

Texas Register

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Volume 14, Number 11, February 10, 1989

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Texas Register

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

Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

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

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



Texas Register Publications

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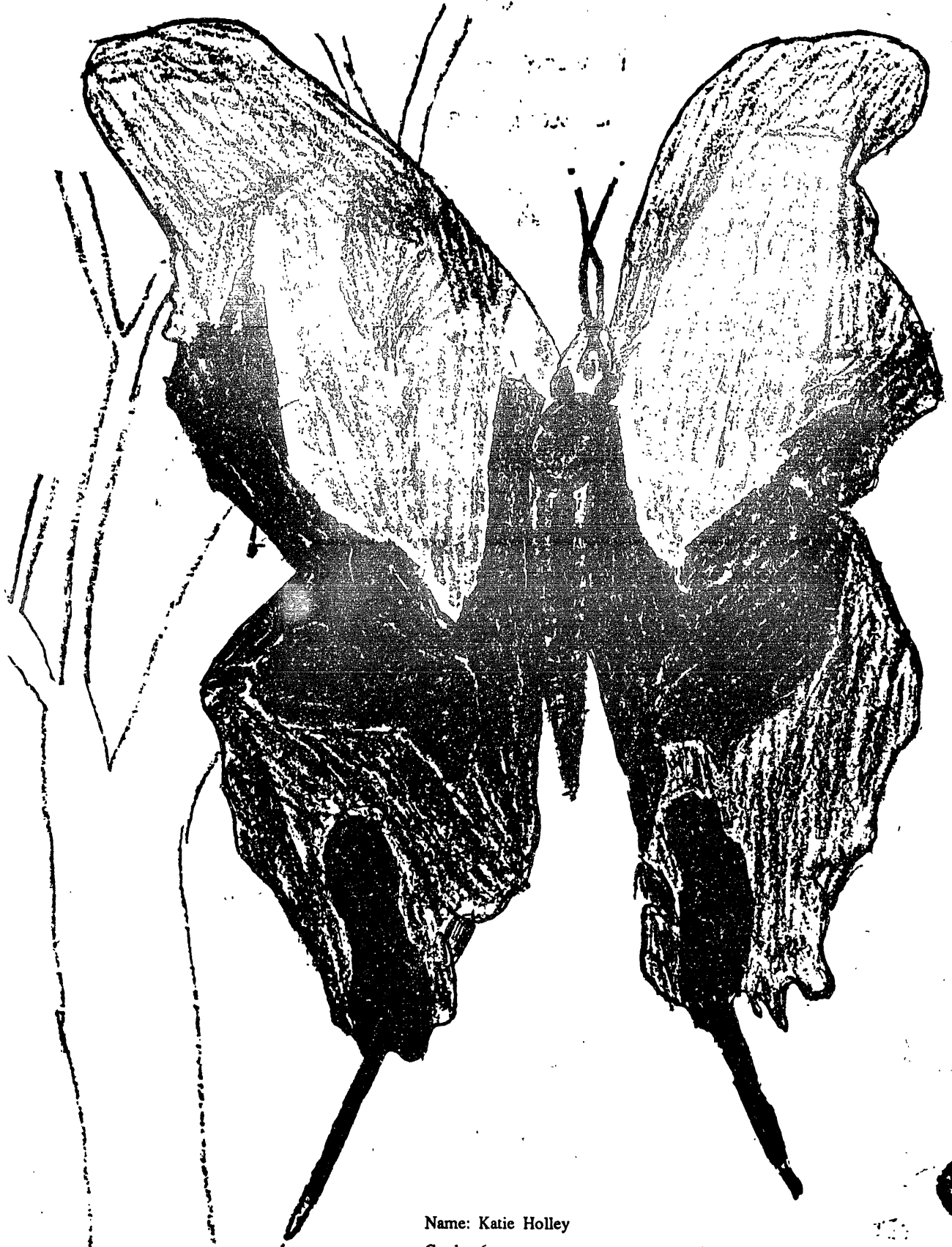
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078-176



Name: Katie Holley

Grade: 6

School: Roscoe Wilson Elementary, Lubbock

The Governor

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

Appointments Made January 27, 1989

To be a member of the **Heroes Monument Commission** for a term to serve at the pleasure of the governor: Cynthia Mae Sullivan, 51 Colony Park Circle, Galveston, Texas 77551. Ms. Sullivan is being reappointed.

To be a member of the **Texas Heroes Monument Commission** for a term to serve at the pleasure of the governor: Anna Irene Ayers, 2908 Avenue O, Galveston, Texas 77550. Ms. Ayers is being reappointed.

To be a member of the **Manufactured Homeowners' Recovery Fund Board of Trustees** for a term to expire February 1, 1991: William Ostrom Goodman, 4701 Strass Drive, Austin, Texas 78731. Mr. Goodman is being reappointed.

To be a member of the **Manufactured Homeowners' Recovery Fund Board of Trustees** for a term to expire February 1, 1991: Paul M. Washburn, 1920 Glenwood, Abilene, Texas 79605. Mr. Washburn is being reappointed.

To be a member of the **Manufactured Homeowners' Recovery Fund Board of Trustees** for a term to expire February 1, 1991: Richard Lee Morgan, 3635 Stables Lane, Dallas, Texas 75229. Mr. Morgan is being reappointed.

To be a member of the **Texas Industrialized Building Code Council** for a term to expire February 1, 1991: Jimmy Furman Rogers, 505 High Woods, Fort Worth, Texas 76112. Mr. Rogers will be replacing Kurt Monier of San Antonio whose term expired.

To be a member of the **Texas Industrialized Building Code Council** for a term to expire February 1, 1991: Michael T. Slataper, 2314 River Ridge Road, Arlington, Texas 76017. Mr. Slataper is being reappointed.

To be a member of the **Texas Industrialized Building Code Council** for a term to expire February 1, 1991: Charles Lewis Clawson, 6219 Lake Ridge, Arlington, Texas 76016. Mr. Clawson is being reappointed.

To be a member of the **Texas Industrialized Building Code Council** for a term to expire February 1, 1991: Charles W. Alexander, 100 Middleford, Irving, Texas 75063. Mr. Alexander is being reappointed.

To be a member of the **Texas Historical Records Advisory Board** for a term to

expire January 23, 1992: David J. Murrah, 2207 16th Street, Lubbock, Texas 79201. Dr. Murrah is being reappointed.

To be a member of the **Texas Historical Records Advisory Board** for a term to expire January 23, 1992: Lydia Torrez, 1613 Tulip, McAllen, Texas 78504. Ms. Torrez is being reappointed.

To be a member of the **Texas Historical Records Advisory Board** for a term to expire January 23, 1992: Ronnie Curtis Tyler, 3102 Hemphill Park, Austin, Texas 78705. Dr. Tyler is being reappointed.

To be a member of the **Criminal Justice Task Force** for a term to serve at the pleasure of the governor: Dawn Elise Reveley, 801-B Robert E. Lee, Austin, Texas 78704. Ms. Reveley will be filling a new position.

To be a member of the **Texas Criminal Justice Task Force** for a term to serve at the pleasure of the governor: Robert A. Mann, 4424 Village Oak, Waco, Texas 76710. Mr. Mann is filling a new position.

Appointment Made January 30, 1989

To be a **Texas Coordinator for the Students' Against Driving Drunk** for a term at the pleasure of the governor: John T. Rogers, Jr., Administrative Assistant, Director's Office, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001.

To be a member of the **East Texas State University, Board of Regents**, for a term to expire February 15, 1995: Kerry Noble Cammack, #4 Bedford Circle, Longview, Texas 75601. Mr. Cammack will be replacing Leon Jackson Coker, Jr. of Texarkana whose term expired.

To be a member of the **Texas A&M University System, Board of Regents**, for a term to expire February 1, 1995: Billy W. Clayton, Box 38, Springlake, Texas 79082. Mr. Clayton is being reappointed.

To be a member of the **Dairy Advisory Board** for a term to expire December 31, 1990: Ben Harvey Long, Jr., Route 4, Box 94, Weatherford, Texas 76086. Mr. Long is being reappointed.

To be a member of the **Dairy Advisory Board** for a term to expire December 31, 1990: Harvey Lee Richards, 5300 Papaya Circle, Route 4, Harlingen, Texas 78552. Mr. Richards is being reappointed.

To be a member of the **Produce Recovery Fund Board** for a term to expire January 31, 1995: Marian Sue Hawkins, 103 North

Boardway, Hart, Texas 79043. Ms. Hawkins is being reappointed.

To be a member of the **Texas Board on Aging** for a term to expire February 1, 1995: Gary R. Cook, 6130 Del Norte, Dallas, Texas 75225. Dr. Cook is being reappointed.

To be a member of the **Texas Low-Level Radioactive Waste Disposal Authority** for a term to expire February 1, 1995: Milton J. Guiberteau, 5626 Teawilliger Way, Houston, Texas 77056. Dr. Guiberteau is being reappointed.

To be a member of the **Texas Board of Human Services** for a term to expire January 20, 1995: Ida Kern Papert, 5840 Dexter Drive, Dallas, Texas 75230. Mrs. Papert is being appointed to a new position on the board.

To be a member of the **Texas Board of Human Services** for a term to expire January 20, 1993: Maurice Lee Barksdale, 2400 table rock court, Arlington, Texas 76006. Mr. Barksdale is being appointed to a new position on the board.

To be a member of the **Texas Board of Human Services** for a term to expire January 20, 1991: Glenn McMennamy, 84 Palomino, Amarillo, Texas 79106. Mr. McMennamy is filling a new position.

To be a member of the **Texas Board of Human Services** for a term to expire January 20, 1995: David Herndon, 2903 Tarry Trail, Austin, Texas 78703. Mr. Herndon is replacing Vicki Garza of Corpus Christi whose term expired.

To be a member of the **Advisory Council on Community Affairs** for a term to expire January 31, 1991: Estella Lane Trevino, P.O. Box 757, Edinburg, Texas 78540. Ms. Trevino is being reappointed.

To be a member of the **Advisory Council on Community Affairs** for a term to expire January 31, 1991: Arthur Lynn Hahn, Box 71, Doss, Texas 78618. Mr. Hahn is being reappointed.

To be a member of the **Advisory Council on Community Affairs** for a term to expire January 31, 1991: Edward L. Garner, 1110 Dressen, Spearman, Texas 79081. Mr. Garner is being reappointed.

To be a member of the **Advisory Council on Community Affairs** for a term to expire January 31, 1991: Matthew Washington, 18 Wellington Court, Missouri City, Texas 77459. Mr. Washington is being reappointed.

To be a member of the **Upper Colorado River Authority Board of Directors**, for a term to expire February 1, 1995: Douglas James Rogers, 22 Terrace Drive, San Angelo, Texas 76903. Mr. Rogers is being reappointed.

To be a member of the **Texas Board of Corrections** for a term to expire February 15, 1993: James Marion Eller, 1317 Brookhollow Way, Bryan, Texas 77805. Mr. Eller is being reappointed.

To be a member of the **Texas Board of Corrections** for a term to expire February 15, 1995: Allan Bruce Polunsky, 11654 Elm Ridge Road, San Antonio, Texas 78230. Mr. Polunsky is being reappointed.

To be a member of the **Texas Board of Corrections** for a term to expire February 15, 1995: Jerry H. Hodge, 32 Oldham Circle, Amarillo, Texas 79109. Mr. Hodge is being reappointed to the board in a new position, replacing Deralyn Davis of Fort Worth whose term expired.

To be a member of the **Interagency Council on Early Childhood Intervention Services** for a term to expire February 1, 1991: Janet D. Holliday, 110 Kennedy Avenue #1, San Antonio, Texas 78209. Ms. Holliday is being reappointed.

To be a member of the **Texas Department of Labor and Standards** for a term to expire February 1, 1991: Richard Lee Morgan, 3635 Stables Lane, Dallas, Texas 75229. Mr. Morgan is being reappointed.

To be a member of the **Branch Pilot for the Sabine Bar, Pass and Tributaries** for a term to expire December 31, 1993: Phillip C. Smith, 3848 Rachel, Port Arthur, Texas 77642. Captain Smith is being reappointed.

To be a member of the **Branch Pilot for the Sabine Bar, Pass and Tributaries**, for a term to expire December 31, 1993: Jerry J. McNeil, P.O. Box 295, Orangefield, Texas 77639. Captain McNeil is being reappointed.

To be a member of the **Branch Pilot for the Port Aransas Bar, Corpus Christi Bay and Tributaries** for a term to expire December 15, 1992: Robert Hans Jorgensen, 4242 Gulfbreeze 3404, Corpus

Christi, Texas 78402. Captain Jorgensen is being reappointed.

Appointments Made January 31, 1989

To be a judge of the **290th Judicial District Court, Bexar County**, until the next general election and until her successor shall be duly elected and qualified: Sharon S. MacRae, 16315 Canyon Shadow, San Antonio, Texas 78232. Ms. MacRae will be replacing Judge David Berchelmann of San Antonio who was elevated to the position of Judge of the Court of Criminal Appeals.

Appointments Made February 1, 1989

To be a member of the **Texas Planning Council for Developmental Disabilities** for a term to expire February 1, 1995: Jeri Jean Wunsch Work, Route 1, Box 14B, Rusk, Texas; 75785. Ms. Work will be replacing Ward Burke of Lufkin whose term expired.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1990: A. Bryan Spiers, Jr., 3105 40th Street, Lubbock, Texas 79413. Dr. Spiers will be replacing Jose L. Gonzalez of Laredo whose term expired.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1989: Stephanie Randolph Roberts, 3901 Pollard, Tyler, Texas 75701. Ms. Roberts will be replacing Father Robert J. Brooks of Houston whose term expired.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1990: Kim A. Caldwell, 419 South Palestine, Athens, Texas 75751. Mr. Caldwell will be replacing Melinda Gonzales of Corpus Christi whose term expired.

To be a member of the **Home Health Services Advisory Council** for a term to expire January 31, 1991: Geraldine Toliver Hester, 3514 Tanglewood Drive, Bryan, Texas 77801. Mr. Hester is being reappointed.

To be a member and chairman of the **Long-Term Care Coordinating Council for the**

Elderly for a term to expire January 31, 1991: Fred Reuben Norton, Jr., 3500B Skyline Boulevard, Texarkana, Texas 75503. Mr. Norton is being reappointed.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1991: Linda Russell, 4220 Hawthorne, Dallas, Texas 75219. Ms. Russell is being reappointed.

To be a member of the **Home Health Services Advisory Council** for a term to expire January 31, 1991: Annabelle G. Henderson, Route 3, Box 360A1, Cameron, Texas 76520. Ms. Henderson is being reappointed.

To be a member of the **Texas Board of Licensure for Nursing Home Administrators** for a term to expire January 31, 1995: Cindy Russell Brockwell, Route 5, Box 5171, Boerne, Texas 78006. Ms. Brockwell will be replacing Mrs. Jean Trebert of Dallas whose term expired.

Issued in Austin, Texas on February 2, 1989.

TRD-8900861

William P. Clements, Jr.
Governor of Texas

Appointments Made February 2, 1989

To be a member of the **Bandera County River Authority Board of Directors** for a term to expire January 31, 1995: Joe K. Leighton, P.O. Box 208, Vanderpool, Texas 78885. Mr. Leighton is being reappointed.

To be a member of the **Air Conditioning and Refrigeration Contractors Advisory Board** for a term to expire February 1, 1995: George William Carpenter, 3803 27th Street, Lubbock, Texas 79410. Mr. Carpenter is being reappointed.

To be a member of the **Texas Commission for the Deaf** for a term to expire January 31, 1995: Mary Helen Haltom, 3309 Tanglewood Trail, Fort Worth, Texas 76109. Ms. Haltom is being reappointed.

Issued in Austin, Texas on February 2, 1988.

TRD-8900960

William P. Clements, Jr.
Governor of Texas

Emergency Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part IV. Department of Labor and Standards

Chapter 77. Health Spas

- 16 TAC §§77.1, 77.5, 77.9, 77.13, 77.17, 77.21

The Department of Labor and Standards adopts on an emergency basis the repeal of §§77.1, 77.5, 77.9, 77.13, 77.17, and 77.21, concerning health spas. These sections are being repealed to reorganized sections may be adopted on an emergency basis. This chapter has been reorganized to conform with a new numbering system which will be used for all the agency's rules. We believe this system will provide for consistency and clarity which will in turn benefit the individuals and businesses the department regulates.

The repeals are adopted on an emergency basis pursuant to the Health Spa Act, Texas Civil Statutes, Article 52211, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which gives the Department of Labor and Standards rulemaking authority.

§77.1. *Definitions.*

§77.5. *Registration Statement.*

§77.9. *Escrow Agent.*

§77.13. *Disclosures to Members and Department.*

§77.17. *Rules for Hearing.*

§77.21. *Forms.*

Issued in Austin, Texas, on February 3, 1989.

TRD-8900986

Joseph L. Huertas
Program Manager
Department of Labor and
Standards

Effective date: February 3, 1989

Expiration date: June 3, 1989

For further information, please call: (512)
463-2906

- 16 TAC §§77.1, 77.10, 77.20, 77.30, 77.40, 77.41, 77.70, 77.71, 77.72, 77.73, 77.80, 77.90, 77.91

The Texas Department of Labor and Standards adopts on an emergency basis §§77.1, 77.10, 77.20, 77.30, 77.40, 77.41, 77.70, 77.71, 77.72, 77.73, 77.80, 77.90, and 77.91, concerning health spas. The entire chapter is adopted to replace the existing chapter, which is being simultaneously repealed on an emergency basis.

The chapter has been reorganized to conform with a new numbering system which will be used for all the agency's rules. We believe this system, as well as general editing that has been done, will provide for consistency and clarity which will in turn benefit the individuals and businesses the department regulates.

Section 77.41 is being added to the rules in response to current needs of members of the public who have suffered a financial loss due to a health spa ceasing to operate or becoming insolvent. This section sets up a process by which an individual who has suffered such a loss can make a claim against a health spa's security instrument.

The new sections are adopted pursuant to the Health Spa Act, Texas Civil Statutes, Article 52211, and the Administrative Procedure and Texas Register Act, Article 6252-13a, which gives the Department of Labor and Standards rulemaking authority.

§77.1. *Authority* These rules are promulgated under the authority of the Health Spa Act (Texas Civil Statutes, Article 52211).

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

Act—The Health Spa Act, Article 52211, Texas Civil Statutes.

Commissioner—The commissioner of the Texas Department of Labor and Standards.

Contract—Any agreement of a month-to-month or longer duration by which one becomes a health spa member.

Department—The Texas Department of Labor and Standards.

Dues—Any form of compensation, remuneration, or payment paid by an individual in exchange for the use of, or which results in the individual using, any or all of the health spa's facilities.

Facilities—Equipment, physical structures, improvements, improvements to leasehold premises, and other real, personal,

or mixed tangible property used by a health spa at each location to conduct its business. The term includes but is not limited to, saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

Financial Losses—Limited to an unused or unearned portion of a health spa member's dues.

Fully open—The date on which all services of the spa that were advertised before the opening or promised to be made available, whether or not contained in the contract, are available for its members' use.

Governmental authority—The state of Texas, or any city, township, village, county, quasi-governmental authority, or any political subdivision thereof.

Health spa—A business primarily involved in the sale of memberships that provides the members instruction in a program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise.

Her—Gender neutral possessive which shall be used to mean his or her.

Member—A person entitled to the benefits of membership in a health spa.

Membership—The status under a contract between an individual and a health spa entitling the individual to use the services or facilities of the health spa.

Owner—Any person who maintains a 10% or more interest in any health spa facility.

Person—An individual, corporation, association, organization, partnership, business trust, trust, estate, or any other legal entity.

Prepayment—A payment for all services, or for the use of facilities, made by health spa members before the first day the services or facilities are made available to the members.

Primarily—Having 51% or more of the facility's floor space devoted to physical exercise or the support of physical exercise or deriving 51% or more of the business' gross receipts from physical exercise services.

Purchaser—A person who purchases a health spa membership.

Security—A bond, certificate of deposit, or letter of credit obtained by the health spa and filed with the department pursuant to the registration requirements of the Act, §10.

Seller—A person who owns or operates a health spa, or who offers for sale the

right to use the facilities or services of the health spa.

Services—Programs, plans, guidance, or instruction a health spa provides its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

She—Gender neutral pronoun which shall be used to mean he or she.

Surety—Any entity which has issued a security instrument for a health spa, including, but not limited to, bonding and surety companies and banks issuing letters of credit.

§77.20. Registration Requirements.

(a) Each health spa location shall file a registration statement containing the following information.

(1) the health spa's name and physical location address;

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the issued and outstanding voting shares, if the health spa is operated through a corporation;

(3) the name and address of all the partners, if the health spa is owned or operated as a general partnership;

(4) the name and address of each general partner, if the health spa is owned or operated by a limited partnership;

(5) the name and address of each person deemed to be an owner, if the health spa is owned or operated as a sole proprietorship;

(6) the name and address of any person or entity holding any direct or indirect ownership of the health spa, if that person or entity exercises direct control of the health spa;

(7) a detailed disclosure of the proposed facilities and services;

(8) the approximate square footage of the health spa facility;

(9) a complete disclosure of any litigation, or any complaint filed with a governmental authority, relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of the health spa filing the registration statement that was completed within the past two years or is currently pending; or a notarized statement that within the past two years there has been no litigation and no complaint filed with a governmental authority relating to the failure to open or the closing of a health spa brought against the health spa owners, officers or directors for which the registration statement is being filed; and

(10) the federal tax number of all owners and all operators of the health spa. If a corporation is the owner or the operator, the federal tax number of the corporation shall be provided.

(b) All changes in a health spa's ownership, facilities, or litigation status must be reported by amendment to the registration statement. The health spa shall file the amendment not later than the 90th day after the day on which the change occurs.

(c) The registration statement must be renewed one Year from the original registration date and each year thereafter on the anniversary of the original registration date.

(d) Each registration statement shall be notarized and sworn to by the person submitting it. If a corporation is the submitting party, the registration statement shall be submitted by the corporation's president or secretary. In the case of a partnership, the registration statement shall be submitted by a partner. In the case of a limited partnership, the registration statement shall be submitted by a general partner. In the case of a sole proprietorship, the registration statement shall be submitted by the owner.

(e) If an initial or renewal application is not complete before the 31st day after it is received incomplete, the file will be closed and the registration fee forfeited.

§77.30. Exemptions. Organizations that are tax exempt under 26 United States Code 501 et seq., private clubs owned and operated by their members, entities primarily operated for teaching dance or aerobic exercise, entities primarily engaged in physical rehabilitation activity related to an individual's injury or disease, individuals or entities engaged in an activity authorized under a valid state license, or activities conducted or sanctioned by schools operating under the Education Code are not considered health spas and are not required to register with the Department.

§77.40. Security Requirements-General.

(a) Except as set forth to the contrary below, when there is a transfer of health spa ownership, the purchasing entity steps into the shoes of the seller. Whatever bond the seller should have had in effect on the date of sale is the bond the purchaser must provide. The only exception is if the purchaser qualifies for an exemption under subsection (c) of this section.

(b) Except as provided by subsection (d) of this section, on or before the 30th day after the date a health spa opens its facilities for the use of its members, the health spa shall file With the department a surety instrument issued by a surety licensed to do business in this state. In lieu of, and in equal amount to the bond, the spa may submit a certificate of deposit, or a letter of credit issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The bond, certificate of deposit or letter of credit shall be payable in

favor of the state of Texas and shall be held for the benefit of any members of the health spa who suffer financial losses due to the insolvency or cessation of operation of the health spa.

(c) The amount of the security required in subsection (b) of this section is 20% of the total value of the prepayments the health spa receives. However, the amount of the security may not be less than \$20,000 or more than \$50,000.

(d) The health spa shall maintain in force and effect the security required by subsection (b) of this section for two years after the date the security is filed with the department. Thereafter, the health spa shall continuously maintain security in at least the amount of \$5,000.

(e) A health spa is exempt from the security requirements of this section if the owner of the health spa owns at least one other spa in this state which has operated at on location for at least the two years preceding the effective date of this Act and against which none of its members have initiated litigation or filed a complaint with any government authority in this state relating to the failure to open or the closing of the health spa. The intent of this provision is that the owner must have owned the spa qualifying him for an exemption for the entire two year period.

(1) Ownership is defined as the applicant holding a document evidencing ownership, in the applicant's name, in another health spa. For example, a sole proprietor could produce an assumed name certificate or a federal income tax return. A corporation could produce articles of incorporation if they indicated the name of the health spa, a federal income tax return or an assumed name certificate. For purposes of this subsection, an individual's stock ownership in a corporation which owns a health spa is not ownership of the health spa.

(2) An owner of a health spa is not subject to this section's security requirements because of litigation or a complaint based on the closing of a health spa if that closing was caused by a fire, flood, or other natural disaster and if the closing does not exceed one month.

(3) An owner is not subject to this section's security requirements because of litigation or a complaint based on the closing of a health spa if that closing is due to the relocation of the spa to a site not more than 10 miles from the original location and if the time elapsed between closing the spa at the old location and reopening at the new location does not exceed one month.

(f) The following provisions shall apply to all security instruments.

(1) Regardless of the number of years the security instrument continues in force, or the number of premiums payable or paid, the limit of the surety's liability

stated in the security instrument shall not be cumulative from year to year or period to period.

(2) The surety shall not be liable through a security instrument for punitive damages or for civil or criminal penalties assessed against a health spa, its individual owners, or its employees.

(3) The security instrument shall be continuous until the surety cancels it or the health spa terminates it. A cancellation or termination may be effected only upon giving the department 90 days prior notice of the cancellation or termination.

(4) A surety shall not be liable for any claim brought against a security instrument if the claim, or the filing thereof, occurs more than two years from the last effective date of the security instrument.

§77.41. Security Requirements—Claims.

(a) only persons who have suffered a financial loss due to a health spa's insolvency or cessation of operation, and who have secured a judgment or an administrative order therefor against the health spa, may file a claim with the department.

(b) An administrative hearing must be held before any person may obtain an administrative order upon which to base a claim against a health spa's security instrument.

(1) If the claim is against an operating health spa, the claimant must make a written request to the department for an administrative hearing.

(2) If the claim is against a health spa that has ceased operation, the department shall schedule an administrative hearing and notify all potential claimants.

(c) If the health spa is still operating, a claim must be filed with the department no later than 45 days after obtaining the judgment or administrative order. If the health spa has ceased operation, a claim must be filed no later than 60 days after cessation of business.

(d) When a registered health spa with a security instrument on file ceases to do business, the department shall make a reasonable effort to obtain the most recent list of spa members and shall notify those members of their potential right to file against the spa's security instrument.

(e) When it receives a claim, the department shall inventory and list it along with any other claims filed against the same health spa.

(1) The department shall maintain an accurate list of all claims filed against a given location.

(2) The list shall, at a minimum, contain the dollar amount of damages sought, the name of the claimant, and the nature of the loss or damages.

(3) The department shall notify the health spa named in the claim of each claim received. The notice shall be in writing and shall be mailed no later than seven days after receiving the claim.

(4) The department shall also notify the health spa's surety of any claims filed. The notice shall be in writing and shall be mailed no later than seven days after receiving the claim.

(f) In the case of a health spa that has ceased operation, after the 60-day filing deadline has passed the department shall forward a copy of the list of claims to the health spa's surety. In the case of a health spa that is still operating, the department shall notify the spa's surety within 30 days of receipt of any claim. Attached to the list of claims or notice of any complaint, the department shall also forward a written demand for payment of all sums sought.

(1) The written demand shall state that the surety shall make payment directly to the individual named on the claim.

(2) The surety shall provide the department with a copy of all checks, drafts, or other forms of payment issued to claimants. The copy must be mailed to the department within five days of the date payment was mailed to the claimant.

(g) If the surety denies liability for the claims asserted, the department shall:

(1) notify the claimant of the denial of liability if the surety has not already done so; and

(2) close the file on the claim and forward the claim, along with the surety's response to the attorney general's office with a request that agency negotiate the claim from that point forward.

§77.70. Responsibilities of the Registrant—Escrow.

(a) Funds to be escrowed pursuant to Texas Civil Statutes, Article 52211, §9, must be escrowed at a state or national bank, or savings and loan association, whose accounts are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation.

(B) The escrow agreement filed with the financial institution must contain the following provisions:

(1) prepayments must be deposited at least biweekly;

(2) The first deposit shall be made not later than the 14th day after the health spa receives the first prepayment;

(3) the escrow agreement must name the department as fiduciary for the prepayment members;

(4) the escrow agreement must provide that the escrow agreement shall not terminate until the 30th day after the health

spa fully opens for business;

(5) the escrow agreement must provide that if the health spa does not fully open for business before the 181st day after the date it first sells a membership in the health spa, or if the health spa does not remain open for 30 days, the escrow agreement shall terminate and all prepayment deposits shall be refunded to the members. This refund shall not be subject to expenses or other charges to the member; and

(6) if the health spa remains open for 30 days after the date it initially opens for business, the escrow agreement shall terminate and the health spa may withdraw the escrowed funds. When the escrow account terminates, the health spa shall file an affidavit with the department certifying that all obligations for which a lien could be claimed under the Texas Property Code, Chapter 53, have been paid and that no person is eligible to claim a lien under the Property Code, Chapter 53, for damage arising during the Period the health spa accepts prepayment.

(c) The health spa shall file a copy of the escrow agreement with the department. The escrow agreement shall identify the escrow officer, style of the deposit account, the financial institution, and any other information which will identify the escrow account into which the prepayments have been deposited.

§77.71. Responsibilities of the Registrant—Refunds for Cancelled Contracts.

(a) A member may cancel a contract before the fourth business day after the date on which the contract is signed by notifying the health spa in writing. The health spa shall refund all money paid to the purchaser exercising the right to cancel.

(b) A member may cancel a contract on written notice by certified mail to the health spa's home office if the spa goes out of business and does not provide facilities within 10 miles, or moves its facilities more than 10 miles from the location in which the member is enrolled. A member may cancel the same way if the health spa does not provide advertised services. If the member has paid money under the contract in excess of the value of services received and facilities used under the contract up to the cancellation date, the spa shall promptly refund that amount to the member.

(c) A member or her estate may cancel a membership if the member dies or becomes totally and permanently disabled after the contract takes effect. The health spa shall make a pro rata refund of funds paid under the contract in an amount based on the time remaining in the contract term, up to a maximum of 50% of the total contract amount. The health spa may require a purchaser, or the purchaser's estate, to provide reasonable proof of death or total and permanent disability.

(d) A health spa shall make a refund required under this section before the 31st day after the date the health spa receives the cancellation notice accompanied by proof of payment. The receipt the purchaser received from the health spa at the time the purchaser made a payment under the contract constitutes adequate proof of payment.

§77.72. Responsibilities of Registrant-Notice of Assignment.

(a) The health spa must give a member written notification of any assignment of the contract between it and that member. The notice must be sent to the address shown on the contract. The notice must identify the contract and inform the member he must notify the assignee in writing, not later than the 30th day after the date on which the notice was mailed, of any facts or circumstances giving rise to a claim or defense against the health spa that the member may have. The notice of assignment must state the names of the member and the health spa and give a description of the services, the correct balance, and the number and amount of installments remaining in the payment schedule.

(b) A person who purchases a health spa, or assumes the operation of a health spa under lease agreement or other a contractual agreement, is responsible for fulfilling the terms of any contract in effect on the date of purchase or assumption of operation. The new owner or operator is responsible for the remaining contract term or two years, whichever is less. If the purchasing entity is charging members who had contracts with the seller any fee, the contracts with the seller are being modified, not honored.

(c) This section does not apply to an agreement relating to the financing or refinancing of a spa that does not involve the sale of the spa.

§77.73. Responsibilities of the Registrant-Disclosures.

(a) Contracts between the spa and members must comply with the provisions of Texas Civil Statutes, Article 52211, §§12-15.

(b) The operators or management of a spa must immediately make the names, addresses, and telephone numbers of the spa's management personnel available to the department upon request by a department representative.

(c) Each health spa shall prepare a comprehensive list of all membership plans the health spa offers for sale. This list shall be available to any prospective purchaser upon request.

§77.80. Fees.

(a) Each original or renewal regis-

tration statement filed with the department must be accompanied by a \$100 registration fee.

(b) All registration fees are non-refundable.

§77.90. Sanctions-General. Anyone who violates provisions of Texas Civil Statutes, Article 52211, may be subject to injunction, action for damages, civil penalties, remedies under the Deceptive Trade Practices Act (Business and Commerce Code, §17.46), fines, or Class A misdemeanor penalties as detailed in Article 52211, §§18, 19, 21, and 22.

§77.91. Sanctions-Administrative.

(a) The department, after a hearing, may deny, suspend, or revoke a certificate of registration issued under the Act if the department determines that:

(1) the health spa does not meet the requirements set forth in these sections; or

(2) the certificate of registration applicant knowingly supplied false or incomplete information on the application.

(b) Pursuant to Texas civil statutes, Article 6252-13c, the department, after a hearing, may suspend or revoke an existing certificate of registration, or disqualify a person from receiving a certificate of registration, because that person has a felony or misdemeanor conviction directly relating to the duties and responsibilities involved in operating a health spa. The department may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(1) In determining Whether a criminal conviction directly relates to the operation of a health spa, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the operation of a health spa;

(C) the extent to which a certificate of registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a health spa.

(2) In determining the present fitness of a person who has been convicted

of a crime, the department shall also consider:

(A) the extent and nature of the person's past criminal activity.

(B) the person's age at the time she committed the crime;

(C) the amount of time elapsed since the person's last criminal activity;

(D) the person's conduct and work activity before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(3) It shall be the applicant's responsibility, to the extent possible, to provide the department the recommendations of the prosecution, law enforcement, and correctional authorities as required.

(4) The applicant shall also furnish proof, in such form as may be required by the department, that she has maintained a record of steady employment, has supported her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as a court may have ordered in all her criminal convictions.

(c) Pursuant to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), before denying, suspending, or revoking any certificate of registration, the commissioner shall give the applicant or registrant at least 10 days written notice of the charges against her, or the question(s) to be determined, and of the hearing's date and location.

(d) The applicant or registrant is entitled to an opportunity to be present and be heard in person, or by counsel, and to an opportunity to offer evidence by oral testimony, affidavit, or deposition.

(e) written notice may be served by personal delivery to the applicant or registrant or by certified mail to the applicant's or registrant's last known mailing address as shown in department records.

(f) The hearing must be conducted in a manner that provides the applicant or

registrant due process of law and is consistent with the Administrative Procedure and Texas Register Act's (Texas Civil Statutes, Article 6252-13a) provisions.

(g) If, after a hearing, the commissioner determines a certificate of registration should be denied, suspended, or revoked, the applicant or registrant has 30 days in which to appeal the commissioner's final order to the Travis County district court.

Issued in Austin, Texas, on February 3, 1989.

TRD-8900984

Joseph L. Huertas
Program Manager
Department of Labor and
Standards

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For further information, please call: (512) 463-2906

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. Systems Administration

Subchapter H. Designation as Single Portal Authority

• 25 TAC §401.504

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis an amendment to §401.504, concerning application process. The amendment stipulates that the duration of designation as a single portal authority is two years. The amendment is required to implement the Single Portal Authority Program, which facilitates the delivery of services to involuntarily committed mental health clients in their local communities.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.504. Application Process.

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

(g) The designation remains in effect through August 31, 1989, for any single portal authority designation effective during fiscal year 1989 and for a two-year period for any single portal authority designation effective on or after September 1, 1989, or until suspended or revoked by the board or surrendered by the designee.

(h) (No change.)

Issued in Austin, Texas, on February 3, 1989

TRD-8901026

Pattilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 3, 1989

Expiration date: June 3, 1989

For further information, please call: (512) 465-4670

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 25. Insurance Premium Finance

Subchapter H. Annual Reports, Examinations, and Assessments

• 28 TAC §25.713

The State board of Insurance adopts on an emergency basis an amendment to §25.713, concerning assessment of insurance premium finance companies in 1989. Section 25.713 was adopted on an emergency basis and became effective on December 21, 1988. Notice of the emergency adoption of §25.713 appeared in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6383). An imminent peril to the public welfare requires that the amendment to §25.713 be adopted on an emergency basis in order to continue the proper functioning of administrative regulation of insurance premium finance companies in Texas. This amendment is necessary to clarify that a rate of assessment sufficient to meet the expenses of performing the board's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies shall be on the basis of a percentage of total loan dollar volume for the 1988 calendar year rather than calendar year 1989 as was stated in the original publication.

The amendment is adopted on an emergency basis under the Insurance Code, Article 24.06, §(c), which provides that each insurance premium finance company licensed by the board shall pay an amount assessed by the board to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies, and Article 24.09, which authorizes the State Board of Insurance to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies.

