credit Union Department by December 7, 1990, and submit a written summary of your comments. Depending upon the number of speakers to appear before the commission, a time limit per speaker may be imposed. Those who plan to attend are encouraged to telephone the Credit Union Department at

(512) 837-9236, a day or two prior to the hearing date in order to confirm the setting.

Any person who wants to give testimony at the hearing may do so.

Issued in Austin, Texas, on November 16, 1990.

TRD-9012321 John R. Hale

Commissioner of Credit Union Department

Filed: November 16, 1990

For further information, please call: (512) 837-9236

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Texas Department of Health
Consultant Proposal Request

Notice of Invitation for Proposal. This notice supersedes and revises the consultant proposal request which was published in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6528). Pursuant to Texas Civil Statutes, Article 6252-11c, V.T.C.S., the Texas Department of Health (TDH) invites offers from management firms for the purpose of obtaining a comprehensive management study of the 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 effective management; to evaluate current methods to assess effectiveness and efficiency of the programs; and to recommend improvements in the areas noted previously 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 previously. Proposals must be received by the TDH no later than 5 p.m. on December 7, 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 begin no later than January 11, 1991 - 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 16, 1990.

TRD-9012320 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 16, 1990

For further information, please call: (512) 458-7738.

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**Permit Application for Municipal Solid
Waste Site**

The Mischer Corporation has filed Application Number 2174 with the Texas Department of Health for a permit to operate an existing Type III municipal solid waste site located 2.5 miles east northeast of the town of Lajitas in Brewster County.

The site covers approximately 40 acres of land, and is to daily receive approximately 2.5 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; (512) 458-7271.

Issued in Austin, Texas, on November 19, 1990

TRD-9012340 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 19, 1990

For further information, please call: (512) 458-7271

Notice is hereby given that the City of McKinney presently holds Solid Waste Permit Number 568 as heretofore issued by the Texas Department of Health for the operation of a Type I municipal solid waste site located two miles northeast of the intersection of SH 121 and US 75, on the Southeast side of the Southern Pacific Railroad in the City of McKinney, Collin County, Texas.

Said permit holder has now filed with the Texas Department of Health an application to amend the aforesaid permit as follows: increase the depth and height of aerial fill and also to transfer the Permit Number 568 from the City of McKinney to the North Texas Municipal Water District.

The site covers approximately 172.8 acres of land, and is to daily receive approximately 891 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 November 19, 1990

TRD-9012339 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 19, 1990

For further information, please call: (512) 458-7271.

Sentry Environmental, L.P. has filed Application Number 2171 with the Texas Department of Health for a permit to operate a proposed Type I municipal solid waste site to be located approximately 1.9 miles west of the Intersection of FM 407 and Interstate 35 west, in Denton County.

The site covers approximately 359.72 acres of land, and is to daily receive approximately 480 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; (512) 458-7271.

Issued in Austin, Texas, on November 19, 1990

TRD-9012341 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: November 19, 1990

For further information, please call: (512) 458-7271.

Radioactive Material License

Notice is hereby given by the Texas Department of Health that it has granted amendment number 4 to the following radioactive material license.

Radioactive Material License Number L03905, issue to Syncor International Corporation for their facility located in El Paso (mailing address: (Syncor International Corporation, 1810 Murchison Road, Suite 205, El Paso, Texas 77902)) .

The amendment to this license changes the Radiation Safety Office from Leroy Candelaria to Charles Garcia.

The Division of Licensing, Registration and Standards has determined that the licensee has met the standard(s) appropriate to this amendment: the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the *Texas Regulations for Control of Radiation* (TRCR) in such a manner as to minimize danger to public health and safety or property; the licensee's equipment, facilities and procedures are adequate to minimize danger to public health and safety or property; the issuance of the license amendment will not be inimical to the health and safety of the public; and the licensee satisfies any applicable special requirements of the TRCR.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by the Health and Safety Code, §401.116, and as set out in TRCT 13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a 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. A person affected may request a hearing by writing Mr. David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. any request

for a hearing must contain the name and address of the person who consider 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. Should no request for public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Mr. David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on November 9, 1990.

