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# Texas Register

Volume 14, Number 64, September 1, 1989

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## Texas Register

The *Texas Register* (ISSN 0362-4781) is published semi-weekly except March 7, June 2, July 7, November 28, and December 29. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

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

Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—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

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

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Hermina Roberts  
Madeline Chrisner

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

4477-Texas Department of Licensing and Regulation  
4477-Texas State Board of Medical Examiners  
4477-Texas Department of Mental Health and Mental Retardation  
4478-Board of Pardons and Paroles  
4478-Texas Parks and Wildlife Department  
4478-Public Utility Commission of Texas  
4478-Railroad Commission of Texas  
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4480-Texas Woman's University  
4480-University of Houston System  
4480-University Interscholastic League  
4480-University of Texas System  
4481-Texas Water Commission  
4481-Regional Meetings

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4483-Notice of Contested Case Hearing  
4484-Notice of Public Hearing

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4484-Notice of Memoranda of Agreement

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4484-Texas Cancer Council Job Announcement

#### ***Texas Board of Chiropractic Examiners***

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#### ***Office of Consumer Credit Commissioner***

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#### ***Middle Rio Grande Development Council***

4490-Waiver Request

#### ***Texas State Board of Pharmacy***

4490-Correction of Error

#### ***Profiles***

4490-Correction of Error

#### ***Texas Department of Public Safety***

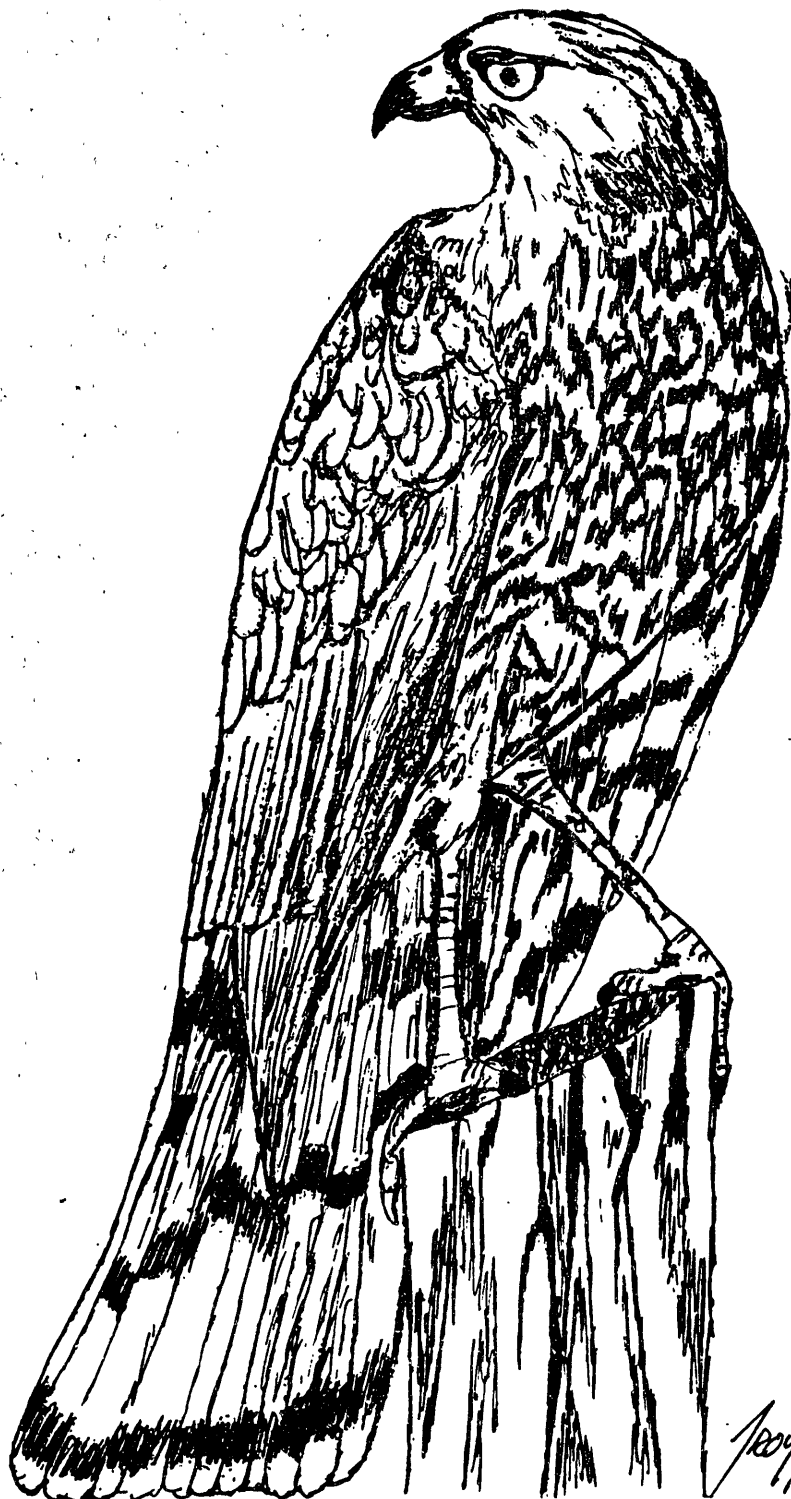
4490-Correction of Error

#### ***Public Utility Commission of Texas***

4490 -Notices to Application to Revise Telephone Service Base Rate Area

#### ***Texas Water Commission***

4491-Public Hearing Notice