§25.713. *General Administrative Expense Assessment, 1989.* On or before April 1, 1989, each insurance premium finance company holding a license issued by the State Board of Insurance under the Insurance Code, Chapter 24, shall pay to the Texas State Board of Insurance an overhead charge which the board shall assess to cover the general administrative expense attributable to the regulation of insurance premium

finance companies. Payment shall be by check, which shall be filed with the report required by the Insurance Code, Article 24.10(b), at the Office of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The assessment to cover general administrative expense shall be computed and paid as follows.

(1) Payment shall be in the amount of 0.00487 of 1.0% of the total loan dollar volume of the company of the calendar year 1988 [1989].

(2)-(3) (No change.)

Issued in Austin, Texas, on February 3, 1989.

TRD-8901034

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 3, 1989

Expiration date: April 20, 1989

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

• 34 TAC §3.554

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.554, concerning instant bingo. The amendment amends subsection (a)(2)(C) to change the type size required on the card for the comptroller's approval, amends subsection (b) to require submission of a series of sample cards to the comptroller for approval and to require resubmission of approved cards if the color is changed, each two years, or at any other time required by the comptroller, and adds subsection (c)(6) requiring each series of cards to be sold to an authorized organization to be enclosed in a clear wrapping material.

The amendment is adopted on an emergency basis in order to provide stronger safeguards in the approval and sale of instant bingo cards.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.554. Instant Bingo

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

(1) (No change.)

(2) Instant bingo card—A device

used to play a specific game of chance consisting of an individual card, the face of which is initially hidden from view to conceal numbers. Each individual card must:

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

(C) be imprinted in no less than nine [12] point type with the words "Authorized by the Texas Bingo Regulation Division";

(D)-(G) (No change.)

(3) (No change.)

(b) Approval of cards.

(1) No instant bingo card may be sold or otherwise furnished to any person in this state or used in the conduct of bingo for public play unless and until a complete series of an identical prototype of

that card has first been presented to the comptroller by its manufacturer and has been approved by the comptroller for use within this state.

(2) Prototypes or examples of all cards must be presented to the Regulatory Taxes Section, Enforcement Division, of the Comptroller's Office in Austin, for review. If granted, approval extends only to the specific card or series approved. If the card is modified in any way, except only in [color and] series number, it must be resubmitted to the comptroller for approval.

(3) Once an instant bingo card has been approved, a complete series of that card must be resubmitted to the comptroller each two years for reapproval. The comptroller may require resubmission of a series of approved cards at any time.

(c) Manufacturing requirements.

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

(6) A manufacturer or distributor, in selling or providing instant bingo cards to a licensed authorized organization, shall seal or wrap each series completely in a clear wrapping material in such a way that it will be apparent if the series is opened prior to use by the licensed authorized organization.

(d)-(g) (No change.)

Issued in Austin, Texas, on February 1, 1989.

TRD-8900908

Bob Bullock
Comptroller of Public
Accounts

Effective date: February 1, 1989

Expiration date: June 1, 1989

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

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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. [Bracket] indicate deletion of existing material within a section.

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 13. Housing Services

Subchapter A. Housing Bond Reservations

- 10 TAC §§13.1, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13

(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 Department of Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Community Affairs proposes the repeal of §§13.1, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, and 13.13, concerning definitions, housing bond reservation requests, limitations on amount of local share to be reserved, housing bond reservation request form, exhaustion of state share by Texas Housing Agency, issuance of reservation certificate, reservation certificate, and certificate of delivery and payment. The Department of Community Affairs is proposing the repeal of these sections because the Housing Bond Program is no longer administered by the department.

Roger A. Coffield, general counsel, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Coffield 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 repeals will be that an unnecessary, and potentially confusing, part of the Texas Administrative Code will be deleted. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Roger A. Coffield, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166.

The repeals are proposed under Texas Civil Statutes, Article 4413(201), §4(13), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt such rules and regulations as may be necessary and proper to carry out its programs and responsibilities.

§13.1. Definitions.

§13.7. Housing Bond Reservation Requests.

§13.8. Limitations on Amount of Local Share to be Reserved.

§13.9. Housing Bond Reservation Request Form.

§13.10. Exhaustion of State Share by Texas Housing Agency.

§13.11. Issuance of Reservation Certificate.

§13.12. Reservation Certificate.

§13.13. Certificate of Delivery and Payment.

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

Issued in Austin, Texas, on February 1, 1989

TRD-8900955

Roger A. Coffield
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 834-6000

TITLE 16. ECONOMIC REGULATION

Part IV. Department of Labor and Standards

Chapter 77. Health Spas

- 16 TAC §§77.1, 77.5, 77.9, 77.13, 77.17, 77.21

(Editor's Note: The Texas Department of Labor and Standards proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Department of Labor and Standards proposes the repeal of §§77.1, 77.5, 77.9, 77.13, 77.17, and 77.21, concerning definitions, registration statement, escrow agent, disclosures to members and department, rules for hear-

ings, and forms. These sections are being replaced to allow for the adoption of edited, renumbered, and reorganized sections.

Joseph L. Huertas, program manager, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Huertas 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 repeals will be the ability to immediately add a clarified procedure for filing claims against the security instruments filed by health spas. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to John L. Huertas, Program Manager, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 6252-13a, which provide the Department of Labor and Standards with the authority to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

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

Issued in Austin, Texas, on February 3, 1989.

TRD-8900985

Joseph L. Huertas
Program Manager
Department of Labor and
Standards

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 463-2906

- 16 TAC §§77.1, 77.10, 77.20, 77.30, 77.40, 77.41, 77.70, 77.71, 77.72, 77.73, 77.80, 77.90, 77.91

The Department of Labor and Standards proposes new §§77.1, 77.10, 77.20, 77.30, 77.40, 77.41, 77.70, 77.71, 77.72, 77.73, 77.80, 77.90, and 77.91, concerning authority, definitions, registration requirements, exemptions, security requirements, claims against security, responsibilities of the registrant, and sanctions. These sections replace existing sections which have been reorganized, renumbered, and edited to improve clarity and consistency. A section has been added outlining procedures by which an indi-

vidual who has suffered a financial loss due to a health spa's closing or insolvency may file a claim against the health spa's security instrument.

Joseph L. Huertas, program manager, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Huertas 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 clarified procedure for filing claims against the security instruments filed by health spas. 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 Joseph L. Huertas, Program Manager, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas, 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, which provide the Department of Labor and Standards with the authority to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

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

Issued in Austin, Texas, on February 3, 1989.

TRD-890983

Joseph L. Huertas
Program Manager
Department of Labor and
Standards

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 463-2906

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 186. Supervision of Physician Assistant Students

• 22 TAC §186.3

The Texas State Board of Medical Examiners proposes an amendment to §186.3, concerning exemption to the supervision of physician assistant students. Wording is being proposed to clarify the institution with the approved physician assistant program. There is also proposed deletion of the language requiring the supervising physicians during the internship to notify the board of such supervision.

Florence Allen, business manager, and Jean Davis Texas Register Liaison, have 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 or small businesses as a result of enforcing or administering the section.

Ms. Davis also has determined that for each

year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the exemption provision of the section. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. Although no definite date has been set a public hearing on the proposed amendment will be held probably at the February or March board meeting.

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

§186.3. Exemption. A physician who is serving as a preceptor under the auspices of [within] an institution with an approved physician assistant program is not required to register with or provide certification to the board if he or she supervises a physician assistant student who is in training at the institution with an approved physician assistant program. An approved physician assistant training program is one that has been accredited by the Committee on Health and Education and Accreditation of the American Medical Association and subsequently approved by the board. [However, all physicians supervising a student during a preceptorship must notify the board of this in writing. This letter must include the physician's and student's names, as well as the dates of the preceptorship.]

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 February 3, 1989.

TRD-8901031

G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: March 13, 1989

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

Chapter 187. Procedure

Subchapter A. General Provisions

• 22 TAC §187.1

The Texas State Board of Medical Examiners proposes an amendment to §187.1, concerning the definition for presiding officer to replace Sturgis rules (previously used as parliamentary text by the board) with Robert's Rules of Order Newly Revised (now used by the board) or the board rules. The proposed

amendment represents a housekeeping matter in the rules.

Florence Allen, business manager and Jean Davis, Texas Register liaison, have 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 or small businesses as a result of enforcing or administering the section.

Ms. Davis 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 alignment of the rules as they relate to parliamentary text. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. Although no definite date has been set, a public hearing on the proposed amendment is expected to occur at a later board meeting. More information will be available later.

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

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

Presiding officer—The president, duly qualified successor in accordance with Robert's Rules of Order Newly Revised or board rules [Sturgis rules], a hearing examiner, or other person presiding over 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 February 1, 1989.

TRD-8900962

G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: March 13, 1989

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

Subchapter D. Post Hearing

• 22 TAC §187.37

The Texas State Board of Medical Examiners proposes new §187.37, concerning costs of appeal. The proposed new section reflects board policy whereby a party appealing a final board decision in a contested case may be instructed by the board to pay all or a portion of the cost involved in preparing the original or a certified copy of the proceeding's

record which is required to be given to the reviewing court. The Administrative Procedures Act requires that a rule be promulgated in this matter.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, have 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 or small businesses as a result of enforcing or administering the section.

Ms. Davis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the matter of which party is responsible for payment of these proceedings. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. Although no definite date has been set, a public hearing is expected to occur at the February or March board meeting. Contact the office for further information.

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

§187.37. Costs of Appeal. A party appealing a final decision of the board in a contested case may be ordered by the board to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

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 February 2, 1989

TRD-8901030 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption March 13, 1989

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

Chapter 193. Standing Delegation Orders

• 22 TAC §193.7

The Texas State Board of Medical Examiners proposes an amendment to §193.7, concerning radiologic technologists. The proposed amendment deletes language relating to the licensed individual, the individual being certified by the Texas Department of Health, or the individual performing procedures under the supervision of a licensed physician when the registrant is performing certain stated pro-

cedures.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, have 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 or small businesses as a result of enforcing or administering the section.

Ms. Davis 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 conditions by which a registrant may perform certain specified procedures. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jean Davis, Box 13562, Austin, Texas 78711. Although no definite date has been set, it is expected that the board will hold a public hearing at the March meeting. Please contact the office for more information.

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

§193.7. Radiologic Technologists.

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

(d) [Unless licensed, certified by the Texas Department of Health, or performing procedures under the supervision of a licensed physician,] A registrant may perform only chest, spine, extremities, abdomen, and skull studies utilizing standard film or film screen combinations and an x-ray tube that is stationary at the time of exposure.

(e)-(g) (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 February 3, 1989.

TRD-8901029 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption March 13, 1989

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

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. Systems Administration

Subchapter H. Designation as Single Portal Authority

• 25 Tac §401.504

(Editor's Note: The Texas Department of Mental Health and Mental Retardation proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes amendment to §401.504, concerning application process. The amendment stipulates that the duration of designation as a single portal authority by TDMHMR in fiscal year 1989 be through August 31, 1989, and that designations after that be for a two-year period. The amendment is required to implement the Single Portal Authority Program, which facilitates the delivery of services to involuntarily committed mental health clients in their local communities.

Sue Dillard, director, Office of Standards and Quality Assurance, 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 or small businesses as a result of enforcing or administering the section.

Ms. Dillard also has determined that for each year of the first five years the section is in effect the anticipated public benefit will be the assurance that agencies designated as single portal authorities will be reevaluated biennially for continuation. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The amendment is proposed under Texas Civil Statutes, Article 5547-202, §211, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 February 3, 1989

TRD-8901025 Pattieau Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 465-4670

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 11. Health Maintenance Organizations

Subchapter M. Acquisition of Control of, or Merger of, a Domestic Health Maintenance Organization

• 28 TAC §11.1205

The State Board of Insurance proposes an amendment to §11.1205, concerning approval by the commissioner of insurance and hearings in connection with proposed acquisitions of control of, or mergers of, domestic health maintenance organizations. This amendment to §11.1205 was adopted on an emergency basis and became effective on October 26, 1988, issue of the *Texas Register* (13 TexReg 5510). This amendment is necessary to provide uninterrupted coverage to enrollees of domestic health maintenance organizations that are subject to changes of control through a possible reduction of the time required for permitting changes of control. The amendment provides that timely notice of hearing may be waived by the unanimous consent of all parties concerned with a change of control of a health maintenance organization.

Jack Evins, deputy insurance commissioner for licensing, 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 or small businesses as a result of enforcing or administering the section.

Mr. Evins also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the increased likelihood that coverage to enrollees of domestic health maintenance organizations that are subject to changes of control will be provided without interruption. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Joan Gibbs Kennedy, Division Code 0322, Director, Insurance Related Activities, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Texas Health Maintenance Organization Act, §22, 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.

§11.1205. Approval by Commissioner; Hearings.

(a) (No change.)

(b) The public hearing referred to in subsection (a) of this section shall be held within 30 days after the statement required by §11.1202(a) or (b) of this title (relating to Filing Requirements) is ac-

cepted for filing as complete in all aspects, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic health maintenance organization. Not less than 10 days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The health maintenance organization shall give prompt notice of the hearing to its shareholder, as prescribed in subsection (c) of this section. All provisions of this subchapter relating to the timely notice of hearing thereon before the commissioner may be waived by the unanimous consent of all parties, including the commissioner's staff. The commissioner shall make a determination within 30 days, after the conclusion of such hearing. At such hearing, the person filing the statement, the health maintenance organization, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.

(c) (No change.)

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

Issued in Austin, Texas, on February 3, 1989.

TRD-8901037

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 13, 1989

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

Chapter 15. Surplus Lines Insurance

Surplus Lines Rules

• 28 TAC §15.27

The State Board of Insurance proposes new §15.27, concerning the standards and criteria required to warrant exemption of an unauthorized insurer from the minimum capital and surplus requirements of the Insurance Code, Article 1.14-2, §8. A similar §15.27 was adopted on an emergency basis and became effective on January 13, 1989. Notice of the emergency adoption appeared in the January 24, 1989, issue of the *Texas Register* (14 TexReg 489). This new section is necessary to provide for consistency, efficiency, and clarity in the administration of exempting unauthorized insurers from the requirement that they maintain minimum capital and surplus in the amounts set out in the Insurance Code, Article 1.14-2, §8. The new section would provide that the commissioner may exempt an unauthorized insurer from the minimum capital and surplus requirements if it is determined, after public hearing, that the exemption is warranted on the basis of quality of management, capital and surplus of any par-

ent company, underwriting profit and investment income trends, reinsurance contracts, company record and reputation within the industry, capital and surplus, security review, specific lines of insurance, and kind and class of business.

Richard B. Schroeter, manager, excess and surplus lines section, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Schroeter 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 is greater assurance that, of smaller, unauthorized insurers, only those that are financially solvent will be eligible as a surplus lines insurer. 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 Richard B. Schroeter, Division Code 0732, Manager, Excess and Surplus Lines Section, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.14 and Article 1.14-2, §3A, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine policy and rules. Article 1.14-2, §3A, authorizes the board to promulgate rules as may be essential for the implementation of statutory provisions concerning surplus lines insurance. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures. Texas Civil Statutes, Article 6252-13a, §5 prescribes the procedure for adoption of rules by any state administrative agency.

§15.27. Exemption from Minimum Capital and Surplus Requirement.

(a) Purpose. The purpose of this section is to establish standards for exempting unauthorized insurers from the requirements of the Insurance Code, Article 1.14-2, §8(b), pertaining to the minimum capital and surplus as set out therein.

(b) Requirements and standards for exemption by commissioner. The commissioner may exempt an unauthorized insurer from the minimum capital and surplus requirements provided by the Insurance Code, Article 1.14-2, §8(b), if it is determined, after public hearing, that the exemption is warranted. In determining whether such an exemption is warranted, the commissioner shall consider the evidence filed and presented relating to each of the following:

(1) Quality of management. The commissioner shall require completed biographical affidavits on all officers and directors of the insurer. Further, the commissioner shall consider the insurer's history of response to regulatory directives; the insurer's history of processing and pay-

ing valid claims; the management's experience in the business of insurance; the record, if any, of disciplinary actions taken against the insurer by regulatory bodies; and the criminal records, if any, of the ownership or management of the insurer.

(2) Capital and surplus of any parent company. The commissioner shall require a National Association of Insurance Commissioners (NAIC) annual statement, if the parent is an insurer, or a statement, if the parent is an alien insurer, or an audit prepared by a certified public accountant on the parent, if not an insurer, and shall require evidence of the amount of financial support to the insurer that would be provided by the parent in the event of impairment.

(3) Underwriting profit and investment income trends. The commissioner shall require a profit and loss history of the insurer; shall consider types of investments by the insurer; shall consider the insurer's gross and net premium writings to surplus to policyholders ratio; shall require an NAIC annual statement form for the preceding year, or certified financial statement if insurer is an alien insurer; and shall require the insurer's latest NAIC quarterly report, if filed.

(4) Reinsurance contracts. The commissioner shall require that all of the ceded reinsurance of the insurer is with insurers licensed in any state or shall require evidence of acceptable trust funds or letters of credit pursuant to insurance laws of this state if the ceded reinsurance is with alien reinsurers. The commissioner may require actual copies of any executed reinsurance agreements.

(5) Company record and reputation within the industry. The commissioner shall consider the volume and types of complaints received by regulatory agencies and shall require that an insurer have at least one year of experience in the business of insurance with no adverse effect on consumers or authorized insurers immediately prior to date of hearing.

(6) Capital and surplus.

(A) The commissioner may, in an analysis of the NAIC annual statement form or certified financial statement, consider the following as qualifying assets:

(i) lawful money of the United States;

(ii) bonds of this state;

(iii) bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America;

(iv) notes secured by first mortgages upon unencumbered real estate,

the title to which is valid and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies; provided that such investments in such notes shall not exceed one half of the minimum capital stock and minimum surplus of the investing company; and

(v) bonds or other interest-bearing evidences of indebtedness of any counties, cities, or other municipalities.

(B) The commissioner may require that the insurer, on a per-risk basis, retain no limit of liability greater than 10% of its capital and surplus.

(7) Security review. The commissioner shall consider the National Association of Insurance Commissioner Insurance Regulatory Information System (NAIC IRIS) report on the insurer, if any.

(8) Specific lines of insurance. The commissioner may, in the public interest, consider the specific line or lines of insurance to be written and may consider this in granting an exemption to the capital and surplus requirements of the Insurance Code, Article 1.14-2, §8.

(9) Kind and class of business. The commissioner shall require information on the kind and class of insurance business to be written by the insurer in Texas as well as documentation of the insurer's license or authority from its domiciliary state or country to conduct the same kind and class of business that is proposed to be written in this state. An exemption granted under this section does not authorize a surplus lines insurer to write kinds or classes of business otherwise prohibited by law.

(c) Annual review. The commissioner shall annually review any changes in the requirements and standards considered under this section for an insurer's exemption to determine if any changes require a hearing to consider whether an exemption should be continued.

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 February 3, 1989

TRD-8901043 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 13, 1989

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

Chapter 21. Trade Practices

Subchapter A. Unfair Competition and Unfair Practices of Insurers, and Misrepresentation of Policies

• 28 TAC §21.6

The State Board of Insurance proposes new §21.6, concerning a prohibition against the use in any manner of the protection afforded by the Life, Accident, Health, and Hospital Service Insurance Guaranty Act (the Guaranty Act) by any person in the sale of insurance. This new section is necessary to clarify that the prohibition contained in the Guaranty Act, §13(a), applies to the sale of all products which are covered by the Guaranty Act (the Insurance Code, Article 21.28-D). The section states that use of the Guaranty Act by any person in the sale of any product included within the scope of the Guaranty Act shall constitute unfair competition and unfair practices subject to the provisions of the Insurance Code, Article 21.21.

Kay Simonton, deputy insurance commissioner, life group, has determined that for the first five years proposed section is in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section.

Ms. Simonton 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 is a clearer understanding of the board's interpretation of the prohibition against the use in the sale of insurance of the protection afforded by the Guaranty Act. Because the proposed section is an interpretation of existing law there is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kay Simonton, Division Code 0830, Deputy Commissioner, Life Group, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 21.28-D, §20, which authorizes and directs the State Board of Insurance to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act, and in augmentation thereof.

§21.6. Prohibition Against the Use of Guaranty Fund Protection in the Sale of Insurance. The use in any manner of the protection afforded by the Life, Accident, Health, and Hospital Service Insurance Guaranty Act (the Act) by any person in the sale of any product included within the scope of the Act (the Insurance Code, Article 21.28-D), shall constitute unfair competition and unfair practices under the Insurance Code, Article 21.21, and shall be subject to the provisions thereof.

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 February 3, 1989.

TRD-8901038

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 13, 1989

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

Chapter 29. Guaranty Acts

Subchapter A. Texas Property and Casualty Insurance Guaranty Association Plan of Operation

• 28 TAC §29.2

The State Board of Insurance proposes an amendment to §29.2, concerning the board of directors of the Texas Property and Casualty Insurance Guaranty Association (the board of directors). This amendment is necessary to cause the plan of operation of the association to comport with amended statutory language relating to the appointment by the State Board of Insurance of the board of directors of the association. The amendment changes the method of determination of membership on the board of directors from election by the members to appointment by the State Board of Insurance.

John F. Hamje, Deputy Insurance Commissioner for Compliance, 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 or small businesses as a result of enforcing or administering the section.

Mr. Hamje also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the members of the board of directors of the Texas Property and Casualty Insurance Guaranty Association are selected in accordance with the requirements of applicable law. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John F. Hamje, Deputy Insurance Commissioner for Compliance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 21.28-C, §17, which authorizes and directs the State Board of Insurance to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of the article, and in augmentation thereof.

§29.2. Board of Directors.

(a) There shall be a board of directors in accordance with the provisions of the Act, §14.

(1) The board of directors shall

consist of eight persons [members] who [all of whom] shall be appointed [chosen] from employees or officers of the member insurers [companies].

(2) (No change.)

(3) Members of the board shall be appointed by the State Board of Insurance to serve overlapping four-year terms, with the terms of two of the members expiring each year.

(4)[(3)] Replacements for members of the board of directors whose terms have expired shall be appointed [elected] by the [member insurers from candidates which have been nominated by the board giving due consideration to the requirements of the Act, §4B(1), after the board has consulted with the] State Board of Insurance. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. If any director ceases to be an officer or employee of a member insurer during the term of office, that office becomes vacant until a successor is appointed. All directors shall be eligible to succeed themselves in office. [Such election may be held by ballot mailed in by the member insurers or at a meeting of members at which the members may be represented by proxy, as the board shall direct. The nominee receiving a majority of the votes of the members voting shall be elected. The board may, if it chooses, nominate only one candidate for each position to be vacant on the board, but any ballot or proxy solicitation form sent to members shall have provision for the writing in of additional candidates.]

(5)[(4)] The board shall elect a chairman, vice-chairman, secretary-treasurer, and such other officers as it deems necessary. The term of office shall be one year or until a successor is elected and qualified. Vacancies occurring in elective office shall be filled by the board.

(b)-(f) (No change.)

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

Issued in Austin, Texas, on February 3, 1989.

TRD-8901045

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 13, 1989

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 375. State Water Pollution Control Revolving Fund

Introductory Provisions

The Texas Water Development Board (board) proposes amendments to §§375.2, 375.3, 375.17-375.20, 375.31-375.34, 375.36, 375.38, 375.51, 375.62, 375.63, 375.72, 375.81-375.84, 375.86, 375.88, 375.102, and 375.103, concerning the State Water Pollution Control Revolving Fund (SRF), which modify procedures and add clarifying language. Corrections of clerical and typographical errors, changes in terminology from facilities plan to SHF engineering plan and changes in terminology from plans and specifications to contract documents are also made throughout the sections. The board also proposes the repeal of §§375.21, 375.35, and 375.71 and the adoption of new §§375.4, 375.35, 375.89, and 375.111.

The board's proposed amendments to §375.2 and §375.3, and new §375.4, to change, add, or delete definitions, and add policy statements. The amendment to §375.2 would add definitions of application for assistance, funding year, planning area and population; delete the definition of project performance standards, modify the definitions of capitalization grant, closing, construction fund, eligible applicant, facilities plan, SHF engineering plan, plans and specifications (renamed contract documents), project, and treatment works. The amendment to §375.3 involved the addition of a policy statement regarding collection systems and modification of a policy statement regarding management of financial resources. New §375.4 is proposed to set forth the dates of applicability of the modifications to these sections. Most modifications to these sections would be effective only for applications for assistance in fiscal year 1990 and in subsequent years. However, the following sections would apply to all projects after they become effective: §375.3(e), which states the board's policy regarding provision of state matching funds in excess of the amount required by the Act; §375.39, which allows the board to make hardship loans; §375.62(b) and §375.88 which reduce the minimum amount of retainage required from 10% to 5%, and §375.72(c) and §375.81(a), which provide for loan closing to occur prior to completion of design in certain instances.

The board's proposed amendments to §§375.17, and 375.18-375.20 clarify procedures, and establish deadlines and requirements for submission of an application. The board also proposes the repeal of §375.21. Section 375.17 would be amended by addition of minor clarifying language which is more consistent with the Act, §201(o) concerning capital financing plans. Section 375.18 would be amended to clarify procedures for the preparation of the project priority list. Section 375.19 would be amended by

modifying the rating system to provide additional rating points to applicants whose facilities produce compliant effluents but which exceed 75% of their permitted average flow, by adding a reference to new §375.111, which provides information for rating of projects and by the addition of minor clarifying language. The amendment to §375.20 would modify procedures relating to the intended use plan, to specifically establish a deadline and content for submission of priority rating information and the required resolution by the governing body, describe the requirements pertaining to the submission of an application, including the deadline for submission, and the loss of priority ranking if the required deadline is not met, and detail the board's procedure for distribution of funds to projects. Section 375.20 would also be amended to authorize the board to provide additional matching funds if required to completely fund a project. Section 375.21 is proposed for repeal (all nonredundant provisions are incorporated elsewhere in these sections).

The proposed amendments to §§375.31-375.34, 375.36, and 375.38, the proposed repeal of §375.35, and the adoption of new §375.35, would modify procedures for applying for financial assistance, and clarify and modify submittals required to more accurately describe the program requirements. Section 375.31 would be amended to clarify the attendants required at a preconstruction conference and to add pertinent language for clarification. Section 375.32 would be amended to require submittal of information regarding the project, secure site, supply and to require applicant to submit a discharge permit application if it has been filed rather than a report on the status of permit or violation proceedings. Section 375.33 would be amended by the addition of minor clarifying language regarding cost estimates. Section 375.34 would be amended to clarify the information which should be included for submission in interlocal contracts, bond ordinances, consultant contracts, and other required information, to clarify the information required to describe the applicant's ability to secure sites and easements for a project, and to require compliance with federal laws, regulations, and rules. Section 375.34 would be amended to relocate 375.34(e), concerning submission of a draft bond ordinance to §375.72(a)(9) where it more appropriately applies. Section 375.35 requires many revisions for clarification which can best be accomplished by the repeal of the current section and adoption of new §375.35. The new §375.35 will clarify when an offer of financial assistance can be made subject to the National Environmental Policy Act, allow the board to adopt previous determinations issued by federal agencies, and add provisions relating to supporting development in floodplain areas. The new section will also clarify the language that existed in the repealed section and contain specific references to applicable federal laws.

Section 375.36 would be amended to modify terminology; to clarify the requirements for an adequate user charge system and capital financing plan; to require a description of the project performance certification, to require a cost estimate, and reimbursement schedule, and to clarify the approval process for an SRF engineering plan. The amendment to §375.36 would remove the requirement for submittal of information concerning the water

conservation plan and remove the reference to release of funds for planning. Section 375.38 would be amended to clarify the process for review of loans by the executive administrator. A new §375.39 is adopted, which would allow the board to consider providing financial assistance for hardship situations, to establish guidance for defining hardship, and to modify the application process for hardship situations.

Section 375.51 would be amended to clarify conditions for receiving an extension of the expiration date of the board's commitment for financial assistance.

The board proposes amendments to §375.62 and §375.63, to add minor clarifying language and to change the requirement for retainage from progress payments in §375.62, and to change terminology in §375.63.

Modifications are proposed to §375.71 and §375.72 to repeal §375.71, which provides for the partial release of funds for planning purposes; and to amend §375.72 to require that submittals required for loan closing include an updated reimbursement schedule, executed contracts for consultant services, and a proposal for adequate construction inspection, to add the requirements that the applicant to a designated management agency, to add a provision waiving submittal of loan closing documents to allow closing to occur prior to completion of project design, and to delete a reference to permit if it provides for planning. The requirement for submission of a bond ordinance, originally in §375.34(e), is added to §375.75 and minor clarifying language is added.

Amendments are proposed to §§375.81-375.84, 375.86 and 375.88, to require submittal of closed documents which were waived in §375.71 and to require the applicant to hold a preconstruction conference, in §375.81; to make minor changes in terminology in §§375.82-375.84, to modify the time for submittal of an operation and maintenance manual in §375.86; and to reflect the change in progress payment retainage in §375.88.

Amendments are proposed to §375.102 and §375.103, to add minor clarifying language to §375.102 and §375.103, and to require records retention in §375.103.

New §375.111 is proposed to include rating sheets and tables required for the priority rating process.

Susan Taylor, director of accounting, has determined that for the first five-year period the sections will be in effect there will not be fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. There is no economic cost to individuals who are required to comply with the sections as proposed. There will be no impacts on small business as a result of the sections as proposed.

Ms Taylor also has determined that for each year of the first five years the sections will be in effect the public benefit anticipated as a result of enforcing the sections will be the clarification of program requirements and the financial assistance application process for eligible local governments of the state.

A public hearing to receive oral and written comments will be held at 10 a.m. on Friday,

February 24, 1989 in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin. The deadline for receiving written comments is February 24, 1989. Comments on the proposal may be submitted to Mr. O. R. Meertschin, Director of Construction Grants Division, P.O. Box 13231, Austin Texas 78711.

• 31 TAC §§375.2-375.4

The amendment and new sections are proposed under the Texas Water Code, §6. 101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

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

Application for assistance—All the information required for submittal in the following sections: §375.32 of this title (relating to Required General Information); §375.32 of this title (relating to Required Fiscal Data); §375.34 of this title (relating to Required Legal Data); §375.35 of this title (relating to Required Environmental Review and Determinations); and §375.36 of this title (relating to SRF Engineering Plan).

Capitalization grant—Federal grant assistance awarded to the state for capitalization [the establishment of the State Water Pollution Control Revolving Fund].

Change order—The documents issued by the loan recipient, [upon recommendation of the project engineer and with the approval of the executive administrator,] authorizing a change, alteration, or variance in previously approved engineering contract documents [plans and specifications], including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs for work performed pursuant to the contract.

Closing—The time at which the requirements for loan closing have been completed in accordance with §375.72 of this title (relating to Loan Closing) and all documents and instruments necessary for the issuance of the debt to be purchased by the board are properly executed by the appropriate parties and approved by the attorney general for the State of Texas and the debt is registered by the comptroller of public accounts for the state of Texas. [The time of actual transfer of funds from the board to an applicant for purposes of constructing a project.]

Contract documents [Plans and specifications]—The engineering description of the project including engineering drawings, maps, technical specifications, design reports, instructions and other [construction] contract conditions and forms that are [documents] in sufficient detail to allow contractors to bid on the work.

Eligible applicant—A waste treatment management agency including any interstate agencies, or any city, town, county, district, river authority, [association], or

other public body created by or pursuant to state law which has authority to dispose of sewage, industrial wastes, or other wastes, or an authorized Indian tribal organization.

Environmental determination—A finding by the executive administrator [board] regarding the potential environmental impacts of a proposed project and describing what mitigative measures, if any, the applicant will be required to implement as a condition of financial assistance.

Funding year—The particular federal fiscal year (October 1-September 30) for which funds are made available to the SRF.

Planning area—The existing and proposed wastewater service area consistent with the appropriate water quality management plan.

Population—That number of people who reside within the territorial boundaries of the applicant as determined by:

(A) Information in the engineering feasibility study or SRF engineering plan or latest official census for an incorporated city; or

(B) the population for which the project is designed, where the applicant is not an incorporated city or town.

Project—The scope of work describing a construction endeavor normally within a single sewage treatment plant service area which can be separately rated in accordance with §375.19 of this title (related to Rating Process) [for which a loan is awarded under the SRF].

[Project performance standards—The performance and operation requirements applicable to a project including the enforceable requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned to meet.]

SRF engineering plan [Facilities planning]—Those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act and state statutes, and which consist of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area and will demonstrate the selected alternative is cost-effective.

Treatment works—Any devices any systems which are used in the storage, treatment, recycling, and reclamation of waste or which are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facil-

ities; and any works, including site acquisition of the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste.

§375.3. Policy Declarations.

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

(e) Management of financial resources. It is the policy of the board to structure financial assistance to applicants, including providing state matching funds in excess of that required by the act when necessary and feasible, such that the board may maximize financial resources available to the state. It is further the policy of the board to satisfy the requirements of the Act, Title II, as soon as possible.

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

(j) Collection system. It is the policy of the board no to provide financial assistance for construction of sewage collection systems to serve substantially undeveloped areas. In implementing this policy, consideration will be given to the percentage of development in the areas to be served by the collection system and the rate of development of the areas in question.

§375.4. Date of Applicability of Rules This chapter, as modified, shall apply to all applications for assistance from funds appropriated for federal fiscal year 1990 and all subsequent years. Applications for assistance for federal fiscal year 1989 shall be governed by this chapter before modification. However, §375.3(e) of this title (relating to Policy Declarations), §375.39 of this title (relating to Hardship Applications), §375.62(b) of this title (relating to Contract Documents), §375.72(c) of this title (relating to Loan Closing), §375.81(a) of this title (relating to Awarding Construction Contracts), and §375.88 of this title (relating to Retainage) shall apply to all projects after the effective date of these sections

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

Issued in Austin, Texas, on February 3, 1989

TRD-8901050

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption March 13, 1989

For further information, please call. (512) 463-7855

Program Requirements

• 31 TAC §§375.17, 375.18-375.20

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.17. Capitalization Grant Requirements. All projects which receive [loan] assistance from the fund and will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants must meet the requirements under the Act, §§201(b), 201(g)(1), 201(g)(4), 201(g)(5), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513. If possible, capitalization grant funds will be committed before any other available funds in the SRF are used. A brief description of the federal statutory requirements are as follows.

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

(8) Section 201(o) requires that the executive administrator encourage and assist communities in developing [communities develop] a capital financing plan.

(9)-(15) (No change.)

§375.18. Project Priority List.

(a) SRF priority list. The project priority list is a [an ordered] listing of entities eligible to apply for [projects anticipated to receive] loans. All entities [projects] requesting loan assistance must be included on the state's project priority list. Loan assistance may be provided regardless of the rank on the state's project priority list.

(b) Projects included. To assure that all eligible entities have an opportunity to obtain loan assistance at the earliest possible time, the following entities [projects] will be listed on the priority list:

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

(c) Preparation and submission. The project priority list will be prepared with all eligible entities listed and will be subjected to a public hearing in accordance with §375.14 of this title (relating to Public Hearings). The priority list will be submitted to the board for its consideration and after final approval will be submitted to EPA.

(d) Revision. The executive administrator may revise the project priority list in accordance with §375.14 of this title (relating to Public Hearings) as necessary to efficiently manage the fund. After the board adopts revisions to the [final] priority list, the executive administrator shall submit it to EPA.

(e)[(d)] Effective period. A project priority list shall become effective and su-

persede all previous lists upon the date of EPA acceptance and shall remain effective until changed by the board.

(f) **Projects categorized.** Each project to be included in the project priority list will be categorized according to population class in alphabetical order.

(g)[(e)] **Population classes.** The population classes shall consist of eligible projects with jurisdiction over population of:

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

(3) 10,001 [10,000] to 25,000, which class shall be designated "C";

(4)-(6) (No change.)

[(f) **Population.** For the purposes of this chapter, population is that number of people who reside within the territorial boundaries of the applicant as determined by:

[(1) information in the engineering feasibility study or facility plan or latest official census for an incorporated city; or

[(2) the population for which the project is designed, where the applicant is not an incorporated city or town.]

§375.19. Rating Process. The rating process is [required by the Act to be] designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of the Act. Since SRF assistance may be provided regardless of the rank of the project on the priority list, the rating [and ranking] process will mainly be used to rate and rank projects placed on the intended use plan.

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

(4) Rating Sheet Number I shall be used to rate wastewater treatment facilities projects which will replace or improve existing facilities.

(A) (No change.)

(B) Where the project's SRF engineering [facility] plan includes work in addition to the wastewater treatment facility work, the project will be rated on the rating sheet which shall include 50% or over of the total facility cost.