TRD-9012253

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

Filed: November 15, 1990

For further information, please call: (512) 458-7236

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Texas Department of Human Services

Notice of Correction of Error

The Texas Department of Human Services (DHS) submitted a proposed amendment that included two copayment charts, one being revised and one to be deleted, concerning the In-home and Family Support Program. The chart to be deleted was erroneously left out of the section as published in the November 13, 1990, issue of the *Texas Register* (15 TexReg 6481). On page 6482, §48.2703 should include the copayment chart to be deleted:

Issued in Austin, Texas, on November 19, 1990.

TRD-9012328 Cathy Rossberg
Agency liaison, Policy and Document
Support Department
Texas Department of Human Services

Filed: November 19, 1990

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



State Board of Insurance Notice of Public Hearings

Notice is hereby given that a public hearing under Docket Number 1800 will be held before the State Board of Insurance beginning at 10 a.m. on Tuesday, January 15, 1991, and continuing each day thereafter at times and places designated by the board until conclusion. The purpose of the hearing is consideration of the revision of the private passenger automobile insurance rates and rating plans, and such other matters as may properly be brought before the board. The location of the beginning of the hearing will be in Room 1-100 of the William B. Travis

Building at 1701 Congress Avenue in Austin.

A prehearing conference will be held before the general counsel as hearing offices for the State Board of Insurance at 10 a.m. on Friday, December 7, 1990, in Room 460 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin. The prehearing conference will be held for the following purposes: considering the formulation and simplification of issues; identifying expert witnesses and stipulations as to their respective qualifications; considering and possible agreeing to the possibility of making admissions of certain averments of fact or stipulations concerning the use by parties of matters of public record; considering the procedure at the hearing; agreeing to limit, where possible, the number of witnesses; and agreeing to such other matters as may aid in the simplification of the proceedings. Among other matters which will be subject to final determination by the general counsel at the prehearing conference will be all decisions on the admission of parties and on any grouping of parties with similar interests who will be required to make a common presentation through representation by one attorney or one speaker at the hearing beginning on January 15. Anyone who wishes to participate in the hearing as a party must,

by 9 a.m. on Thursday, December 6, 1990, present a motion for admission as a party to the Office of the General Counsel of the State Board of Insurance in Room 460 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin. The motion must be in writing and must contain a full explanation of the identifiable separate interest and separate contribution which would constitute sufficient justification for granting of the motion for admission as a party. Without an extensive showing of exceptional circumstances, the board will not accept any motion for admission as a party after 9 a.m. on Thursday, December 6, 1990, and any decision on admission or consolidation of parties at the prehearing conference will be final subject to review by the board of presentations at the prehearing conference and of arguments therefrom.

The State Board of Insurance has jurisdiction and legal authority over the subject matters of this hearing pursuant to the Insurance Code, Articles 1.04, 5.01, 5.03, 5.06, 5.10, and 5.96, and the rules of practice and procedure before the State Board of Insurance (28 TAC Chapter 1, Subchapter A).

The order and procedures of presentation at the hearing on an adoption of rates under Docket Number 1800 will be governed by the contested case provisions of the rules of practice and procedure before the State Board of Insurance, by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and by the Insurance Code, Article 5.96. Reference is hereby made to the previously cited statutes and rules, and to the Insurance Code, Articles 5.01-5.12-1, 5.77-5.79, 8.24, and 21.77, the manual entitled *Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements* commonly called the *Texas Automobile Manual*, and the manual entitled *Automobile Liability Experience Rating Plan*, as particular sections of the statutes and rules which may be involved.

Under Docket Number 1800, the State Board of Insurance will consider automobile insurance experience and rate adjustment proposals by the board's staff, the Office of Consumer Protection, the Texas Automobile Service Office, and others relating to private passenger automobile insurance rates and rating plans.

It is asserted by the staff of the State Board of Insurance, the Office of Consumer Protection, and the Texas Automobile Insurance Service Office that the State Board of Insurance has the statutory authority and duty pursuant to the Texas Insurance Code, Chapter 5, Subchapter A, as amended, to determine, fix, prescribe, and promulgate rates of premiums to be charged and collected by insurers writing private passenger automobile insurance in Texas; and, in so doing, it is the duty, right, and privilege of the State Board of Insurance to consider the peculiar hazards and experience of individual risk, past and prospective, within and outside the state and of other relevant factors within and outside the state to insure that the rates determined therefrom are just, reasonable, and adequate to the public and the insurers writing such insurance and to determine that such rates are not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of said Subchapter A.