Name: Troy Tyler

School: Marshall High, Marshall

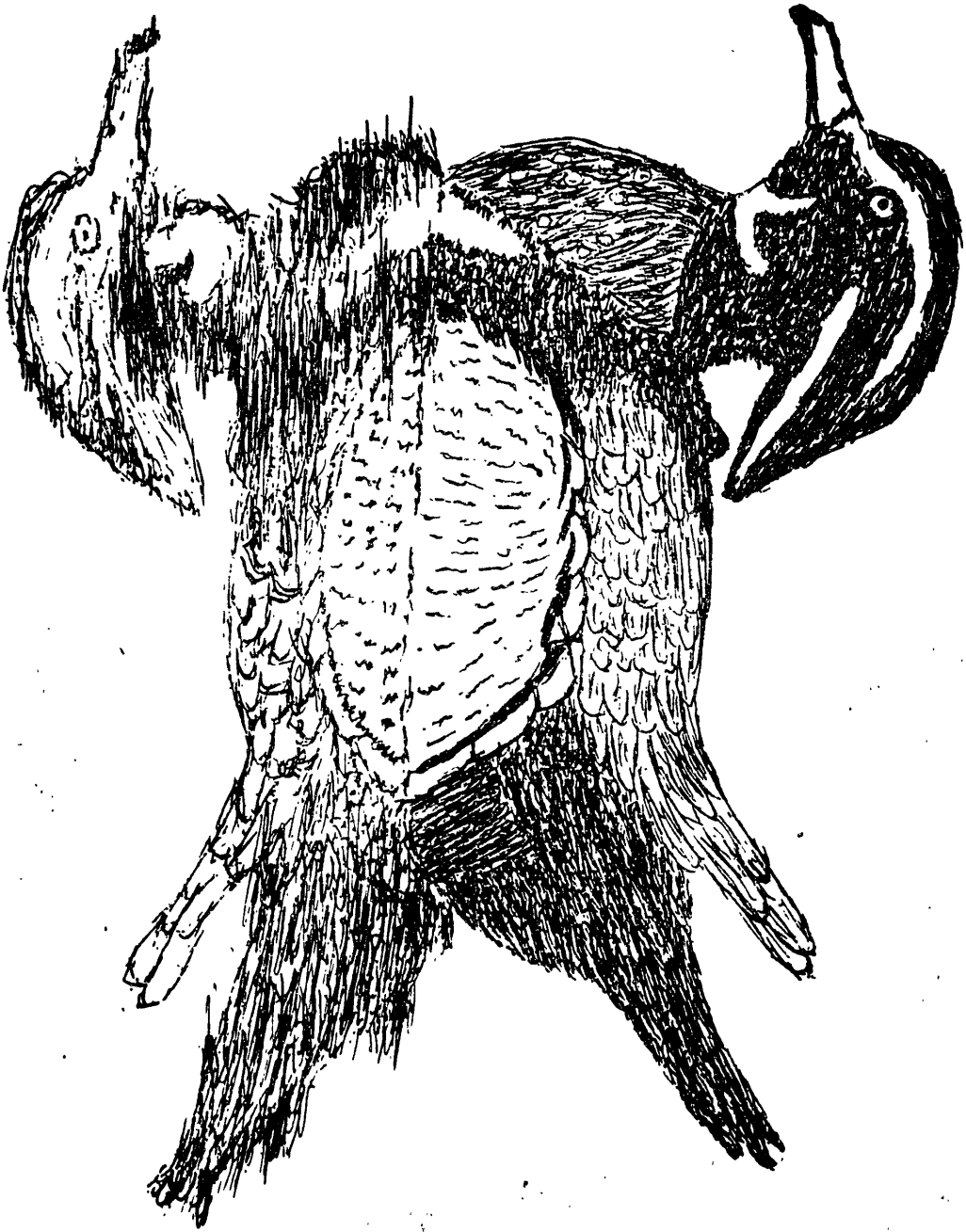
*Troy Tyler*



Name: Anthony Thompson  
School: Marshall High, Marshall

*Anthony Thompson*

Name: Jason Shepard  
School: Marshall High, Marshall



JASON  
Shepard

# TAC Titles Affected

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## TAC Titles Affected-September

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

### TITLE 1. ADMINISTRATION

#### *Part IV. Secretary of State*

1 TAC §§102.1, 102.10, 102.20, 102.30, 102.40, 102.41, 102.70-102.73, 102.80, 102.90, 102.91—4441, 4453

1 TAC §§103.1, 103.2, 103.10, 103.21—4444, 4453

1 TAC §104.1, §104.10—4445, 4453

#### *Part V. State Purchasing and General Services*

### TITLE 4. AGRICULTURE

#### *Part II. Animal Health Commission*

4 TAC §35.1—4469

4 TAC §35.2—4469

4 TAC §35.4—4471

4 TAC §49.1—4471

4 TAC §51.2—4471

4 TAC §57.11—4471

### TITLE 10. COMMUNITY DEVELOPMENT

#### *Part I. Texas Department of Community Affairs*

10 TAC §1.21—4472

10 TAC §1.23—4472

10 TAC §1.25—4472

#### *Part I. State Board of Insurance*

28 TAC §§3.3302-3.3309, 3.3313, 3.3315-3.3318—4446

### TITLE 31. NATURAL RESOURCES AND CONSERVATION

#### *Part III. Texas Air Control Board*

31 TAC §103.42—4454

31 TAC §103.66—4454

### TITLE 34. PUBLIC FINANCE

#### *Part I. Comptroller of Public Accounts*

34 TAC §3.319—4451

34 TAC §3.641—4455

### TITLE 37. PUBLIC SAFETY AND CORRECTIONS

#### *Part I. Texas Department of Public Safety*

37 TAC §§13.1-13.5, 13.7-13.9, 13.12-13.14, 13.16, 13.17, 13.24, 13.27-13.30, 13.32-13.36, 13.38, 13.43, 13.45-13.50, 13.52-13.54—4458

37 TAC §15.58—4472

### TITLE 40. SOCIAL SERVICES AND ASSISTANCE

#### *Part I. Department of Human Services*

40 TAC §§6.1, 6.2—4473

40 TAC §6.103—4473

40 TAC §6.301, §6.304—4473

40 TAC §6.303, §6.306—4297

40 TAC §7.302—4473

40 TAC §§35.101, 35.102, 35.107—4467

40 TAC §175.18—4473

40 TAC §301.33—4516





Name: Jason

School: Marshall High, Marshall

*Jason*



# The Governor

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

## Appointments Made August 18, 1989

To be chairman, of the Texas Surplus Property Agency, to serve at the pleasure of the Governor: M.F. "Red" Connor of McAllen.