(C) Where the SRF engineering [facility] plan shows that it is cost effective to abandon the existing treatment facilities and to divert sewage to a different location, the diversion line shall have the rating score of the existing treatment facilities to be abandoned.

(D)-(E) (No change.)

(F) Where the six month average flow (MGD) divided by the per-

mitted effluent flow is equal to or greater than 0.75, lines four and 17 shall have a minimum unit value of one.

(G) For the purposes of the water quality impact (Part C), dischargers to either a classified or unclassified stream segment shall have future permit parameters furnished by the commission. If none are furnished by the commission the more stringent of the existing permit parameters or 10/15/3 (BOD5/TSS/NH3-N) will be used.

(5) (No change.)

(6) Rating Sheet Number 3 shall be used to rate a sewage system project which will serve an entire community presently without sanitary sewer service, e. g., an entire community relying solely upon septic tank facilities. It shall not be used for new subdivisions, newly developed urban areas, existing communities with a sewage system, or new communities.

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

(D) For the purpose of the water quality impact (Part C), dischargers to either a classified or unclassified stream segment shall have future permit parameters furnished by the commission. If none are furnished by the commission the more stringent of the existing permit parameters or 10/15/3 (BOD5/TSS/NH3-N) will be used.

(7)-(8) (No change.)

(9) Rating Sheets 1-5, Tables I-V, and Figure 1—population density point curve are found in §375.111 [§375.44] of this title (relating to Rating Sheets 1-5, Tables I-V, and Figure 1—Population Density Point Curve). [Copies may be obtained from the board, Room 513, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711.]

§375.20. Intended Use Plan.

(a) Each fiscal year [after congress appropriates and the state receives its allocation of funds for the SRF,] the board shall prepare an intended use plan under the procedures in subsection (b) of this section. [which shall be subjected to a public hearing and approved by the board.] The intended use plan will identify projects anticipated to receive loans from that year's available funds [appropriation]. The intended use plan will include the following items:

(1) (No change.)

(2) a list of projects for construction of sewage facilities which are included on the priority list and a list of activities eligible for assistance under the Act, §319 and §320. The list of projects will include the following items:

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

(E) terms of financial assistance;.]

(3) assurances for meeting the requirements of the Act, §602(b)

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

(D) all projects funded with capitalization grant funds will meet the requirements under the Act, §§201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513; and.]

(4)[(b) Also included in the intended use plan are] the criteria and methods [method] that are established for distribution of funds.

(b) The criteria and methods for listing projects in the intended use plan, will be in accordance with the following procedures.

(1) The plan will be developed according to the following sequence of events.

(A) On or before April 1 preceding each funding year the executive administrator will solicit a priority rating report from entities desiring to be placed on the subsequent funding year's intended use plan. Applicants which have submitted SRF engineering plans and required environmental documents, which exceed the requirements of the priority rating report, will not be required to submit this report. Applicants will be notified in writing concerning the acceptability of their rating information for inclusion on the intended use plan. The priority rating report must be submitted under the seal of a registered professional engineer and will include, as a minimum, the following information:

(i) a description of existing facilities, including structural condition, operation and maintenance problems, capacity and efficiency of units and inflow, and infiltration conditions in the collection system,

(ii) a description of present wastewater problems and future needs;

(iii) an analysis of conditions in the planning area, including a description of the planning area, existing and projected population, wastewater sources, influent and effluent characterization, and uses of the receiving body of water;

(iv) the status of the required wastewater permit for the proposed project;

(v) a description of the proposed project that will correct present problems and meet future needs;

(vi) an estimated total project cost; and (vii) an estimated project schedule.

(B)[(1)] The executive administrator shall begin preparing the [a] preliminary intended use plan by July 1, preceding the funding year. [on the day that the federal appropriation act is signed into law.] The entities to be considered for inclusion on the list of projects on the plan [funding] will be those eligible applicants [legal entities] that have submitted the rating information and made the required commitments to the board. [indicated to the board that they desire to receive assistance within the next 12 months.]

(C) July 1 will also be the deadline for submission of rating information. Potential applicants which do not submit this information by July 1 may have their projects added to the intended use plan. However, the projects will be added to the appropriate population class list below the line for which the information was submitted prior to July 1 in order of date of submission rather than being ranked in accordance with paragraph (4) of this subsection.

(D) The preliminary intended use plan will be subjected to a public hearing as soon as practicable following the July 1 deadline for submission of rating information. [within 90 days after the federal appropriation act is signed into law.] The date of this hearing will be the deadline for inclusion of projects in the intended use plan.

(E) The intended use plan will be presented to the board for consideration at a regularly scheduled meeting after the federal appropriation has been made and funding levels are established.

(2) Each project to be included in the intended use plan shall be categorized according to population class and shall be rated under the rating process set out in §375.19 of this title (relating to Rating Process). The project rating score shall be based upon rating information acceptable to [a facilities plan approved by] the executive administrator. Projects which do not submit this information [have an approved facilities plan] will not be rated [using information furnished by the entity or information as listed in the current needs survey].

(3) The [board] approved intended use plan shall include only the eligible applicants which have submitted [committed in writing] by the day of the public hearing a certified copy of a resolu-

tion of its governing body listing estimated total project costs and committing to the following requirements.[:]

(A) The entity will proceed as expeditiously as possible to secure a commitment for assistance from the board [enter into a binding commitment with the board within one year of the date of approval of the capitalization grant award].

(B) An application will be submitted on or before March 15 of that funding year. [The application for a loan from the SRF will be submitted within 90 days of approval of the intended use plan.]

(C)-(D) (No change.)

(E) After the 90-day application filing period set out in paragraph (5) (C) of this section, the board may add projects to the intended use plan as necessary to utilize available funds. Such projects must comply with all requirements applicable to projects listed on the board approved intended use plan.]

(4) Projects will be ranked as follows.

(A) (No change.)

(B) Projects on the ready to proceed portion of the current priority list which have not been offered grant assistance shall be listed in priority order as the highest ranked projects in priority order on the intended use plan in the population categories.]

(B)[(C)] Projects which are to be refinanced shall be rated on facility conditions which existed prior to start of construction on their treatment works.

(C)[(D)] Where two or more projects in the same population class have equal rating scores, such projects shall be ranked in order of the executive administrator's receipt of acceptable rating information. [their written request to be included on the intended use plan]

(5) The apportionment of funds shall be as follows.

(A) After all reserve percentages are assigned, the board shall apportion available funds [the funds in the state's allotment] among the population classes. Projects shall be listed with funds required and totaled by population class. Funds required for all population classes shall then be totaled. A percentage of the total funds required by each population class shall be computed based upon the ratio of funds

required by each class to the total funds required by all classes. The portion of the available funds [state's allotment for funding projects] shall be assigned to the population classes based on this computed percentage. However, no class [category] shall be apportioned less than 5.0% of the funds unless the total funds required for a population class is less than 5.0% of the funds available [allotted] for the year.

(B) After population class percentages have been assigned and available funds distributed among the classes, a line will be drawn within each class according to funds available to each class. Project costs will be based on cost estimates, acceptable to the executive administrator, contained in the report to be used for rating purposes. Projects [wholly] above the line and thus within the range of available funds shall be designated as projects to receive assistance. Projects below [not wholly above] the line shall be eligible for assistance at such time funds become available.

[(C) Applicants designated to receive assistance must submit an application to receive a loan from the SRF within 90 days of board approval of the intended use plan. If an application is received but is not approved within 90 days of board approval of the intended use plan, the executive administrator may approve a priority ranking extension of no more than 30 days upon written request from the entity.]

[(D) All applicants which do not submit their applications within the required 90-day period, or any approved extension period, and any other projects which day become eligible for funding, will be considered when an approved application is submitted on a first-come-first-served basis.]

(C)[(E)] Funds distributed to a population class shall be reserved for projects in that class in accordance with subparagraph (G) of this paragraph. [for a period of 90 days after approval of the state's intended use plan. During the 90-day reservation period, applicants] Projects will be eligible for assistance solely on the basis of rank. [A project with a higher rank will be eligible to be funded in entirety before a project of lower rank may receive assistance.] Ranking within a population class is subject to change on March 15 of the funding year in accordance with subparagraph (E) of this paragraph. Funds shall be committed to a project designated to receive assistance upon board approval of the application.

(D) Applicants above the line which intend to preserve their priority status must submit applications con-

taining the information required for submittal in §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Fiscal Data), §375.34 of this title (relating to Required Legal Data), §375.35 of this title (relating to Required Environmental Review and Determinations), and §375.36 of this title (relating to SRF Engineering Plan), on or before March 15 of the funding year. The executive administrator may request additional information regarding an application after March 15 without affecting the priority status of the application.

(E) Applicants above the line which miss the March 15 deadline will be moved to the bottom of the list within their population category in relative priority order. Extensions of this deadline will not be granted unless the applicant can demonstrate to the satisfaction of the executive administrator that the deadline was missed due to circumstances totally beyond the applicant's control.

(F) Loan assistance will not exceed the cost estimate in the intended use plan without board approval. Any funds which may become available due to project costs being less than costs identified in the intended use plan will be subject to board reallocation to other projects within the same category in order to make the best use of available funds.

[(F) In the event the board is unable to provide assistance for an entire project in one fiscal year, the board may negotiate a multi-year commitment with the affected participant. A project so affected will receive the highest priority ranking in subsequent years. In the event that two or more projects require multi-year commitments, ranking in subsequent years will be based on the order in which the commitments were made (first in--first out).]

(G) Any funds available in a category after funding determinations have been made for those projects above the line will be made available to projects in the category in priority order. Applicants below the line will be asked in priority order to submit an application on a schedule established by the executive administrator. If funds are still available after all applicants in the category have had the opportunity to be funded, the remaining funds will be pooled with any left over from the other categories and made available to category A in accordance with the provisions of this subparagraph. If no applicants in category A meet these criteria, then the funds will be made available to category B, etc.

(H) In the event the cost of a project exceeds the funds available, the board may add additional state matching funds to the fund to provide assistance for the entire project at a project specific interest rate. The applicant would then have the option of accepting a loan at the project specific interest rate or the available funds without the additional state funds at an interest rate established in accordance with §375.3(h) of this title (relating to Policy Declarations).

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 February 3, 1989.

TRD-8901051 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 463-7855

Program Requirements

• 31 TAC §375.21

The repeal is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.21. SRF Financing

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 February 3, 1989.

TRD-8901052 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 463-7855

Applications for Assistance

• 31 TAC §§375.31-375.36, 375.38, 375.39

The amendments and new sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.31. Preplanning and Preapplication Conferences.

(a) Preplanning conferences. Potential applicants shall confer with the board's staff as early in its planning process as practical. During the conference the

board's staff [executive administrator] will provide information, advice, instruction, and guidance on the scope of work and level of effort needed to define eligible projects in order to ensure that the applicant expeditiously complies with the environmental and SRF engineering [facilities] planning requirements dictated by the Act, and with the water conservation requirements of the state statutes [statutes]. Guidance on the scope of the required general, legal, and fiscal information, environmental information, SRF engineering [facilities] planning, and on water conservation planning requirements will also be given at the conference. Potential applicants should contact the board's staff [executive administrator] to arrange meetings and allow at least five working days for preparation.

(b) Preapplication conference. An applicant seeking financial assistance will make an appointment with the staff of the board. At a minimum, the preapplication conference should be attended by a member of the governing body of the political subdivision, the entity's engineer, and financial advisor [fiscal representative]. [If possible the applicant should bring information documenting the existence of a dedicated source of revenue for repaying the loan.] The primary purpose of the meeting is to acquaint the applicant with program requirements and to assist the applicant in preparing an application. [Also, a determination if the project qualifies for funding will in most cases be made at this meeting.]

§375.32. Required General Information. Three copies of an application shall be filed with the board. The following information is required on all applications to the board for financial assistance:

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

(7) a brief description of the project including, but not limited to, the following:

(A) (No change.)

(B) a comprehensive statement clearly demonstrating the project need and timing of need in sufficient detail to support and justify the project; [and]

(C) the total estimated cost of the project [certified by the engineer]; and

(D) source of the project's water supply.

(8) (No change.)

(9) evidence that an application has been filed [status of any proceedings] to obtain appropriate permits [a permit] or other authorization from the commission or any other state or federal agency; and

(10) (No change.)

§375.33. Required Fiscal Data. The applicant shall submit a statement of the total project costs including the [project] engineer's most current estimate of construction costs [project cost] itemized as to major facilities, [or items including] land and right-of-way costs, and engineering fees, [of engineers,] as well as estimates of all legal fees, fees of financial advisors and/or consultants, contingencies, and interest during construction.

(1)-(13) (No change.)

§375.34. Required Legal Data.

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

(c) **Utilities service [interlocal contracts].** If the applicant provides or will provide water supply or sewage collection and/or treatment service to another entity, or receives or will receive water supply or sewage collection and/or treatment service from another entity, the applicant shall submit the actual or proposed agreement, resolution, or other legally binding instruments which establish this service relationship. If a loan is closed, a certified copy of such agreement shall be required. The executive administrator may waive this requirement in whole or in part in the case of a project where the applicant is the supplier of water, sewage collection, and/or treatment services to other municipal entities, provided the applicant can demonstrate that its financial strength is adequate to continue the project even if one of the proposed customer entities fails to participate. [The applicant shall submit a copy of any actual or proposed interlocal contract under which any portion of the applicant's sewer capacity is utilized by another municipal entity. Before a loan is closed, a certified copy of such contract shall be required.]

(d) (No change.)

(e) **Draft ordinance.** The applicant shall submit a pro forma draft of an ordinance, resolution, or similar instrument to be adopted by the governing body authorizing a contractual loan agreement or the issuance of each of the bonds issues described in §375.33(1)(B) of this title (relating to Required Fiscal Data). Such ordinance, resolution, or similar instrument shall contain, in addition to the usual provisions, sections providing:

[(1) that a construction fund shall be created which shall be separate from all other funds of the applicant. If operating revenues are to be used to retire the debt, the loan recipient may establish a restricted asset account within the appropriate enterprise fund instead of creating a separate construction fund. The board rules applicable to construction funds also apply to restricted asset accounts;

[(2) that project accounts for the construction fund shall be maintained in accordance with standards set forth by the Governmental Accounting Standards Board. The construction fund shall be established at an official depository of the applicant and all funds in the construction fund shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. If the applicant is not required by law to maintain its funds in an official depository, then it shall designate a depository with the approval of the executive administrator and shall maintain the construction fund in such depository and require that funds therein be secured in the manner provided by law for county funds. All proceeds from the sale of bonds to the board and all other proceeds acquired by the loan recipient to plan and construct the project shall be placed in the construction fund. All proceeds in the construction fund shall be used for the sole purpose of planning and building the project as approved by the board except as otherwise stated in these sections or approved by the board;

[(3) that final accounting be made to the board of the total cost of the project upon completion of the project performance certificate. Such resolution or ordinance shall include that if the project is not fully completed at a total cost less than the amount of available funds for building the project, or if the executive administrator disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the applicant shall immediately, with filing the final accounting, return to the board the amount of any such excess and/or the cost as determined by the executive administrator relating to the parts of the project not built in accordance with the plans and specifications, to the nearest multiple of \$1,000 or \$5,000, depending upon the denomination of the bonds being sold. Thereupon, the board shall cancel and deliver to the applicant a life amount of the bonds of the applicant held by the board in inverse numerical order. Any returned funds will be deposited in the SRF. Unless otherwise stated in the loan commitment, in determining the amount of available funds for building the project, the applicant shall account for all monies in the construction fund, including all loan funds extended by the board, all other funds available from the project as described in the project engineer's or fiscal representative's sufficiency of funds statement required for closing the board's loan, and all interest earned by the applicant on money in the construction fund. This requirement shall not be interpreted as prohibiting the board from enforcing such other rights as it may have under law;

[(4) that an annual audit of the applicant, prepared by a certified public accountant or licensed public accountant be provided to the executive administrator;

[(5) that the applicant shall maintain adequate insurance coverage on the project in an amount adequate to protect the board, interest;

[(6) that the applicant will implement any water conservation program required by the board until all financial obligations to the state have been discharged;

[(7) that the applicant will comply with any special conditions specified by the board's environmental determination until all financial obligations to the state have been discharged; and

[(8) that the applicant covenants to abide by the board's rules and relevant state statutes.]

(e)[(f)] **Affidavit.** The applicant shall submit an affidavit executed by the authorized representative stating that the facts contained in the application are true and correct to his best knowledge and belief.

(f)[(g)] **Construction contract.** The applicant shall submit a copy of any existing [or proposed] construction contract.

(1) All [proposed] contracts shall have provisions assuring compliance with the board's rules and all relevant statutes.

(2) The applicant shall be represented by a registered professional engineer who shall inspect the project at each phase of construction to assure construction in substantial compliance with the contract documents [plans and specifications] and in accordance with sound engineering principles and the terms and provisions of the construction contracts.

(3) (No change.)

(g)[(h)] **Consultant contracts.** The applicant shall submit copies of any proposed or existing contracts for consultant services necessary for construction of the proposed project and included as part of the total cost of the project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator.

(h)[(i)] **Compliance with state law.** The applicant shall submit a certification by the authorized representative of the applicant in a form acceptable to the board which warrants compliance by the applicant with all representations in the application, all laws of the State of Texas, and all rules and published policies of the board.

(i)[(j)] **Ordinance for prior lien bonds.** If bonds to be sold to the board are revenue bonds secured by a subordinate lien, then a copy of the authorizing instrument of the governing body in the issuance of the prior lien bonds shall be furnished.

(j)[(k)] **Other information.** The ap-

plicant shall submit other information[, plans, and specifications] requested by the board or the executive administrator which is [are] reasonably necessary for an adequate understanding of the project. [The applicant shall submit a copy of any proposed or existing lease or other agreement transferring interests in any land acquired, or to be acquired, with assistance from the SRF. Regardless of the source of funds in the acquisition, the applicant shall:

(1) describe what real property interests and acquisitions are necessary for the construction of the projects;

(2) explain the status and means of obtaining the property interests; and

(3) provide a certification that it has the necessary legal powers and authority to obtain the necessary interests.]

(k) **Sites and easements.** The applicant shall submit a description of all real property interests (sites, easements, rights-of-way, or specific use permits) necessary for construction of the project.

(1) The applicant shall submit a statement explaining the status and means of obtaining the property interests.

(2) The applicant shall provide certification that it has the necessary legal powers and authority to obtain the property interests.

(3) The applicant shall submit a copy of any proposed or existing lease or other agreement transferring interests in any land acquired or to be acquired for the project.

(l) **Compliance with SRF capitalization grant requirements.** The applicant's authorized representative shall certify in a form acceptable to the board that the applicant will comply with all federal laws, regulations, and rules which apply to the SRF loan program.

§375.35. Required Environmental Review and Determinations.

(a) **General.** The applicant's preparation of the environmental information and the executive administrator's review and issuance of a determination forms an integral part of the planning process required of any potential applicant to the fund. There are three levels of environmental information required, varying according to the nature and scope of the project and the environment in which it is proposed. Correspondingly, the appropriate level of review will be conducted by the board and formal determinations documenting the review are issued. The categorical exclusion (CE) is directed toward those applicants proposing only minor rehabilitation or functional replacement of existing equipment. Although the environmental information required is small, the proposed project must

fit a narrow range of criteria defined in paragraph (1)(A) of this subsection. The CE must be revoked and an environmental information document (EID) must be prepared if the project is subsequently modified so as to exceed the limits of the criteria. The majority of applicants will prepare an EID, a stand-alone document developed in accordance with guidance available from the board. In addition, as a greater amount of information to be supplied by the applicant, a public hearing must be held on the proposed project and the determination, a finding of no significant impact (FNSI), is also subject to public comment for a period no less than 30 days following its issuance. All applicants whose proposed projects do not meet the criteria for either a CE or environmental impact statement (EIS) must prepare an EID. Although there are other criteria involved as described in subsections (a)(1)(C) and (d)(3) of this section, an EIS is normally required of those projects that are so major in scope as to involve such environmentally sensitive areas (i.e., floodplains, endangered species habitat, etc.) that the proposed project may have significant adverse social or environmental impacts. An EIS requires staff consultation and involvement by the board and other agencies in its preparation and results in a record of decision (ROD). The board staff shall endeavor to provide guidance as to the appropriate level of environmental information to applicants during the pre-planning process. All applicants are urged, however, to review the criteria and contact the board's staff, particularly if there is doubt as to the level of environmental information that is appropriate to the proposed project. Based on the environmental information and as required by the provisions of the Act, §602(b) (6) and §375.17 of this title (relating to Capitalization Grant Requirements), the executive administrator will conduct an independent and interdisciplinary environmental review consistent with the National Environmental Policy Act (NEPA) of all projects proposed for funding through the SRF. This review will further insure that the proposed project will comply with the applicable local, state, and federal laws and board rules relating to the protection and enhancement of the environment. Based upon the staff's review, the executive administrator will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determinations will include mitigative provisions to be applied as a condition of receiving financial assistance and no financial assistance will be provided for building until a final environmental determination has been made. Nothing in these rules shall prohibit any public, private, or governmental party from seeking administrative or legal relief from the determinations of the board.

(1) **Basic environmental determinations.** There are three basic environmental determinations that will apply to

projects proposed to be implemented with assistance from the fund. These are: a determination to categorically exclude a proposed project from a formal environmental review, a FNSI based upon a formal environmental review supported by an EID, and a determination to provide or not provide financial assistance based upon a ROD following the preparation of an EIS. The appropriate determination will be based on the following criteria.

(A) **The CE determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.**

(i) Proposed projects which meet the following criteria may be categorically excluded from formal environmental review requirements.

(I) The proposed project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works. Examples include infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites.

(II) The proposed project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(ii) CE's will not be granted for proposed projects that entail:

(I) the construction of new collection lines;

(II) a new discharge or relocation of an existing discharge;

(III) a substantial increase in the volume or loading of pollutants;

(IV) providing capacity for a population 30% or greater than the existing population;

(V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; or

(VI) the construction of facilities which will not be, or apparently will not be, cost-effective or are likely to cause significant public controversy.

(B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with guidance developed by the executive administrator. Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a CE or EIS will be required to prepare an EID. The executive administrator's issuance of a FNSI will be based upon an EA documenting the potential environmental impacts which are significant or that they may be mitigated without extraordinary measures.

(C) The ROD may only be based upon an EIS prepared in conformance with the format and guidelines described in subsection (b)(3) of this section. An EIS will be required when the executive administrator determines any of the following:

(i) the proposed project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of a proposed project's construction or operation will conflict with local or state laws or policies;

(iii) the proposed project may have significant adverse impacts upon:

(I) wetlands;

(II) floodplains;

(III) threatened and endangered species or their habitats;

(IV) cultural resources including parklands, preserves, other public lands, or areas of recognized scenic, recreational, agricultural, archeological, or historic value;

(v) the proposed project will displace population or significantly alter the characteristics of existing residential areas;

(vi) the proposed project may directly or indirectly (e.g., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quantity or quality, fish, shellfish, wildlife, or their natural habitats;

(vii) the proposed project may generate significant public controversy;

(viii) the treated effluent will be discharged into a body of water where the present classification is being challenged as too low to protect present or

recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(2) Other determinations that are required of the board.

(a) Recognizing that a project may be altered at some time after an environmental determination on the proposed project has been issued, the executive administrator shall provide that, prior to approval, the contract documents, loan application, and related documents will be examined for consistency with the environmental determination. If minor inconsistencies are found and the amended project will not entail adverse environmental impacts different from those previously identified, the project may be allowed to proceed without additional formal environmental review. When substantive inconsistencies are found or new adverse environmental impacts may result, the executive administrator will revoke a CE and require the preparation of an EID or an EIS, consistent with the criteria of subsection (a)(1) of this section, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the executive administrator will:

(i) reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

(ii) issue a FNSI when a CE has been revoked, or issue a public notice that the preparation of an EIS will be required;

(iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

(iv) issue a supplement to a ROD, or revoke the ROD and issue a public notice that financial assistance will not be provided.

(B) When five or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the executive administrator will re-evaluate the proposed project, environmental conditions and public views, and prior to presentation of the application to the board, the application, proceed in accordance with subparagraph (A) of this paragraph.

(3) Other determinations that are available to the board.

(A) The executive administrator may adopt previous environmental determinations issued by the EPA and other federal agencies whose determinations may be considered to be current and applicable under the environmental review require-

ments of this section. In so doing, the executive administrator will insure that all mitigative measures specified in the previous determinations are applied as conditions of the loan agreement and that such adoption will be consistent with the requirements of these rules. The executive administrator will adopt the previous determination by means of a statement of findings, when the proposed project and its previous determination are to be adopted without substantial modifications, or in a FNSI which will explain modifications to the proposed project, potential environmental impacts identified during an environmental review, and any mitigative measures proposed in addition to those included in the federal environmental determination to be adopted.

(B) In order to better inform the public, the executive administrator may issue a statement of findings to interested agencies and public groups describing the outcome of a mitigative condition required by an environmental determination.

(b) Required environmental information. A minimum of three copies of all information required in this subsection shall be submitted to the executive administrator.

(1) Applicants seeking a CE for their proposed projects will provide the executive administrator with sufficient documentation to demonstrate compliance with the criteria of subsection (a)(I)(A) of this section. At a minimum, this will consist of:

(A) a brief, complete description of the proposed project and its costs;

(B) a statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and

(C) a plan maps or maps of the proposed project showing:

(i) the location of all construction areas;

(ii) the planning area boundaries; and

(iii) any known environmentally sensitive areas.

(2) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a CE and for which the executive administrator has made a preliminary determination that an EIS will not be required. The executive administrator will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning.

(A) At a minimum, the contents of an EID will include:

(i) the purpose and need for the project;

(ii) the environmental setting of the proposed project and the future of the environment without the project;

(iii) the alternatives to the project as proposed and their potential environmental impacts;

(iv) a description of the proposed project;

(v) the potential environmental impacts of the project as proposed including those which cannot be avoided;

(vi) the relationship between the short term uses of man's environment and the maintenance and enhancement of long term productivity;

(vii) any irreversible and irretrievable commitments of resources to the proposed project;

(viii) a description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of the public participation process; and

(ix) documentation of required public participation activities and coordination with appropriate governmental agencies.

(B) Prior to the applicant's adoption of the SRF engineering plan, the applicant will hold a public hearing on the proposed project and the EID, and provide the executive administrator with a verbatim transcript of the hearing. The executive administrator will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will be advertised at least 30 days in advance in a local newspaper of general circulation. Notice of the public hearing and availability of the documents also will be sent at least 30 days in advance of the public hearing to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of all attenders, any written testimony, and the applicant's responses to the issues raised.

(C) The applicant will provide copies of the EID to all federal, state, and local agencies and others with an interest in the proposed project. The executive administrator will provide guidance to the applicant regarding coordination requirements.

(3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the preferred alternative, and their environmental, economic, and social impacts. The following

format must be followed by the applicant unless the executive administrator determines there are compelling reasons to do otherwise:

(A) a cover sheet identifying the applicant, the proposed project(s), the program through which financial assistance is requested, and the date of publication;

(B) an executive summary consisting of a 10 to 15 page synopsis of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

(i) a description of the existing problem;

(ii) a description of each alternative;

(iii) a listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and

(iv) any major conclusions;

(C) the body of the EIS, which will contain the following information:

(i) a complete and clear description of the purpose and need for the proposed project and objectives;

(ii) a balanced description of each alternative considered by the applicant. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements, and construction schedule. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;

(iii) a description of the alternatives available to the board including:

(I) providing financial assistance to the proposed project;

(II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) providing no financial assistance;

(iv) a description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide

financial assistance, or otherwise effect or have an interest in any of the alternatives;

(v) a description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, soil biology, socioeconomics, land use, and natural resources of the planning area. The executive administrator will provide assistance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total effects of each alternative in a manner that will facilitate comparison. The effects of a no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.

(4) The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issue of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. Commentators will be identified if a comment has led to a change in either the project or the EIS, the reason should be given. The board's staff will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

(5) Material incorporated into an EIS by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in subsection (b)(4) of this section.

(6) Preparation of the EIS will be done, at the discretion of the executive administrator: directly by its own staff; by consultants to the board; or by a consultant, contracted by the applicant subject to approval by the executive administrator. In the latter two cases, the consultants will be required to execute a disclosure statement prepared by the executive administrator signifying they have no financial or other conflicting interest in the outcome of the project. When an EIS is prepared by contractors, either in the service of the appli-

cant or the board, the executive administrator will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.

(7) The following public participation requirements are the minimum allowable to the applicant and the board.

(A) Upon making the determination that an EIS will be required of a proposed project, the executive administrator will publish in the *Texas Register* and distribute a notice of intent to prepare an EIS.

(B) As soon as possible after the notice of intent has been issued, the executive administrator will convene a meeting of the affected federal, state, and local agencies, the applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared and issued separately. In no case will the notification period be less than 45 days. As part of the scoping meeting the board will, at a minimum:

(i) determine the significance of issues and the scope of those significant issues to be analyzed in depth in the EIS;

(ii) identify the preliminary range of alternatives to be considered;

(iii) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) discuss the method for EIS preparation and the public participation strategy;

(v) identify consultation requirements of other laws and regulations;

(vi) determine the relationship between the preparation of the EIS and the completion the SRF engineering plan and any necessary arrangements for coordination of the preparation of both documents.

(C) Following the scoping process, the executive administrator will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this, including a list of the significant issues identified, will be provided to the applicant and other interested parties.

(D) The draft EIS will be the subject of a formal public hearing and any

other public participation activities determined to be appropriate during the scoping process. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of subsection (b)(2)(B) of this section except that the advertisement period for the public hearing and comment periods for the draft EIS and final EIS will be no less than 45 days. The executive administrator will publish, in the *Texas Register* and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least 45 days prior to making any environmental determination.

(c) Environmental Review.

(1) When the executive administrator has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a CE is to be rescinded, the executive administrator will prepare a public notice of the determination and the availability of supporting documentation for public inspection. The notice will be published in a local newspaper of community-wide circulation by the applicant. The executive administrator, concurrent with the publication, will distribute the notice to all interested parties.

(2) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the executive administrator to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the executive administrator may require the applicant to submit additional information or undertake additional public participation and coordination to support the environmental determination. Based on the environmental review, the executive administrator will prepare an EA, describing:

(A) the purpose and need for the proposed project;

(B) the proposed project, including its costs;

(C) the alternatives considered and the reasons for their rejection or acceptance;

(D) the existing environment;

(E) any potential adverse impacts and mitigative measures; and

(F) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of

compliance with the conditions.

(3) Based upon this EA, the executive administrator will issue a FNSI or issue a notice of intent to prepare an EIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the board. The EA will be attached when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the SRF engineering plan or the provision of financial assistance for building will be taken by the board for at least 30 days after the issuance of the FNSI.

(4) Following the public hearing on the draft EIS and the comment period on the final EIS and at the time of the decision to approve the SRF engineering plan or to provide or deny financial assistance to the proposed project, the executive administrator will prepare a concise public ROD. The ROD will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(d) Application of other laws and authorities. In addition to the requirements of state law and rules, the Act, and the NEPA, the board must, as required by the initial guidance for the state water pollution control revolving fund and the capitalization grant agreement, insure that each project proposed to receive SRF financial assistance complies with the following federal laws and authorities respecting the human environment: the Archeological and Historic Preservation Act of 1974, Public Law 93-191; the Historic Sites Act; the Clean Air Act, 42 United States Code 7506(c); the Coastal Barrier Resources Act, 16 United States Code 3501 et seq., the Coastal Zone Management Act of 1972, Public Law 92-583, as amended; the Endangered Species Act, 16 United States Code 1531 et seq.; Executive Order 11953, Protection and Enhancement of the Cultural Environment; Executive Order 11988, Floodplain Management; the Flood Disaster Protection Act of 1973, Public Law 93-234; Executive Order 11990, Protection of Wetlands; the Farmland Protection Policy Act, 7 United States Code 4201 et seq.; the Fish and Wildlife Coordination Act, Public Law 85-624, as amended; the National Historic Preservation Act of 1966, Public Law 89-665, as amended; the Safe Drinking Water Act, §1424(e), Public Law 92-523, as amended; and the Wild and Scenic Rivers Act, Public Law 90-542, as amended. Because particular federal and/or state agencies are charged with the enforcement of or permitting under many of these laws and

authorities, the executive administrator will provide guidance to applicants to the fund regarding consultation requirements and will encourage proper coordination of project planning with the appropriate agencies. Because of their complexity and critical importance to the board's administration of the fund, the board has adopted the following sections to effect proper compliance with the requirements of the Flood Disaster Protection Act of 1973, the Coastal Barrier Resources Act, and Executive Order 11988.

(1) The board will not provide financial assistance from the SRF for any project element that is proposed to be constructed in a floodplain when the applicant's community is sanctioned by the Federal Emergency Management Agency (FEMA) in its administration of the National Flood Insurance Program, pursuant to the requirements of the Flood Disaster Protection Act of 1973, Public Law 93-234.

(2) The board will not provide financial assistance from the fund to any entity proposing construction in or extension or expansion of sewerage service into any area within the Coastal Barrier Resources System other than those permitted by the Coastal Barrier Resources Act, 16 United States Code 3501 et seq.

(3) Pursuant to the requirements of Executive Order 11988, the board will avoid direct and indirect support of development in floodplains wherever there is a practicable alternative. Therefore, both to preserve the significant natural functions and values of floodplains and to protect human health and safety.

(A) The board may provide financial assistance from the fund for the transportation or treatment of wastewater generated in a floodplain only when the proposed project will provide service to:

(i) areas of existing development in a floodplain;

(ii) facilities such as marinas which, by their nature, must be located in floodplains;

(iii) areas of projected growth, if an EID demonstrates that the proposed development will be consistent with FEMA's floodplain management criteria for flood prone areas (40 CFR 60.3) and will have no significant impacts on natural functions and values of floodplains;

(iv) areas of projected growth if an FIS demonstrates that there is no practicable alternative to such growth, that such growth will be consistent with the floodplain management criteria cited in clause (iii) of this subparagraph and that the benefits of such growth outweigh its costs to the natural function and values of the effected floodplains or risks to human health and safety.

(B) When regional systems are proposed, the board will require the regional authority and the member entities to demonstrate compliance with these rules.

(C) For the purposes of this subsection, the following definitions will apply:

(i) Areas of existing development—All or part of the project planning area which, at the time of the board's issuance of its environmental determination, is:

(I) occupied by existing structures or facilities;

(II) substantially surrounded by existing structures and facilities and which serves no significant independent natural floodplain function; or

(III) characterized by substantial investment in public infrastructure (e. g., roads and utilities are available to individual users) but which is only partially occupied by structures or facilities.

(ii) Floodplain or 100-year floodplain—Those lowland, relatively flat areas usually adjoining inland or coastal waters that have a 1.0% or greater chance of flooding in any given year. In determining these areas, the applicant will use flood insurance rate maps or flood hazard boundary maps approved by FEMA. Where these maps are unavailable, the applicant should produce its own map(s) delineating the 100-year floodplain and showing 100-year flood elevations. Such maps should be prepared in accordance with FEMA's Guidelines and Specifications for Study Contractors.

(iii) Natural functions and values of the floodplain include:

(I) maintenance of water quality;

(II) transport, storage, and absorption of floodwaters;

(III) groundwater recharge;

(IV) flow of debris;

(V) wildlife habitat;

(VI) cultural and historical resource repository;

(VII) agricultural resources; and

(VIII) aesthetic resources.

(D) The board will, as appropriate and consistent with the requirements of these rules and Executive Order 11988, require assurances or include conditions to the provision of SRF financial assistance to insure compliance with these rules.

§375.36. SRF Engineering Plan [Facilities Planning Report].

(a) Preplanning conference. As early as practical, pursuant to §375.31 of this title (relating to Preplanning and Preapplication Conferences), the applicant's engineers and appropriate staff shall meet with the board's staff to obtain current planning information, and obtain guidance on the scope of the SRF Engineering Plan [facilities planning report], and to get an early determination under §375.35 of this title (relating to Required Environmental Review and Determinations). The applicant shall utilize the guidance provided by the board's staff to the maximum extent feasible. The applicant shall submit three copies of its SRF engineering plan [facilities planning report].