Additional statements, briefs, arguments, and statistical information may be submitted at the hearing. Please direct inquiries regarding the hearing on rates for private passenger automobile insurance under Docket Number 1800 to Gaylon Daniel, Chief Property and Casualty Actuary, Statistical and Rate Development Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 475-3017.

Issued in Austin, Texas on November 19, 1990.

TRD-9012368

Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: November 19, 1990

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

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Notice is hereby given that a public hearing under Docket Number 1801 will be held before the State Board of Insurance beginning at 10 a.m. on Tuesday, January 15, 1991, and continuing each day thereafter at times and places designated by the board until conclusion. The purpose of the hearing is consideration of the revision of the commercial automobile insurance rates and rating plans, and such other matters as may be properly brought before the board. The location of the beginning of the hearing will be in Room 1-100 of the William B. Travis Building at 1701 North Congress Avenue in Austin.

A prehearing conference will be held before the general counsel as hearing offices for the State Board of Insurance at 10 a.m. on Friday, December 7, 1990, in Room 460 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin. The prehearing conference will be held for the following purposes: considering the formulation and simplification of issues; identifying expert witnesses and stipulations as to their respective qualifications; considering and possible agreeing to the possibility of making admissions of certain averments of fact or stipulations concerning the use by parties of matters of public record; considering the procedure at the hearing; agreeing to limit, where possible, the number of witnesses; and agreeing to such other matters as may aid in the simplification of the proceedings. Among other matters which will be subject to final determination by the general counsel at the prehearing conference will be all decisions on the admission of parties and on any grouping of parties with similar interests who will be required to make a common presentation through representation by one attorney or one speaker at the hearing beginning on January 15. Anyone who wishes to participate in the hearing as a party must, by 9 a.m. on Thursday, December 6, 1990, present a motion for admission as a party to the Office of the General Counsel of the State Board of Insurance in Room 460 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin. The motion must be in writing and must contain a full explanation of the identifiable separate interest and separate contribution which would constitute sufficient justification for granting of the motion for admission as a party. Without an extensive showing of exceptional circumstances, the board will not accept any motion for admission as a party after 9 a.m. on Thursday, December 6, 1990, and any decision on admission or consolidation of parties at the prehearing conference will be final subject to review by the board of presentations at the prehearing conference and of arguments therefrom.

The State Board of Insurance has jurisdiction and legal authority over the subject matters of this hearing pursuant to the Insurance Code, Articles 1.04, 5.01, 5.03, 5.06, 5.10, and 5.96, and the rules of practice and procedure before the State Board of Insurance (28 TAC Chapter 1, Subchapter A).

The order and procedures of presentation at the hearing on an adoption of rates under Docket Number 1801 will be governed by the contested case provisions of the rules of practice and procedure before the State Board of Insurance, by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and by the Insurance Code, Article 5.96. Reference is hereby made to the previously cited statutes and rules, and to the Insurance

Code, Articles 5.01-5.12-1, 5.77-5.79, 8.24, and 21.77, the manual entitled *Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements*, commonly called the *Texas Automobile Manual*, and the manual entitled *Automobile Liability Experience Rating Plan*, as particular sections of the statutes and rules which may be involved.

Under Docket Number 1801, the State Board of Insurance will consider automobile insurance experience and rate adjustment proposals by the board's staff, the Office of Consumer Protection, the Texas Automobile Insurance Service Office, and others relating to commercial automobile insurance rates and rating plans.

It is asserted by the staff of the State Board of Insurance, the Office of Consumer Protection, and the Texas Automobile Insurance Service Office that the State Board of Insurance has the statutory authority and duty pursuant to the Texas Insurance Code, Chapter 5, Subchapter A, as amended, to determine, fix, prescribe, and promulgate rates of premiums to be charged and collected by insurers writing private passenger automobile insurance in Texas; and, in so doing, it is the duty, right, and privilege of the State Board of Insurance to consider the peculiar hazards and experience of individual risk, past and prospective, within and outside the state and of other relevant factors within and outside the state to insure that the rates determined therefrom are just, reasonable, and adequate to the public and the insurers writing such insurance and to determine that such rates are not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of said Subchapter A.