## Appointments Made August 21, 1989

To be a member of the Trinity River Authority Board of Directors for a term to expire March 15, 1995: Fred Walter Asmussen III, 910 East Tyler Street, Athens, Texas 75751. Mr. Asmussen will be replacing Bruce Smith of Athens, whose term expired.

To be a member of the State Board of Dental Examiners for a term to expire May 10, 1995: E. Penn Jackson, D.D.S., 427 Ridge Bluff, San Antonio, Texas 78216. Dr. Jackson will be replacing Dr. Frank Santos of San Antonio, whose term expired.

To be a member of the State Board of Dental Examiners for a term to expire May 10, 1995: James L. Bolton, D.D.S., 1601 Primrose, Borger, Texas 79007. Dr. Bolton will be replacing Dr. Randolph Minatra of Houston, whose term expired.

To be a member of the Texas Water Commission for a term to expire August 31, 1995: John E. Birdwell, Jr., 4901 21st Street, Lubbock, Texas 79407. Mr. Birdwell will be replacing Paul Hopkins of Austin, whose term expired.

Issued in Austin, Texas on August 21, 1989.

TRD-8907849 William P. Clements, Jr.  
Governor of Texas

## Appointment Made August 21, 1989

To be a member of the Southern Regional Education Board for a term to expire June 30, 1993: Representative Bill Hammond, 6665 Lakeshore Drive, Dallas, Texas 75214. Representative Hammond will be replacing Representative Wilhelmina Delco of Austin, whose term expired.

## Appointments Made August 23, 1989

To be a member of the Texas State Board of Public Accountancy for a term to expire January 31, 1995: Leopoldo P. Botello, Jr., 8714 Paisano Pass, San Antonio, Texas

78255. Mr. Botello is being appointed to a new position.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1995: Lisa Hembry, 816 Blaylock Drive, Dallas, Texas 75203. Ms. Hembry will be replacing Adam Medrano of San Antonio, whose term expired.

To be a member of the Commission on Fire Protection Personnel Standards and Education for a term to expire June 11, 1995: James L. Roberts, 1200 West College, Midland, Texas 79701. Chief Roberts will be replacing Gene Adams of El Paso, whose term expired.

To be a member of the Commission on Fire Protection Personnel Standards and Education for a term to expire June 11, 1995: Otto C. Schattel, Route 2, Box 108, Hallsville, Texas 75650. Chief Schattel will be replacing Ernest A. Emerson of Austin, whose term expired.

To be a member of the Texas Department of Licensing and Regulation Board pursuant to House Bill 863, 71st Legislature for a term to expire February 1, 1995: Earl L. Yeakel, III, 2500 Greenlee Drive, Austin, Texas 78703. Mr. Yeakel is being appointed to a new position.

To be a member of the Texas Department of Licensing and Regulation Board pursuant to House Bill 863, 71st Legislature for a term to expire February 1, 1995: Johnnye Davis, 2541 Palo Verde, Odessa, Texas 79762. Mrs. Davis is being appointed to a new position.

To be a member of the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 1995: Julian Lawson Biggers, Jr., 6103 Lynnhaven, Lubbock, Texas 79413. Dr. Biggers will be replacing Ann Karen Barlow of Denton, whose term expired.

To be a member of the Texas Animal Health Commission for a term to expire September 6, 1995: Claude J. Kelley, Jr., Route 3, Box 300, Fredericksburg, Texas 78624. Mr. Kelley will be replacing Mary Nan West of Batesville, whose term expired.

To be a member of the Texas Health and Human Services Coordinating Council for a term to expire September 1, 1991: Anne Ashy Shepard, 5404 Guava Drive, Harlingen, Texas 78552. Mrs. Shepard is being reappointed.

To be a member of the Texas Health and Human Services Coordinating Council

for a term to expire September 1, 1991: Polly Key Sowell, 1101-A Winsted, Austin, Texas 78703. Mrs. Sowell is being reappointed.

To be a member of the Boards for Lease-Texas Department of Corrections for a term to expire September 1, 1991: Alan Polunsky, 11654 Elm Ridge Road, San Antonio, Texas 78230. Mr. Polunsky is being reappointed.

To be Judge of the 369th Judicial District Court, Anderson and Cherokee Counties until the next general election and until his successor shall be duly elected and qualified: Bascom William Bentley, III, 404 Royall, Palestine, Texas 75801. Judge Bentley is being appointed to a new position pursuant to Senate Bill 1379, 71st Legislature, Regular Session, effective September 1, 1989.

To be Judge of the 367th Judicial District Court, Denton County until the next general election and until her successor shall be duly elected and qualified: E. Lee Gabriel, 197 Canyon Road, Sanger, Texas 76266. Mrs. Gabriel is being appointed to a new position pursuant to Senate Bill 1379, 71st Legislature, Regular Session, effective September 1, 1989.

Issued in Austin, Texas on August 23, 1989.

TRD-8907773 William P. Clements, Jr.  
Governor of Texas

## Appointments Made August 24, 1989

To be a member of the Pilot Commission for the Sabine Bar, Pass and Tributaries for a term to expire August 22, 1991: Kent M. Adams, 22 Oak Trace, Beaumont, Texas 77706. Mr. Adams is being reappointed.

To be a member of the Pilot Commission for the Sabine Bar, Pass and Tributaries for a term to expire August 22, 1991: William G. McNinch, 5865 Tangledahl, Beaumont, Texas 77706. Mr. McNinch is being reappointed.

To be a member of the Pilot Commission for the Sabine Bar, Pass and Tributaries for a term to expire August 22, 1991: J. Lynn Harden, 2500 Harrison, Beaumont, Texas 77702. Mr. Harden is being reappointed.

To be a member of the Runnels County Water Authority Board of Directors for a term to expire February 1, 1995: James Doyle Condra, Route 1, Box 163, Talpa, Texas 76882. Mr. Condra will be replacing

Wesley Hays of Winters, whose term expired.