(b) Contents of SRF engineering [facilities] plan. Pursuant to the Act, §602(b)(6), the SRF engineering [facilities] plan shall contain the following information:

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

(8) [complete analysis and] description of the proposed or existing user charge system which will proportionately distribute operation and maintenance and replacement costs to each recipient of wastewater treatment services within the applicant's jurisdiction. The user charge system should generate sufficient funds to cover operation and maintenance and replacement costs. The description should include the formula for distributing charges, a projection of operation and maintenance and replacement costs, and the proposed rates to cover the costs. The [user or user class()] system may allow subsidizing of low-income residential users [user] (as defined by the board) when adopted after public notice and hearing[];

[(9) a capital financing plan including a projection of future (through 10 or more years) needs for construction and reconstruction and an explanation of how and when the financing will be obtained;]

[(9) [(10)] the preliminary engineering design data specified in §317.1(b) of this title (relating to Design Criteria for Sewerage Systems);]

[(11) a description of the water conservation plan if existing or required by §375.37(d) of this title (relating to required Water Conservation Plan) in terms of public education, building codes, rate structures, leak detection, reuse, enforcement and emergency/drought contingency plans;]

(10)[(12)] an analysis of potential recreation and open space opportunities for the proposed project;

(11)[(13)] a valid schedule for implementation of the project, covering design through construction including the date by which an application can be submitted to the board [and a payment schedule]; [and]

(12) a description of the operational evaluation that will be provided for certification that the completed project conforms with the design specifications and effluent limitations;

(13) a schedule of projected monthly reimbursements for eligible project costs to be requested by the applicant throughout the project funding period. Any eligible project costs which will be paid by the applicant prior to receiving reimbursement must be identified separately in this schedule;

(14)[(13)] a detailed estimate of the total project costs, including construction costs, land and right of way costs, engineering fees, fees of financial advisors or consultants, legal fees, contingencies, interest during construction, and any other eligible costs relating to the project; and

(15)[(14)] other information deemed necessary by the executive administrator.

(c) Capital financing plan. The applicant should also include a capital financing plan including a projection of future additional (through 10 or more years) needs for construction and reconstruction for wastewater services and an explanation of how and when the financing will be obtained.

(d)[(c)] Approval of SRF engineering [facilities] plan. The executive administrator will approve the SRF engineering [facilities] plan after confirming [the] that the items listed in subsection (b) of this section have been completed, the appropriate environmental determinations have been completed in accordance with §375.35(c) of this title (relating to Required Environmental Review and Determinations), and the loan recipient has agreed to incorporate all mitigating measures directed by the executive administrator.

(d) Partial funding. In the event financial assistance is required by the applicant to complete detailed planning required in subsection (b) of this section, the board may approve the application and authorize partial funding subject to all requirements being met and approved by the executive administrator before the loan closing.]

§375.38. *Review of Applications by the Executive Administrator.*

(a) Review criteria for loans. The executive administrator will review the

applications and request any modifications or additional information as may be required for consistency with sections: §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Fiscal Data), §375.34 of this title (relating to Required Legal Data), §375.35 of this title (relating to Required Environmental Review and Determinations), and §375.36 of this title (relating to SRF Engineering Plan). If at any time the executive administrator determines that requested modifications or information is not being provided expeditiously by the applicant or that the applicant is not proceeding expeditiously to seek a loan commitment he shall, after notice to the applicant, return the application. Return of an application will result in moving the applicant to the bottom of the list within their population category in relative priority order.

(a) Review criteria for loans. The executive administrator shall review the application for funds and present it to the board only after confirming the following.

(1) The project is consistent with and included on the project list in accordance with §375.18(a) of this title (relating to Project Priority List).

(2) The applicant has satisfactorily completed a facility planning report in accordance with §375.36 of this chapter (relating to Facilities Planning Report).

(3) The project has been determined to be consistent with the area wide water quality management planning of the state.

(4) The categories of proposed work are eligible.

(5) The applicant has adopted or has agreed to adopt an acceptable user charge system.

(6) The applicant has adopted or agreed to adopt an adequate water conservation plan, unless the loan application amount is for less than \$500,000, or implementation of a water conservation program is not reasonably necessary to facilitate water conservation or an emergency exists as determined by the executive administrator.

(7) The applicant has satisfactorily demonstrated it has the necessary legal, financial, and managerial capability to complete the project.

(8) The applicant has submitted an acceptable schedule for the initiation and completion of the project.

(9) The applicant is considered capable of repaying the loan under the terms of its commitment.]

(b) Review criteria for refinancing. The executive administrator shall review an application for refinancing of construction costs and present it to the board only after confirming the following.

(1) (No change.)

(2) The contract documents [plans and specifications] have been approved in accordance with §375.63 of this title (relating to Approval of Contract Documents [Plans and Specifications]).

(3)-(4) (No change.)

(5) The SRF engineering planning and environmental review was completed in accordance with §375.36(d) of this title (relating to Approval of SRF Engineering Plan) before initiation of construction.

(6) An operation and maintenance manual has been submitted and approved by the executive administrator unless construction of the project is less than 85% complete in which case the manual will be submitted for approval in accordance with §375.36(a)(2) of this title (relating to Building Phase Submittals).

(7)[(5)] Any other information, requested by the executive administrator has been provided.

(c) (No change.)

(d) Return of applications which cannot be funded. All or parts of applications which cannot be funded within the funding year may be returned to the applicant. Applications not funded during the funding year must be resubmitted according to the deadlines in §375.20(b)(5) of this title (relating to Intended Use Plan) in order to be considered for funding in a later funding year.

§375.39. *Hardship Applications.*

(a) The board may consider, on a case-by-case basis, making financial assistance available to eligible applicants which qualify as hardship cases. In evaluating hardship, the board will consider:

(1) severity of public health problems;

(2) the likelihood that alternative sources of funding would impose a severe hardship on the community;

(3) median annual household income as compared with the national poverty line established by the United States Department of Health and Human Services and the United States Department of Commerce;

(4) county civilian unemployment level provided by the Texas Employment Commission; and

(5) other information requested by the board which is necessary for an adequate assessment of the proposal.

(b) The board may reserve funds from SRF loan repayments to fund qualified projects identified as hardship cases. In order to provide timely financial assistance, the board may waive §375.19 of this title

(relating to Rating Process) and §375.20 of this title (relating to Intended Use Plan), those requirements of §375.36 of this title (relating to SRF Engineering Plan), and any other requirements of these sections which apply only to first round loans, and are not specifically required of all SRF loan recipients in the capitalization grant agreement.

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 February 3, 1989.

TRD-8901054 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 463-7855

Applications for Assistance

• 31 TAC §375.35

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

The repeal is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.35. Required Environmental Review and Determinations

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

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TRD-8901053 Suzanne Schwartz
General Counsel
Texas Water Development Board

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Board Action on Application

• 31 TAC §375.51

The amendment is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties

§375.51. Formal Action by the Board.

(a) (No change.)

(b) Action by board. At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of

the application. The board shall approve an application only if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal act and state law. If the board commits itself to participation in the project, such commitment for financial assistance shall expire 270 days after the board's action making the commitment, unless another period of time for expiration of the commitment is extended by the board. Any extension must be requested of the board by application filed with the executive administrator. Prior to referring such request to the board for consideration, the executive administrator will require full justification for an extension and may require the refiling of, or updating of information contained in the original application. After such information is provided, the staff will refer the request to the board along with its recommendation. Notice of the time and place of board consideration will be given to the applicant's authorized representative.

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

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TRD-8901055 Suzanne Schwartz
General Counsel
Texas Water Development Board

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Engineering Design

• 31 TAC §375.62, §375.63

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.62. Contract Documents [Plans and Specifications]

(a) Submittals. The applicant shall prepare contract documents including plans and specifications and a final engineering design report on all significant elements of the project. These documents shall conform to the requirements detailed in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems). The contract documents [plans and specifications] shall incorporate the accepted recommendations of any value engineering performed in accordance with §375.61 of this title (relating to Value Engineering). Three copies of the documents shall be submitted to the executive administrator.

(b) Additional requirements. The

contract documents [plans and specifications] shall contain the following:

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

(3) except for hardship applications under §375.39 of this title (relating to Hardship Applications), provisions requiring the successful contractor and subcontractors to pay all laborers and mechanics employed on the project not less than the prevailing wage rates, as determined by the United States Secretary of Labor, in accordance with the Davis-Bacon Act (40 United States Code §276a-§276a-7);

(4) (No change.)

(5) provisions providing for the applicant to retain a minimum of 5.0 [10] % of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in the retainage is authorized by the executive administrator in accordance with §375.86 of this title (relating to Retainage);

(6)-(8) No change.)

§375.63. Approval of Contract Documents [Plans and Specifications].

(a) Approval. The executive administrator will approve the contract documents [plans and specifications] if they:

(1) conform to the requirements listed in §375.62 of this title (relating to Contract Documents [Plans and Specifications]);

(2)-(3) (No change.)

(4) are consistent with the SRF engineering [facilities] planning documents and environmental determinations required by §375.35(b) of this title (relating to Required Environmental Review and Determinations) and §375.36 of this title (relating to SRF Engineering Plan [Facilities planning Report]).

(b) (No change.)

(c) Other approvals. The applicant shall obtain the approval of the plans and specifications from each state and federal agency having jurisdiction over the project. The executive administrator's approval of the contract documents [plans and specifications] does not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

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

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General Counsel
Texas Water Development Board

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Prerequisites to Release of Funds

• 31 TAC §375.71

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

The repeal is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.71. Partial Release of Funds for Planning.

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

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Suzanne Schwartz
General Counsel
Texas Water Development
Board

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• 31 TAC §375.72

The amendment is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.72. Loan Closing.

(a) Submittals for loan closing. Prior to the closing of a loan for construction funds, the applicant shall submit for approval to the executive administrator the following documents:

(1) the contract documents [plans and specifications] approved in accordance with §375.63 of this title (relating to Approval of Contract Documents [Plans and Specifications]);

(2) (No change.)

(3) two original copies of each contingently executed construction contract to be entered into by the applicant for building of the project containing the appropriately executed bonds, insurance certificates, act of assurance, wage rates and other documents required by §375.62 of this title (relating to Contract Documents [Plans and Specifications]);

(4)-(7) (No change.)

(8) a certified copy of an escrow agreement providing that funds for construction costs shall not be disbursed without board approval [in accordance with §375.21 of this title (relating to SRF Financing)]. This escrow agreement may be

waived by the board if the applicant provides some other form of binding commitment to obtain board approval before funds are disbursed;

(9) a certified copy of the bond transcript including the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of bonds sold to the board containing the covenants [convenants] as agreed upon or as may be required in the board's resolution. The board may require that bond resolutions and covenants reflect provisions consistent with the executive administrator, approved land acquisitions procedures framed in the application and supporting documents. If not combined in the bond transcript, a certified copy of the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of any other bonds to finance the balance of the cost of the projects[;]. Prior to adoption by the governing body the applicant shall have submitted a pro forma draft, acceptable in form and substance to the executive administrator, of the ordinance, resolution, or similar instrument authorizing the issuance of each of the bond issues described in §375.33(6) or §375.33(10) of this title (relating to Required Fiscal Data). Such ordinance, resolution, or similar instrument shall contain, in addition to the usual provisions, sections providing:

(A) that a construction fund shall be created which shall be separate from all other funds of the applicant. If operating revenues are to be used to retire the debt, the loan recipient may establish a restricted asset account within the appropriate enterprise fund instead of creating a separate construction fund. The board rules applicable to construction funds also apply to restricted asset accounts;

(B) that project accounts for the construction fund shall be maintained in accordance with standards set forth by the Governmental Accounting Standards Board. The construction fund shall be established at an official depository of the applicant and all funds in the construction fund shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. If the applicant is not required by law to maintain its funds in an official depository, then it shall designate a depository with the approval of the executive administrator and shall maintain the construction fund in such depository and require that funds therein be secured in the manner provided by law for county funds. All proceeds from the sale of bonds to the board and all other proceeds acquired by the loan recipient to plan and construct the project shall be placed in the construction fund. All pro-

ceeds in the construction fund shall be used for the sole purpose of planning and building the project as approved by the board except as otherwise stated in these sections or approved by the board;

(C) that a final accounting be made to the board of the total eligible and ineligible construction cost of the project upon completion of the project performance certification and submission of the final funds requisition. Such resolution or ordinance shall also provide that if the project be finally completed at a total eligible cost less than the amount of SRF funds received, or if the executive administrator disapproves construction of any portion of the project as not being in accordance with the contract documents, the applicant shall immediately, upon notification from the board, return to the board the amount of any such excess and/or the cost as determined by the executive administrator relating to the parts of the project not built in accordance with the contract documents, to the nearest multiple of \$1,000 or \$5,000, depending upon the denomination of the bonds being sold. Thereupon, the board shall cancel and deliver to the applicant like amount of the bonds a of the applicant held by the board in inverse numerical order. Any returned funds will be deposited in the SRF. This requirement shall not be interpreted as prohibiting the board from enforcing such other rights as it may have under law;

(D) that an annual audit of the applicant, prepared by a certified public accountant or licensed public accountant be provided to the executive administrator;

(E) that the applicant shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest;

(F) that the applicant will implement any water conservation program required by the board until all financial obligations to the state have been discharged;

(G) that the applicant will comply with any special conditions specified by the board's environmental determination until all financial obligations to the state have been discharged; and

(H) that the applicant covenants to abide by the board's rules and relevant state statutes.

(I) bonds delivered in proper form to the office of the state treasurer, Austin, or other place specified by the executive administrator, accompanied by written

instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the funds [state warrant] shall be [made payable and to whom it shall be] delivered;

(11)-(14) (No change.)

(15) other such instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require; [and]

(16) evidence that the applicant has obtained an environmental determination in accordance with §375.35 of this chapter (relating to Required Environmental Review and Determination); [.]

(17) evidence that the applicant has been designated a waste treatment management agency under the Act, §208 and §303e;

(18) copies of executed contracts for consultant services necessary for construction of the project and included as a part of the total cost to be funded with the proceeds of the loan from the board;

(19) an updated schedule of projected monthly reimbursements for eligible project costs to be requested by the applicant throughout the project funding period. Any eligible project costs which will be paid by the applicant prior to receiving reimbursement must be identified separately in this schedule; and

(20) a proposal for project inspection demonstrating how work under each construction contract will be adequately inspected including the qualifications of the inspection staff.

(b) (No change.)

(c) Loan closing prior to completion of design. In the event financial assistance is needed by the applicant to complete design of a project the board at its option may authorize the executive administrator to close the loan and release funds for planning and design without requiring the submittals in paragraphs (1), (2), (3), (5), (19), and (20) of subsection (a) of this section. However, these submittals will be required prior to awarding any construction contracts or releasing any funds for building purposes.

(c) Completion of facilities planning submittals. If the project included a partial release of funds to complete detailed planning the applicant must submit and gain approval by the executive administrator of the information required in §375.36(b) of this title (relating to Facilities Planning Report).

(d) Transfer of funds. Upon executive administrator's approval of the items detailed in subsection (a), [of this section] subsection (b), or subsection (c)[(b)] of this

section if appropriate, the applicant shall make necessary arrangements with the executive administrator, consistent with established policy of the board, applicable federal requirements, and these sections, for actual transfer of funds from the fund to the applicant and the receipt from the applicant of those bonds, or other contractual agreement, theretofore authorized and issued for the purpose of financing the project.

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

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Suzanne Schwartz
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Texas Water Development
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Building Phase

• 31 TAC §§375.81-375.84, 375.86, 375.88

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§375.81. Awarding Construction Contracts.

(a) The applicant shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. Any submittals waived by §375.72(c) of this title (relating to Loan Closing) will be submitted to the executive administrator for approval prior to awarding any construction contracts and releasing funds for building purposes. The text of the construction contract shall not vary from the text of the executive administrator approved pro forma draft submitted by the loan recipient.

(b) Prior to initiation of construction the applicant shall conduct a preconstruction conference on each significant construction contract to address the contents of the executed contract documents with the project engineer, prime contractor, and other appropriate parties in attendance. The executive administrator shall be given at least five days advance notice of the date, time, and location for the preconstruction conference.

§375.82 Inspection During Construction. After the construction contract is awarded, the applicant shall provide for adequate inspection of the project by the project engineer and require his assurance that the work is being performed in a satisfac-

tory manner in accordance with the approved contract documents [plans and specifications], approved alterations, and in accordance with sound engineering principles and building practices. The executive administrator is authorized to inspect the building of any project at any time in order to assure that contract documents [plans and specifications] are being followed and that the works are being built in accordance with sound engineering principles and building practices, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the applicant and the project engineer any variances from the approved contract documents [plans and specifications]. The applicant and the project engineer shall immediately initiate necessary corrective action.

§375.83. Inspection of Materials.

(a) The executive administrator is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. A resident engineer or inspector may be stationed at the building site by the executive administrator to report on the manner and progress of the building or to report conditions relating to the materials furnished and the compliance by the contractor with approved contract documents [plans and specifications] for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the project engineer from determining compliance with the requirements of the contract documents.

(b) In the event building procedures or materials are determined by the executive administrator to be substandard or otherwise unsatisfactory and/or not in conformity with approved contract documents [plans and specifications], the executive administrator may order the applicant to take such action through the project engineer in the manner provided for in the construction contract to correct any such deficiency.

(c) In those instances of dispute between the applicant's [applicant] project engineer and the executive administrator's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the executive administrator may order the applicant to direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(d) (No change.)

(e) The executive administrator is authorized to conduct engineering and fi-

financial audits of every project which is financed in whole or in part by SRF funds. For purposes of this section, the following definitions are applicable:

(1) (No change.)

(2) Engineering audit—A physical inspection of the project to analyze and compare the project with the approved contract documents [plans and specifications], resulting in the issuance of a technical report which itemizes any variances from the construction contract and approved contract documents [plans and specifications] and recommends corrective action.

(f) (No change.)

§375.84. Alterations in Approved Contract Documents [Plans and Specifications]. If after the executive administrator approves engineering contract documents [plans and specifications] it becomes apparent that changes in such contract documents [plans and/or specifications] are necessary or appropriate, a change order and justification therefore shall be submitted for approval, well in advance of the building alteration when possible. The executive administrator may approve and authorize a change, alteration, or variance in previously approved engineering contract documents [plans and specifications], including, but not limited to, additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project, is not a substantial or material alteration in the contract documents [plans and specifications], and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved contract documents [plans and specifications] which involves an alteration in the basic purpose or effect of a project, substantially or materially alters the previously approved contract documents [plans and specifications] of the project, or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. If there is an immediate danger to life or property, tentative approval of change orders may be secured from the executive administrator via telephone and confirmed by letter or telegraph. A request for a change order should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations, copies of the approved

change order shall be forwarded to the project engineer. If commission approval of plans for a wastewater treatment plant or other facility has been required, commission approval also must be obtained before any substantial or material alteration is made in those plans.

§375.86. Building Phase Submittals. The following submittals and accompanying actions by the assistance [loan] recipient will be required during the building phase of the project.

(1) (No change.)

(2) A final operation and maintenance manual will be submitted for the executive administrator's approval on or before the date the project reaches 85% completion [prior to placing the treatment works into operation].

(3) A complete set of as-built drawings [drawing] will be submitted to the executive administrator upon completion of all construction.

(4)-(5) (No change.)

§375.88. Retainage.

(a) Retainage withheld. Progress payments to the prime contractor should be for no more than 95% [90%] to the actual work completed at the time of the payment request.

(b) Partial release of retainage. If a project is substantially complete, a partial release of the 5.0% [10%] retainage may be made by the applicant with approval of the executive administrator.

(c) (No change.)

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

Issued in Austin, Texas, on February 3, 1989

TRD-8901059 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption March 13, 1989

For further information, please call: (512) 463-7855

◆ ◆ ◆
Post Building Phase

• 31 TAC §375.102, §375.103

The amendments are proposed under the Texas Water Code §6.101 which provides the

board with the authority to adopt rules necessary to carry out its powers and duties.

§375.102. Project Performance Certification. On the date one year after the initiation of operation [of the project], the applicant shall certify in a form acceptable to the executive administrator whether the project meets the design specifications and effluent limitations [project performance standards]. If the applicant cannot certify that the project meets these requirements [the project performance standards], the applicant shall accomplish the following actions:

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

§375.103. Final Accounting. Upon completion of the project performance period, and after the applicant certifies that the facility is meeting the design specifications and effluent limitations and submits the final funds requisition [project performance standards], a final accounting will be made to the executive administrator in accordance with §375.72(a) (9)(C) [§375.34(e)(3)] of this title (relating to Required Legal Data). The applicant will retain all SRF construction records for three years following the submission of the final funds requisition.

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 February 3, 1989.

TRD-8901060 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption: March 13, 1989

For further information, please call: (512) 463-7855

◆ ◆ ◆
Rating Information

• 31 TAC §375.111

The new section is proposed under the Texas Water Code, §6.101 which provides the board with the authority to adopt rules necessary to carry out its powers and duties

§375.111. Rating Sheets 1-5, Tables I-V, and Figure 1-Population Density Point Curve. The following items will be used for the rating of projects as specified in §375.19 of this title (relating to Rating Process).

REPLACEMENT WASTEWATER TREATMENT FACILITIES

(Rating Sheet No. 1)

A. Existing Treatment Facilities:

1. Biochemical oxygen demand of influent where verifiable; otherwise, 200 mg/l..... _____
 2. Average effluent biochemical oxygen demand concentration derived from at least 6 months of self-reporting data, if available; otherwise, the best board information available..... _____
 3. Effluent biochemical oxygen demand specified in applicable waste control order or 30, whichever is smaller..... _____
 4. Difference of line 3 subtracted from line 2 (Minimum = 0) _____
- Note: If quotient computed in line 8 is greater than or equal to 0.75, then, the minimum in line 4 is equal to 1.
5. Average effluent flow (MGD) received at existing plant during last 6 months of self-reporting data, if available; otherwise, the best board information available..... _____
 6. Product of Line 4 times line 5..... _____
 7. Applicable waste discharge permit parameter for volume (MGD) for existing wastewater treatment facility _____
 8. Quotient of line 5 divided by line 7..... _____

9. Difference of line 2 subtracted from
line 1....._____
 10. Quotient of line 9 divided by line 1....._____
 11. Sum of line 10 and 0.15....._____
 12. Product of line 8 multiplied by line 11....._____
 13. Product of line 12 multiplied by line 6....._____
 14. Suspended solids concentration of influent where
verifiable; otherwise, 200 mg/l....._____
 15. Average effluent suspended solids concentration derived
from at least 6 months of self-reporting data, if
available; otherwise, the best board information
available....._____
 16. Effluent suspended solids specified in applicable waste
control order or 30, whichever is smaller..._____
 17. Difference of line 16 subtracted from line 15 (Minimum
= 0)....._____
- Note: If quotient computed in line 8 is greater than
or equal to 0.75, then, the minimum in line 17
is equal to 1.
18. Product of line 17 times line 5....._____
 19. Difference of line 15 subtracted from line
14....._____
 20. Quotient of line 19 divided by line 14....._____
 21. Sum of line 20 and 0.15....._____
 22. Product of line 8 multiplied by line 21....._____
 23. Product of line 18 multiplied by line 22...._____

- 24. Sum of line 13 and line 23....._____
- 25. Product of line 24 multiplied by 0.9 (Maximum =
200)....._____

B. Water Quality Impact:

- 26. Largest downstream water use factor
(Table I)....._____
- 27. Factor (Figure 1) for average population densities of
counties (from latest Texas Almanac) traversed by
receiving stream for distance of 50 miles downstream
from point of discharge, including originating and
terminating counties....._____
- 28. Sum of line 26 and line 27....._____
- 29. Product of line 28 multiplied by line 24,
multiplied by 0.4 (Maximum = 350)....._____

C. Future Treatment Requirements

- 30. Effluent biochemical oxygen demand specified in
applicable waste control order or basin plan
for proposed wastewater treatment facility.._____
- 31. Effluent suspended solids specified in applicable waste
discharge permit or basin plan for proposed wastewater
treatment facility....._____
- 32. Sum of line 30 and line 31....._____
- 33. Quotient of 100 divided by line 32....._____

- 34. Enter "2.5" where applicable waste discharge permit or basin plan requires nitrogen removal for proposed wastewater treatment facility; otherwise enter "0"....._____
- 35. Enter "2.5" where applicable waste discharge permit or basin plan requires phosphorus removal for proposed wastewater treatment facility; otherwise, enter "0"....._____
- 36. Sum of lines 33, 34 and 35....._____
- 37. Volume (MGD) for proposed wastewater treatment facility according to parameters set in applicable waste discharge permit or basin plan....._____
- 38. Quotient of Line 29 divided by 350
(Minimum = 0.5)....._____
- 39. Product of line 36 multiplied by line 37, multiplied by line 38, multiplied by 0.7
(Maximum = 200)....._____

D. Environmental Nuisances:

- 40. Environmental nuisance factor
(Table II) based upon information from Board's pre-rating inspection....._____
- 41. Average yearly rainfall for area to be served by project....._____
- 42. Existing population served by

- present facilities..... _____
- 43. Quotient of line 42 divided by
10,000..... _____
- 44. Product of line 40 multiplied by
line 41, multiplied by line 43 _____
- 45. Quotient of line 44 divided by
24.0 (Maximum = 50)..... _____

RATING SCORE (Sum of lines 25, 29, 39, 45, (Maximum =
800)..... _____

REPLACEMENT INTERCEPTORS/LIFT STATIONS

(Rating Sheet No. 2)

A. Existing Treatment Facilities: -0-

B. Water Quality Impact:

- 1. Population served by present interceptor/lift
station..... _____
- 2. Square of line 1..... _____
- 3. Population for which replacement interceptor/lift
station is designed..... _____
- 4. Product of line 3 multiplied by 1300..... _____
- 5. Quotient of line 2 divided by line 4..... _____
- 6. Overflow factor (Table IV) based on frequency
of overflow of existing interceptor/lift

station.....
7. Product of line 5 multiplied by line 6 (Maximum = 350).....

C. Future Treatment Requirements: -0-

D. Environmental Nuisances:

8. Environmental nuisance factor (Table II)....
9. Average yearly rainfall for area to be served by project.....
10. Population (from line 1).....
11. Quotient of line 10 divided by 10,000.....
12. Product of line 8 multiplied by line 9, multiplied by line 11.....
13. Quotient of line 12 divided by 24.0 (Maximum =

RATING SCORE (Sum of line 7, 13) (Maximum = 800).....

NEW SEWERAGE SYSTEMS

(Rating Sheet No. 3)

A. Existing Treatment Facilities:

1. Sum of biochemical oxygen demand and suspended solids concentrations for septic tanks.....
2. Average estimated flow of effluent (MGD) based upon

- present population (Table III)....._____
- 3. Product of line 1 times line 2 times 0.2.-
....._____
- 4. Product of line 3 times 0.9 (Maximum = 200)._____

B. Water Quality Impact:

- 5. Largest downstream water use factor (Table I)
....._____
- 6. Factor (Figure 1) for average population densities of
counties (from latest Texas Almanac) traversed by
receiving stream for distance of 50 miles downstream
from point of discharge, including originating and
terminating counties....._____
- 7. Sum of line 5 and line 6....._____
- 8. Product of line 7 multiplied by line 3, multiplied
by 0.4 (Maximum = 350)....._____

C. Future Treatment Requirements:

- 9. Effluent biochemical oxygen demand specified in
applicable waste control order or basin plan for
proposed wastewater treatment facility....._____
- 10. Effluent suspended solids specified in applicable waste
discharge permit or basin plan for proposed wastewater
treatment facility....._____
- 11. Sum of line 9 and line 10....._____

- 12. Quotient of 100 divided by line 11..... _____
- 13. Enter "2.5" where applicable waste discharge permit or basin plan requires nitrogen removal for proposed wastewater treatment facility; otherwise, enter "0"..... _____
- 14. Enter "2.5" where applicable waste discharge permit or basin plan requires phosphorus removal for proposed wastewater treatment facility; otherwise enter "0"..... _____
- 15. Sum of lines 12, 13 and 14..... _____
- 16. Volume (MGD) for proposed wastewater treatment facility according to parameters set in applicable waste discharge permit or basin plan..... _____
- 17. Quotient of Line 8 divided by 350
(Minimum = 0.5)..... _____
- 18. Product of line 15 multiplied by line 16, multiplied by line 17, multiplied by 0.7
(Maximum = 200)..... _____

D. Environmental Nuisances:

- 19. Environmental nuisance factor (Table II) based upon information from Board's pre-rating inspection..... _____
- 20. Average yearly rainfall for area to be served by project..... _____

- 21. Population to be served by project....._____
- 22. Quotient of line 21 divided by
10,000....._____
- 23. Product of line 19 multiplied by
line 20, multiplied by line 22_____
- 24. Quotient of line 23 divided by
24.0 (Maximum = 50)....._____

RATING SCORE (Sum of lines 4, 8, 18, 24,)
(Maximum = 800)....._____

NEW INTERCEPTORS/LIFT STATIONS

(Rating Sheet No. 4)

A. Existing Treatment Facilities: _____ -0-

B. Water Quality Impact:

- 1. Existing population to be served by project....._____
- 2. Square of line 1....._____
- 3. Total population for service area....._____
- 4. Product of line 3 multiplied by 2000....._____
- 5. Quotient of line 2 divided by line 4....._____
- 6. Environmental condition factor (Table V)
based on type of condition to be corrected.._____
- 7. Product of line 5 multiplied by line 6 (Maximum =
350)....._____

C. Future Treatment Requirements:

-0-

D. Environmental Nuisances:

- 8. Environmental nuisance factor (Table II).....
- 9. Average yearly rainfall for area to be served
by project.....
- 10. Existing population (from line 1).....
- 11. Quotient of line 10 divided by 10,000.....
- 12. Product of line 8 multiplied by line 9, multiplied by
line 11.....
- 13. Quotient of line 12 divided by 24.0 (Maximum =
50).....

RATING SCORE (Sum of lines 7, 13) (Maximum =
800).....

COLLECTION FACILITIES

(Rating Sheet No. 5)

A. Existing Treatment Facilities:

-0-

B. Water Quality Impact:

- 1. Existing population to be served by project.....
- 2. Square of line 1.....
- 3. Product of line 2 multiplied by 1.5.....

- 4. Total population for service area..... _____
- 5. Product of line 4 multiplied by 3500..... _____
- 6. Quotient of line 3 divided by line 5..... _____
- 7. Environmental condition factor Table V)..... _____
- 8. Product of line 6 multiplied by line 7 (Maximum =
350)..... _____

C. Future Treatment Requirements

-0-

D. Environmental Nuisances:

- 9. Environmental nuisance factor (Table II).... _____
- 10. Average yearly rainfall for area to be served
by project..... _____
- 11. Existing population (from line 1)..... _____
- 12. Quotient of line 11 divided by 10,000..... _____
- 13. Product of line 9 multiplied by line 10 multiplied by
line 12..... _____
- 14. Quotient of line 13 divided by 24.0 (Maximum =
50)..... _____

RATING SCORE (Sum of lines 8, 14) (Maximum =
800)..... _____

TABLE I

Impact on Water Uses of Receiving Stream

(Stream Miles From Discharge)

<u>Water Uses</u>	<u>0-5</u>	<u>5-10</u>	<u>10-20</u>	<u>20-40</u>	<u>40+</u>
1. Drinking Water	7.5	6.5	5.0	3.0	1.5
2. Contact Recreation	6.5	5.0	3.0	1.5	0.5
3. Non-Contact Recreation	5.0	3.0	1.5	0.5	0
4. Fish and Wildlife	3.0	1.5	0.5	0	0
5. Shipping	1.5	0.5	0	0	0

TABLE II

Environmental Nuisances:

- A. Board files reflect unavoidable verified bypasses and/or spillages.

Regular 15 Intermittent 9 Only During Rains 4

- B. Lift Station/interceptor/sewage treatment plant unavoidable bypasses and/or spillages.

Regular 12 Intermittent 7 Only During Rains 3

- C. Septic tank overflows:

General 12 Limited 7 Only During Rains 3

- D. Where none exists, the total points for Environmental Nuisances (Part D) on the rating sheets shall equal zero.

TABLE III

Septic Tank Overflows:

A. General area <u>use</u>	<u>*Population to be served</u> 1×10^4
B. Limited area <u>use</u>	<u>*Population to be served</u> 2×10^4
C. Only During Rains <u>use</u>	<u>*Population to be served</u> 3×10^4

This will be the line 2 value on Rating Sheet 3 for new sewerage systems.

*Existing population to be served by project.

TABLE IV

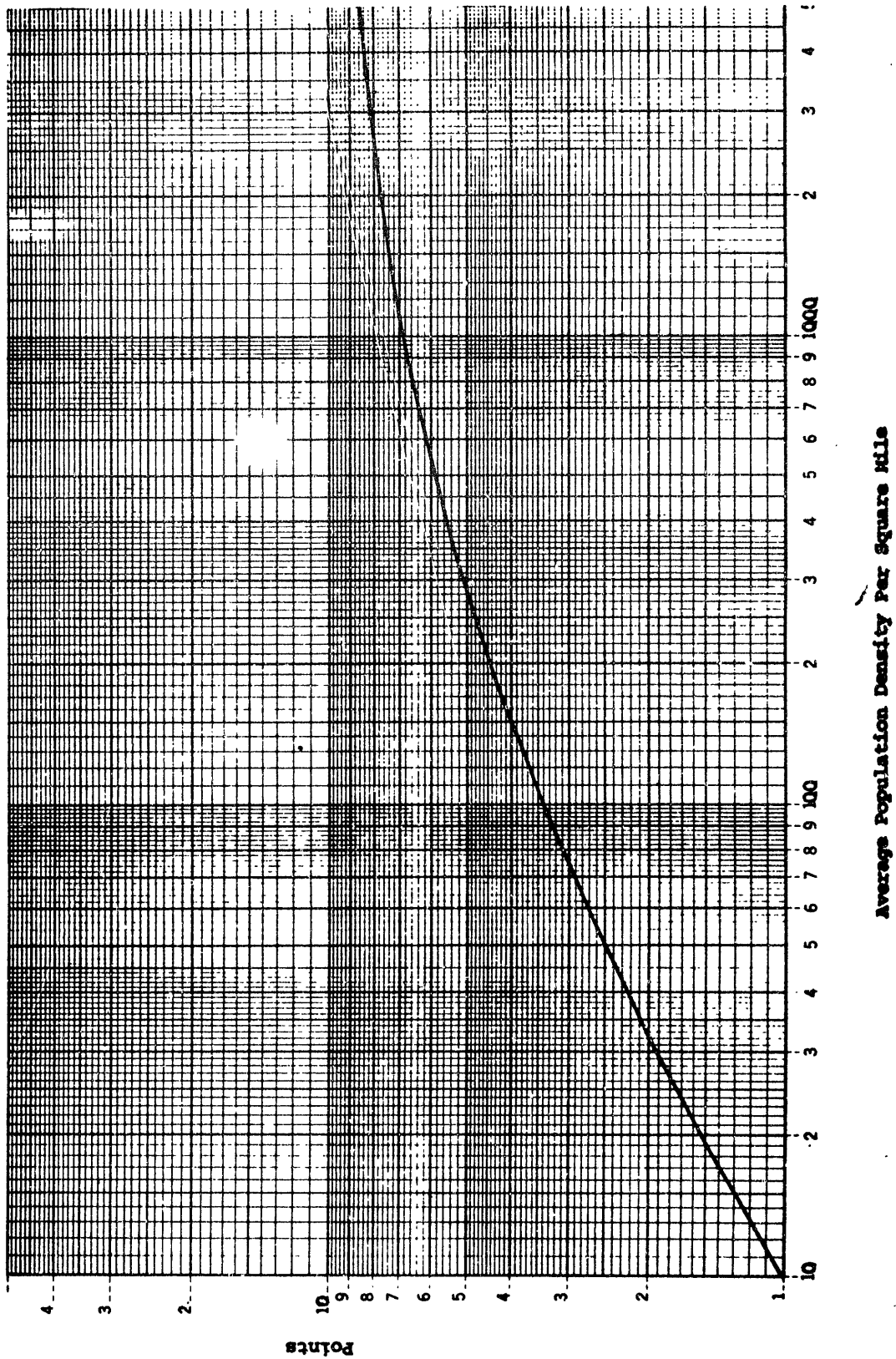
<u>Overflow</u>	<u>Overflow Factor</u>
A. Regular <u>use</u>	1.25
B. Intermittent <u>use</u>	1.0
C. Only During Rains <u>use</u>	0.5

TABLE V

<u>Environmental Condition</u>	<u>Environmental Condition Factor</u>
A. Divert to another sewage treatment plant	2.0
B. Abandon sewage treatment plant	2.5
C. Serve Existing Area	
Septic Tank Overflow:	
General Area	1.0
Limited Area	0.75
Only During Rains	0.5
No Overflow	0.0
D. Serving Projected Population	0.5

FIGURE 1

Population Density Point Curve



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 February 3, 1989.