Additional statements, briefs, arguments, and statistical information may be submitted at the hearing. Please direct inquiries regarding the hearing on rates for commercial passenger automobile insurance under Docket Number 1801 to Gaylon Daniel, Chief Property and Casualty Actuary, Statistical and Rate Development Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 475-3017.

Issued in Austin, Texas on November 19, 1990.

TRD-9012364 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: November 19, 1990

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

Legislative Budget Board

Correction Of Error

The Legislative Budget Board submitted a Budget Execution Proposal which contained a publication error in the November 20, 1990, issue of the *Texas Register* (15 TexReg 6692).

Signatures and vote totals for Board Members were omitted. The missing text should read as follows.

"W. P. Hobby, Lieutenant Governor, Chairman, Legislative Budget Board, Gib Lewis, Speaker of the House, Vice-Chairman, Legislative Budget Board.

"I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on November 7, 1990, by the following vote: On the part of the Senate Yes: 4 No's: 0 On the part of the House Yes: 4 No's: 0 Jim Oliver, Director, Legislative Budget Board.

Lower Colorado River Authority

Notice of Application for Sale, Transfer, or Merger

Notice is hereby given that on the 19th day of October, 1990, the Lower Colorado River Authority filed an Application for Sale, Transfer, or Merger with the Public Utility Commission of Texas, in Docket Number 9815. On November 6, 1990, Docket 9815 was consolidated with Docket 9427.

Said Application is for the purpose of entering into Facilities and Transmission Leases.

A copy of all relevant material is available for public inspection at the Public Utility Commission of Texas or at the Lower Colorado River Authority, 3700 Lake Austin Boulevard, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on November 14, 1990.

TRD-9012243 Glen E. Taylor
General Counsel
Lower Colorado River Authority

Filed: November 15, 1990

For further information, please call: (512) 473-3510

Middle Rio Grande Development Council

Requests for Consultants Proposals

This request for consultant proposals is filed under the provisions of the Texas Civil Statutes, Article 5252-11c. The Middle Rio Grande Development Council (MRGDC) is pursuing the development of an Inter-District Non-profit Consortium to provide educational alternative programs for at-risk and out of school youths within a nine county area. Work to be performed will involve a feasibility study to assess potential client population in each county, logistical ramifications, cost effectiveness, locations and types of settings, and assessment of Texas Education Agency regulations vis-a-vis this project. Assuming favorable outcomes of the feasibility study, the consultant selected must be able to provide the MRGDC with all necessary legal documents of incorporation, established of board structure and training, development of curriculum to include diploma requisites, development of all contractual agreements between school districts and the development of organizational structure to include job descriptions, recruitment and training of staff, participant selection, testing and intake procedure, and any other necessary activities to implement the project within the Middle Rio Grande Region.

Individuals or firms interested in submitting a proposal may obtain a proposal package by writing to Ramon S. Johnston at the Middle Rio Grande Development Council, P.O. Box 1199-1904 East First Street, Carrizo Springs, Texas 78834, or by calling (512) 876-3533.

All proposals are due no later than 5 p.m., Friday December 28, 1990. Proposals received after this date will not be considered.

Middle Rio Grande Development Council staff will review and prioritize proposals meeting the deadline date and will make a recommendation on the selection of the consultant. The MRGDC has awarded A contract to Program Development Associates to conduct a preliminary inquiry as to the interest of this project within the region via a request

for proposal and intends to continue to utilize Program Development Associates as a consultant for this project unless a better offer is received. The MRGDC further reserves the right to accept or reject any or all proposals and competitively negotiate the services for the implementation of this project.