To be a member of the Bandera County River Authority Board of Directors for a term to expire January 31, 1991: Morgen Keith Cox, Route 2, Box 43A, Bandera, Texas 78003. Mr. Cox will be filling the unexpired term of Connie Taylor of Bandera, who resigned.

To be Judge of the 368th Judicial District Court, Williamson County Until the next

general election and until his successor shall be duly elected and qualified: Alfred Burton Carnes, 310 Cherrywood Circle, Taylor, Texas 76574. Mr. Carnes is being appointed to a new position pursuant to Senate Bill 1379, 71st Legislature, effective September 1, 1989.

To be Judge of the 366th Judicial District Court, Colilla County until the next general election and until his successor shall be

duly elected and Qualified: Nathan E. White, Jr., 2700 Arborcove Drive, Plano, Texas 75075. Mr. White is being appointed to a new position pursuant to Senate Bill 1379, 71st Legislature, effective September 1, 1989.

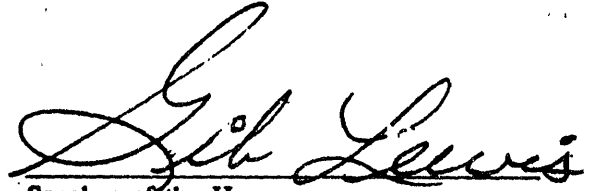
Issued in Austin, Texas on August 24, 1989.

TRD-8907792

William P. Clements, Jr.  
Governor of Texas



Lieutenant Governor  
Chairman, Legislative Budget Board



Speaker of the House  
Vice-chairman, Legislative Budget Board

I certify that this Legislative Budget Board Contingent Order was adopted on August 24, 1989

by the following vote:

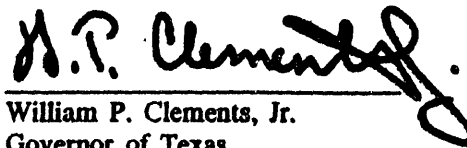
On the part of the Senate                      Yeas: 4        ,        Nays: 0

On the part of the House                      Yeas: 4        ,        Nays: 0



Director, Legislative Budget Board

Approved:



William P. Clements, Jr.  
Governor of Texas

Date:

8/24/89

# 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 1.

### ADMINISTRATION

#### Part IV. Office of the Secretary of State

##### Chapter 102. Health Spas

- 1 TAC §§102.1, 102.10, 102.20, 102.30, 102.40, 102.41, 102. 70-102.73, 102.80, 102.90, 102.91

The Office of the Secretary of State adopts on an emergency basis new §§102.1, 102.10, 102.20, 102.30, 102.40, 102.41, 102.70, 102.71, 102.72, 102.73, 102.80, 102.90, and 102.91, concerning the administration and enforcement of registering health spas pursuant to the Health Spa Act, Article 5221I, Texas Civil Statutes. The new sections enact the provisions of House Bill 863 of the 71st Legislature.

These new sections are adopted due to the passage of House Bill 863 of the 71st Legislature which transfers the administration and enforcement of the Health Spa Act, Article 5221I, Texas Civil Statutes from the Department of Labor and Standards to the Office of the Secretary of State effective September 1, 1989.

These new sections are adopted on an emergency basis to protect the welfare of those members of the public who wish to register their health spa on or after September 1, 1989.

These new sections are also being proposed for permanent adoption in this issue of the *Texas Register*.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, and the Health Spa Act, Texas Civil Statutes, Article 5221I, which provide the Office of the Secretary of State with rulemaking authority.

**§102.1. Authority.** These rules are promulgated under the authority of the Health Spa Act (Texas Civil Statutes, Article 5221I), and under the general rule making authority of the Office of the Secretary of State.

**§102.10. 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 5221I, Texas Civil Statutes.

**Secretary**—The secretary of state.

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

**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 area, 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, country, 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.

**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 secretary 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.

**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.

#### §102.20. 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 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 the 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.

**§102.30. 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 secretary.

#### **§102.40. Security Requirements—General.**

(a) Except as set forth to the contrary below, when there is a transfer of health spa ownership, the successor is subrogated for the predecessor. Whatever bond the predecessor should have had in effect on the date of sale is the bond the successor must provide. The only exception is if the successor qualifies for an exemption under subsection (e) of this section.

(b) 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 secretary 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 \$20,000.

(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 on which the health spa ceases business or until the secretary determines that each claim to which the bond or other security deposit is subject has been satisfied or foreclosed by law.

(e) 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 secretary 90 days prior notice of the cancellation or termination.

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

#### **§102.41. 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 secretary.

(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 secretary for an administrative hearing.

(2) If the claim is against a health spa that has ceased operation, the secretary 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 secretary 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 secretary 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 secretary shall inventory and list it along with any other claims filed against the same health spa.

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

(g) If the surety denies liability for the claims asserted, the secretary 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.

#### *§102.70. 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 secretary 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 day 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 members.

(6) Not later than the 14th day on which the first prepayment is received, the spa shall give the secretary a notarized statement that identifies the financial institution in which the prepayments are held in escrow and the name in which the account is held.

(7) 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 secretary 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 damages arising during the period the health spa is open for business.

(c) The health spa shall file a copy of the escrow agreement with the secretary. 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.

#### *§102.71. 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 a member's 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 on 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.

#### *§102.72. 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 contract must identify the contract and inform the member he must notify the assignee in writing, not later than the 30th day after the day 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 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.

#### *§102.73. 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 secretary upon request by a secretary 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.

#### *§102.80. Fees.*

(a) Each original or renewal registration statement filed with the secretary must be accompanied by a \$100 registration fee.

(b) All registration fees are nonrefundable.

*§102.90. Sanctions—General.* Anyone who violates the 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 Texas Civil Statutes, Article 52211, §§18, 19, 20, 21, and 22.