TRD-8901051

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption: March 3, 1989

For further information, please call: (512) 463-7855

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 14. County Indigent Health CARE Program

Subchapter A. Program Administration

The Texas Department of Human Services (DHS) proposes amendments to §14.1 and §14.107, concerning county program administration, and notification and appeals. For the last several months a County Ad Hoc Committee has worked with the department to develop proposed State Legalization Impact Assistance Grant (SLIAG) rules. The 14-member committee includes county judges, commissioners, auditors, and program administrators associated with CIHCPs in each DHS region in Texas, and a representative of the Texas Association of Counties. The committee also reviewed and recommended proposed changes to county program administrative procedures, and notification and appeals requirements at its January 11, 1989, meeting.

State assistance fund deficits may occur in the coming biennium. DHS is concerned, based on past experience, that existing rules do not allow the department to ensure that eligible counties receive matching funds for matchable expenditures. Although eligible counties may choose to continue their programs when the state assistance fund is exhausted, other counties may choose to close down their programs when state matching funds are unavailable. To permit DHS to adequately monitor demand for state assistance funds, and inform counties when the assistance funds are expended, DHS proposes an amendment to §14.1 to ensure that DHS can adequately perform these functions

Section 14.1(f) is amended to require counties to notify DHS by telephone no later than the date the county reaches the 8.0% and 10% expenditure levels, and in writing within seven days of the date the county calls DHS. Section 14.1(i) is amended to assist DHS in its administration of the state assistance fund by implementing an encumbrance process for state assistance funds, so that funds are encumbered before the commissioners court

authorizes payment. DHS proposes procedures for encumbering funds, and time frames for submitting claims. In addition, DHS proposes to send weekly reports on the status of the fund to all counties that reported reaching the 8.0% expenditure level after 50% of the fund is expended.

Auditing counties at the 8.0% and 10% expenditure levels is a costly and burdensome process for both DHS and counties. DHS has determined that program integrity can be maintained with less extensive review and audit procedures. Section 14.1(g) is amended to simplify audit procedures by eliminating the full 8.0% audit. Instead, DHS proposes to review the county eligibility system, and identify and inform counties of the specific types of accounting system elements subject to DHS audit. Amended §14.1(h) proposes that DHS may routinely audit counties receiving state assistance funds either after the state assistance fund is expended or at the end of the state fiscal year.

Section 14.107(b)-(f), concerning notification and appeals, is amended to give counties the option to follow or adapt notification and appeals procedures used by DHS, or to establish county notification and appeals procedures. This change is proposed in response to a question raised by Southeast Texas legal services concerning the adequacy of existing rules. Rather than proposing additional, burdensome requirements on counties, DHS proposes to provide counties with the information needed to afford due process to clients. The burden of providing adequate notification and appeals procedures rests with the counties under the Indigent Health Care and Treatment Act.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be simpler and clearer rules for audit, notification, and appeals. Amendments to the rules for monitoring the expenditure of state matching funds will ensure that counties do not spend more money for indigent health care than they are required to spend. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-026, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

• 40 TAC §14.1

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

§14.1. County Program Administration.

(a)-(e) (No change.)

(f) Eligibility requirements for counties applying for state assistance.

(1) Each county that plans to credit expenditures towards eligibility for the state assistance fund must:

(A) (No change.)

(B) notify DHS by telephone as soon as possible before the dates on which the county anticipates it will expend both 8.0% and 10% of its GRTL. The telephone calls reporting these expenditure levels must occur no later than the date on which the county reaches these expenditure levels [notify DHS and the county's mandated providers, in writing, within seven days after the county has expended 8.0% of its GRTL];

(C) notify DHS in writing within seven days after the county telephones DHS to report that the county has reached the 8.0% expenditure level. The county must also notify DHS and the county's mandated providers in writing within seven days after the county telephones DHS to report that the county has reached the 10% expenditure level [notify DHS, by telephone and in writing, as soon as possible before the date on which the county anticipates it will expend 10% of its GRTL];

(D)-(J) (No change.)

(2) (No change.)

(g) Determining [DHS audits to determine] county eligibility for state assistance.

(1) Within 30 days from the date DHS receives written notification that the county expended 8.0% of its GRTL for mandatory services for eligible residents, DHS must: [DHS must complete an audit of county expenditures and conduct an audit exit conference with the county within 30 days from the date DHS receives written notification that the county has expended 8.0% of its GRTL for mandatory services for eligible residents. DHS notifies the county of its right to appeal and its responsibilities at the audit exit conference.]

(A) complete a review of the county's eligibility system;

(B) provide the county with a report of the findings of the review; and

(C) provide information relevant to a DHS audit of the county's financial accounting system.

(2) If the eligibility systems review does not identify any serious defi-

ciencies in the county's eligibility system, the county is eligible for state assistance when it reaches the 10% expenditure level. If deficiencies are identified, the county must correct the deficiencies before claiming state assistance funds. [After notifying DHS in writing that the county has expended 10% of its GRTL for mandatory services to eligible residents, the county may claim state assistance if the following requirements are met:

[(A) DHS completed the county's audit report and transmitted it to the county. If DHS does not complete the audit report within the initial 30-day period, the audit division may request that DHS extend 30-day temporary emergency eligibility to the county, pending completion of the audit report. If DHS does not complete the audit within 60 days, the county is presumed eligible until the audit is completed.

[(B) DHS audit exceptions totaled no more than \$15,000 or 5.0% of the county's 10% GRTL amount, whichever is larger; and

[(C) the county agrees, in writing, to return state matching funds to DHS, if necessary, to resolve any outstanding audit exceptions.]

(3) A county with total audit exceptions exceeding \$15,000 or 5.0% of the county's 10% GRTL amount, whichever is larger, cannot claim state assistance until the audit exceptions are resolved. DHS may waive this provision only if nonreceipt of state assistance would require the county to discontinue its program or if DHS determines the county has otherwise shown good cause for a waiver. If DHS waives the provision, DHS cannot authorize state assistance funds to the county for more than 30 days pending resolution of the audit. The county must also agree to resolve all audit exceptions and, if necessary, return state assistance to DHS before requesting additional state assistance.)

(b) DHS state-assistance-fund audits.

(1) DHS may routinely audit a county that receives state assistance funds. The audit may occur after the state assistance fund is depleted or at the end of the state fiscal year.

(2)[(4)] A county may request an administrative review of the DHS audit report if the county disagrees with the report findings. The county requests an administrative review by sending written notice, an explanation of the county's reason for disagreement, and all relevant information to the DHS Indigent Health Care Policy Section. The county's written request must be postmarked within 14 days from the date of the county's audit exit confer-

ence.

(3)[(5)] If the policy section does not receive a written request for administrative review as stipulated in paragraph (2) [(4)] of this subsection, the findings of the DHS audit report are [is] final.

(4)[(6)] The policy section must determine the accuracy of the DHS audit report and notify the county of its decision by letter postmarked within 14 days from the date DHS received the county's written request for administrative review.

(5)[(7)] If the county disagrees with the policy section's decision on the audit report, the county may file a request to appeal the policy section's decision with DHS's [DHS'] Office of the General Counsel. The county must send its written request appealing the policy section's decision, and all other relevant information, within 14 days from the date the county received the policy section's decision.

(6)[(8)] The Office of the General Counsel conducts the appeal hearing according to the department's contract appeal rules.

(l)[(h)] DHS administration of state assistance funds [fund]. The following procedures are established to assist DHS in its administration of state assistance funds and to assist counties in the management of their programs.[:]

(1) After a county reaches the 8.0% GRTL expenditure level, the county must contact DHS by telephone immediately before any commissioners court meets to authorize program expenditures; the county must report the amount of expenditures the court will be asked to authorize and the amount of any other unpaid bills for services. [DHS sends a monthly report on the status of the assistance fund after 50% of the fund is expended.]

(2) After a county reaches the 10% expenditure level, the county must contact DHS by telephone to encumber available state assistance funds to match expenditures that the commissioners court will be asked to authorize. [After 90% of the assistance fund is expended, counties that have expended 10% of their GRTL may:]

(A) DHS provides the county with an approval code number for the state-assistance-encumbered funds. [discontinue their programs:]

(B) The county must complete the State of Texas purchase voucher form, enter the approval code number for the encumbered funds on the voucher, and submit the voucher to DHS within 30 days after the commissioners court authorizes the expenditure. If the

county does not submit the purchase voucher within the 30-day period, the encumbered state assistance funds become unencumbered. [continue their programs without requesting state assistance funds; or

[(C) comply with the procedures specified in clauses (i)-(iv) of this subparagraph.

[(i) The county may contact DHS by telephone to request state assistance. If sufficient funds are available, DHS reserves an appropriate amount of state funds for the county and gives the county an approval code number.

[(ii) The county must enter the approval code number on the State of Texas purchase voucher that the county submits to request the state funds held in reserve for the county.

[(iii) The county may request additional reserved funds only after the previously reserved funds are committed.

[(iv) The county must repeat the steps outlined in clauses (i)-(iii) of this subparagraph to request additional state assistance funds.]

(3) DHS prepares a weekly report on the status of the state assistance fund after 50% of the fund is expended, and DHS sends the report to counties that reported reaching the 8.0% expenditure level.

(4) DHS cannot ensure that a county will expend only the amount it is legally obligated to spend on its program unless the county complies with the requirements contained in this section.

(5) If a county underclaims state assistance funds for a state fiscal year, and state assistance funds for that fiscal year are expended, DHS cannot match the underclaimed county expenditures.

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 February 3, 1989.

TRD-8901014

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Earliest possible date of adoption: April 10, 1989.

For further information, please call: (512) 450-3785

◆ ◆ ◆
Subchapter B. Providing
Services

• 40 TAC §14.107

The amendment is proposed under the Hu-

man Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§14.107. Notification and Appeals.

(a) (No change.)

(b) Counties may adapt, for use in their program, the DHS fair hearing and notifications procedures reprinted in the CIHCP Handbook, Appendix IX or develop their own rules and procedures for fair hearing and notifications. [Eligibility staff must send the denied individual a denial notice which includes information about the individual's right to appeal.

(c) Denied individuals are entitled to notification if their eligibility is denied unless they are deceased or their location is unknown.

(d) If the county hearing authority determines that a denied individual was eligible while the appeal was pending, the county must pay for medical services he received during the pending period.

(e) Denied individuals have the right to appeal within 90 days from the effective date of the denial action. The request for appeal may be oral or written.

(f) If the individual does not clearly understand English, eligibility staff must ensure, if possible, that the appeal procedures are explained in a language the individual understands.

(g) Each county may follow the DHS appeals procedures as specified in DHS' Legal Services chapter or establish its own appeals procedure. An appeals procedure established by a county must be equitable and treat all households uniformly. The county hearing authority selected by the county must be knowledgeable about the County Indigent Health Care Program's eligibility requirements.]

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

Issued in Austin, Texas, on February 3, 1989.

TRD-8901015

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Proposed date of adoption: April 10, 1989.

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



**Subchapter E. SLIAG
Reimbursement for County
Indigent Health Care
Program Services Provided
to Eligible Legalized Aliens**

• 40 TAC §§14.401-14.406

The Texas Department of Human Services (DHS) proposes new §§14.401-14.406, concerning State Legalization Impact Assistance Grant (SLIAG) funds available to County Indigent Health Care Programs (CIHCP) serving eligible legalized aliens (ELAs). The new sections are added under new Subchapter E in DHS's County Indigent Health Care Program rule chapter.

A 14-member committee, consisting of county judges, commissioners, auditors, and program administrators associated with CIHCPs in each DHS region, and a representative of the Texas Association of Counties, was appointed in the fall of 1988 to recommend proposed rules and handbook policies for claiming CIHCP/SLIAG funds. The CIHCP Ad Hoc Committee on SLIAG met monthly in November, December, and January to recommend rules in compliance with federal SLIAG regulations for counties applying for SLIAG funds for federal fiscal years (FFY) 1988-1991. New Subchapter E was unanimously recommended by the committee at its meeting January 11, 1989, for publication as proposed sections.

The Texas Health and Human Services Coordinating Council is the single state agency serving as the federal/state conduit for Texas SLIAG funds. DHS is the state agency responsible for distributing SLIAG funds from the coordinating council to a county claiming these funds through its CIHCP program. The rules specify administration of SLIAG funds, ELA documentation requirements, allowed county costs, procedures for claiming SLIAG funds through DHS, and federal audit requirements. The federal government has made SLIAG funds available to state and local governments to compensate them for the cost of providing public assistance in FFY 1988-1991 to individuals granted lawful temporary resident status under the Immigration and Nationality Act, §§245A, 210, or 210A. The CIHCP operates locally in almost 140 Texas counties that are not fully served by a public hospital or hospital district, and CIHCP is defined as a public assistance program under federal SLIAG regulations.

Sections 14.401-14.405 propose procedures for claiming SLIAG funds for FFY 1989-1991. Federal regulations require that claims for these years be based on actual SLIAG-allowed expenditures for ELAs. Section 14.406 proposes procedures for claiming SLIAG funds retroactively for FFY 1988. Federal regulations permit counties to claim SLIAG reimbursement retroactively for FFY 1988, based either on a mathematical model which estimates allowed SLIAG expenditures for ELAs, or on documented actual costs.

Section 14.401 is proposed to specify administration of SLIAG funds to counties for allowed CIHCP expenditures for ELAs during FFY 1989-1991. SLIAG reimburses county qualifying costs dollar-for-dollar, if sufficient federal funds are available. Reporting and record-keeping requirements are also speci-

fied. Section 14.402 specifies ELA documentation requirements for verification of ELA eligibility, and specifies documentation in the case record.

Section 14.403 proposes policies for determining allowed SLIAG costs. There are two types of SLIAG-allowed costs for CIHCP-eligible ELAs: (1) program costs for services provided; and (2) administrative costs related to providing the services. Both direct and indirect administrative costs may be claimed. Counties may not credit expenditures which are or could be claimed under SLIAG toward the county's 10% general revenue tax levy (GRTL) or eligibility for DHS state assistance matching funds. Counties overclaiming SLIAG expenditures must return the overpayment to DHS.

Section 14.404 proposes procedures for claiming SLIAG funds, including the required forms and time frames. Counties participating in SLIAG must designate an individual responsible for signing and submitting all SLIAG claims to DHS.

Section 14.405 explains federal SLIAG audit requirements and time frames for retaining SLIAG records. To meet federal reporting requirements, DHS monitors the county's SLIAG expenditures and claims; DHS audits county expenditures only in relation to the state assistance fund.

Section 14.406 proposes the procedures for claiming SLIAG reimbursement for FFY 1988. DHS proposes to base county ELA expenditures for FFY 1988 on a mathematical model developed from the following data: CIHCP monthly financial/activity report form information submitted by counties for FFY 1988; 1988 county population estimates; the United States Department of Health and Human Services (HHS)-determined number of ELAs in each county; and average county expenditures per recipient. DHS will compute county allocations for program and administrative costs upon receipt of actual ELA data from HHS. DHS will notify counties of these allocations. Counties may submit to DHS, by May 1, 1989, additional information to establish a SLIAG claim in an amount exceeding the initial allocation computed by DHS.

Counties that submitted all FFY 1988 monthly financial/activity report forms to DHS have the option to request funds based on documented actual costs for mandatory services and program administration. To claim funds based on documented actual costs for FFY 1988, counties must send to DHS by May 1, 1989, documentation of each ELA served and allowed actual program and administrative costs, as specified in §14.402 and §14.403. Counties that did not submit all FFY 1988 Monthly Financial/Activity Report forms to DHS may request funds based on either documented actual costs for mandatory services and administration expenses, or submit to DHS by May 1, 1989, monthly expenditure and caseload information for each month in FFY 1988. Any county choosing not to submit additional information by May 1, 1989, cannot claim funds in an amount different from the initial allocation computed by DHS.

Section 14.406 also proposes procedures for identifying the CIHCP state assistance fund share of FFY 1988 SLIAG program costs for counties that received CIHCP state assis-

tance funds in state fiscal year 1988. DHS proposes to claim the portion of the SLIAG program cost allocations computed for these counties that represents the SLIAG program costs reimbursed by state assistance funds. Section 14.405 explains the proposed formula DHS would apply to compute the state assistance fund share of these counties' SLIAG claims for program costs.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for local government as a result of enforcing or administering the sections. The effect on local government for the first five-year period the sections will be in effect will be an estimated increase in revenue of \$400,229 in fiscal year 1989; \$449,637 in fiscal year 1990; \$505,189 in fiscal year 1991; \$181,421 in fiscal year 1992; and \$90,710 in fiscal year 1993. There is no anticipated effect on state government or small businesses for the first five-year period the sections will be in effect.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased federal sharing of CIHCP costs, which will reduce the tax burden on state and local governments. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-024, Texas Department of Human Services 222-E, P.O. 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§14.401. SLIAG Program Administration.

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

(1) **Eligible legalized alien (ELA)**—An individual granted lawful temporary resident status under the Immigration and Nationality Act, §§245A, 210, or 210A. ELA status begins on the effective date of adjustment as established by the INS, and continues for five years from that date if during that time the alien retains his lawful temporary or permanent resident status.

(2) **Federal fiscal year (FFY)**—The 12-month period beginning October 1 of each calendar year and ending September 30 of the following calendar year. SLIAG funds are available for these FFYs: FFY 1988 (October 1, 1987, to September 30, 1988); FFY 1989 (October 1, 1988, to September 30, 1989); FFY 1990 (October 1, 1989, to September 30, 1990); and FFY 1991 (October 1, 1990, to September 30, 1991).

(3) **Immigration and Naturaliza-**

tion Service (INS)—An agency of the United States Department of Justice that administers the legalization process.

(4) **State Legalization Impact Assistance Grant (SLIAG)**—Federal grant to reimburse state and local governments for the cost of providing public assistance, public health, and educational services to ELAs. Federal regulations categorize the County Indigent Health Care Program (CIHCP) as a public assistance program.

(b) Sections 14.401-14.405 of this title (relating to SLIAG Program Administration, SLIAG Documentation Requirements, Determining Allowed SLIAG Costs, Procedures for Claiming SLIAG Funds, and Audits) apply to county claims for SLIAG funds for allowed CIHCP expenditures for ELAs during FFY 1989, 1990, and 1991. Section 14.406 of this title (relating to Claiming SLIAG Reimbursement for Federal Fiscal Year 1988 (October 1, 1987, to September 30, 1988)) applies to county claims for SLIAG funds for FFY 1988.

(1) The Texas Health and Human Services Coordinating Council is the single state agency serving as the federal/state conduit for Texas SLIAG funds.

(2) DHS is the state agency responsible for distributing SLIAG funds from the coordinating council to counties claiming SLIAG funds through a CIHCP operating in a county not fully served by a public hospital or hospital district. DHS monitors SLIAG expenditures, completes required federal reports and grant applications, and processes county claims for funds.

(3) SLIAG reimburses allowed CIHCP expenditures dollar-for-dollar if sufficient federal funds are available. If sufficient federal funds are unavailable, the actual percentage of available funds is distributed.

(4) Counties should report the total amount expended for all ELAs during a month on DHS's monthly financial/activity report form contained in the CIHCP Handbook. Counties should submit the form to DHS within 10 days after the end of each month in which eligible SLIAG expenditures were paid or SLIAG eligibility was determined. Allowed ELA expenditures made between October 1, 1988, and September 30, 1991, may be claimed up to December 29, 1994.

(5) Counties must retain all SLIAG-related records for three FFYs plus one additional quarter following the FFY for which funds were claimed, or until any audit exceptions are resolved.

§14.402. SLIAG Documentation Requirements.

(a) A county must document the A9/90 number of each ELA receiving health care services. The A9/90 number is

an INS identification number issued to an ELA. This number appears on the face of the INS identifying document. An ELA identification number always begins with "A9" followed by seven other numerical digits.

(b) ELA status must be verified if an individual possesses one of the following INS documents and the document is valid during the period in which CIHCP services are provided:

(1) **INS Receipt Issued** upon receipt of the application for legalization and before the DHS interview, this receipt is proof of ELA status until the expiration date stamped on the receipt.

(2) **Temporary Resident Card I-688** Issued by INS to aliens granted temporary residence, this card is proof of ELA status until the expiration date on the face of the card.

(3) **Employment Authorization Card I-688-A** Issued by INS to applicants for temporary resident status after INS completes the interview for legalization, this card is proof of ELA status until the expiration date on the face of the card. It is valid for a six-month period, and can be renewed by INS.

(4) **Alien Registration Card I-551** Issued by INS to a lawful permanent resident, this card, which has an A9/90 number, is proof of ELA status through 1991.

(c) Counties must comply with the following case documentation requirements:

(1) photocopy the identification document, if possible, and file the copy in the case record;

(2) document the following on the worksheet form contained in the CIHCP Handbook:

(A) ELA identification number (A9/90 number);

(B) INS document type;

(C) period of validity; and

(D) expiration date, if applicable.

(3) document the following on the medical services record form contained in the CIHCP Handbook, or on a similar form developed by the county:

(A) type of service provided to the ELA;

(B) date the service was provided; and

(C) date and amount the county paid for the service.

§14.403. Determining Allowed SLIAG Costs.

(a) Counties may claim reimbursement for allowed SLIAG program costs. Allowed program costs are auditable county expenditures made to reimburse health care providers for CIHCP mandatory services for ELAs, and paid under DHS payment standards.

(1) The date that the county makes an expenditure for an ELA is the date the county writes a check paying a bill for services provided; that is, expenditures are determined using cash-basis accounting.

(2) Mandatory services are:

(A) inpatient and outpatient hospital services;

(B) physician services;

(C) up to three prescriptions for drugs per recipient per month;

(D) skilled nursing facility services;

(E) family planning services; and

(F) laboratory and x-ray services.

(3) The DHS payment standards are specified in Subchapter C of this chapter (relating to Providing Services) and CIHCP Handbook Appendices II-IV.

(4) The ELA must meet either:

(A) the minimum eligibility standards specified in Subchapter B of this chapter (relating to Determining Eligibility), or

(B) less restrictive indigent health care eligibility standards established and consistently applied by the county.

(b) Counties may claim reimbursement for allowed administrative costs associated with SLIAG planning, consultation with state agencies, claims preparation, audits, recordkeeping, reports, and administration of mandatory services to ELAs.

(1) Both direct and indirect administrative costs may be claimed.

(2) Counties must use a documented, auditable methodology to determine administrative costs.

(c) Counties may claim the portion of direct and indirect administrative costs related to providing services to ELAs.

(1) Direct costs include salaries, travel, and certain overhead expenses.

(2) Indirect costs include expenditures for heat, electricity, and other items not easily identified as a specific cost item.

(d) Counties may claim only those program costs they have paid. The county must deduct voluntary copayments received from or on behalf of ELAs before claiming a cost.

(e) Counties may not claim expenditures which are or could be claimed under SLIAG toward:

(1) the county's 10% general revenue tax levy (GRTL) limitation, as described in Section 1 of the CIHCP Handbook; or

(2) eligibility for DHS state assistance matching funds.

(f) If a county receives state assistance funds for an individual subsequently identified as an ELA, the county must claim SLIAG funds for ELA expenditures and return to DHS the state matching funds received.

(g) Counties may not claim the following:

(1) indirect costs, such as bad debts, contingency reserves, contributions, fines and penalties, interest on borrowed money, and bond discounts;

(2) direct costs, except for the portion attributable to serving ELAs; and

(3) costs reimbursed by other state or federal programs.

(h) Counties overclaiming SLIAG expenditures must return the overpayment to DHS.

§14.404. Procedures for Claiming SLIAG Funds.

(a) The County Commissioners Court must designate, by resolution, an individual with overall authority and responsibility for ensuring that SLIAG funds claimed by the county meet the established program requirements.

(b) Counties must use the State of Texas purchase voucher to claim SLIAG funds for allowed expenditures for ELAs.

(1) Counties must send to DHS a copy of the Commissioners Court Resolution designating the individual responsible for SLIAG; the copy must be sent with the first purchase voucher submitted. If the Commissioners Court later designates another individual, a copy of the Commissioners Court Resolution designating the newly responsible individual must be attached to the first purchase voucher signed by the new designee.

(2) The designated individual must sign all purchase vouchers submitted to DHS to claim SLIAG funds for the county.

(3) The purchase voucher must

be completed in accordance with the separate instructions for preparing a SLIAG claim contained in the CIHCP Handbook.

(c) The designated individual must ensure that the following certification is included on or attached to each State of Texas purchase voucher claiming SLIAG funds: "For reimbursement for health care services provided and administrative costs incurred in providing services to Eligible Legalized Aliens under the State Legalization Impact Assistance Grants (Public Law 99-603, §402). "I, (designated person), the individual designated by the (county name) County Commissioners Court with overall responsibility for claiming State Legalization Impact Assistance Grant (SLIAG) funds for said county, certify that the attached documented county program and/or administrative expenditures correctly and accurately show expenditures made for Eligible Legalized Aliens (ELAs) through said county's County Indigent Health Care Program. I further certify, on behalf of said County, that in submitting this claim for SLIAG funds: 1. I have read and fully understand the Texas Department of Human Services Adopted Rules pertaining to SLIAG in relation to the County Indigent Health Care Program and published in the *Texas Register*, and Section 6 of the County Indigent Health Care Program Handbook, which pertain to SLIAG. This claim for SLIAG grant funds strictly complies with all definitions, policies, procedures, forms instructions, and other requirements contained in rule and handbook materials. 2. I agree that if an error was made in submitting this claim, said county will return to the Texas Department of Human Services any and all SLIAG funds erroneously claimed and received by said county. The Texas Department of Human Services is in no way liable for any erroneous claims made by said county.

(d) The county claim for SLIAG funds must contain:

(1) a purchase voucher completed in accordance with the purchase voucher instructions, including:

(A) the signature of the county-designated individual;

(B) the correct comptroller's vendor identification number; and

(C) reimbursable program and administrative costs; and

(2) documentation of allowed indigent health care expenditures being claimed for ELAs including:

(A) the A9/90 number for each ELA, and the period of validity, if applicable;

(B) the type of service(s) provided;

(C) the date the service(s) was provided;

(D) the date the county paid the bill(s) for the service(s);

(E) the amount(s) paid for the service(s); and

(F) a description of the methodology the county used to compute and claim direct or indirect administrative costs.

(e) DHS processes SLIAG claims for federal reimbursement on a quarterly basis in January, April, July, and October.

(f) The county may not submit a duplicate purchase voucher for an unpaid bill; DHS only may originate duplicate purchase vouchers. The county may request that DHS investigate the status of a purchase voucher already submitted. If, after receiving a reply from DHS, a second submission is necessary, the county must re-submit a new original purchase voucher.

§14.405. Audits.

(a) The county must retain all SLIAG records for three FFYs plus one additional quarter following the end of the FFY for which a SLIAG reimbursement was claimed, or until audit exceptions are resolved.

(b) The county must cooperate fully with the federal government by providing information requested by the federal government in an audit of county records or a review of county claims for SLIAG reimbursement.

(1) A single federal audit must be performed if a county receives more than \$100,000 in federal funds for all programs.

(2) Either a single federal audit or separate program audit may be required if a county receives between \$25,000 and \$100,000 in federal funds for all programs.

(3) A county receiving less than \$25,000 in federal funds for all programs is exempted from the single audit requirement.

(c) DHS audits the county's SLIAG expenditures only in relation to the state assistance fund.

§14.406. Claiming SLIAG Reimbursement for Federal Fiscal Year 1988 (October 1, 1987, to September 30, 1988).

(a) DHS Administration of SLIAG Funds.

(1) DHS serves as a conduit for federal SLIAG funds as specified in §14.401 of this title (relating to SLIAG Program Administration).

(2) DHS submits a federally required end-of-year report for FFY 1988, requesting SLIAG administrative and program funds for counties. The end-of-year report specifies that allowed county administrative costs are 16% of the county's program costs. Program costs are based on a mathematical model developed from:

(A) monthly financial/activity report form information submitted by counties;

(B) 1988 county population estimates;

(C) the number of ELAs in each county, determined by the Department of Health and Human Services (HHS); and

(D) average county expenditures per recipient.

(3) DHS computes county allocations for program and administrative costs upon receipt of actual ELA data from HHS, submits an updated FFY 1988 end-of-year report containing these allocations to HHS, and notifies counties of these allocations.

(4) Counties may submit, by May 1, 1989, additional information to DHS to establish a SLIAG claim in an amount exceeding the initial allocation computed by DHS. If a county does not submit additional information by May 1, 1989, it cannot claim funds in an amount different from the initial allocation computed by DHS.

(5) DHS amends the 1988 end-of-year report to claim county funds based on either data applied to the mathematical model or reported actual expenditures for ELAs.

(b) County Claims for FFY 1988 SLIAG funds.

(1) Counties must claim SLIAG funds for FFY 1988 on a purchase voucher completed as specified in §14.404 of this title (relating to Procedures for Claiming SLIAG Funds). Counties must ensure that DHS receives this purchase voucher by June 1, 1989.

(2) Counties that submitted all FFY 1988 monthly financial/activity report forms to DHS may request funds based on documented actual costs for mandatory services and program administration. To claim funds based on documented actual costs, these counties must submit the following information so DHS receives it by May 1, 1989:

(A) identification and documentation of each eligible ELA for whom the county expended funds for health care services in FFY 1988, as specified in

§14.402 of this title (relating to SLIAG Documentation Requirements);

(B) identification and documentation of allowed actual program costs, as specified in §14.403 of this title (relating to Determining Allowed SLIAG Costs);

(C) identification and documentation of actual SLIAG administrative costs, as specified in §14.403 of this title (relating to Determining Allowed SLIAG Costs), or the product of multiplying actual program costs by 16%; and

(D) documentation of ELA eligibility and the total costs computed in accordance with subparagraphs (A)-(C) of this paragraph.

(3) Counties that did not submit all FFY 1988 monthly financial/activity report forms to DHS may either request funds based on documented actual costs for mandatory services and program administration, as specified in subsection (b) (2) of this section, or submit the following information to DHS so DHS receives the information by May 1, 1989:

(A) total monthly expenditures for indigent health care services provided to eligible residents as of the last day of each month in FFY 1988, and

(B) total monthly approved CIHCP applications as of the last day of each month in FFY 1988.

(c) Procedures affecting counties that received state assistance funds in FFY 1988.

(1) State assistance fund expenditures are included in the FFY 1988 initial SLIAG program allocation for 12 state assistance fund counties.

(2) DHS claims the portion of the SLIAG program cost allocations computed for these counties which portion represents the SLIAG program costs reimbursed by state assistance funds.

(3) DHS applies the following formula to compute the state assistance fund share of these counties' claims for SLIAG program costs:

(A) divide the total state assistance funds expended in FFY 1988 by the total CIHCP county and state program funds expended in FFY 1988 and multiply the result by 100 to compute the percentage of state assistance funds expended in relation to total CIHCP funds expended;

(B) apply the state assistance fund percentage to either the county's total SLIAG end-of-year report program allocation, or total actual documented SLIAG

program expenditures claimed by the county, to compute the state assistance fund's share;

(C) subtract the state assistance fund's share from the county's total

SLIAG program claim to compute the county's share.

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 February 3, 1989.

TRD-8901018

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Proposed date of adoption: April 19, 1989.

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



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 within 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 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter N. Memorandum of Understanding

• 31 TAC §305.521

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §305.521, submitted by the Texas Water Commission has been automatically withdrawn, effective January 30, 1989. The amendment as proposed appeared in the July 29, 1988, issue of the *Texas Register* (13 TexReg 3736).

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.

TRD-8900980

Filed: January 30, 1989



TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 21. Right of Way Division

Control of Outdoor Advertising Signs

• 43 TAC §21.160

The State Department of Highways and Public Transportation has withdrawn the emergency effectiveness of new §21.160, concerning the control of outdoor advertising signs. The text of the emergency new §21.160 appeared in the December 20, 1988, issue of the *Texas Register* (13 TexReg 6237). The effective date of this withdrawal is February 22, 1989.

Issued in Austin, Texas, on February 1, 1989.

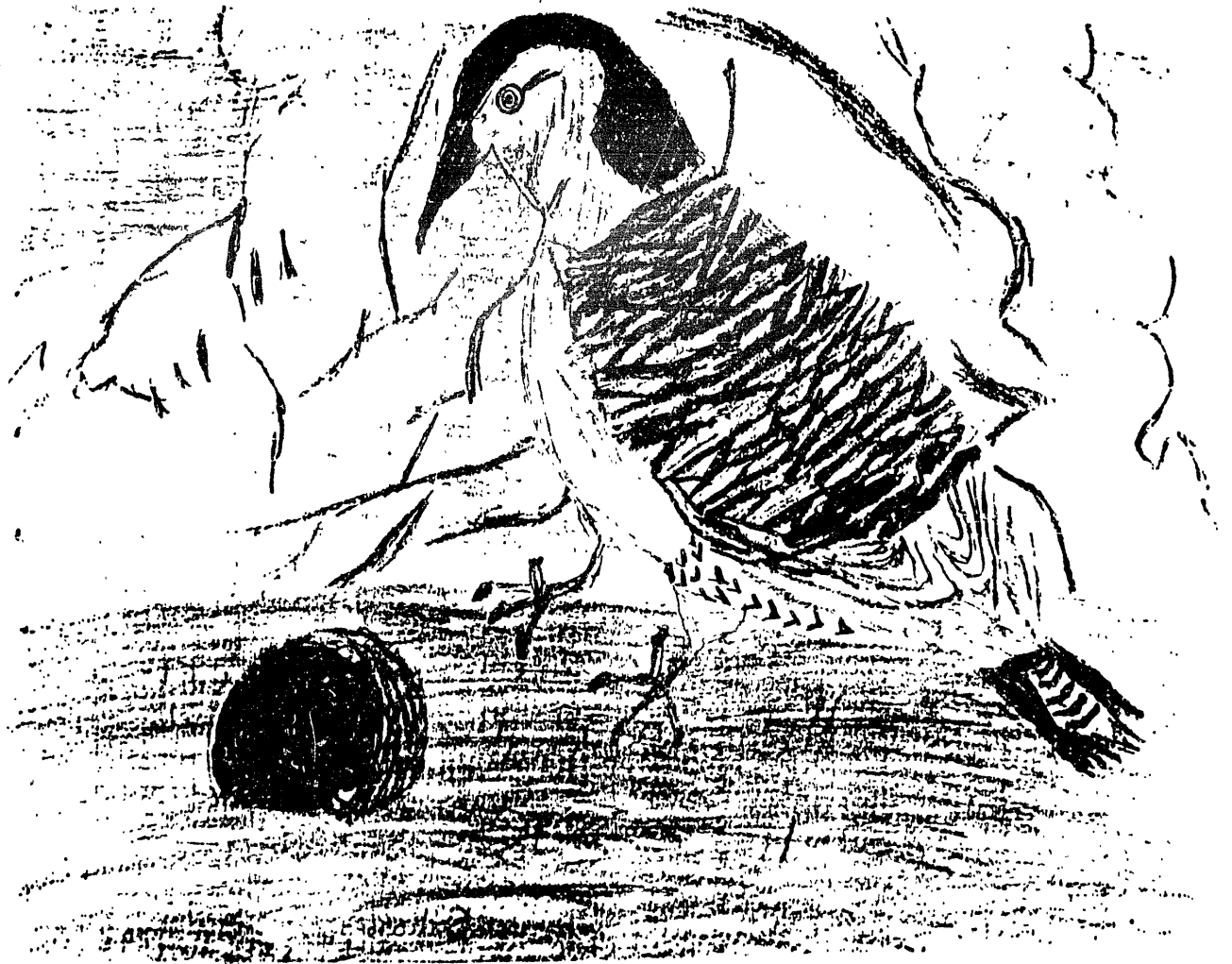
TRD-8900931

Robert E. Shaddock
General Counsel
State Department of
Highways and Public
Transportation

Effective date: February 22, 1989

For further information, please call: (512)
463-8630





Name: Jennifer Salinas

Grade: 6

School: Roscoe Wilson Elementary, Lubbock

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Registration

• 22 TAC §131.131, §131.132

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.131 and §131.132, without changes to the proposed text as published in the December 20, 1988, issue of the *Texas Register* (13 TexReg 6246).

The amendments to §131.131 and §131.132 are necessary in order to make the sections compatible with Texas Civil Statutes, Article 3271a, §15(a) and (b).

The amendments will speed up the issuance of certificates of registration; remove from the general process of professional registration the requirement for a newly approved registrant to procure an engineer's seal and to submit to the board an imprint of the seal before a certificate is issued, failure to comply being grounds for withdrawal by the board of its approval for registration; and make the seal acquisition and imprint procedure a separate requirement of the registrant subsequent to registration, subject to disciplinary action with due process as required by law.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 February 1, 1989.