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

TRD-9012202 Ramon S. Johnston
Deputy Director
Middle Rio Grande Development Council

Filed: November 14, 1990

For further information, please call: (512) 876-3533

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Public Utility Commission of Texas

Notice of Application To Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 29, 1990, to amend a Certificate of Convenience and necessity pursuant to the Public Utility Regulatory Act, §16(a), 18(b), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Southwestern Bell Telephone Company to Revise Tariff to Reflect Changes to its Belton and Temple Exchange Area Boundaries, Docket Number 9832, before the Public Utility Commission of Texas.

The Application. In Docket Number 9832, Southwestern Bell Telephone Company seeks approval of its application to the amend its Belton and Temple exchanges in order to reflect the way service is presently being administered within Bell 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 Commission Public Information Division at (512) 458-0223, or (512)458-0227 within 15 days of this notice.

Issued in Austin, Texas on November 13, 1990.

TRD-9012232 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 14, 1990

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 11, 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 Central Power and Light Company for a Certificate of Convenience and Necessity for a Proposed Transmission Line Within Cameron County, Docket Number 9842 before the public Utility Commission of Texas.

The Application. In Docket Number 9842, Central Power and Light Company requests approval of its application to construct approximately 8.4 miles of underground 138kV transmission line within Cameron 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 Commission Public Information Division at (512) 458-0223, or (512)458-0227 within 15 days of this notice.

Issued in Austin, Texas on November 13, 1990.

TRD-9012233 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 14, 1990

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

◆ ◆ ◆

Railroad Commission of Texas

Notice of Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (commission), is soliciting bids for the reforestation of approximately 150 acres at the ALCOA Area 12 abandoned mine land (AML) site. The site is located in Milam County, 9.5 miles southwest of Rockdale. This is a rebid for work that was originally let for bid October 9, 1990.

As the designated state agency for implementation of the Surface Mining Control and Reclamation Act of 1977 (30 United States Code Annotated, §1201 et seq), the commission will award a unit price contract to the lowest qualified bidder for completion of this work. Sealed bids will be received until 2 p.m. on December 7, 1990, at which time the bids will be publicly opened and read at the address given below.

Copies of the specifications, drawings, and other contract documents are on file in Austin at the address shown following. The complete bid package may be obtained at the mailing address given following: ALCOA Area 12 AML Reforestation Project, Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701, Attn: Melvin B. Hodgkiss, P.E., Director.

Issued in Austin, Texas, on November 16, 1990.

TRD-9012357 Brenda Loudermilk
Hearings Examiner
Railroad Commission of Texas

Filed: November 19, 1990

For further information, please call: (512) 463-6901

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Center For Rural Health Initiatives

Correction Of Error

The Center for Rural Health Initiatives submitted adopted section 25 TAC §500.7, which contained an error as submitted by the center for the September 7, 1990, issue of the *Texas Register* (15 TexReg 5113).

In §500.7(j), the first and second sentences were combined. The subsection should read as follows.

(j) Minutes. The official minutes of the executive committee shall be kept in the office of the executive director of the Center for Rural Health Initiatives (center) to be available to a citizen desiring to **examine them**. Official minutes are those which the recording secretary prepares, the executive committee approves at a regular meeting or special meeting, and are affixed with the original signatures of the presiding officer and the secretary of the

executive committee. Drafts of the minutes shall be forwarded to each member for review and comments or corrections prior to approval of the executive committee.

◆ ◆ ◆
Texas Water Commission
Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th-day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Thomas Steel Drums, Incorporated, SWR Number 65206, on November 9, 1990, assessing \$27,600 in administrative penalties with \$9,200 deferred and foregone contingent upon compliance.

Information concerning any aspect of this order may be obtained by contacting Irene Montelongo, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 15, 1990.

TRD-9012271 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 15, 1990

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

◆ ◆ ◆
Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th-day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Texana Tank Car and Manufacturing Inc., SWR Number 33294, on November 9, 1990, assessing \$25,200 in administrative penalties with \$12,000 deferred and waived contingent upon compliance.

Information concerning any aspect of this order may be obtained by contacting H. Glenn Hall, III, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 15, 1990.

TRD-9012272 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 15, 1990

For further information, please call: (512) 463-7906

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Fry Road Municipal Utility District, Permit Number 11989-01, on November 9, 1990, assessing \$18,200 in administrative penalties with \$9,200 deferred contingent upon compliance. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Laura Ray Culbertson, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 15, 1990.