#### *§102.91. Sanctions—Administrative.*

(a) Pursuant to Texas Civil Statutes, Article 6252-13c, the secretary, 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 secretary may also, after a 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 secretary shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the operation of 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 secretary shall also consider:

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

(B) the person's age at the time the person 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 secretary 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 secretary, that applicant has maintained a record of steady employment, has supported applicant's 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 applicant's 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 secretary shall give the applicant or registrant at least 10 days written notice of the charges against applicant or registrant, 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 the secretary's 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 secretary determines a certificate of registration should be denied, suspended, or revoked, the applicant or registrant has 30 days in which to appeal the secretary's final order to the Travis County district court. Issued in Austin, Texas, on August 25, 1989.

TRD-8907844

Lorna Wassdorf  
Special Assistant  
Office of the Secretary of  
State  
Effective date: September  
1, 1989  
Expiration date: December  
30, 1989  
For further information,  
please call: (512) 463-  
5071

## Chapter 103. Membership Camping Resorts

### • 1 TAC §§103.1, 103.2, 103.10, 103.21

The Office of the Secretary of State adopts on an emergency basis new §§103.1, 103.2, 103.10, and 103.21 concerning the administration and enforcement of registering membership camping resorts and membership camping resort brokers and sellers, pursuant to the Membership Camping Resort Act, the Property Code, §222.001 et seq. The new

sections enact the provisions of House Bill 863 of the 71st Legislature.

These new sections are adopted due to the passage of House Bill 863 of the 71st Legislature which transfers the administration and enforcement of the Membership Camping Resort Act, the Property Code, §222.001 et seq., from the Department of Labor and Standards to the Office of the Secretary of State effective September 1, 1989. The new sections are adopted on an emergency basis to protect the welfare of those members of the public who wish to register their membership camping resort on or after September 1, 1989.

These new sections are also being proposed for permanent adoption in this issue of the *Texas Register*.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, and the Membership Camping Resort Act, Property Code, §221.001 et seq., which provide the Office of the Secretary of State with rulemaking authority.

#### §103.1. Registration of Membership Camping Resort.

(a) Documents will be accepted only upon submission of a completed registration form and receipt of the filing fee provided in §103.10 of this title (relating to Fee).

(b) Application to register as a membership camping resort shall be made on forms prescribed by the secretary of state entitled Registration of Membership Camping Resort. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

#### §103.2. Registration of Membership Camping Resort Brokers and Sellers.

(a) Documents will be accepted only upon submission of a completed registration form and receipt of the filing fee provided in §103.10 of this title (relating to Fee).

(b) Application to register as a membership camping resort broker or seller shall be made on forms prescribed by the secretary of state entitled Registration of Membership Camping Resort Brokers and Sellers. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

#### §103.10. Filing Fees.

(a) The filing fee for registering a membership camping resort is \$250.

(b) The filing fee for registering a membership camping contract broker or seller is \$50.

**§103.21. Sanctions-Administrative.**

(a) Pursuant to Texas Civil Statutes, Article 6252-13c, the secretary, 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 membership camping resort. The secretary may also, after a 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 membership camping resort, the secretary shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the operation of a membership camping resort;

(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 membership camping resort or selling or reselling a membership camping resort interest or right.

(2) In determining the present fitness of a person who has been convicted of a crime, the secretary shall also consider:

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

(B) the person's age at the time the person 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 secretary 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 secretary, that applicant has maintained a record of steady employment, has supported applicant's 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 applicant's 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 secretary shall give the applicant or registrant at least 10 days written notice of the charges against applicant or registrant, 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 the secretary's 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 secretary 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 August 25, 1989.

TRD-8907849 Lorna Wassdorf  
Special Assistant  
Office of the Secretary of  
State

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-5558



**Chapter 104. Wrestling Promoters**

**• 1 TAC §104.1, §104.10**

The Office of the Secretary of State adopts on an emergency basis new §104.1 and §104.10, concerning the administration of registering wrestling promoters pursuant to the Boxing and Wrestling Act, Article 8501-1, §1 et seq. The new sections enact the provisions of House Bill 863 of the 71st Legislature.

These new sections are adopted due to the passage of House Bill 863 of the 71st Legislature which transfers the administration of wrestling promoters from the Department of Labor and Standards to the Office of the Secretary of State effective September 1, 1989.

These new sections are adopted on an emergency basis to protect the welfare of those members of the public who wish to register as a wrestling promoter on or after September 1, 1989.

These new sections are also being proposed for permanent adoption in this issue of the *Texas Register*.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, which provide the Office of the Secretary of State with rulemaking authority.

**§104.1. Registration of Wrestling Promoter.**

(a) Documents will be accepted only upon submission of a completed registration form and receipt of the filing fee provided in §104.10 of this title (relating to Filing Fee).

(b) Application to register as a wrestling promoter shall be made on forms prescribed by the secretary of state entitled Application for Wrestling Promoter's License. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

**§104.10. Filing Fee.** The filing fee for registering a wrestling promoter is \$200.

Issued in Austin, Texas on August 25, 1989.

TRD-8907848 Lorna Wassdorf  
Special Assistant  
Office of the Secretary of  
State

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-5558



# TITLE 28. INSURANCE

## Part I. State Board of Insurance

### Chapter 3. Life, Accident, and Health Insurance and Annuities

#### Subchapter T. Minimum Standards for Medicare Supplement Policies

##### • 28 TAC §§3.3302-3.3309, 3.3313, 3.3315-3.3318

The State Board of Insurance adopts on an emergency basis amendments to §§3.3302-3.3309 and 3.3313, and new §§3.3315-3.3318, concerning minimum standards for Medicare supplement policies. The amendments and new sections are necessary to facilitate implementation of amendments to the Insurance Code, Article 3.74, occasioned by the passage of House Bill 116 into law during the 71st Legislature. An imminent peril to the public health and welfare requires adoption of these amendments and new sections on an emergency basis in order to provide immediate notice to insurers issuing Medicare supplement policies of the requirements of amendments to the Insurance Code, Article 3.74, and in order to comply with recently enacted federal standards applicable to Medicare supplement insurance. The amendments to §§3.3302-3.3309 and 3.3313 implement, facilitate, and require compliance with the Omnibus Reconciliation Act of 1987 (Public Law 100-203) and supplemental federal legislation which followed its passage. New §3.3315 relates to standards for claims payment and requires compliance with federal law relating to Medicare supplement insurance. New §3.3316, concerning filing requirements for out-of-state group policies, requires that certificates for such policies be filed for prior approval and that a copy of the master group policy also be filed for informational purposes. New §3.3317 requires that compensation be restricted to renewal compensation for agents in situations where replacement of existing coverage is with the same entity and the replacement provides substantially similar benefits. It provides an exception for replacement before the first policy year has expired, during which an agent is to receive the pro rata portion of commission attributable to the original policy year. New §3.3318 states the effective date of the amendments and new sections and provides for distinctions between policies issued on and after September 20, 1989, and those issued before that date.