TRD-8900972 Charles E. Nemir
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 23, 1989

Proposal publication date: December 2, 1988

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

• 22 TAC §131.141

The Texas State Board of Registration for Professional Engineers adopts new §131.141, without changes to the proposed text as published in the December 20, 1988, issue of the *Texas Register* (13 TexReg 6247).

The new section is necessary to make acts of retaliation by a registrant against references who provide pertinent information to the board to be considered as misconduct and therefore subject to disciplinary action by the board.

The new section will provide references with the confidence that frank and candid information can be submitted to the board for a better evaluation of an applicant's suitability for professional registration.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 February 1, 1989.

TRD-8900973 Charles E. Nemir
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 23, 1989

Proposal publication date: December 2, 1988

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

Part IX. State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §163.2

The Texas State Board of Medical Examiners adopts an amendment to §163.2, without changes to the proposed text as published in the November 22, 1988, issue of the *Texas Register* (13 TexReg 5817).

The section is adopted because language contained in subsection (b)(3)(C) was redundant, as the requirements for Educational Commission for Foreign Medical Graduates (ECFMG) certification are covered in subsection (b)(3).

Deletion of the redundant language should eliminate any confusion which could have arisen between the rule sections.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the 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 January 31, 1989.

TRD-8903914 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Effective date: February 22, 1989

Proposal publication date: November 22, 1988

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

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §217.1, §217.17

The Board of Nurse Examiners adopts an amendment to §217.1 and new §217.17, without changes to the proposed text as published in the December 23, 1988, issue of the *Texas Register* (13 TexReg 6318).

The adoption of the amendment and new section is a direct result of the Medical Radiologic Technologist Certification Act, Article 4512m, Senate Bill 1439, 70th Legislature, 1987, and the independent rulemaking authority of the Board of Nurse Examiners, Article 4514.

The adoption of the amendment and new section will establish a registry of registered nurses who perform radiological procedures under the direction of a practitioner and to communicate that information to the board that licenses the practitioner.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are

adopted under 70th Legislature, 1987, Article 4514, §1, and Senate Bill 1439, which provides the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

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 February 1, 1989.

TRD-8900974 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: February 23, 1989

Proposal publication date: December 23, 1988

For further information, please call: (512) 835-4880

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. Systems Administration

Subchapter D. Standards of the Texas Department of Mental Health and Mental Retardation-Quality Assurance

• 25 TAC §§401.341-401.350

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§401.341-401.350. Section 401.345 and §401.349, are adopted with changes. Section 401.345 adopts by reference the TDMHMR Mental Health Community standards. Sections 401.341-401.344, 401.346-401.348, and 401.350 are adopted without changes and will not be republished.

Section 401.349(12) is changed to reflect a revised effective date for mental health community standards of 1989. Changes to the TDMHMR Mental Health Community Standards as adopted by reference include the addition of an overview of the mental health service system, including philosophy, and a description of the application of the standards; the addition of several terms to the glossary; the clarification of language in most sections of the standards, including service plan, client rights, safety and therapeutic environment, treatment planning and programming, continuity of services, medication and other treatment, and residential services; and the deletion of several standards.

There was no public comment concerning the proposed sections; however, prior to publication, comment was solicited from TDMHMR employees, members of special interest groups, and other interested individuals concerning the TDMHMR Mental Health Community Standards. The recommendations received in response to the request for comment formed the basis for many of the changes made in the document as adopted. A summary of this independent comment and revision process is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.345 Standards of Care.

(a) The Texas Department of Mental Health and Mental Retardation adopts by reference the following standards as integral to quality client services in facilities and centers:

(1) Joint Commission on Accreditation of Healthcare Organizations—standards contained in *Consolidated Standards for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities* or Accreditation Manual for Hospitals, as applicable, for mental health facilities.

(2) Medicare standards—federal standards governing conditions of participation for hospitals serving Title XVIII clients in mental health facilities, as contained in 42 Code of Federal Regulations 405, Subpart J.

(3) National Fire Protection Association (NFPA) standards—standards contained in the NFPA's *Life Safety Code*.

(4) Rehabilitation Act of 1973, §504—federal standards for rights of the handicapped.

(5) Medicaid standards—standards governing intermediate care facilities for persons with mental retardation or related conditions (ICF-MR), codified in 42 Code of Federal Regulations 442, Subpart C, for all mental retardation facilities; and ACDD standards—standards of the Accreditation Council on Services for People with Developmental Disabilities for designated mental retardation facilities, as contained in *Standards for Services for People with Developmental Disabilities*.

(6) Community-based program standards—standards contained in the TDMHMR *Community Standards* of the Texas Department of Mental Health and Mental Retardation.

(7) Community-based mental health program standards—standards contained in TDMHMR *Mental Health Community Standards* of the Texas Department of Mental Health and Mental Retardation.

(8) Community-based mental re-

tardation program standards—standards contained in TDMHMR *Community Standards for Individuals with Mental Retardation* of the Texas Department of Mental Health and Mental Retardation.

(9) Commission on Laboratory Accreditation of the College of American Pathologists (CAP) standards—laboratory standards for all TDMHMR facilities contained in *Standards of the Commission on Laboratory Accreditation of the College of American Pathologists*.

(b) Copies of these documents are available for inspection at the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or by writing to the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

§401.349. References. Reference is made to the following statutes, standards, and rules of the department:

(1) 42 Code of Federal Regulations 405, Subpart J (Medicare standards for psychiatric hospitals);

(2) 42 Code of Federal Regulations 442, Subpart G (Medicaid standards for ICF-MR services);

(3) Rehabilitation Act of 1973 (Public Law 93-112, §504);

(4) Texas Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-201 et seq.);

(5) Mentally Retarded Persons Act (Texas Civil Statutes, Article 5547-300);

(6) Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq);

(7) TDMHMR rules contained in the Texas Administrative Code, Title 25, Part II, Chapters 401-407;

(8) Directive 1, concerning standard operating procedures;

(9) Directive 11, concerning standards and quality assurance, Texas Department of Mental Health and Mental Retardation;

(10) Directive 12, concerning professional nursing quality assurance;

(11) TDMHMR *Community Standards*, Texas Department of Mental Health and Mental Retardation, 1985;

(12) TDMHMR *Mental Health Community Standards*, Texas Department of Mental Health and Mental Retardation, 1989;

(13) TDMHMR *Community Standards for Individuals with Mental Retardation*, Texas Department of Mental Health and Mental Retardation, 1988;

(14) Consolidated Standards for

Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities, Joint Commission on the Accreditation of Healthcare Organization, 1988;

(15) *Accreditation Manual for Hospitals*, Joint Commission on the Accreditation of Healthcare Organization, 1983;

(16) *Standards for Services for People with Developmental Disabilities*, Accreditation Council on Services for People with Developmental Disabilities, 1987;

(17) *Life Safety Code*, National Fire Protection Association, 1985; and

(18) *Standards of the Commission on Laboratory Accreditation of the College of American Pathologists*, 1987.

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 February 3, 1989.

TRD-8901021

Fatilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 24, 1989

Proposal publication date: September 13, 1988

For further information, please call: (512) 465-4670

Chapter 402. Client Assignment and Continuity of Services

Subchapter F. Continuity of Services-Mental Retardation Campus-Based Components

• 25 TAC §§402.201-402.222

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§402.201-402.222. Sections 402.203, 402.204, 402.205, 402.211, 402.212, 402.213, 402.216, 402.219, and 402.220 are adopted with changes to the proposed text as published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4758). Sections 402.201, 402.202, 402.206-402.210, 402.214, 402.215, 402.217, 402.218, 402.221, and 402.222 are adopted without changes and will not be republished. The new subchapter is adopted contemporaneously with the adopted repeal of the subchapters it will replace, which are Chapter 405, Subchapter J of this title, concerning criteria for placement of residents in community intermediate care facilities, and Chapter 405, Subchapter BB of this title, concerning admissions, transfers, furloughs, and discharges-state schools for the mentally retarded. The new subchapter reflects changes in the organizational and functional procedures of the department consistent with board policy, the settlement of *Lelaz v. Kavanagh*, legislation, and the TDMHMR client assignment and registration system.

Section 402.203, concerning definitions, has been revised to define "interdisciplinary team" consistent with the most recent departmental rules governing related matters. Section 402.204(a), concerning admission application process, has been revised to clarify that the mental retardation authority (MRA) is responsible for ensuring the completeness of application information with the computerized TDMHMR client assignment and registration system. Section 402.205(a) (1), concerning eligibility determination for admission to an MR campus-based component, has been revised to specify that the deputy commissioner for mental retardation services designates the MR campus-based component admissions committee responsible for reviewing proposed admissions of state hospital clients to MR campus-based components. Section 402.211, concerning reassignment between MR campus-based components, has been renamed "Transfer/Reassignment Between MR Campus-Based Components," and terminology throughout the section similarly the section similarly revised consistent with §402.203, concerning definitions. Section 402.212(a), concerning general requirements for absences and community placements, has been revised to clarify the situations in which the MR campus-based component must notify the MRA concerning absences. Section 402.213, concerning requirements for specific types of absences, has been changed to delete an unnecessary requirement (formerly subsection (b)(2)) and renumbered Section 402.216(b), concerning general requirements for discharge or reassignment, has been revised consistent with the department's procedures for notification of the MRA concerning client deaths. Sections 402.219(b) and 402.220(8) will be changed to delete reference to Exhibit H: TDMHMR Interdisciplinary Team Staffing Procedures in Mental Retardation Programs: Guidelines and Recommendations.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Absence—A period of time during which a client is physically away from a campus-based assignment and a return is expected. This term includes: absence for community hospitalization, absence for home visit, absence-special therapeutic, absence for temporary transfer to another component, absence for trial placement (see definition of community placement), absence for other.

Adaptive behavior—The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. A table of descriptions and illustrations of expected behavior has been developed by the American

Association on Mental Deficiency (AAMD) to guide in determining adaptive behavior level. (See AAMD's Classification in Mental Retardation, 1983.)

Admission-Assignment of a client to an MR campus-based component.

Assignment—The identification of the location at which a client is receiving services. Assignments track client movements throughout the TDMHMR service delivery system. Clients may have multiple assignments; however, a client may not have two concurrent residential assignments.

CARE—The TDMHMR client assignment and registration system.

Community-based facility—Any community-based facility, including facility community services, that provides supervision and habilitative services and includes residential services, in which the client is engaged in programs designed to improve the client's capabilities to optimally function or to maintain the client's present level of functioning (e.g., geriatric facilities).

Community MHMR center—An entity organized pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Articles 5547-203, as amended, which provides mental retardation services. The term does not include facility community services.

Community placement—The movement of a client from an MR campus-based component to a community-based facility. For the purposes of this subchapter, the term will be used for initial movement from the MR campus-based component to the community-based facility if the return of the client is not expected; and for the movement of the client from an MR campus-based component to a community-based facility, following the initial movement, when reassignment to the MRA is accomplished. If the client is absent from the MR campus-based component for a trial community placement and return is expected (e.g., from a weekend visit to a group home), the absence is considered an absence for trial placement.

Community support services—A network of services to assist the client to remain in the community in lieu of or subsequent to placement in an MR campus-based component.

Comprehensive diagnosis and evaluation (D & E)—A study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a diagnostic and evaluation team. The study shall include, but not be restricted to, a social and medical history; medical, neurological, audiological, visual, educational, and appropriate psychological and sociological examinations; and an examination of the person's adaptive behavior.

Continuity of services activities—The activities designed to ensure coordination of services to the client, particularly between components within the TDMHMR system,

to include: exchange of information pertinent to treatment/training, joint discharge planning, development of the community support plan, implementation of treatment recommendations and revisions, the obtaining of adequate resources to meet the client's needs, and other activities as outlined in the *TDMHMR Community Standards for Mental Retardation Services*.

Discharge—Discharge from an MR campus-based component when an MR client chooses to terminate association with TDMHMR or when an MR client is found to be ineligible for continued MR services.

Developmental period—The period of a person's life which begins at conception and extends to the age 18 years.

Facility—community services—Community-based program of a facility.

Guardian—The person who, under court order, is the guardian of the person of another or is a limited guardian under Texas Probate Code, §130A-O.

Habilitation—The process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of self and the environment and to raise the level of physical, mental, and social efficiency, and which is not limited to programs of formal, structured education and training.

Individual program coordinator—A single staff person as defined in the *TDMHMR Community Standards for Mental Retardation Services* representing the receiving community-based service (a community center or facility community service) and who:

(A) participates with staff of the MR campus-based component in joint planning regarding community-based services and the development of the community support plan;

(B) informs the facility treatment coordinator at the MR campus-based component of community resources and facilitates the coordination and development of community contacts and resources when necessary and practicable; and

(C) facilitates the delivery of services to the client as outlined in the *TDMHMR Community Standards for Mental Retardation Services* to include monitoring and coordination of the overall treatment plan and treatment recommendations.

Interdisciplinary team (IDT)—A group of persons functioning as a team to include: the client, client's family, and/or parent, as appropriate; person(s) who are professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of persons with mental retardation, person(s) who are di-

rectly involved in the delivery of mental retardation services to the client; representative(s) of the MRA, as appropriate; and at the request of the public responsibility committee (PRC), members of the MR residential facility's PRC.

Involuntary admission—The placement of a mentally retarded person pursuant to a court order in a TDMHMR MR campus-based component for services.

Legally adequate consent—Consent given by a person when each of the following conditions has been met:

(A) **Legal capacity**. The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law (i.e., does not have a court-appointed guardian for this purpose).

(B) **Comprehension of information**. The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client.

(C) **Voluntariness**. The consent has been given voluntarily and free from coercion and undue influence.

Local service area—A geographic area composed of one or more Texas counties delimiting the population which may receive services from an MRA.

Mental retardation—A condition characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

Mental retardation authority (MRA)—A component of the TDMHMR service delivery system designated by the department to direct, operate, facilitate, or coordinate MR services delivery for a local service area. Unless otherwise specified, MRA refers to the MRA serving the client's county of residence (see Exhibit A in §402.220 of this title (relating to Exhibits)).

Mental retardation (MR) campus-based component—A program composed of residential services provided for clients on the grounds of a state school or state center providing long-term residential services.

Mental retardation services—Programs and assistance for persons with mental retardation which may include, but shall not be limited to, diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but shall not include those services or programs which have been explicitly delegated by law to other state agencies.

Parent—For the purpose of complying with §402.218 of this title (relating to

Review Procedures Concerning Return to MR Campus-Based Component), parent includes:

(A) the natural or adoptive mother and father of a client, but does not include a parent as to whom the parent-child relationship has been legally terminated, and does not include the parent of a client who is competent;

(B) a family member or advocate if there is one who acts in behalf of the client instead of the mother or father and is listed as the primary correspondent for the client, and does not include the family member or advocate of a client who is competent;

(C) a legally appointed guardian of the client;

(D) a legally appointed managing conservator of the client.
Resident of the state—

(A) a person who physically resides in Texas, who intends to remain in Texas indefinitely, or who has no present intention to leave, and who is able to show that residence in any other state other than Texas has been abandoned;

(B) a person who has established residency in Texas, but is temporarily absent from the state;

(C) a minor whose parent or legal guardian is a resident of Texas;

(D) an adult whose legal guardian is a resident of Texas; or

(E) a military dependent who is a minor and whose parent's residence of record is Texas.

Register for MR campus-based component (RCBC)—A statewide listing of applicants who have been recommended by a certified D & E team or IDT for assignment to an MR campus-based component. The CARE system retains the date the client was initially placed on the register, the status (active or temporarily deferred), and the date the status was established or the last date the status changed.

Respite—The assignment to an MR campus-based component of a client to provide special assistance or relief to the client or the client's family for a brief period of time.

Service district—County or counties for which an MR campus-based component has responsibility to serve individuals residing in that area.

TDMHMR service system—All campus-based facilities and community-

based service operated or contracted by TDMHMR.

Transfer/Reassignment—The movement of a client between MR campus-based components, or from an MR campus-based component to a community-based facility with the intent of permanent relocation and reassignment within the TDMHMR service delivery system.

§402.204. Admission Application Process. Except as provided in §402.208 of this title (relating to Requirements for Regular Admission), §402.209 of this title (relating to Requirements for Emergency Admission), and §402.210 of this title (relating to Requirements for Respite Admission), a person may be admitted or committed to an MR campus-based component only if an application package is completed.

(1) Any person may initiate an application for admission, but the application procedure must be completed by the competent adult applicant, the parent of a minor, a guardian, or by a court of commitment. The application form is available from the MRA, which is responsible for facilitating and/or providing direct assistance in its completion and ensuring its entry into the CARE system.

(2) A completed application package must include:

(A) application forms, referred to in §402.220 of this title (relating to Exhibits) as Exhibit B (signed by the legally responsible party). All CARE forms will be entered into the CARE system;

(B) a statement by the person making application specifying the reasons placement is sought;

(C) a photograph of the applicant, which must be current within 90 days of receipt of the application package;

(D) a medical history form, including medication history and immunization record;

(E) a duplicate a copy of applicant's social security card;

(F) a copy of the applicant's birth certificate;

(G) a copy of legal documents concerning the custody of the applicant (e. g., copy of divorce papers, letters of guardianship, letters of managing conservatorship), if applicable;

(H) a copy of legal documents concerning mental retardation com-

mitment, if applicable, or a legally adequate consent for admission;

(I) the applicant's education records, to include admission, review and dismissal (ARD) reports, if applicable;

(J) a comprehensive diagnosis and evaluation (D & E) report which must be current within 90 days of receipt of the application package, and which concludes that the applicant is a person with mental retardation and is in need of MR campus-based services; and

(K) documentation by the D & E team outlining the determination that MR campus-based services are the least restrictive and most appropriate services for the client (as outlined in Chapter 402, Subchapter G of this title (relating to Determination of Least Restrictive Environment-Mental Retardation Services)), including the documentation that this determination is based on the consideration of relevant community-based resources.

§402.205. Eligibility Determination for Admission to an MR Campus-Based Component.

(a) Except as provided in §402.208 of this title (relating to Requirements for Regular Admission), §402.209 of this title (relating to Requirements for Emergency Admission), and §402.210 of this title (relating to Requirements for Respite Admission), a determination of eligibility for admission shall be made by the MRA and shall meet the following requirements. MR campus-based components will admit based on appropriateness and space availability. Any conflict which results in an inability to agree on an eligibility determination will be reviewed and resolved by the deputy commissioner for mental retardation services or designee.

(1) The determination of eligibility will be based on a review of a complete, current application package to include the determination by the D & E team that MR campus-based services are the least restrictive and most appropriate for the client.

(2) The applicant must have a diagnosis of mental retardation as determined by a comprehensive D & E team.

(3) Ordinarily, only those applicants determined by a comprehensive D & E team to possess a measured IQ of more than three standard deviations below the mean of a standardized psychometric instrument, existing concurrently with an adaptive behavior level of II, III, or IV, are eligible for MR campus-based admission. The determination of eligibility for MR campus-based services for those persons who possess a measured IQ of two, but not more than three, standard deviations below

the mean of a standardized psychometric instrument, existing concurrently with an adaptive behavior level of II, III, or IV, will be made only when the MRA provides documentation which outlines the determination by the D & E team of the least restrictive environment (as outlined in Chapter 402, Subchapter G of this title (relating to the Determination of Least Restrictive Environment-Mental Retardation Services)) and specifically addresses the consideration of relevant community-based services.

(4) There must be verification that the application is made to the MR campus-based component serving the county of residence of the competent adult applicant, the parent of a minor applicant, or the court-appointed guardian of the applicant. If there are compelling reasons for seeking placement elsewhere, programmatic justification for seeking such placement shall be documented in the record, and shall be submitted for approval to the deputy commissioner for mental retardation services or designee.

(b) Immediately following review of the application package for applicants who are eligible for MR services, but who are determined to be not eligible for regular admission to an MR campus-based component, the MRA will ensure notification of the competent adult applicant, the parent of a minor applicant, the court-appointed guardian of the applicant, or the court of:

(1) the determination of ineligibility for regular admission to an MR campus-based component; and

(2) the determination of eligibility for other MR services, to include emergency and/or respite admissions when space is available and other community support services which are available to the applicant.

(c) Immediately following review of the application package for applicants recommended for admission to an MR campus-based component, the MRA will ensure the notification of the competent adult applicant, the parent of a minor applicant, the court-appointed guardian of the applicant, or the court of:

(1) the determination of eligibility for MR campus-based services;

(2) the nature of the register for assignment to an MR campus-based component and the process for placement on the register;

(3) the current space and program availability and whether or not a date for admission can be projected; and

(4) other services available to the applicant while awaiting placement.

(d) Following determination of eligibility, the MRA will retain the completed admission application package and documentation related to the determination of eligibility.

(e) Any client with mental retardation residing in a state hospital who no longer requires the mental health services provided by the hospital shall be discharged and reassigned as outlined in TDMHMR guidelines.

(1) In addition, at the request of a receiving MR campus-based component, the deputy commissioner for mental retardation services will designate an MR campus-based component admissions committee to conduct a review of a proposed admission to include a review of the client's records, including injury and incident reports, social and medical histories, progress notes, and other pertinent documents, and interviews with staff, as needed.

(2) The committee shall submit its recommendations to the deputy commissioner for mental retardation services for final determination and approval for admission to an MR campus-based component.

§402.211. Transfer/Reassignment Between MR Campus-based Components.

(a) Requests for transfer/reassignment between MR campus-based components may be made by the client, if legally competent, the parent of a minor, the court-appointed guardian, or the client's interdisciplinary team. If client is legally competent, but determined by the IDT not to be factually competent, the request for transfer/reassignment from the client will be evaluated on an individual basis by the IDT.

(b) Transfer/reassignment between MR campus-based components requires that:

(1) the requirements as outlined in Chapter 402, Subchapter G of this title (relating to Determination of the Least Restrictive Environment-MR Services) shall be met;

(2) a request for transfer/reassignment, which is referred to in §402.220 of this title (relating to Exhibits) as Exhibit D shall be completed by the client, if competent, parent of a minor, or court-appointed guardian, or the superintendent or designee, of the MR campus-based component where the client is currently placed; and

(3) the client and the client's parents or guardian shall be given at least 30 days' notice of the proposed transfer/reassignment, along with an invitation to participate in the interdisciplinary team meeting to consider the proposal, and shall be informed of the right to an administrative hearing for the purpose of contesting the proposed transfer/reassignment, in accordance with the Mentally Retarded Persons Act, Texas Civil Statutes, Article 5547-300, §42.

(c) If the decision to seek a transfer/reassignment is made, a transfer/reassignment package consisting of the

following shall be prepared and forwarded to the destination MR campus-based component:

(1) the request for transfer/reassignment;

(2) a completed transfer/reassignment data form, which is referred to in §402.220 of this title (relating to Exhibits) as Exhibit E;

(3) the client's current treatment/program plan;

(4) documentation outlining the determination of least restrictive environment (see Chapter 402, Subchapter G of this title (relating to Determination of Least Restrictive Environment-Mental Retardation Services));

(5) a copy of the most recent D & E; and

(6) the most recent monthly program review from the client's record.

(d) Upon receipt of the transfer/reassignment package, the destination MR campus-based component shall complete the transfer/reassignment data form and return it to the requesting MR campus-based component.

(e) If the destination facility can accept the client immediately, a transfer/reassignment date shall be established and necessary CARE forms shall be completed. The following records shall be duplicated to accompany the client to the destination MR campus-based component:

(1) original admission application packet (see §402.204 of this title (relating to Admission Application Process));

(2) photograph recent within one year;

(3) most recent health care information, including:

(A) dental records-initial assessment and current progress notes;

(B) medical consultation and medical evaluations within past year (including, but not limited to, X-ray, EEG, EKG) and any other significant medical consultations and medical evaluations;

(C) physical examination to include vision and hearing screening;

(D) immunization record;

(E) seizure record, if applicable;

(F) occupational therapy evaluation;

(G) physical therapy evaluation;

tion;

(H) nursing assessment, if present;

(I) weight and height record;

(J) medication, diet, and treatment record for most recent quarter;

(K) medical, medication, and dietary history; and

(L) laboratory results obtained during past 12 months;

(4) most recent diagnostic records forms;

(5) a copy of the original social history and social history summary;

(6) complete psychological current within three years plus any update psychological reports;

(7) most recent staffing and monthly reviews since most recent staffing;

(8) current treatment/program plan, current specific program objectives, and activity plans, and progress notes for most recent month;

(9) incident reports and observation notes for most recent quarter;

(10) discharge/reassignment program summary as outlined in §402.216 of this title (relating to General Requirements for Discharge or Reassignment);

(11) a copy of the birth certificate; and any legal documents concerning the custody of the applicant (e.g., copy of divorce papers, letters of guardianship, letters of managing conservatorship), if applicable; and

(12) complete personal belongings inventory.

(f) In addition to the records listed in subsection (e) of this section, the following shall accompany the client on the date of reassignment:

(1) an adequate supply of prescribed medication to ensure that the client continues to receive medications as prescribed; and

(2) all personal belongings of the client.

(g) No transfer/reassignment will be completed until the requirements as outlined in the Mentally Retarded Persons Act, Texas Civil Statutes, Article 5547-300, §42 are met.

(h) The client's original records shall be retained by the original MR campus-based component as a permanent record.

(i) Interfacility disagreement con-

cerning transfer/reassignment will be referred to the deputy commissioner for mental retardation services or designee for resolution.

§402.212. General Requirements for Absences and Community Placements.

(a) The MR campus-based component will notify the MRA regarding absences (other than home visits, receipt of short-term services less than 30 days, or unauthorized departures) when no permanent community alternative is being considered. The MRA will have the opportunity to have input regarding such client absences (i.e., will give input regarding any other options/alternatives). This input will be documented in the client record.

(b) Copies of all documents developed by the destination facility, if applicable, during the absence period shall be placed in the client's unit record or master file (whichever is appropriate) at the MR campus-based component from which the client is absent. Information shall also be released to the MRA at the MRA's request. This will be accomplished in accordance with Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(c) Any contracts, agreements, or memoranda of understanding developed at the initiation of a client absence or community placement shall stipulate:

(1) that the MR campus-based component from which the client is absent or receiving the community placement shall have free access to all documents developed during the absence period or the community placement until reassignment to an MRA is accomplished;

(2) that the MR campus-based component from which the client is absent or receiving the community placement shall have the authorization to reproduce, summarize, or otherwise reflect the content of such documentation; and

(3) that such reproductions, summarizations, or other reflections of the content shall be placed in the client's unit record or master file (whichever is appropriate) at the MR campus-based component from which the client is absent or receiving the community placement.

(d) Clients may be absent to receive services outside the local service area of the MRA. There may be occasion when a time-limited specific placement for a specialized service is not available through the MRA. In such cases, the following must occur.

(1) The MRA of the client's county of residence must ensure the delivery of the specifically designated service (i.e., through contract, memorandum of agreement, etc.).

(2) The MRA where the client will be served must be notified by the MRA of the client's county of residence prior to

the absence. If there is any disagreement between the two MRAs, the assistant deputy commissioner(s) for the MRAs involved shall be contacted to resolve the discrepancy.

(3) The MRA of the client's county of residence shall submit a copy of a community support plan which stipulates the reason for such placement to the assistant deputy commissioner serving the client's county of residence and shall obtain approval for the plan.

(4) The client's individual treatment/program plan shall be reviewed at least annually to determine the client's need to continue to receive services outside the service area of the MRA of the client's county of residence.

§402.213. Requirements For Specific Types of Absences.

(a) If the absence is for the purpose of providing emergency medical, dental, or psychiatric services or examinations:

(1) a physician shall determine that the client is in need of immediate services that are not available at the MR campus-based component and this is documented in the client record;

(2) arrangements or agreements have been concluded for obtaining the necessary services elsewhere;

(3) there is documented evidence in the client record that the objectives of the absence are likely to be met through provision of services outside the MR campus-based component;

(4) legally adequate consent, if required, has been obtained and is documented in the client record;

(5) the MR campus-based component granting the absence shall transport the client to the destination facility in an appropriately equipped vehicle;

(6) the following shall accompany the client for the destination facility:

(A) legally adequate consent form (copy), if required;

(B) medical history (copy);

(C) immunization record (copy);

(D) weight and height record (copy);

(E) seizure record (copy);

(F) treatment and diet orders (copy);

(G) examination and assessment reports for medical, psychological, and social factors (copy);

(H) reports of laboratory tests conducted within the previous 30 days plus any additional significant reports conducted within the past year, including X-ray, EEG, EKG, etc. (copy);

(I) an adequate supply of the client's prescribed medication to ensure that the client continues to receive medications as prescribed;

(J) an adequate supply of clean, suitable clothing, and other personal items as appropriate;

(K) other data requested by the destination facility; and

(L) any other data which would be beneficial or pertinent to optimum treatment of the client or as required by TDMHMR guidelines or directives; and

(7) for any client absent from an MR campus-based component to a state hospital, requirements as outlined in Texas Civil Statutes, Article 5547-300, §46, shall be met.

(b) If the absence is an absence for trial placement or for the purpose of providing the client with specific habilitation, training, care, treatment, or programs for particular needs of the client other than those areas addressed in subsection (a) of this section:

(1) the IDT shall determine that the client's needs cannot be met or services are not available at the MR campus-based component. This determination is documented in the client record, to include:

(A) a determination that the client is in need of the programs or assistance offered, and possesses the necessary skills and abilities to benefit from the proposed absence; and

(b) a determination that the benefit to be derived from the absence exceeds the benefit that would be derived from continuation of the client's existing program plan without interruption.

(2) The following shall accompany the client to the destination facility:

(A) an adequate supply of the client's prescribed medications to ensure that the client continues to receive medication as prescribed;

(B) an adequate supply of clean, suitable clothing and other personal items, as appropriate;

(C) all appropriate special instructions for the client or others, which shall be furnished both in writing and orally prior to or at the time of departure; and

(d) a copy of the client's current treatment/program plan, specific program objectives, most recent month's progress notes, and most recent monthly reviews.

(c) If the purpose of the absence is for the client to visit relatives, guardians, or friends:

(1) the client's treatment/program plan must specify that such absences are in the best interest of the client;

(2) there must be no legal restrictions prohibiting the type of absence proposed;

(3) documentation shall be made in the client's record specifying responsibility for the client during the absence period, the length of absence period, and the nature of the absence, which shall be developed by the individual or agency assuming responsibility for the client and by the MR campus-based component, with the cooperation and agreement of the client, as appropriate; and

(4) the following shall accompany the client upon departure;

(A) an adequate supply of prescribed medications, to ensure that the client receives prescribed medications without interruption;

(B) an adequate supply of clean, suitable clothing and of personal items, as appropriate; and

(C) any special instructions for the client or others, which shall be furnished both orally and in writing before or at the time of departure.

§402.216. General Requirements for Discharge or Reassignment.

(a) For the purposes of this subchapter, the death of a client will not be considered a discharge and shall be recorded in the client record and documented in accordance with Chapter 405, Subchapter K of this title (relating to Client Deaths).

(b) The MR campus-based component shall contact the MRA regarding all discharges/reassignments prior to discharge/reassignment and regarding all deaths.

(c) No client may be discharged/reassigned from an MR campus-based component unless a discharge/reassignment summary which complies with the requirements as outlined in the *TDMHMR Community Standards for Mental Retardation*

Services has been prepared by the interdisciplinary team and includes the following:

(1) a statement that the client, parent of a minor, or guardian, has been counseled on the relative advantages and disadvantages of the discharge/reassignment;

(2) the date of discharge/reassignment;

(3) the reason for discharge/reassignment;

(4) a summary of findings of most recent evaluations to include the most recent D & E;

(5) a summary of services received by the client since the time of admission;

(6) a summary of the course of treatment/program effectiveness;

(7) diagnoses at admission and discharge/reassignment; and

(8) any referrals made or instructions given to the client at discharge/reassignment, to include a copy of the community support plan, if applicable, naming the services the client requires in the new environment and the agency(e) responsible for provision; and

(9) signatures of the interdisciplinary team members and representatives of each agency providing community support services, or documentation of communication with the agency(s) regarding the discharge/reassignment.

(d) For court-committed clients, the court that issued the commitment order shall be promptly notified of all discharges.

(e) Requirements as outlined in Subchapter G of this title (relating to Determination of Least Restrictive Environmental Retardation Services) must be met.

§402.219. Quality Assurance Requirements.

(a) All rules, policies, standards, and regulations established by TDMHMR, to include revisions to referenced rules, policies, standards, and regulations, shall be met in the admission of clients to MR campus-based components and in the provision of continuity of services.

(b) All applicable external standards including, but not limited to, 42 Code of Federal Regulations 442, Subpart G, and the Texas Administrative Code, Title 40, Part I, Chapter 27, must be met.

§402.220. Exhibits. The following exhibits are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711:

(1) Exhibit A: Procedures and Criteria for Determining County of Residence;

(2) Exhibit B: Application for Admission;

(3) Exhibit C: Application for Respite or Emergency Admission;

(4) Exhibit D: Request for Reassignment;

(5) Exhibit E: Reassignment Data Form;

(6) Exhibit F: Criteria for Identifying Persons with Mental Retardation Most in Need of Case Management Services; and

(7) Exhibit G: Clarification of Case Management for Persons Who Are Mentally Retarded.

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 February 3, 1989.

TRD-8901024

Patilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 24, 1989

Proposal publication date: September 27, 1988

For further information, please call: (512) 465-4670

Chapter 405. Client (Patient) Care

Subchapter J. Criteria for Placement of Residents in Community Intermediate Care Facilities

• 25 TAC §§405.231-405.246

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.231-405.246, without changes to the proposed text as published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4771). The repeal is adopted contemporaneously with the adoption of new Chapter 402, Subchapter F of this title, concerning continuity of services—mental retardation campus-based components.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 February 3, 1989.

TRD-8901022

Patilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: February 24, 1989

Proposal publication date: September 27, 1988

For further information, please call: (512) 465-4670

◆ ◆ ◆
**Subchapter BB. Admissions,
Transfers, Furloughs, and
Discharges-State Schools for
the Retarded**

◆ ◆ ◆
• 25 TAC §§405.691-405.724

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.691-405.724, without changes to the proposed text as published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4771). The repeals are adopted contemporaneously with the adoption of now Chapter 402, Subchapter F of this title, concerning continuity of services-mental retardation campus-based components.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 February 3, 1989.

TRD-8901023 Patilou Dawkins
 Chairman
 Texas Board of Mental
 Health and Mental
 Retardation

Effective date: February 24, 1989

Proposal publication date: September 27, 1988

For further information, please call: (512) 465-4670

◆ ◆ ◆
TITLE 28. INSURANCE
**Part I. State Board of
Insurance**

**Chapter 5. Property and
Casualty Insurance**

**Subchapter J. Rules to
Implement the Amusement
Ride Safety Inspection and
Insurance Act**

◆ ◆ ◆
• 28 TAC §§5.9001-5.9008

The State Board of Insurance adopts amendments to §§5.9001-5.9004 and new §§5.9005-5.9008, without changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4954).

These sections concern implementation of the Amusement Ride Safety Inspection and Insurance Act (the Act). Adoption of new

§§5.9006-5.9008 is simultaneous with the repealing of old §§5.9005-5.9007. Notice of the repeals appears elsewhere in this issue of the *Texas Register*. New §5.9005, concerning filing affidavit, replaces repealed §5.9005. New §5.9007, concerning board information request, replaces repealed §5.9006. New §5.9008, concerning board confirmation of required insurance and inspection certificate; rule construction, replaces repealed §5.9007, concerning confirmation of required insurance and safety inspection certificate; rules construction. The amendments and new sections are necessary in order to provide implementation of inspection and reporting requirements under the amended structure of the Act (the Insurance Code, Article 21.60). Such implementation is necessary to promote the safe operation of amusement rides in this state and to provide strong administrative regulation for enforcement of the safeguards required under the Act.