TRD-9012273 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 15, 1990

For further information, please call: (512) 463-7906

◆ ◆ ◆
Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to First Quality Cylinders Inc., SWR Number 38564, on November 9, 1990, assessing \$10,080 in administrative penalties with \$3,360 deferred and foregone contingent upon compliance.

Information concerning any aspect of this order may be obtained by contacting Robert Renbarger, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 15, 1990.

TRD-9012274 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 15, 1990

For further information, please call: (512) 463-7906

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Notice of Application For Waste
Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of November 5-9, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

American Airlines; Fort Worth; airport maintenance base; approximately 2.0 miles north of the Keller-Haslet Road interchange on Interstate Highway 35W is at 2000 Eagle Parkway in the City of Fort Worth, Denton/Tarrant Counties; 03291; new.

Anderson County Fresh Water Supply District Number 1; Palestine; packing plant; approximately two miles south-east of the City of Palestine in Anderson County; 01958; amendment.

City of Bartlett; wastewater treatment facilities; the interim facilities are approximately 1/2 mile northeast of the intersection of U.S. Highway 95 and FM Road 487, the final wastewater treatment facilities are to be 3/4 mile northeast of the intersection of U.S. Highway 95 and FM Road 487, in Bell County; 10880-01; amendment.

Jack Beyer and Jim Beyer; Dublin; action barn; approximately 3.0 miles from the intersection of State Highway 377 and FM Road 988, approximately 3.5 miles southwest of Stephenville on State Highway 377 in Earth County; 03211; new.

Fort Bend County Municipal Utility District Number 13; Houston; wastewater treatment facilities; 4802 Oilfield Road in Fort Bend County; 12833-02; renewal.

Greenleaf Nursery Company; El Campo; plant nursery; plant site is adjacent to and southwest of the intersection of FM 2674, US Highway 71 and Wharton County Road 314 in Wharton County; 03224; new.

Harris County Municipal Utility District Number 86; Houston; wastewater treatment facilities; approximately 0.4 mile south of the intersection of FM 1960 and Medberry Road in Harris County; 12065-01; renewal.

William D. Hefner doing business as L & D Mobile Home Park; Tomball; mobile home park wastewater treatment facilities; 20810 Cypress Wood Drive in Harris County; 13054-01; renewal.

Hi-Port Inc. (Formerly Hi-Port Industries, Division of Peterson/Puritan, Inc.); Highlands; packaging facility; 409 East Wallisville Road, in the Community of Highlands, Harris County; 01062; renewal.

McMullen County Water Control and Improvement District Number 1; Tilden; wastewater treatment facility; adjacent to the west side of State Highway 16 and immediately south of the intersection of State Highway 16 and FM Road 72 in McMullen County; 13543-01; new.

Montgomery County Utility District Number 2; Houston; wastewater treatment facilities; approximately 500 feet east of Kingston Cove Lane in Montgomery County; 11271-01; renewal.

City of Sabinal; wastewater treatment facilities; approximately 0.75 mile northwest of the intersection of U.S. Highway 90 and State Highway 127, 200 yards west of the western end of Tyler Street, on the west side of the Sabinal river in Uvalde County; 10604-01; renewal.

Shinko Wire America, Inc.; Houston; metal finishing facility; approximately 1, 200 feet west of the intersection of Tanner Road and Brittmore Road, Harris County; 03287; new.

Sienna Plantation Fresh Water Supply District; Houston; wastewater treatment facility; approximately 2.5 miles south-southwest of the intersection of State Highway 6 and State Highway 288, and approximately 4,200 feet west of the Missouri Pacific Railroad tracks in Fort Bend County; 12178-01; renewal.

Southwest Utilities, Inc.; El Campo; wastewater treatment plant; approximately 3,500 feet west-northwest of the intersection of State Highway 59 and Little York Road, 1,600 feet north-northwest of the intersection of Little York Road and Foy Street in Harris County; 11255-01; renewal.

Temple-Inland Forest Products Corporation; Diboll, forest products complex; north of FM Road 2426 in the City of Pineland, Sabine County; 01820; amendment.