The amendments and new sections are adopted on an emergency basis under the Insurance Code, Article 3.74, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 3.74, §2 (c) and (f), provides that the State Board of Insurance shall issue reasonable rules to establish specific standards for provisions of Medicare supplement policies including requirements that are at least equal to those required by federal law, rules, regulations, and standards. Article 3.74, §4 (d), provides that the State Board of Insurance may issue reasonable rules providing loss ratio standards applicable

to rates charged for Medicare supplement policies. Article 3.74, §8, provides that the State Board of Insurance shall issue reasonable rules concerning compensation to agents or other producers of Medicare supplement insurance coverage. Article 3.74, §10, provides that the State Board of Insurance may adopt rules in accordance with federal law regulating Medicare supplement policies and any other reasonable rules that are necessary and proper to carry out Article 3.74, concerning Medicare supplement insurance and policies. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures; §5 prescribes the procedure for adoption of rules by a state administrative agency.

**§3.3302. Applicability and Scope.** Except as otherwise specifically provided, this subchapter applies [these sections apply] to:

(1) (No change.)

(2) all certificates issued under group Medicare supplement policies, which certificates [policies] have been delivered or issued for delivery in this state regardless of the place where the policy was delivered or issued for delivery [on or after the effective date hereof]. In this subchapter, the required minimum standards for Medicare supplement insurance which make specific reference to a policy or policies are equally applicable to a group certificate or certificates.

**§3.3303. Definitions.** The following words and terms, when used in this subchapter [these sections], shall have the following meanings, unless the context clearly indicates otherwise.

Medicare supplement policy—A group or individual policy of accident and sickness insurance or a subscriber contract of a hospital service corporation subject to the Insurance Code, Chapter 20, or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, [as amended (Insurance Code, chapter 20A),] which policy, subscriber contract, or evidence of coverage is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age. Such term does not include:

(A) (No change.)

[(B) a policy, contract, subscriber contract, or evidence of coverage of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:

[(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

[(ii) has been maintained in good faith for purposes other than obtaining insurance; and

[(iii) has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members;]

[(B)[(C)] a policy or health care benefit plan including[ contract, subscriber contract, or evidence of coverage issued pursuant to a conversion privilege under] a policy or contract of group insurance or group contract of a hospital service corporation subject to the Insurance Code, Chapter 20, or group evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, [as amended (the Insurance Code, Chapter 20A),] when such [group] policy or plan is not marketed or held to be a Medicare supplement policy or benefit plan[, subscriber contract, or evidence of coverage includes provisions which are inconsistent with the requirements of the Insurance Code, Article 3.74].

**§3.3304. Policy Definitions and Terms.** No insurance policy, subscriber contract, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if such policy, subscriber contract, or evidence of coverage contains definitions or terms which do not conform to the requirements of this section.

(1) "Accident,"[or] "Accidental Injury," or "Accidental Means" shall be defined to employ "result" language and shall [may] not include words which establish an accidental means test or use words such as "external, violent, visible wounds," or similar words of description or characterization.

(A) The definition shall [may] not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(B) Such definition may provide that injuries do not include injuries for which benefits are provided under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault plan, unless prohibited by law [or injuries occurring while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit].

(2)-(6) (No change.)

(7) "Mental or nervous disorders" shall [may] not be defined more re-



strictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

(8)-(9) (No change.)

(10) "Sickness" may not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may not be construed to limit §3.3306(1) [§3.3006 (1)] of this title (relating to Minimum Benefit Standards). The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

#### §3.3305. Prohibited Policy Provisions.

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

(d) The terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy is issued in compliance with provisions of this subchapter.

(e) No Medicare supplement insurance policy, contract, or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.

§3.3306. Minimum Benefit Standards. No insurance policy, subscriber contract, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, or evidence of coverage meets the standards in paragraphs (1) and (2) of this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter [these sections], the Insurance Code, Article 3.74, and any other applicable law.

(A) A Medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a pre-existing condition. The policy may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage. A Medicare supplement policy issued by an insurer which replaces an existing Medicare supplement policy within the first 24 months of the date of issue of the existing policy shall provide that any pre-existing conditions waiting periods al-

ready satisfied under the replaced policy shall be considered satisfied under the new policy, except that if new or additional benefits are included in the succeeding insurer's policy, such policy may include appropriate waiting periods as a condition of payment for such new or additional benefits.

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

(D) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall [may] not:

(i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium, [.] or

(ii) be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(E) (No change.)

(2) Minimum benefit standards.

A maximum of three separate Medicare supplement policies may be offered by any insurer or other entity designated in the Insurance Code, Article 3.74, §1(a), which offers Medicare supplement insurance or benefits for sale in this state. For a group master policy issued in connection with any certificates providing group Medicare supplement insurance benefits to a resident of this state, a maximum of three alternative sets of benefits may be provided in connection with such policy. Every insurance policy advertised, solicited, or issued for delivery as a Medicare supplement policy, however, must meet all the following minimum standards of coverage in subparagraphs (A)-(G) of this paragraph:

(A)-(G) (No change.)

(3) Explanation of percentages in parentheses in paragraph (2) of this section. The percentages within parentheses in paragraph (2)(A)-(G) of this section are intended to mean the copayment amounts, whatever those amounts are.