The amendment to §5.9001 clarifies language and phrasing. The amendment to §5.9002 adds or amends definitions of Act, amusement ride, Class A amusement ride, and Class B amusement ride to conform to definitions in the Insurance Code, Article 21.60. The amendment to §5.9003 clarifies language and eliminates one use of the word safety in order to make the section conform with amended statutory language. The amendment to §5.9004 clarifies language and eliminates three uses of the word safety from paragraph (2) in order to make the section conform with amended statutory language. The amendment to §5.9004 also adopts by reference a revision of SBI Form AR-100, which §5.9004(2)(E) adopts by reference as the Amusement Ride Inspection Certificate, to reflect proper designation and language of the Amusement Ride Safety Inspection and Insurance Act as the Insurance Code, Article 21.60, and to eliminate the word safety from the certification language in order to conform with amended statutory language. In order to reflect amendments to the Insurance Code, Article 21.60, §4(a)(2), the amendment to §5.9004 also modifies the amount of insurance which a person who operates an amusement ride must maintain in force. New §5.9005 prescribes and adopted by reference a quarterly injury report (SBI Form AR-800), which must be filed with the State Board of Insurance at the end of each quarter to provide a description of any injury that results in death or requires medical treatment by a medical professional. In order to accommodate the newly inserted §5.9005, new §§5.9006-5.9008 replace repealed §§5.9005-5.9007. New §5.9006 requires filing of affidavits, insurance policies, and inspection certificates prior to operation of amusement rides and after supplemental inspections. New §5.9007 requires that, when the State Board of Insurance requests information concerning amusement rides, responses must be by written verification with accompanying documentation. New §5.9007 also includes a reference to statutory language at the beginning of the section in order to clarify the meaning of the section. New §5.9008 requires that a copy of an inspection certificate bearing confirmation by the State Board of Insurance must be kept on the premises of an amusement ride, and states that nothing in this subchapter may be construed to authorize the operation of an amusement ride until all applicable require-

ments of law are met. New §5.9008 also eliminates the word safety in the title and in subsections (a) and (b) to make the section conform with amended statutory language.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections are adopted under the Insurance Code, Article 21.60, §3, which provides that the State Board of Insurance shall administer and enforce the Amusement Ride Safety Inspection and Insurance 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 February 3, 1989.

TRD-8901035 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: February 24, 1989

Proposal publication date: October 7, 1988

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

◆ ◆ ◆
• 28 TAC §§5.9005-5.9007

The State Board of Insurance adopts the repeal of §§5.9005-5.9007, without changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4956).

Sections 5.9005-5.9007 concern implementation of the Amusement Ride Safety Inspection and Insurance Act (the Act). The repeal of these sections is necessary in order to provide implementation of inspection and reporting requirements under the amended structure of the Act (the Insurance Code, Article 21.60). Such implementation is necessary to promote the safe operation of amusement rides in this state and to provide strong administrative regulation for enforcement of the safeguards required under the Act.

The repeal of these sections enables the board simultaneously to adopt new sections which replace these repealed sections with similar provisions in a more understandable format with clearer language in conformance with amended statutory language. Notification appears elsewhere in this issue of the *Texas Register* for adoption of the new sections which replace these repealed sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Insurance Code, Article 21.60, §3, which provides that the State Board of Insurance shall administer and enforce the Amusement Ride Safety Inspection and Insurance 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 February 3, 1989.

TRD-8901036 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: February 24, 1989

Proposal publication date: October 7, 1988

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

◆ ◆ ◆
**TITLE 37. PUBLIC
SAFETY AND
CORRECTIONS**

**Part XI. Texas Juvenile
Probation Commission**

**Chapter 341. Texas Juvenile
Probation Commission**

◆ ◆ ◆
• 37 TAC §341.17

The Texas Juvenile Probation Commission adopts new §341.17, without changes to the proposed text as published in the December 6, 1988, issue of the *Texas Register* (13 TexReg 6024).

Senate Bill 298, passed by the regular session of the 70th Texas Legislature, 1987, requires the adoption by rule of a memorandum of understanding among the Texas Juvenile Probation Commission and the Texas Commission for the Blind, Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Rehabilitation Commission, and the Texas Youth Commission regarding the coordination of services for multiproblem children and youth.

The memorandum of understanding adopted in this section provides for the implementation of a system of community resource coordination groups.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, §75.041, which provides the Texas Juvenile Probation Commission with the authority to make rules for juvenile boards and juvenile probation officers necessary for the provision of effective probation services.

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 February 3, 1989.

TRD-8901019 Bill Anderson
Executive Director
Texas Juvenile Probation
Commission

Effective date: February 24, 1989

Proposal publication date: December 6, 1988

For further information, please call: (512) 443-2001

◆ ◆ ◆
• 37 TAC §341.19

The Texas Juvenile Probation Commission adopts new §341.19, without changes to the proposed text as published in the December 6, 1988, issue of the *Texas Register* (13 TexReg 6024).

The new section is adopted because the memorandum of understanding adopted in §341.17 of this title requires participation from the local juvenile justice system.

The section designates participants from local juvenile probation departments for the system of community resource coordination groups and the memorandum of understanding adopted in §341.17 of this title.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, §75.041, which provides the Texas Juvenile Probation Commission with the authority to make rules for juvenile boards and juvenile probation officers necessary for the provision of effective probation services.

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 February 3, 1989.

TRD-8901020 Bill Anderson
Executive Director
Texas Juvenile Probation
Commission

Effective date: February 24, 1989

Proposal publication date: December 6, 1988

For further information, please call: (512) 443-2001

◆ ◆ ◆
**TITLE 43.
TRANSPORTATION**

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

**Chapter 21. Right of Way
Division**

◆ ◆ ◆
• 43 TAC §21.160

The State Department of Highways and Public Transportation adopts new §21.160, without changes to the proposed text as published in the December 20, 1988, issue of the *Texas Register* (13 TexReg 6265).

The new section incorporates revised sign spacing, location, and size criteria which will provide greater flexibility to relocate certain off-premise signs within the highway taking to the remainder or abutting property. The present criteria for sign spacing, location, and size provide that signs may not exceed 672 square feet in area nor be erected closer than 1,500, 750, or 300 feet apart. They also require at least two adjacent recognized commercial or industrial activities in an area defined as an unzoned commercial or industrial area.

Under the new section, an existing sign displaced by a state highway system right-of-way project may be relocated on the remaining or abutting property adjacent to the new right-of-way line as therein provided, with maximum permitted area being 1,200 square feet and minimum permitted spacing being 500, 300, or 100 feet apart. For the purposes of those relocated signs, an unzoned commercial or industrial area is based on at least one or more recognized commercial or industrial activities.

Comments received on the new section complimented the department for the resolution of a potential financial burden upon all parties.

Associations commenting in favor of the new section were the Texas Outdoor Advertising Association and the Harris County Advertising Association.

The new section is adopted under Texas Civil Statutes, Articles 6666 and 4477-9a, which provide the State Highway and Public Transportation with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and to promulgate rules for control of outdoor advertising.

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 January 31, 1989.

TRD-8900932 Diane L. Northam
Administrative Procedures
Technician
State Department of
Highways and Public
Transportation

Effective date: February 22, 1989

Proposal publication date: December 20, 1988

For further information, please call: (512) 463-8630

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 Adult Probation Commission

Thursday, February 16, 1989. The Texas Adult Probation Commission will meet in Suite 600, Building B, 8100 Cameron Road, Austin. Times and agendas follow.

1:30 p.m. The Audit Review Committee will hear fiscal audit reports; consider final reviews on the following counties: Bowie, Brown, Cameron, Collin, Cooke, Dallas, Grayson, Guadalupe, Hill, Howard, Hutchinson, Kleburg, Limestone, Matagorda, Montague, Montgomery, Navarro, Nolan, Rusk, San Patricio, Terry, Travis, and Val Verde; and consider initial reviews on the following counties: Cherokee, Denton, Ector, Hidalgo, Jim Wells, Liberty, Mason, Maverick, McCulloch, McLennan, Morris, Upshur, Walker, and Williamson.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building, B, Austin, Texas 78753, (512) 834-8188.

Filed: February 3, 1989, 4:57 p.m.

TRD-8901048

1:30 p.m. The Planning and Development Committee will hear status report; consider response to open forums, life at 85, and action plan for the committee.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building, B, Austin, Texas 78753, (512) 834-8188.

Filed: February 3, 1989, 4:57 p.m.

TRD-8901047

1:30 p.m. The Program Committee will consider contract residential services, new applications for Angelina and Bell Counties, grant adjustment for Grayson County, deobligation for Travis County, surveillance probation, new application for Cameron County, deobligations for Harris and Tarrant Counties, specialized caseloads, grant adjustments for Brazos and Travis Counties, and restitution centers; consider grant adjustment for Cass, Ector, and Taylor Counties; consider court residential treatment center, grant adjustment for Harris County, new application for Terry County, supplemental funding for Brazoria and

San Patricio Counties, waivers, and discussion items; hear status report-jail diversion caseloads and special report-summary of favorable findings of monitoring reports; consider impact statement of fiscal year 1990-EEB recommendation; and hold discussion review fiscal year 1990 grant review process.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building, B, Austin, Texas 78753, (512) 834-8188.

Filed: February 3, 1989, 4:57 p.m.

TRD-8901044

Friday, February 17, 1989, 9 a.m. The Texas Adult Probation Commission will meet in Suite 600, Building B, 8100 Cameron Road, Austin. According to the agenda summary, the commission will introduce guests; hold TAPC service awards; approve minutes of the previous meeting; hear financial report; discuss mutual interest of corrections in Texas; hear probation services report concerning contractual residential services; consider new applications and grant adjustments for various counties, surveillance probation, new application and deobligations for various counties, specialized caseloads, grant adjustments, various counties, restitution centers, grant adjustments for various counties, court residential treatment center-grant adjustment and new application, supplemental funding for various counties, and waivers; hear Planning and Development Committee report, data services prt.-statistical report, fiscal services report, and Audit Review Committee report; consider request for approval to purchase facilities and utilities and equipment to the judicial district adult probation fund; hear Executive Division report and AIDS report; and consider standards, legislative issues, request for separation-Guadalupe County, other administrative business, and date and site of next meeting.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building, B, Austin, Texas 78753, (512) 834-8188.

Filed: February 3, 1989, 4:57 p.m.

TRD-8901046

Texas Commission for the Blind

Monday, February 13, 1989, 10 a.m. The Texas Commission for the Blind will meet in the Staff Training Room, Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. According to the agenda, the board will present certificates of appreciation; approve minutes of the November 21, 1988, meeting; hear Legislative Committee report and executive director's quarterly report on agency activities; discuss and act on adoption of a memorandum of agreement between the commission and various other state agencies concerning the coordination of services to disabled persons and grant request submitted by the South Texas Lighthouse for the Blind; and consider general announcements. The board will also meet in executive session to discuss personnel and pending legal matters.

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

Filed: February 3, 1989, 4:17 p.m.

TRD-8901039

State Cogeneration Council

Friday, February 17, 1989, 10 a.m. The State Cogeneration Council will meet in the Canteen Room A, Austin State Hospital, TDMHMR, Austin. According to the agenda, the council will approve minutes of the December 2, 1988, council meeting; receive public comment on pending state agency projects; receive a presentation by General Land Office on the use of state-owned gas for state agency cogenerators; consider approval of Austin State Hospital's cogeneration council; and set date, time, and location of next meeting.

Contact: Abba Anderson, P.O. Box 12428, Austin, Texas 78701, (512) 475-2556.

Filed: February 3, 1989, 10:23 a.m.

TRD-8900982

Texas Cosmetology Commission

Sunday, February 12, 1989, 10 a.m. The Texas Cosmetology Commission will meet at the Radisson Plaza Hotel, 700 San Jacinto, Austin. According to the agenda summary, the commission will meet in executive session to review executive director applications; and meet in executive session.

Contact: Janis Rebold, 1111 Rio Grande, Austin, Texas 78701, (512) 463-3183.

Filed: February 3, 1989, 1:54 p.m.

TRD-890103

Monday, February 13, 1989, 9 a.m. The Texas Cosmetology Commission will meet at the Radisson Plaza Hotel, 700 San Jacinto, Austin. According to the agenda summary, the commission will reconvene from meeting of February 12, 1989; call order; introductions; meet in executive session for TEC hearing regarding Normar Jenkins, pending litigation regarding Lynn Thompson, and enforcement personnel problems pertaining to districts; and meet in open session.

Contact: Janis Rebold, 1111 Rio Grande, Austin, Texas 78701, (512) 463-3183.

Filed: February 3, 1989, 1:54 p.m.

TRD-8901012

Texas Commission for the Deaf

Saturday, February 4, 1989, 3 p.m. The Board for Evaluation of Interpreters for the Texas Commission for the Deaf met in emergency session in the Conference Room, Houston International Hospital, 6441 Main Street, Houston. According to the agenda summary, the board discussed BEI budget, and adjustment of budget items. The emergency status was necessary due to convenience for BEI members and preparation of BEI budget decision for the commission at the commission's rescheduled meeting. The commission's meeting was canceled due to lack of quorum on February 3, 1989.

Contact: Larry Evans, P.O. Box 12904, Austin, Texas 78711.

Filed: February 3, 1989, 1:12 p.m.

TRD-8901010

East Texas State University

Thursday, February 9, 1989, 1 p.m. The Board of Regents of East Texas State University met in the McDowell Administration Building, East Texas State University, Commerce. Agendas follow.

The Executive Committee considered internal auditing policy, appointment of presi-

dent and chief executive officer for fiscal year 1990, and professor emeritus designation; heard report on doctoral programs; and considered update on assistant internal auditor. The committee also met in executive session to discuss personnel matters.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Filed: February 2, 1989, 2:12 p.m.

TRD-8900963

The Campus Planning and Finance Committee considered operating budget adjustments for ETSU-Commerce and ETSU-Textarkana, summer faculty salary budget for ETSU-Commerce and ETSU-Textarkana, proposals for architects fees, housing rates for fiscal year 1990, and capital/construction/renovation accounts.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Filed: February 2, 1989, 2:12 p.m.

TRD-8900964

The Student and University Advancement Committee considered authorization of credit card for centennial items; and heard report division activities.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Filed: February 2, 1989, 2:12 p.m.

TRD-8900965

The Academic Affairs Committee heard faculty workload reports of ETSU-Commerce and ETSU-Textarkana, undersized class reports of ETSU-Commerce and ETSU-Textarkana, and report on division activities.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Filed: February 2, 1989, 2:12 p.m.

TRD-8900966

Friday, February 10, 1989, 9 a.m. The board will meet in the McDowell Administration Building, East Texas State University, Commerce. According to the agenda summary, the board will approve minutes of the October 14, 1988, meeting; receive a report by the president; and consider motions from the Student and University Advancement Committee, Academic Affairs Committee, Campus Planning and Finance Committee, and Executive Committee. The board will also meet in executive session to discuss personnel matters.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Filed: February 2, 1989, 2:12 p.m.

TRD-8900967

Texas Education Agency

Tuesday and Wednesday, February 21 and 22, 1989, 8:30 a.m., daily. The State Parent Advisory Council for Migrant Education of the Texas Education Agency will meet in the Starfish Room, Holiday Inn Beach Resort, 100 Padre Boulevard, South Padre Island. According to the agenda, the council will consider migrant program visitations; hear report on motions taken by council at previous council meetings; review framework on graduation rates; consider panel discussion on dropout prevention efforts for at-risk students; hear dropout reports and secondary services and report on dropout effort in state plan; and review changes in new legislation for migrant program.

Contact: Frank Contreras, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9067.

Filed: February 2, 1989, 1:13 p.m.

TRD-8900957

Employees Retirement System of Texas

Monday, February 6, 1989, 2 p.m. The Board of Trustees of the Employees Retirement System of Texas met in emergency session in Room 401, ERS Building, 18th and Brazos, Austin. According to the agenda, the board met with the executive director to discuss the statutory duties of the executive director pursuant to Texas Civil Statutes, Article 6252-17, §2(g) and considered emergency and proposed rules governing participation by health maintenance organizations (HMOs) in the Texas Employees Uniform Group Insurance Program. The board also met in executive session to consult with its attorney concerning the pending litigation of Texas HMO Association v. Pamela A. Carley, et al, as well as to obtain its attorney's opinion concerning legislation, case law, regulations, and other legal matters affecting the Employees Retirement System of Texas pursuant to Texas Civil Statutes, Article 6252-17, §2(e). The emergency status was necessary to address issues and adopt emergency rules resulting from pending litigation.

Contact: William S. Nail, 18th and Brazos, Austin, Texas, (512) 476-6431, ext. 213.

Filed: February 3, 1989, 4:38 p.m.

TRD-8901040

Wednesday, February 15, 1989, 9 a.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet in the Auditorium, Texas Air Control Board, 6330 US 290 East, Austin. According to the agenda summary, the committee will approve minutes of the previous meeting; consider status of HMO standardization of benefits/litigation and

further clarification on outpatient precertification; discuss evidence of insurability and open enrollment; review issue of reciprocity for waiver pre-existing conditions clause for transfers between UGIP and higher education insurance programs; and consider updates on subcommittee activities and other related insurance matters.

Contact: James W. Sarver, 18th and Brazos, Austin, Texas 78711-3207, (512) 476-6431, ext. 217.

Filed: February 7, 1989, 8:59 a.m.

TRD-8901096

Texas Housing Agency

Friday, February 13, 1989, noon. The Finance and Audit Committee of the Texas Housing Agency will meet in the Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will hear report on financial statements of agency and status report and a restructure proposal for San Jacinto Gardens; consider criteria and process for selecting minority bond counsel, proposed multi-family co-managers applications and RFP from financial institutions desiring to serve as the trustee/paying agent/registrant in a trustee resource group; hear reports concerning bond proposals from MBank; hear report on alternative structure for remarketing Bond Series B, C, and D; hear report regarding evaluation of outside service providers to THA (managers and consultants); and review and assessment of the cooperative housing concept as an alternative low to moderate program with adaptive regulations of the Texas market (Co-op interchange).

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: February 3, 1989, 4:45 p.m.

TRD-8901041

Texas Department of Human Services

Tuesday, February 14, 1989, 9 a.m. The Vendor Drug Formulary Subcommittee for the Texas Department of Human Services will meet in the Public Hearing Room, 701 West 51st Street, First Floor, Austin. According to the agenda, the subcommittee will review drug product applications of Motofen and Novolin; cost containment and member term report with follow-up on drug utilization review activity for H2 antagonists and overview and discussion on length of member terms for the formulary subcommittee.

Contact: Robert Harris, P.O. Box 2960, Austin, Texas 78769, (512) 450-3188.

Filed: February 3, 1989, 3:58 p.m.

TRD-8901027

State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto, Austin. Dates, times, rooms, and agendas follow.

Tuesday, February 14, 1989, 10 a.m. The board will meet in Room 414, to consider personnel matters, pending and contemplated litigation, solvency matters, payment of overtime in cash for statistical operation in personnel and warehouse section of purchasing, and travel incentive reimbursement programs.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 6, 1989, 2:56 p.m.

TRD-8901079

Tuesday, February 14, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10239-Whether disciplinary action should be taken against William Douglas Helton, Dallas, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license issued by the board.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 6, 1989, 11:23 a.m.

TRD-8901074

Wednesday, February 15, 1989, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 10251-Approval of provider contracts and group contracts of Blue Cross and Blue Shield of Texas, Inc. Dallas, forms PPA-3 and TXPL-1.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 6, 1989, 11:22 a.m.

TRD-8901073

Wednesday, February 15, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342 to consider Docket 10218-Whether disciplinary action should be taken against Richard A. Hunter, Lubbock, who holds a group I, legal reserve life insurance agent's license.

Contact: Wendy Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 6, 1989, 11:22 a.m.

TRD-8901072

Wednesday, February 15, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10240-Whether disciplinary action should be taken against Robert Louis Cummings, Houston, who holds a group I, legal reserve life insurance agent's license.

Contact: Earl Corbit, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 6, 1989, 11:22 a.m.

TRD-8901071

Friday, February 17, 1989, 8:45 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10256-Amendment to the Articles of Incorporation of Omaha Financial Life Insurance Company of Texas, Dallas.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: February 6, 1989, 11:22 a.m.

TRD-8901070

Texas Department of Labor and Standards

Thursday, February 16, 1989, 10 a.m. The Industrialized Building Code Council of the Texas Department of Labor and Standards will meet in Room 1012, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the council will introduce new member; approve minutes of the previous meeting; consider department update and old business concerning Edwards County jail; consider new business concerning federal express waiver (door landing and location of electrical panel), review of Design Review Agency and Third Party Inspection Agency criteria, council requirements for approval of alternate material/methods of construction, council review and approval of revised inspection procedures, and council approval of third party inspectors; hold annual election of chairman and vice chairman; and hear public comments.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas, (512) 463-7348.

Filed: February 6, 1989, 1:48 p.m.

TRD-8901075

Thursday, February 16, 1989, 10 a.m. The Industrialized Building Code Council of the Texas Department of Labor and Standards will meet in Room 1012, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the council will introduce new member; approve minutes of the previous meeting; consider department update and old business concerning Edwards County jail; consider new business concerning federal express waiver (door landing and location of electrical panel), review of Design Review Agency and Third Party Inspection Agency criteria, council requirements for approval of alternate material/methods of construction, and council review and approval of revised inspection procedures; hold annual election of chairman and vice chairman; and hear public comments.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas, (512) 463-7348.

Filed: February 6, 1989, 1:48 p.m.

TRD-8900987

Thursday, February 16, 1989, 1:30 p.m. The Board of Boiler Rules-Task Force on Electrical Connection of the Texas Department of Labor and Standards will meet in Room LL12, 320 East Jefferson, Dallas. According to the agenda, the board will approve order of business and minutes of December 16, 1988, meeting; discuss rule 75.7; review correspondence; and consider new assignments and next meeting.

Contact: George Bynog, P.O. Box 12157, Austin, Texas, (512) 463-2904.

Filed: February 2, 1989, 3:11 p.m.

TRD-8900969

Friday, February 17, 1989, 9:30 a.m. The Board of Boiler Rules-Task Force on Steam Traction Engines of the Texas Department of Labor and Standards will meet in the Collin County Farm Museum, Route 4, FM Road 106, McKinney. According to the agenda, the board will accept order of business; approve minutes of January 5, 1989, meeting; review assignments and other state's requirements; and consider new assignments and next meeting.

Contact: George Bynog, P.O. Box 12157, Austin, Texas, (512) 463-2904.

Filed: February 2, 1989, 3:11 p.m.

TRD-2900968

Lamar University System

Thursday, February 9, 1989. The Board of Regents of Lamar University System met in the Map Room, John Gray Institute, 855 Florida, Beaumont. Times and agendas follow.

9 a.m. Finance and Audit, Academic Affairs, Building and Grounds, and Personnel Committees met. The committees also met in executive session.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: February 6, 1989, 2:55 p.m.

TRD-8901098

1 p.m. The board approved minutes of the January 12, 1989, meeting; heard chairman's comments and chancellor's comments; considered approval of recommendations from Finance and Audit, Academic Affairs, Building and Grounds, and Personnel Committees; and heard comments and suggestions. The board also met in executive session to consider legal, real estate, and personnel matters.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: February 6, 1989, 2:55 p.m.

TRD-8901097

Texas Low-Level Radioactive Waste Disposal Authority

Wednesday, February 15, 1989, 7 p.m. The Board of Directors of Texas Low-Level Radioactive Waste Disposal Authority will meet in the Doubletree Hotel, 6505 IH-35 North, Austin. According to the agenda, the board will hear staff presentation on facility design and hold discussion.

Contact: L.R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas.

Filed: February 6, 1989, 2:45 p.m.

TRD-8901076

Thursday, February 16, 1989, 8:30 a.m. The Board of Directors of Texas Low-Level Radioactive Waste Disposal Authority will meet in Suite 300, 7701 North Lamar Boulevard, Austin. According to the agenda summary, the board will approve minutes of the previous two meetings; hear the general manager's report including a financial year-to-date report and fiscal year 1990-1991 appropriation's request, general manager's legal report including status of legislation and interstate compacts, technical report including status of site studies, and special programs report; and consider new business dealing with settlement of a claim with Rogers and Associates Engineers.

Contact: L.R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752.

Filed: February 6, 1989, 2:44 p.m.

TRD-8901077

Texas State Board of Medical Examiners

Friday-Saturday, February 17-18, 1989, 2 p.m. and 9 a.m., respectively. The Medical School Committee for the Texas State Board of Medical Examiners will meet at the Texas A&M University College of Medicine, College Station Campus (Friday) and Temple Campus (Saturday). According to the agenda summary, the committee will hear report on admissions; overview of curriculum; discussion with students; tour of facilities; discussion of graduate medical education and continuing medical education; and executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and attorney general opinion 1974, number H-484.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: February 3, 1989, 11:01 a.m.

TRD-8901068

Midwestern State University

February 9, 1989. The Board of Regents of Midwestern State University met in the Hardin Boardroom, MSU, Wichita Falls. Times and agendas follow.

3:30 p.m. The Executive Committee considered the Small Business Development Center and fall scheduling of finals and the holiday schedule; and considered recommendations concerning South Campus Street and parking overlay and construction, architect selection (Machman Hall and Maintenance Building), contract signing authorization, and land purchase by the university.

Contact: Deborah L. Barrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901088

4 p.m. The Finance Committee considered return check charges, change of schedule fees, course and computer use fees, recommendations concerning bond advisors and counsel to conduct the sale of 2.25 million dollars of bonds, and ratification of items \$15,000 and under; considered funding for the 1988 summer budget presented for approval, not to exceed \$450,000; and considered recommendation to balance the athletic budget for 1987-1988.

Contact: Deborah L. Barrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901087

4:30 p.m. The Personnel and Curriculum Committee approved position changes in the fiscal year 1988-1989 budget; accepted information concerning the enrollment and small class reports for the spring 1989 semester and the last day enrollment report for the fall 1988 semester; considered recommendation to move a faculty member to tenure track status; and added a position of secretary in the business office.

Contact: Deborah L. Barrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901086

4:50 p.m. The Student Affairs Committee received a housing occupancy report; and accepted a recommendation concerning apartment negotiations for fall 1989 and information regarding the cafeteria/snack bar remodel.

Contact: Deborah L. Barrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901085

3 p.m. The University Development Committee accepted the summary of gifts, grants, and pledges, September 1, 1988-January 17, 1989; and reviewed a recommendation concerning the establishment of a quasi-endowment fund for the Dr. Madge Davis General Scholarship Fund.

Contact: Deborah L. Farrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901084

5:10 p.m. The Athletics Committee heard an update report.

Contact: Deborah L. Barrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901083

February 10, 1989, 9 a.m. The board will meet in the Hardin Boardroom, MSU, Wichita Falls. According to the agenda summary, the board will approve minutes of the previous meeting, financial report, and appointment of MSU president 1989-1990; receive information and accept recommendations from the Executive, Finance, Personnel and Curriculum, Student Affairs, and University Development Committees; and hear informational reports presented by the Athletics Committee and the president. The board will also meet in executive session.

Contact: Deborah L. Barrow, 3400 Taft, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: February 6, 1989, 2:52 p.m.

TRD-8901082

Texas Motor Vehicle Commission

Thursday, February 16, 1989, 9:30 a.m. The Texas Motor Vehicle Commission will meet in Suite 302, Brazos Building, 815 Brazos Street, Austin. According to the agenda summary, the commission will adopt minutes of the commission meeting of January 13, 1989; review inspection report per commission order, Docket 88-178-CN-Spike Miller v. Chrysler Motors Corporation; consider proposals for decision-lemmon law cases set for oral argument, and cases with exceptions only; motions for rehearing; proposals for decision-lemmon law cases, no arguments or exceptions; agreed orders for approval and entry by the commission; settlement orders, consumer complaint cases; orders of dismissal, consumer complaints and dealer complaints; and review agency budget and financial status.

Contact: Russell Harding, 815 Brazos Street, Suite 300, Austin, Texas 78701, (512) 476-3587.

Filed: February 3, 1989, 4 p.m.

TRD-8901028

Texas National Research Laboratory Commission

Tuesday, February 14, 1989, 4:30 p.m. The Commission for the Texas National Research Laboratory Commission will meet in Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will review minutes of the December 1, 1988, meeting; approve with corrections/additions, if any; hear chairman's comments, executive director and committee reports; and discuss old and new business.

Contact: Ken Welch, 7320 North MoPac, Suite 302, Austin, Texas, (512) 343-7891.

Filed: February 6, 1989, 10:50 a.m.

TRD-8901069

Board of Nurse Examiners

Friday, February 17, 1989, 1 p.m. The Advisory Committee-Evaluation of Mandatory Reporting of the Board of Nurse Examiners will meet in Suite 104, Conference Room, 9101 Burnet Road, Austin. According to the agenda summary, the committee will consider peer review and review completed data collections forms and discuss any suggested revisions of the evaluation plan. The public is invited to observe.

Contact: Julie Houfek, P.O. Box 140466, Austin, Texas 78714, (512) 835 4880.

Filed: February 2, 1989, 4:07 p.m.

TRD-8900975

Pan American University

Tuesday, February 7, 1989, 10 a.m. The Board of Regents of Pan American University submitted an emergency revised agenda for a meeting held in the Boardroom, Administration Building, Pan American University, Edinburg. According to the agenda, the board considered the attorney general's interagency contract. The emergency status was necessary because the addition of the item will expand upon issues raised in executive session. The issue required immediate consideration of the board.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539-2999, (512) 381-2100.

Filed: February 6, 1989, 4:49 p.m.

TRD-8901089

Board of Pardons and Paroles

Monday-Friday, February 13-17, 1989, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin.

According to the agenda summary, the board will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713

Filed: February 3, 1989, 10:33 a.m.

TRD-8900988

Tuesday, February 14, 1989, 1:30 p.m. The Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juenita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: February 3, 1989, 10:32 a.m.

TRD-8900989

State Preservation Board

Friday, February 10, 1989, 9:30 a.m. The Permanent Advisory Committee of the State Preservation Board will meet in Room 314, Library and Archives Building, 1201 Brazos, Austin. According to the agenda, the committee will approve minutes of the previous meeting; consider old or unfinished business concerning grounds policy, exhibitions and events policy, goddess of liberty report, exhibition subcommittee dissolution, and gift shop; and consider new business concerning listing of change requests, capitol collection-approval of items, General Land Office building master plan status report, capitol master plan status report, and SPB statute re-write.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: February 2, 1989, 4:35 p.m.

TRD-8900977

Monday, February 13, 1989, 9 a.m. The State Preservation Board will meet in the Senate Sergeant at Arms Committee Room 215, State Capitol, Austin. According to the agenda, the board will approve minutes of the previous meeting; consider old and unfinished business concerning grounds policy, exhibitions and events policy, goddess of liberty report, exhibition subcommittee dissolution, and gift shop; and consider new business concerning listing of change requests, capitol collection-approval of items, General Land Office building master plan status report, capitol master plan status re-

port, and SPB statute re-write.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: February 2, 1989, 4:35 p.m.

TRD-8900978

Texas State Board of Public Accountancy

The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Thursday, February 9, 1989, 9 a.m. The Behavioral Enforcement Division of the Texas State Board of Public Accountancy met in emergency session to hear January status report; consider recommendations regarding specific complaints-licenses: 88-11-13L, 88-09-01L, 88-09-02L, 88-09-03L, 88-12-07L, 88-11-09L, 88-06-29L, 88-01-37L, and 88-11-08L; discuss Lingo, Fussell, Fields, and Taylor; discuss Wood, Fuller, and Wood; discuss Guinan and Post; consider complaint 87-11-11L; consider Canon, Barber, Seilheimer, Hopkins, McIntosh, Rasco, Squyres, Johnson, Squyres & Company, solicitation questions, Boatright, Lawlor, and agenda items; and review backlog of complaints. The emergency status was necessary because it was the only time members could meet.

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

Filed: February 2, 1989, 10:39 a.m.

TRD-8900953

Thursday, February 9, 1989, 10 a.m. The board met in emergency session to review complaints 87-10-37L, 88-06-34L, and 87-12-14L. The emergency status was necessary because it was the only time complainants and board members could meet.

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

Filed: February 2, 1989, 10:39 a.m.

TRD-8900968

Friday, February 10, 1989, 11 a.m. The board will meet in emergency session to review complaints 88-10-08L and 88-01-02L. The emergency status is necessary because it is the only time complainants and board members can meet.

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

Filed: February 2, 1989, 10:39 a.m.

TRD-8900966

Thursday, February 16, 1989, 9:30 a.m. The board will review complaints 88-03-

02L and 85-09-14L.

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

Filed: February 2, 1989, 10:39 a.m.

TRD-8900967

Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Thursday, February 16, 1989, 10 a.m. The Hearings Division will consider Docket 8555-Proceedings concerning Houston Lighting and Power Company on remand from causes 5705 and 352,044.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 2, 1989, 3:22 p.m.

TRD-8900970

Thursday, February 16, 1989, 10 a.m. The Hearings Division will consider Dockets 8425, 6668, and 6753-Application of Houston Lighting and Power Company for authority to change rates, inquiry of the commission into the prudence and efficiency of the planning and management of the construction of the South Texas Nuclear Project.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1989, 4:20 p.m.

TRD-8901064

Tuesday, February 21, 1989, 10 a.m. The Hearings Division will consider Docket 8439-Petition of Central Power and Light Company for order to refund fuel cost over-recoveries.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1989, 4:20 p.m.

TRD-8901065

Wednesday, February 22, 1989, 10 a.m. The Hearings Division will consider Docket 8218-Inquiry of the General Counsel into the WATS prorate credit.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 2, 1989, 3:22 p.m.

TRD-8900971

Wednesday, March 1, 1989, 10 a.m. The Hearings Division will consider Dockets 8425, 6668, and 6753-Application of Hous-

ton Lighting and Power Company for authority to change rates; and inquiry of the commission into the prudence and efficiency of the planning and management of the construction of the South Texas Nuclear Project.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1989, 4:21 p.m.

TRD-8901063

Railroad Commission of Texas

Monday, February 13, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The Administrative Services Division will consider and act on the division director's report on division administration, budget, procedure, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7257.

Filed: February 3, 1989, 11:28 a.m.

TRD-8900996

The Automatic Data Processing Division will consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7251.

Filed: February 3, 1989, 11:28 a.m.

TRD-8900995

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors.

Contact: C. Tom Clowe, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7274.

Filed: February 3, 1989, 11:28 a.m.

TRD-8901000

The Flight Division will consider and act on the division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6787.

Filed: February 3, 1989, 11:28 a.m.

TRD-8900994

The Gas Utilities Division will consider various matters within the regulatory jurisdiction of the Railroad Commission of Texas. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Meredith Kawaguchi, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7009.

Filed: February 3, 1989, 11:28 a.m.

TRD-08901004

The Office of Information Services will consider and act on the Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12970, Austin, Texas 78753, (512) 463-6710.

Filed: February 3, 1989, 11:28 a.m.

TRD-08900999

The Investigation Division will consider and act on the division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Arne Wiley, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6828.

Filed: February 3, 1989, 11:28 a.m.

TRD-08900998

The Legal Division will consider and act on the Legal Division's report on division administration, budget, procedures, and personnel matters; proposed and pending litigation.

Contact: Cue Boykin, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6921.

Filed: February 3, 1989, 11:28 a.m.

TRD-08901006

The LP-Gas Division will consider various matters falling within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meetings and such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to, scheduling an item in its entirety or for particular action at a future time or date; consider administrative penalty orders concerning violation of commission regulations by Mission Petroleum Carriers, Inc., Dockets 670 and 671.

Contact: Meredith Kawaguchi, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7009.

Filed: February 3, 1989, 11:28 a.m.

TRD-08901005

The Oil and Gas Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Ardy Taylor, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6924.

Filed: February 3, 1989, 11:28 a.m.

TRD-08900991

The Oil and Gas Division will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6755.

Filed: February 3, 1989, 11:28 a.m.

TRD-08901001

The Personnel Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6981.

Filed: February 3, 1989, 11:28 a.m.

TRD-08901002

The Office of Research and Statistical Analysis will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ceryl Payne, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6976.

Filed: February 3, 1989, 11:28 a.m.

TRD-08900997

The Surface Mining and Reclamation Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Jerry Hill, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6900.

Filed: February 3, 1989, 11:28 a.m.

TRD-08901003

The Transportation Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this

date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Karen Kornell, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7094.

Filed: February 3, 1989, 11:28 a.m.

TRD-08900990

Wednesday, February 15, 1989, 9:30 a.m. The Legal Division will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the division will discuss with the Public Utility Commission of Texas the aspects and impact of electric and gas utility rebate and marketing programs.

Contact: Cue Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: February 3, 1989, 11:29 a.m.

TRD-8900993

Wednesday, February 15, 1989, 2:30 p.m. The Legal Division will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division will hear oral argument in gas utilities docket 7085-Joint application of Cabot Gas Supply Corp. and Energas Company to abandon services of supplemental gas supply to the Amarillo Distribution System.

Contact: Lynn Salazar, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7007.

Filed: February 3, 1989, 11:29 a.m.

TRD-8900992

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**Texas Real Estate
Commission**

Monday, February 13, 1989, 9:30 a.m. The Texas Real Estate Commission will meet in Conference Room, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will consider election of officers; hear staff reports for month of December 1988, audit report, and budget report; consider possible amendments to 22 TAC §§531.10-531.17 concerning minimum appraisal standards, proposed amendment to 22 TAC §535.92 concerning annual certification, time for filing, proposed legislation, claims against the Real Estate Recovery Fund, motions for rehearing and/or probation, and entry of orders in contested cases. The commission will also meet in executive session to discuss pending litigation.

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

Filed: February 2, 1989, 4:14 p.m.