The Blue Tulip Dairy Corporation; Dublin; a dairy; approximately 1.9 miles south-southwest of the intersection of U.S. Highways 377 and 67 and St. George Road Number 31, approximately 2.0 miles southwest of the intersection of FM Roads 1702 and 219, southwest of the City of Dublin in Erath County; 03237; new.

City of West; wastewater treatment facilities; approximately 4,000 feet northeast of City Hall and approximately 1,500 feet northeast of the intersection of Oak Street and FM Road 2114 in the City of West in McLennan County; 10544-01; amendment.

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

TRD-9012220
Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: November 14, 1990

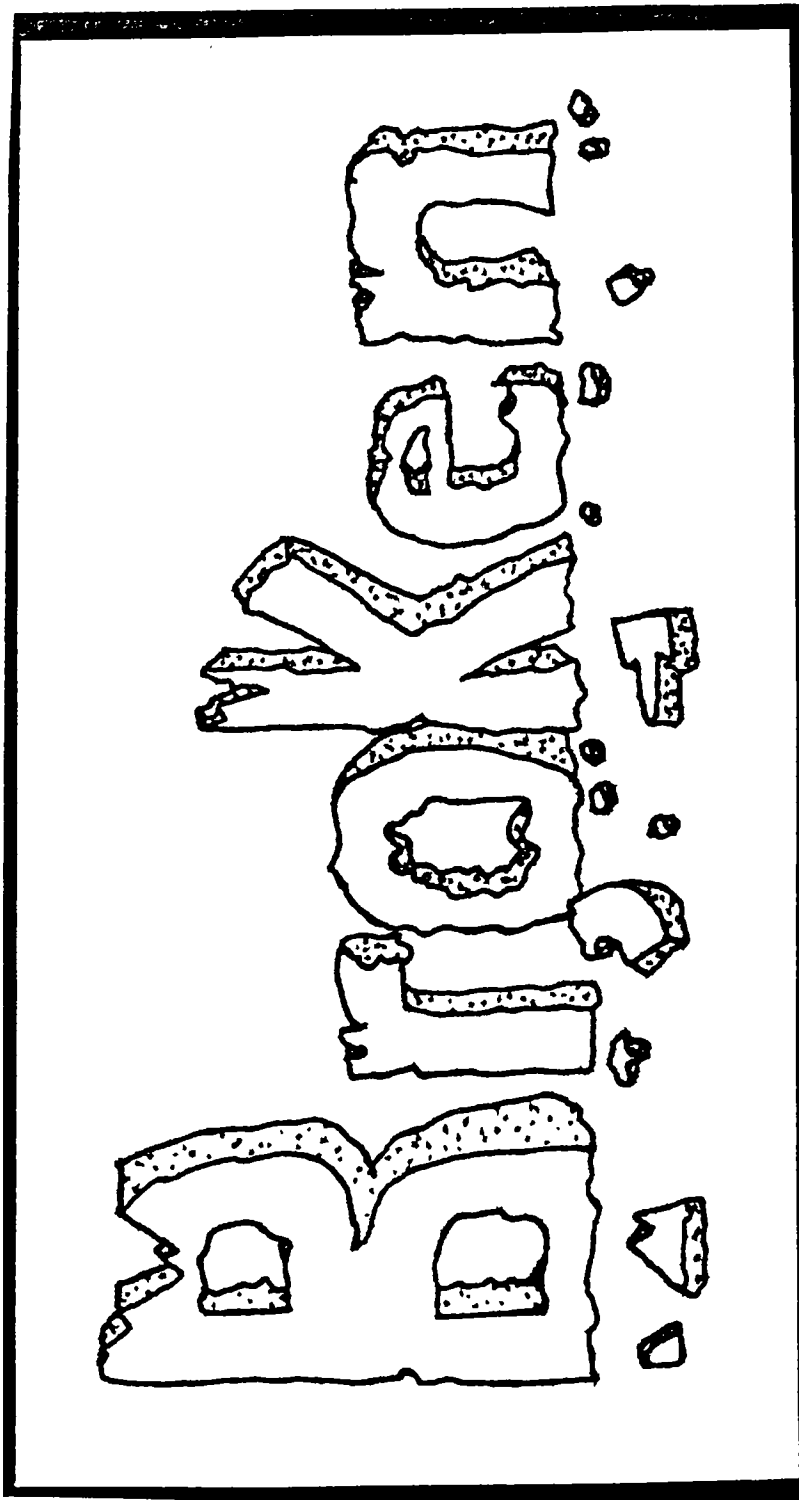
For further information, please call: (512) 463-7906