(4) Medicare eligible expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

#### §3.3307. Loss Ratio Standards.

(a) Minimum aggregate loss ratio standard. Medicare supplement policies

delivered or issued for delivery in this state shall [are expected to] return to policyholders or certificateholders in the form of aggregate benefits under the policy, [as estimated] for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service, rather than reimbursement, and earned premiums for such period, not including any changes in additional reserves, and in accordance with generally accepted actuarial principles and practices:

(1) at least 75% of the aggregate amount of premiums earned [collected] in the case of group policies, and

(2) at least 60% of the aggregate amount of premiums earned [collected] in the case of individual policies. [For purposes of this section, Medicare supplement policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.]

(b) Calendar year experience loss ratio standard. For the most recent calendar year, the ratio of incurred losses to earned premiums for all policies or certificates which have been in force for three years or more, as of December 31st of the most recent year, shall be equal to or greater than:

(1) at least 75% of the amount of premiums earned in the case of group policies, and

(2) at least 60% of the amount of premiums earned in the case of individual policies. [Prior to the use of any Medicare supplement policy form in this state, every insurer shall submit to the commissioner an actuarial memorandum for each such policy form which includes claim experience data and assumptions made thereon to sufficiently explain how the rates for such policy form were calculated.]

(c) Filing of rates and rating schedules. All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section. [On or before June 30 of each year, a company officer and a qualified actuary shall certify and submit to the commissioner as part of the accident and health policy experience exhibit supplementing the insurer's annual statement, complete and accurate information regarding earned premiums, incurred claims, and claim ratios for each Medicare supplement policy form used in this state.]

(1) Each Medicare supplement policy or certificate form shall be accompanied, upon submission for approval, by an actuarial memorandum. Such memorandum shall be prepared and signed by

a qualified actuary in accordance with generally accepted actuarial principles and practices, and shall contain the information listed in the following subparagraphs:

(A) the form number that the actuarial memorandum addresses;

(B) a brief description of benefits provided;

(C) a schedule of rates to be used;

(D) a complete explanation of the rating process, including assumptions, claims data, methodology, and formulae used in developing the gross premium rates;

(E) a statement of what experience base will be used in future rate adjustments;

(F) a certification that the anticipated aggregate loss ratio is at least 60% (for individual coverage) or at least 75% (for group coverage), which certification should include a statement of the period over which the aggregate loss ratio is expected to be realized;

(G) a table of anticipated loss ratio experience for representative issue ages for each year from issue over the period of time over which the aggregate loss ratio is to be realized; and

(H) a certification that the premiums are reasonable in relation to the benefits provided.

(2) Subsequent rate filings, except for those rates filed solely due to a change in the Part A calendar year deductible, shall also provide an actuarial memorandum, prepared by a qualified actuary in accordance with generally accepted actuarial principles and practices, which shall contain the information in the following subparagraphs.

(A) The form number addressed by the actuarial memorandum shall be included.

(B) A brief description of benefits provided shall be included.

(C) A schedule of rates before and after the rate change shall be included.

(D) A statement of the reason and basis for the rate change shall be included.

(E) A demonstration and certification by the qualified actuary shall be included to show that the past plus future expected experience after the rate change will result in an aggregate loss ratio equal to or greater than the required minimum aggregate loss ratio.

(i) This rate change and demonstration shall be based on the experience of the named form in Texas only, if that experience is credible.

(ii) The rate change and demonstration shall be based on experience of the named form nationwide, if the named form is used nationwide and the Texas experience is not credible, but the nationwide experience is credible.

(iii) The rate change and demonstration shall be based on experience of forms used in Texas, which are similar to the named form if the experience in clause (i) or (ii) of this subparagraph is not credible, but the experience for all similar Texas forms is credible.

(iv) The rate change and demonstration shall be based on any other reasonable experience which is credible for purposes of this rate filing, if the experience in clauses (i), (ii), or (iii) of this subparagraph is not credible. For the purposes of this section, the definition of a credible basis shall be in accordance with generally accepted actuarial principles and practices. The assumptions used in this demonstration shall be reasonable and stated in the memorandum.

(F) For policies or certificates in force less than three years, a demonstration shall be included to show that the third-year loss ratio is expected to be equal to or greater than the applicable percentage.

(G) A certification by the qualified actuary that the resulting premiums are reasonable in relation to the benefits provided shall be included.

(d) Annual filing required. Every insurance entity providing Medicare supplement policies or benefits in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums for the most recent calendar year broken down by calendar year of issue, for purposes of demonstrating that the insurance entity is in compliance with the loss ratio standards. The annual filing requirements in this subsection shall be as follows:

(1) the NAIC Medicare supplement/experience, exhibit for each form with business in force in Texas;

(2) the NAIC Medicare supplement/experience exhibit which sum-

marizes the experience of all individual forms with business in force in Texas;

(3) the NAIC Medicare supplement experience exhibit which summarizes the experience of all group forms with business in force in Texas;

(4) rates and rating schedules for each form with business in force in Texas;

(5) a certification by the qualified actuary that the policies or certificates in force less than three years are anticipated to produce a third-year loss ratio which is greater than or equal to the applicable loss ratio percentage; and

(6) a certification by the qualified actuary that the expected losses in relation to premiums over the entire period for which the policy is rated comply with the required minimum aggregate loss ratio standard.

(e) Refund and credits. If the loss ratio for the most recent calendar year for all Texas Medicare supplement policies or certificates which have been in force for three years or more as of December 31st of the most recent year is less than the percentage under the calendar year loss ratio standard, then a premium refund or credit shall be made on an equitable basis to those policyholders or certificateholders with coverage in force as of December 31st. For future demonstration of compliance with loss ratio standards, such refunds or credits may be treated as incurred claims.