TRD-8900976

Texas Rehabilitation Commission

Friday, February 17, 1989, 9:30 a.m. The Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will hold the Advocacy and Public Information meeting in Room 302, 118 East Riverside Drive, Austin. According to the agenda, the council will approve summary report; consider designation of Nominating Committee representative, state legislation/policy items, and federal legislation/policy update; and hear executive director's report.

Contact: Roger A. Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: February 6, 1989, 2:51 p.m.

TRD-8901080

Secretary of State

Friday, February 10, 1989, 9 a.m. The Campaign Finance Reform Task Force of the Secretary of State will meet in emergency session in the Commissioner's Courtroom, Dallas County Administration Building, Dallas. According to the agenda, the task force will hear opening remarks and introductory remarks by task force members; receive public testimony; discuss the working draft; and hear closing remarks by task force members. The emergency status was necessary to afford the greatest number of citizens a reasonable opportunity to express their views on legislative proposals for campaign finance reforms is a matter of urgent public necessity. The convening of this public hearing is required as an immediate action to be taken by the task force in order that its purpose be accomplished and its recommendations be submitted timely for consideration by the 71st legislature during the current regular session.

Contact: Lauren Donder, (512) 463-5701.

Filed: February 6, 1989, 5:01 p.m.

TRD-8901090

Tuesday, February 14, 1989, 2 p.m. The Campaign Finance Reform Task Force of the Secretary of State will meet in the Joe C. Thompson Convention Center, Austin. According to the agenda, the task force will hear opening remarks and introductory remarks by task force members; receive public testimony; discuss the working draft; and hear closing remarks by task force members.

Contact: Lauren Donder, (512) 463-5701.

Filed: February 6, 1989, 5:01 p.m.

TRD-8901091

Friday, February 17, 1989, 9 a.m. The Campaign Finance Reform Task Force of the Secretary of State will meet in the Com-

missioner's Courtroom, Harris County Administration Building, Houston. According to the agenda, the task force will hear opening remarks and introductory remarks by task force members; receive public testimony; discuss the working draft; and hear closing remarks by task force members.

Contact: Lauren Donder, (512) 463-5701.

Filed: February 6, 1989, 5:01 p.m.

TRD-8901092

The University of Texas at Austin

Tuesday, February 7, 1989, 3 p.m. The Intercollegiate Athletics Council for Men at the University of Texas at Austin met in emergency session in the Justice Room, Second Level, Radisson Plaza Hotel, 700 San Jacinto Street, Austin. According to the agenda summary, the council approved minutes of the previous meeting; considered items from executive session, schedules, awards and award policies, academics, budget and budget changes, new business, tickets and ticket prices, construction, and development and old business. The council also met in executive session. The emergency status was necessary because certifying signature authority was not available.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713.

Filed: February 3, 1989, 9:39 a.m.

TRD-8900981

University of Texas System

Thursday, February 9, 1989, 11 a.m. (Executive Session), and 1:30 p.m. (Open Session). The Board of Regents and Standing Committees for the University of Texas System met in the Regent's Meeting Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda summary, the board and committees considered general revenue subordinate lien notes; amendments to RRR; chancellor's docket (submitted by system administration); general property deposits; fees; appointments to endowed academic positions, development boards, and investment advisory committee; affiliation agreements; building and grounds matters including approval for projects, preliminary and final plans; award of contracts; land and investment matters; acceptance of gifts, bequests, and estates; establishment of endowed positions and funds; litigation; land acquisition and negotiated contracts; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: February 3, 1989, 1:18 p.m.

TRD-8901011

Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, and agendas follow.

Monday, April 10, 1989, 10 a.m. The commission will consider application by Marvin G. and Merlynn Verstuylt and Roger and Patricia Verstuylt, application 4177A, for an amendment to permit 3850. The permit authorizes the diversion and use not to exceed 200 acre-feet of water per annum from the Frio River, tributary of the Nueces River, Nueces River Basin for the irrigation of a maximum of 200 acres of land approximately 14 miles northeast of Uvalde, Uvalde County. The applicants request the following amendments: 1) the diversion and use of an additional 800 acre-feet of water per annum from the Frio River; 2) the irrigation of an additional 300 acres of land; and 3) an increase in the overall acreage within which irrigation will be authorized by 193,598 acres of land, i.e., from 855,271 acres to 1,048,869 acres.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 2, 1989, 1:45 p.m.

TRD-8900958

Monday, April 17, 1989, 10 a.m. The commission will consider application by Lone Star Growers, Company, application 5211, for a permit to divert 100 acre-feet of water per annum directly from the Medina River, San Antonio River Basin. The water will be used for irrigation of 200 acres out of a 403.87 acre tract of land located approximately 16 miles west of San Antonio. Water will be diverted at a maximum rate of 1.8 cfs (800 gpm) from the north, or left, bank of the Medina River, south 63 degrees east, 1,900 feet from the southwest corner of the William T. Neil survey.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 2, 1989, 1:45 p.m.

TRD-8900959

West Texas State University

Tuesday, February 14, 1989, 11 a.m. The Board of Regents of West Texas State University will meet in Room 317, Old Main, West Texas State University. According to the agenda summary, the board will consider finance and administrative items, budget changes, and construction contracts-change orders; hear investment report; consider computer upgrade, bookstore fixtures, and federal non-discrimination regulations; consider academic affairs items, retirements, resignations, employment, faculty handbook revision, and tenure and promo-

tion policy approval; hear report of Committee on Panhandle-Plains Historical Museum and action thereon and Committee to Study Merger Issue and action thereon. The board will also meet in executive session.

Contact: Texas Smith, West Texas State University, Canyon Texas 79016, (806) 656-2100.

Filed: February 6, 1989, 3 p.m.

TRD-890108

Regional Meetings

Meetings Filed February 2, 1989

The Dallas Central Appraisal District, Board of Directors, met in Suite 500, 1420 West Mockingbird Lane, Dallas, on February 7, 1989, 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.

The Golden Crescent Regional Review Committee, met in the Boardroom, Regional Airport, Building 102, Victoria, on February 6, 1989, at 2 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Golden Crescent Service Delivery Area, Private Industry Council, met at 1301 East Rio Grande, Victoria, on February 8, 1989, at 6:30 p.m. Information may be obtained from Cleve Schoener, P.O. Box 2149, Victoria, Texas 77902.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on February 10, 1989, at 10:30 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 76508 (214) 759-0015.

The Jasper County Appraisal District, Board of Directors, met in the Jasper ISD Administration Building, 130 Park Street, Jasper, on February 9, 1989, at 7 p.m. Information may be obtained from David W. Luther, Jasper, Texas 75951, (409) 384-2544.

The Lamb County Appraisal District, Appraisal Review Board, met at 330 Phelps, Littlefield, on February 7, 1989, at 7 p.m. Information may be obtained from Murlene J. Godfrey, 330 Phelps, Littlefield, Texas.

The Nolan County Central Appraisal District, Board of Directors, met in Suite 317 A, Nolan County Courthouse, Sweetwater, on February 7, 1989, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Swisher Appraisal District, Board of Directors, met at 130 North Armstrong, Tulia, on February 9, 1989, at 7:30 p.m.

Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

TRD-8900952

Meetings Filed February 3, 1989

The Barton Springs/Edwards Aquifer Conservation District, Board of Directors, met in Suite F, 909 North Loop 4, Buda, on February 6, 1989, at 7 p.m. Information may be obtained from Douglas G. Caroom, 1800 San Jacinto Center, Austin, Texas, (512) 472-8021.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on February 14, 15, and 17, 1989, at 8:30 a.m. and 9 a.m., respectively. The Board of Directors will meet at the same location on February 20, 1989, at 5 p.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Burnet County Appraisal District, Appraisal Review Board, met at 215 South Piece, Burnet, on February 8, 1989, at 2 p.m. Information may be obtained from Amy Shrader, P.O. Drawer E, Burnet, Texas 78611, (512) 752-8291.

The Dallas Area Rapid Transit, Minority Affairs Committee and Planning and Development Committee, met in the Boardroom, 601 Pacific Avenue, Dallas, on February 7, 1989, at 2 p.m. and 4 p.m., respectively. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Board of Directors, met in Suite 500, 1420 West Mockingbird Lane, Dallas, on February 7, 1989, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247.

The Gonzales County Appraisal District, Board of Directors and Appraisal Review Board, met at 928 St. Paul Street, Gonzales, on February 9 and 15, 1989, at 5 p.m. and 6 p.m., respectively. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Grand Parkway Association, met in 140 West Wing, 5757 Woodway, Houston, on February 8, 1989, at 9 a.m. Information may be obtained from Larry W. Nettles, 1001 Fannin, Houston, Texas 77002-6760, (713) 654-4586.

The Hays County Appraisal District, Board of Directors, met in the Municipal Building, 632 A East Hopkins, San Marcos, on February 9, 1989, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

The Hockley County Appraisal District, Board of Directors, met at 1103-C Houston Street, Levelland, on February 6, 1989, at 7 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Hunt County Tax Appraisal District, Board of Directors, met in the Boardroom, 4801 King Street, Greenville, on February 9, 1989, at 7 p.m. Information may be obtained from Joe Pat Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Lampasas County Appraisal District, Board of Directors, met at 109 East Fifth Street, on February 8, 1989, at 9:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The San Patricio County Appraisal District, Board of Directors, met at 1146 East Market, Sinton, on February 9, 1989, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on February 7, 1989, at 2 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The Texas Municipal Power Agency, Board of Directors, met in the Meeting Room, Fifth Floor, First City Center, 1700 Pacific Avenue, Dallas, on February 8, 1989, at 8 p.m. Information may be obtained from Jim Bailey, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

TRD-8900979

Meetings Filed February 6, 1989

The Tax Appraisal District of Bell County, Board of Directors, will meet at 411 East Central Belton, on February 15, 1989, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841.

The Education Service Center, Region VI, Board of Directors, will meet at College Station Hilton, College Station, on February 16, 1989, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Ellis County Appraisal District, met at 406 Sycamore Street, Waxahachie, on February 9, 1989, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Gray County Appraisal District, Board of Directors, met at 815 North Sumner, Pampa, on February 9, 1989, at 5 p.m. Information may be obtained from W. Pat Bagley, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791.

The Hood County Appraisal District, Board of Directors, will meet at 1902 West Pearl, Granbury, on February 13, 1989. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471.

The Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on February 16, 1989, at 8 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422.

The Palo Pinto Appraisal District, Board of Directors, will meet at the Palo Pinto County Courthouse, Palo Pinto, on February 14, 1989, at 3 p.m. Information may be obtained from Jack Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Trinity River Authority of Texas, Administration Committee and Utility Service Committee will meet at 5300 South Collins, Arlington, on February 10 and 13, 1989, respectively at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

The Upshur County Appraisal District, Board of Directors, will meet at Warren and Trinity Streets, Gilmer, on February 13, 1989, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

TRD-8901062

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**Meetings Filed February 7,
1989**

The Archer County Appraisal District, Board of Directors, will meet at 211 South Center, Archer City, on February 22, 1989, at 5 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Burnet County Appraisal District, Board of Directors, will meet at 215 South Pierce, Burnet, on February 13, 1989, at 6:30 p.m. Information may be obtained from Amy Shrader, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Deep East Texas Private Industry Council, Planning Committee, will meet at 118 South First Street, Lufkin, on February 14, 1989, at 10 a.m. The council will meet at the Rodeway Inn, Highway 59 South, Lufkin, on February 15, 1989, at 2 p.m. Information may be obtained from Mary Daniel, P.O. Box 20315, Beaumont, Texas 77720, (409) 842-6386 or W. Floyd Clark, P.O. Box 700, Coldspring, Texas 77331, (409) 653-4654.

The Denton Central Appraisal District, Board of Directors and Appraisal Review Board, will meet at 3911 Morse Street, Denton, on February 23 and 24, 1989, at 4 p.m. and 9 a.m., respectively. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904.

The Education Service Center, Region II, Board of Directors, will meet in the Administration Conference Room, 209 North Water, Corpus Christi, on February 14, 1989, at 6:30 p.m. Information may be obtained from Gerald V. Cook, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288.

The Education Service Center, Region XVIII, Board of Directors, met at 2811 LaForce Boulevard, Midland, on February 9, 1989, at 7:30 p.m. Information may be obtained from Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380.

The Gillespie Central Appraisal District, Board of Directors, will meet in the City Hall Assembly Room, Fredericksburg, on February 16, 1989, at 9 a.m. Information may be obtained from Mary Lou Smith,

P.O. Box 429, Fredericksburg, Texas 78624, (512) 997-9807.

The Henderson County Appraisal District, Board of Directors and Appraisal Review Board, will meet at 175 Enterprise, Athens, on February 13, 1989, at 7:30 p.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas 75751, (214) 675-9296.

The Lower Colorado River Authority, Energy Operations Committee, will meet at 3700 Lake Austin Boulevard, Austin, on February 10, 1989, at 10 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78765, (512) 473-3238.

The Nortex Regional Planning Commission, Executive Committee will meet in the Wichita II Room, Hilton Hotel, 401 Broad Street, Wichita Falls, on February 16, 1989, at noon. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas, (817) 322-5281.

The San Antonio River Authority, Board of Trustees, Audit Committee, and Board of Directors will meet at 100 East Guenther Street, San Antonio, on February 15, 1989, at 1 p.m., 1:30 p.m., and 2 p.m., respectively. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0028, (512) 227-1373.

The West Central Texas Municipal Water District, will meet in Suite 300, 401 Cypress Street, Abilene, on February 16, 1989, at 4 p.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

TRD-8901095

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board

Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on Friday, March 3, 1989, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Texas Capital Bank-Fort Bend, Richmond.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on February 2, 1989.

TRD-8901009 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: February 3, 1989

For further information, please call (512) 479-1200

Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by Secured Trust Corporation, Tyler, the hearing previously scheduled for February 8, 1989, has been cancelled.

Issued in Austin, Texas on February 2, 1989.

TRD-8900854 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: February 2, 1989

For further information, please call (512) 479-1200

Texas Department of Commerce

Weekly Report on the 1989 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1989 is \$839,250,000.

State legislation, Texas Civil Statutes, Article 5190.9(a) (the Act), established the allocation process for the State of Texas. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is \$279,750,000, with \$186,500,000 available to the local housing authorities and \$93,250,000 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$209,812,500 and the amount for all other bonds requiring an allocation is \$349,687,500.

Generally, the state ceiling is allocated on a first-come, first-served basis, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a weekly report of the allocation activity for the period, January 23, 1989-January 27, 1989.

Weekly report on the 1989 allocation of the state ceiling on certain private activity bonds as pursuant to Texas Civil Statutes, Article 5190.9(a).

Total amount of state ceiling remaining unreserved for the \$279,750,000 subceiling for qualified mortgage bonds under the Act as of January 27, 1989: \$279,750,000.

Total amount of state ceiling remaining unreserved for the \$209,812,500 subceiling for state-voted issues under the Act as of January 27, 1989: \$209,812,500.

Total amount of state ceiling remaining unreserved for the \$349,687,500 subceiling for all other bonds under the Act as of January 27, 1989: \$500.

Total amount of the \$839,250,000 state ceiling remaining unreserved as of January 27, 1989: \$489,563,000.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from January 23, 1989-January 27, 1989: none.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from January 23, 1989-January 27, 1989: none.

Issued in Austin, Texas, on January 31, 1989.

TRD-8900827 J. William Lauderback
Executive Director
Texas Department of Commerce

Filed:

For further information, please call (512) 472-5059

Texas Department of Community Affairs

Public Notice-Emergency Shelter Grants Program

The State of Texas announces the imminent availability of funds under the Emergency Shelter Grants Program (ESGP). The Texas Department of Community Affairs (TDCA), is the state agency designated by the governor to administer this program. TDCA is applying to the United States Department of Housing and Urban Development

(HUD) for \$1,223,000 in ESGP funds. The ESGP is authorized by Congress under the Steward B. McKinney Homeless Assistance Act of 1987 (Title IV of Public Law 100-77) as amended by Public Law 100-628.

Program funds will be made available to local governments and private non-profit organizations on a competitive basis to improve the quality of existing emergency shelters for the homeless, to make available additional emergency shelters, and to meet the costs of operating emergency shelters and providing certain essential social services to homeless individuals. Units of local government may apply on behalf of and distribute all or part of their grant amounts to non-profit organizations to use for carrying out emergency shelter activities. TDCA has set a minimum grant amount of \$30,000 and a maximum amount of \$200,000. ESGP entitlement cities and counties (See 53 FedReg 52600, December 28, 1988-CHAP Requirements, for a complete list) are eligible for funding under the state program but only up to the amount that represents the difference between the \$200,000 maximum less their HUD allocations.

To be eligible, an applicant must meet the following criteria: be a unit of general local government (incorporated city or county in Texas), or a private non-profit organization (501(c) entities as defined by the Internal Revenue Code) providing assistance to the homeless, if the local government for the locality in which the project is located certifies that it approves of the project; plan to utilize ESGP funds for eligible activities as set forth in HUD's implementing regulations; be able to supplement (match) the ESGP grant amount with an equal amount of funds from other sources; and ensure that all of its grant amounts can be obligated within 180 days after grant award from TDCA. Housing and Urban Development regulations require the state to make all of its grant award available to recipients within 65 days of the HUD application approval date. TDCA anticipates that the request for proposal (RFP) for this program will be available in early March 1989; the proposal due date to TDCA will be mid-April 1989; and the date for the obligation of ESGP funds will be mid-May 1989. The RFP packet will contain a specific timetable of events and deadlines. Because of the critical deadlines HUD has place on the obligation of ESGP funds, potential recipients should begin planning now for the possible receipt and obligation of the ESGP funds.

To request a copy of the ESGP request for proposal, write to: Mr. Eddie Fariss, Texas Department of Community Affairs, 8317 Cross Park Drive, Austin, Texas 78754-5124, or call Mr. Fariss at (512) 834-6022.

Issued in Austin, Texas on January 31, 1989.

TRD-8900911

Roger A. Coffield
General Counsel
Texas Department of Community Affairs

Filed: February 1, 1989

For further information, please call (512) 834-6010

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Comptroller of Public Accounts
Consultant Contract Award

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Comptroller of Public Accounts has issued a purchase order to Computer Associates to provide planning and implementation of CA 7/RPT and CA 11.

The consultant proposal request was published in the November 22, 1988, issue of the *Texas Register* (13 TexReg 5842).

The consultant will evaluate the comptroller's current environment and provide plans for the implementation of CA software 7/RPT and 11. The consultant will assist the comptroller in implementation of the software and the conversion of batch jobs.

The contract is awarded to Computer Associates, 909 Las Colinas Boulevard East, Irving, Texas 75039-3906.

The total cost of the consultant contract is \$40,500. Work is to begin on or about February 20, 1989, and be completed by April 19, 1989.

Issued in Austin, Texas on February 2, 1989.

TRD-8900958

Bob Bullock
Comptroller of Public Accounts

Filed: February 2, 1989

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

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Office of Consumer Credit
Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ / Agri-cultural / Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	02/06/89-02/12/89	18.00%	18.00%
Monthly Rate ⁽¹⁾ Art. 1.04(c)	02/01/89-02/28/89	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	01/01/89-03/31/89	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	01/01/89-03/31/89	18.00%	N.A.

Lender Credit Card Quarterly Rate - Art. 15.02(d) ⁽³⁾	01/01/89-03/31/89	15.21%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	01/01/89-03/31/89	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	01/01/89-03/31/89	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	01/01/89-03/31/89	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	02/01/89-02/28/89	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.
- (3) Credit for personal, family or household use.
- (4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on January 30, 1989.

TRD-8900935 Al Erdsley
Consumer Credit Commissioner

Filed: February 1, 1989

For further information, please call: (512) 479-1280

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Texas Commission for the Deaf Board Vacancy-Notice of Extension of Deadline

In the December 16, 1988, issue of the *Texas Register* (13 TexReg 6222), the Texas Commission for the Deaf Board for Evaluation of Interpreters published announcement of two openings to be filled. The deadline for submittal of applications for board membership has been extended to Friday, March 31, 1989.

All other information remains the same as prescribed in the board vacancy.

Additional information regarding those vacancies may be

obtained by contacting: Sharon Hassell, Program Specialist, Texas Commission for the Deaf, P. O. Box 12904, Austin, Texas 78711.

Issued in Austin, Texas on February 3, 1989.

TRD-8901049 Larry D. Evens
Executive Director
Texas Commission for the Deaf

Filed: February 3, 1989

For further information, please call (512) 469-9891

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East Texas Council of Governments Request for Proposals

The East Texas Council of Governments (ETCOG) is requesting proposals from all interested vendors to provide specific services and products for utilization by ETCOG in the operation of its government procurement assistance center. Vendors may submit proposals to provide one or more of the services or products listed following.

Request. ETCOG is requesting the following items.

1. A computer software program capable of the following:

- a. Organizing and managing client data.
- b. Matching clients' products and/or services to governmental buying entities, and providing a printout of those entities' names, addresses, telephone numbers, contact people, etc.
- c. Matching clients' products and/or services to solicitation notices published in the Commerce Business Daily.

2. Access to industrial specifications and standards not included in information handling services' basic 07E package.

3. Technical assistance related to government procurement.

Length of Contract. The term of the contract will be for two years.

Selection Criteria. Selections will be based on a combination of factors, including: cost, experience, references from procurement centers to whom proposer has provided similar services, and what is deemed in the best interest of ETCOG and its clients. The ETCOG Executive Committee will award the contract(s) at its meeting on April 6, 1989.

Submission Procedures. All proposals must be received by ETCOG no later than 3 p.m., March 16, 1989. Proposals must be mailed to: Wayne Smith, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662. Envelopes should be clearly marked: "PROPOSAL ENCLOSED--DO NOT OPEN."

Complete copies of the RFP may be obtained by writing to Wayne Smith at the previously stated address, or by calling (214) 984-8641.

Issued in Kilgore, Texas on February 1, 1989.

TRD-8901032 Glynn J. Knight
Executive Director
East Texas Council of Governments

Filed: February 3, 1989

For further information, please call (214) 984-8641

The Federal Register Federal Register Workshop

The Office of the Federal Register will offer a free public workshop at 9 a. m. Wednesday, February 22, 1989, at the Lyndon Bains Johnson Library, Eighth Floor, 2313 Red River Street, in Austin.

Frances D. McDonald, an attorney with the Legal Services Division, is scheduled to discuss the regulatory process with a focus on the *Federal Register* system and the public's role in the development of regulations.

The three-hour presentation also will cover the relationship between the *Federal Register* and *Code of Federal Regulations*, the important elements of typical *Federal Register* documents, and an introduction to the finding aids of the FR/CFR system. The workshop will guide participants through the steps necessary to research federal agency regulations. There will be no discussion of specific agency regulations.

For reservations call the Houston Federal Information Center, Austin, (512) 472-5494; San Antonio, (512) 224-4471; and Houston, (713) 229-2552.

Issued in Austin, Texas on February 1, 1989.

TRD-8901078 Dan Procter
Director, Texas Register
Office of the Secretary of State

Filed: February 1, 1989

For further information, please call (512) 463-5561

Governor's Office of Budget and Planning Request for Proposals

The Energy Management Center (EMC) in the Governor's Office of Budget and Planning invites proposals for consideration for funding through the Public-Private Partnership Program. This program is funded with oil overcharge refunds in accordance with the Oil Overcharge Restitutionary Act, Texas Civil Statutes, Article 4413(56). Proposals are solicited for projects, programs and demonstrations that address the energy related needs of nonprofit organizations or their low-to-moderate income clients, and that use oil overcharge refunds to leverage additional resources from the private sector. Matching contributions may be monetary or in-kind goods and services.

Notice of Invitation. Projects and programs funded through the Public-Private Partnership Program must, at a minimum, achieve each of the following:

(1) promote the efficient use of energy by nonprofit organizations or their low-to-moderate income clients through technical assistance and training, building or equipment modifications, use of renewable energy resources, or a combination or variation of the foregoing; and

(2) form a public-private partnership by leveraging funds in addition to oil overcharge funds from sources such as private and corporate foundations; direct grants, or in-kind professional services from local governments, utilities, private businesses or individuals; the applicant's own resources; or a combination of partnerships.

Proposals may address local, regional, or statewide activities. The EMC will select projects to reflect the geographic and demographic diversity of the state and to ensure an equitable distribution of funds among rural, small-town, and urban areas.

Restrictions on the use of funds. Projects funded through the Public-Private Partnership Program are subject to the federal guidelines of the Energy Extension Service (EES) and certain other restrictions established by the U.S. v. Exxon court decision. Both the Exxon court order and EES rules and regulations have restrictions of which proposers should be aware. The funds may not be used for any of the following purposes:

(1) to purchase land, buildings, structures, or interest therein;

(2) to conduct research or to purchase equipment to conduct research or product development;

(3) capital expenditures for any purpose other than demonstration;

(4) to demonstrate techniques or technologies that are not commercially available; nor

(5) for administrative costs.

A proposal may, however, be structured so that administrative costs or capital expenditures are leveraged from private funds. Proposed demonstration projects must also

meet United States Department of Energy (DOE) demonstration review elements. A list of these elements will be included in the application package available from the EMC.

All proposals selected will be funded on a cost reimbursement basis. All expenses must be properly documented and permissible under the contract and the federal guidelines, and all are subject to approval by the Governor's Office. No advance payments will be made.

Contact person. For copies of the required proposal format or further information concerning the program, contact Douglas Key, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 463-1870.

Proposal submission guidelines and deadlines. Proposals must be submitted using the application form provided by the Energy Management Center for this program.

Four copies of each proposal should be mailed to: Sherri Rains, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711.

If the proposals are to be sent by overnight mail or hand delivered, the street address is 201 East Fourteenth Street, Sam Houston Building, Suite 612, Austin, Texas, 78701.

Proposals should be received by 3 p.m. on April 10, 1989. Any proposal arriving after 3 p.m. will not be accepted.

Selection Procedures. Proposals must adhere to the proposal format provided by the Energy Management Center, and each of the application requirements must be addressed. Proposals will be evaluated using the following criteria:

I. Energy savings (10%). The proposal must have the potential to improve energy efficiency or reduce energy costs for nonprofit organizations or their low-to-moderate income clients.

II. Meeting unmet needs (10%). The proposal may not duplicate existing services or supplant other private or public funds, and should address needs that would otherwise go unmet.

III. Other resources leveraged (20%). The proposal must document how additional resources, which may be monetary or in-kind goods and services, will be leveraged from private sector sources (Except in cases of documented extreme hardship, a dollar-for-dollar match is required. Leveraging more than the minimum amount is strongly encouraged).

IV. Restitution to consumers (20%). The proposal must indicate how the program or project will benefit the nonprofit organization's clients who were consumers aggrieved by the oil overcharge violations. It must show how the energy dollars saved will be used to increase or improve services to clients. Additional weight under this criterion will be given to nonprofit organizations whose clients are low-to-moderate income persons.

V. Community support (5%). The proposal should be supported by leaders of the business community, religious organizations, educational institutions, utilities, local governments, and/or civic organizations. The involvement of unpaid volunteers drawn from the community is encouraged.

VI. Innovation (5%). The proposal should attempt new solutions for old problems, or demonstrate the cost-effective use of new technologies that have been proven to save energy and are commercially available, yet have not been widely adopted.

VII. Qualifications of the proposer (20%). The proposing organization should have the proven ability to administer program dollars efficiently, and to deliver services expeditiously and effectively.

VIII. Ongoing benefits (10%). The program or project should have the potential to become self-sustaining without additional grant dollars, or to be completed within a short time-frame, with lasting benefits to the organizations and/or their clients. Final selection will be based on the recommendations of a proposal review panel. If two or more proposals are so closely ranked that a decision cannot be made, the review panel may request finalists to provide additional information or to meet with EMC staff in Austin prior to final selection. However, no respondent will be reimbursed for any costs incurred in preparation, submission, or clarification of a proposal.

Issued in Austin, Texas on January 31, 1989.

TRD-8900949 Ron Lindsey
Director
Governor's Office of Budget and Planning

Filed: February 2, 1989

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

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Texas Department of Health Schedule for Development and Review of Block Grant Funds

Under the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the State of Texas became the recipient of the Preventive Health and Health Services (PHHS) and Maternal and Child Health Services (MCHS) Block Grants. The Texas Department of Health is the agency designated to administer these block grants. Provisions in the Act require the chief executive officer of each state to annually furnish the secretary of health and human services a description of the intended use of block grant funds in advance of each federal fiscal year (FFY). This description is to be made public within each state in such a manner as to facilitate comments and/or any complaints regarding the quality of services funded by the block grants.

Programs consolidated into the PHHS Block Grant include public health promotion, emergency medical services systems, sexual assault prevention and crisis services, fluoridation, and preventive health and health incentive (314d). The PHHS Block Grant award for FFY 1988 was \$3,575,844, and of this amount, \$216,465 had to be spent for sexual assault prevention and crisis services. Funding for FFY 1989 is expected to decrease by 1.0%.

Programs consolidated into the MCHS Block Grant include maternal and child health services, chronically ill and disabled children's services, and other special projects that are now a part of the generalized maternal and child health services. The award for FFY 1988 was \$23,266,559. Funding for FFY 1989 is expected to increase by 7.0%.

The Texas Department of Health's schedule for the development and review of the FFY 1990 Reports of Intended Expenditures for the block grants is as follows.

February 1989—Publish information describing the manner in which the 1990 Report of Intended Expenditures for each block grant is developed and when this is accomplished.

March 1989—Hold preliminary planning conferences in the following Public Health Regions (PHRs) as follows: PHR

7-Tyler, March 6, 1989, 1 p.m.; PHR 2-Lubbock, March 10, 1989, 1 p.m.; PHR 4-Houston, March 13, 1989, 1 p.m.; PHR 6-Uvalde, March 16, 1989, 9 a.m.

March 1989-Hold public hearings in the following Public Health Regions (PHRs) as follows: PHR 1-Austin, March 3, 1989, 4 p.m. to 6 p.m.; PHR 5-Arlington, March 8, 1989, 1 p.m.; PHR 3-Midland/Odessa, March 14, 1989, 9 a.m.; PHR 8-Harlingen, March 15, 1989, 4 p.m. to 6 p.m.

April 1989-Summarize and consider the impact of public comments received at the preliminary planning conferences and public hearings in the regions. Consult with state advisory or coordinating councils that have responsibility for similar programs.

May 1989-Obtain approval of allocations from the Texas Board of Health. Prepare a 1990 draft Report of Intended Expenditures for each block grant.

June 1989-Notify public of availability of 1990 Report of Intended Expenditures for each block grant and solicit comments.

July 1989-Prepare the final 1990 Report of Intended Expenditures for each block grant and forward to the governor, state legislature, and federal government.

Note: Agencies shall continuously conduct public information activities to inform recipients of availability of services/benefits, their rules and eligibility requirements, and complaint procedures.

Written comments may be submitted through Friday, May 12, 1989, to Mr. Julian M. Kosh, Jr., Director, Grants Management Division, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas on February 3, 1989.

TRD-8901017 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: February 3, 1989.

For further information, please call: (512) 458-7470

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas of Gem Insurance Company, a foreign life insurance company. The home office is in Salt Lake City, Utah.
2. Application for admission to do business in Texas of the Ethical Life Insurance Company of America, a foreign life insurance company. The home office is in Washington, D.C..
3. Application for admission to do business in Texas of National General Assurance Company, a foreign casualty insurance company. The home office is in Hazelwood, Missouri.
4. Application for incorporation of Global Insurance Company, a domestic casualty insurance company. The home office is in Houston.

Issued in Austin, Texas, on January 30, 1989.

TRD-8901033 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: February 3, 1989

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

Texas Motor Vehicle Commission Correction of Error

The Agency Guide Section to the 1988 Annual Index publication by the *Texas Register* (14 TexReg 298), contained an error as published.

Under the Texas Motor Vehicle Commission the rule action under the title "Warranty Performance Obligation" should read as follows: "Adopted....4778, Proposed....3500, 3733."

Texas Board of Pardons and Paroles Request for Bids

This request for bids is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Texas Board of Pardons and Paroles (BPP) is soliciting bids from qualified vendors to provide residential and program services for inmates released from the Texas Department of Corrections in pre-parole transfer (PPT) status.

Approximately 300 to 400 beds will be purchased. The facilities are required to be fully operational within 100 days after the contracts are awarded. The contract period will end August 31, 1989. Bids for facilities to be located in Harris and El Paso Counties will not be considered.

Qualifications. Bidders must have previous experience operating halfway houses, pre-release facilities, or similar correctional facilities. Bidders need not submit detailed proposals. All program, staff, physical plant, and ancillary requirements are contained in the BPP's "Pre-Parole Transfer Facility Requirements," which will be furnished by the BPP to bidders upon request.

Site locations are required to be in or near (50 miles) a major city.

Physical plants other than motels, hotels, shopping centers, homes in residential areas, or any structure in a major business district or residential area are preferred.

Scope of Services. The program to be developed should focus on employment counseling and placement services; substance abuse counseling, living skills, and family support and networking.

Bid Submission. Bids must be submitted to the Texas Board of Pardons and Paroles, P.O. Box 10229 Northwest Station, Austin, Texas 78766-1229, by 5 p. m. C.D.T., on Wednesday, March 1, 1989. The bid envelope/package must be clearly marked: "Bid Opening March 2, 1989, 2:00 p.m., Room C-4."

A bidder's conference will be held at 1:30 p.m. on Wednesday, February 8, 1989, 8610 Shoal Creek Boulevard, Austin.

Contact. To obtain a bid package and further information, contact James Poland, Director, Community Services, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2737.

Issued in Austin, Texas on February 2, 1989.

Filed: February 2, 1989

For further information, please call (512) 469-2708

State Purchasing and General Services Commission

Correction of Error

The State Purchasing and General Services Commission proposed a new section which contained an error as published in the January 20, 1989, issue of the *Texas Register* (14 TexReg 343).

In the preamble to the repeal of §115.62, the last paragraph should read: "the repeal is proposed under Texas Civil Statutes, Article 601b, §7.05, which provide the State Purchasing and General Services Commission with the authority to promulgate rules reasonably required to

implement and enforce the provisions of Texas Civil Statutes, Article 601b, Article 7."

In the preamble to new §115.62, the last sentence of the first paragraph should read: "They are published as ANSI A117.1 and are titled *Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People.*"

The first sentence to the third paragraph should read: "Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, 1711 San Jacinto, Central Services Building, Suite 401, Austin, Texas 78701."

In §115.62, the last sentence of subparagraph (c)(2)(V) should read: "See subparagraph (I) of this paragraph, Essential features."

The second sentence in paragraph (m)(7) should read: "The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:"

$$T = \frac{D}{1.5 \text{ ft/s}}$$

where T=total (in seconds) and D=distance (in feet) from a point in the lobby or corridor 60 inches directly in front of the farthest call button controlling that car to the centerline of the hoistway door."

The second to last sentence of paragraph (z)(2) should read: "However, if it is determined, with commission concurrence, that the applicable percentage would be in excess of the needs of a particular facility, part but not all of the units comprising the approximate percentage, may be designed so that adaptability and installation of accessible fixtures and equipment can easily be accomplished when needed."

Railroad Commission of Texas

Notice of Permit Application

Texas Utilities Mining Company (TUMCO), 400 North Olive Street, Dallas, Texas 75201 has applied to the Railroad Commission of Texas to renew its permit 3 to conduct surface coal mining operations at the Big Brown Mine located in Freestone County.

The permit area is contained within the Roustabout Camp, Young, and Stewards Mill United States Geological Survey 7.5-minute quadrangle maps. It is located approximately three miles northeast of the town of Fairfield. The northern boundary is along an unnamed county road that connects FM Road 488 and FM Road 2570. The northeastern boundary is delineated by FM 2570; the Tehuacana Creek floodplain partially defines the permit area's eastern

boundary. The to the north is bounded by an unnamed county road which intersects with FM Road 1124 approximately 12 miles north of Fairfield.

Approximately 7,604 acres are proposed to be affected during the life of the mine, subject to permit renewal applications. Surface mining activities within the permit area began in 1971 and are scheduled to continue until approximately 2004.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Texas Civil Statutes, Article 5920-11. Interested persons are invited to submit written comments on the application. Please address all comments or inquiries to: Charles E. Evans, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

A copy of the permit application may be inspected in the offices of the Railroad Commission at 1701 North Congress Avenue, William B. Travis Building, Austin at the Regional Office, 2202 Old Henderson Highway, Tyler, and in the Office of the County Clerk in the Freestone County Courthouse, Fairfield.

Issued in Austin, Texas on February 1, 1989.

TRD-8901007

J. Randal (Jerry) Hill
Director, Surface Mining and Reclamation
Division
Railroad Commission of Texas

Filed: February 3, 1989

For further information, please call (512) 463-7152