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**Texas Workers' Compensation
Commission
Correction Of Error**

The Texas Workers' Compensation Commission submitted proposed sections which contains an error as submitted by the agency in the October 26, 1990, issue of the *Texas Register* (15 TexReg 6177).

In the preamble to new §§129.1-129.5 the fiscal note should address the effect on small businesses as follows.

"Mr. Looney has also determined that, for each year of the first five years the sections are in effect, the public benefit anticipated is the implementation of the Texas Workers' Compensation Act, adopted by recent legislation. There will be no effect on small businesses except in Rule 129.3. In rule capacity as an insurance carrier, there will be negligible costs in printing and completing the required notices to the employee. In comparing the costs to a small business with the cost for the largest business, the costs will be proportionately the same. There is no anticipated additional economic cost to persons who are required to comply with the sections as proposed."



Name: Wendy Edwards

Grade: 10

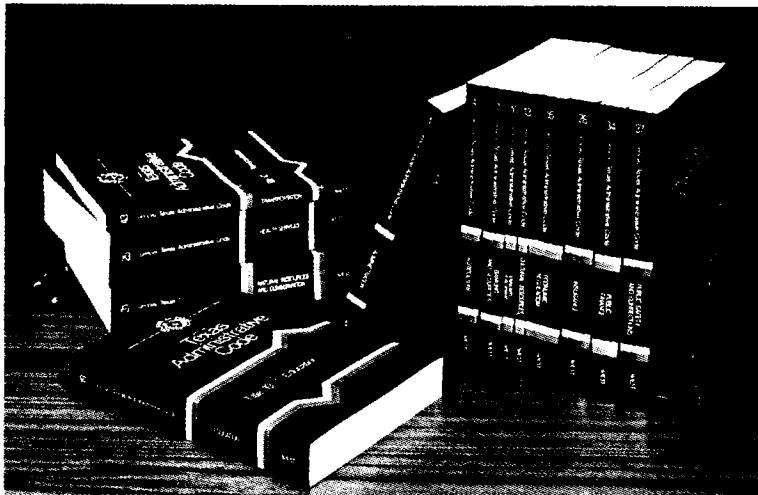
School: Richardson High School, Richardson ISD

1990-'91 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for upcoming 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 23	Monday, November 19	Thursday, 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	
*Tuesday, January 1	Friday, December 21	Thursday, December 27
Friday, January 4	NO ISSUE PUBLISHED	
Tuesday, January 8	Wednesday, January 2	Thursday, January 3
Friday, January 11	Monday, January 7	Tuesday, January
Tuesday, January 15	Wednesday, January 9	Thursday, January 10
Friday, January 18	Monday, January 14	Tuesday, January 15
Tuesday, January 22	Wednesday, January 16	Thursday, January 17
Friday, January 25	1990 ANNUAL INDEX	
Tuesday, January 29	Wednesday, January 23	Thursday, January 24
Friday, February 1	Monday, January 28	Tuesday, January 29
Tuesday, February 5	Wednesday, January 30	Thursday, January 31
Friday, February 8	Monday, February 4	Tuesday, February 5
Tuesday, February 12	Wednesday, February 6	Thursday, February 7
Friday, February 15	Monday, February 11	Tuesday, February 12
Tuesday, February 19	Wednesday, February 13	Thursday, February 14
*Friday, February 22	Friday, February 15	Tuesday, February 19
Tuesday, February 26	Wednesday, February 20	Thursday, February 21
Friday, March 1	Monday, February 25	Tuesday, February 26
Tuesday, March 5	Wednesday, February 27	Thursday, February 28
Friday, March 8	Monday, March 4	Tuesday, March 5
Tuesday, March 12	Wednesday, March 6	Thursday, March 7

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