(f) Premium adjustments to conform with minimum standards for loss ratios. As soon as practicable, but no later than 60 days prior to the effective date of Medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, every insurer, health care service plan, or other entity providing Medicare supplement insurance or contracts in this state shall file with the board, in accordance with the applicable filing procedures of this state, the items required in paragraphs (1) and (2) of this subsection. Paragraph (1) of this subsection applies only to situations in which an anticipated loss ratio falls below that which was originally filed. Premium adjustments should be sufficient to generate an anticipated loss ratio as originally filed.

(1) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts shall be filed. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

(A) Every insurer, health care service plan, or other entity providing Medicare supplement insurance or benefits to a resident of this state

pursuant to the Insurance Code, Article 3.74, shall make such premium adjustments as are:

(i) necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies; and

(ii) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan, or other entity for such Medicare supplement insurance policies or contracts.

(B) No premium adjustment which would modify the loss ratio experience under the policy, other than the adjustments described in this subsection, should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(C) Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within 60 days of the renewal date or

anniversary date if a refund is provided to the premium payer.

(D) Premium adjustments shall be calculated for the period commencing with Medicare benefit changes.

(2) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare shall be filed. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract.

**§3.3308. Required Disclosure Provisions.**

(a) General rules.

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

(5) [Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate

within 10 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.] Medicare supplement policies or certificates issued [pursuant to a direct response solicitation] to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(6)-(7) (No change.)

(b) (No change.)

(c) Form for outline of coverage. In providing outlines of coverage to applicants pursuant to the requirements of subsection (b)(1) of this section, insurers shall use a form which complies with the requirements of this subsection. The outline of coverage must contain each of the following paragraphs (1)-(11) of this subsection in the order and form set out in this subsection. The outline of coverage must begin with the heading which follows this sentence.

(Company Name)

Outline of Medicare

Supplement Coverage

(1)-(9) (No change.)

(10) A statement that the person to whom the policy is issued is permitted to return the policy within 30 [10] days (or more as stated in the policy) of its delivery

to that person and to have the premium paid refunded.

(11) (No change.)

(d)-(f) (No change.)

**§3.3309. Requirements for Replacement.**

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

(c) The notice required by subsection (b) of this section for an insurer, other than a direct response insurer, shall be provided, in substantially the following form:

NOTICE TO APPLICANT REGARDING

REPLACEMENT OF ACCIDENT AND

SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy provides 30 [10] days within which you may decide without cost whether you

desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

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

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy has never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.[:]

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's signature)

(d) (No change.)

**§3.3313. Filing Requirements for Advertising.** A Medicare supplement policy shall not be deemed to meet the standards and requirements set forth in this subchapter unless the filing company has complied with the requirements of the following paragraphs.

(1) Until September 20 [30], 1989, every insurer, nonprofit hospital service corporation, health maintenance organization (including agents for these entities) providing Medicare supplement insurance or benefits in this state, shall provide to the board [commissioner of insurance] for review a copy of any advertisement as defined in §21.102 of this title (relating to Scope), used to promote a policy which is approved under the provisions of this subchapter. The copy of the advertisement must be provided to the board [commissioner] no later than 15 days after its first use in this state.

(2) After September 20 [30], 1989, any advertisement [advertisements] as referenced in paragraph (1) of this section shall be submitted to the board [commissioner] no later than 60 [30] days prior to its first use. At the expiration of the 60-day period provided by this paragraph, any advertisement filed with the board shall be deemed acceptable, unless before the end of that 60-day period the board has notified the entity of its nonacceptance.

(3) All advertisements shall comply with all applicable federal and state laws and shall be submitted in accordance with §21.120 of this title (relating to Filing for Review). This section does not require prior approval of the advertisement. [Lack of response by the commissioner may not be construed as a tacit approval of the material submitted, and] Nothing [nothing] in this section relieves any person from otherwise complying with all applicable laws or from any sanction imposed by law.

**§3.3315. Standards for Claims Payment.**

(a) Every insurance entity providing Medicare supplement policies, con-

tracts, or certificates for delivery in this state shall comply with all provisions of the Omnibus Reconciliation Act of 1987 (Public Law 100-203), §4081, and with all requirements set forth in Public Law 96-265, 42 United States Code, §1395ss.

(b) Compliance with the requirements set forth in subsection (a) of this section must be certified on the Medicare supplement insurance experience reporting form.

**§3.3316. Filing Requirements for Out-of-State Group Policies.** Every insurer providing group Medicare supplement insurance benefits to a resident of this state pursuant to the Insurance Code, Article 3.74, shall, for information purposes, file with the Group Life, Accident, and Health Section of the State Board of Insurance a copy of any master policy issued in connection with any certificate used in this state; all such certificates shall be filed in accordance with the filing requirements and procedures applicable to group Medicare supplement policies issued in this state.

**§3.3317. Compensation Restrictions Upon Replacement.** No entity designated in the Insurance Code, Article 3.74, §1(a), which provides Medicare supplement insurance or coverage to a resident of this state, shall provide compensation to its agents or other producers that is greater than the renewal compensation which would have been paid on an existing policy or coverage, if that existing policy or coverage is replaced by another policy or coverage with the same entity, and if the new policy benefits or coverage benefits are substantially similar to the benefits under the old policy or coverage and the old policy was issued by the same insurer, insurer group, or entity. For a policy replaced within the first policy year, an agent shall be entitled to receive the pro rata unpaid portion of commission attributable to that original policy year and a commission not greater than renewal compensation thereafter.

**§3.3318. Effective Date of Amendments; Impact on Existing Policies.** Adoption of new sections and amendments to existing sections of this subchapter is necessary to

facilitate implementation of amendments to the Insurance Code, Article 3.74, pursuant to Acts of the 71st Legislature, 1989. New sections and amendments effective September 20, 1989, to this subchapter apply only to Medicare supplement policies and certificates delivered, issued for delivery, or renewed on and after September 20, 1989. Policies and certificates delivered, issued for delivery, or renewed before September 20, 1989, are subject to the rules as they existed at the time the policy was delivered, issued for delivery, or renewed, respectively, and those sections or portions of sections are continued in effect for that purpose.

Issued in Austin, Texas on August 23, 1989.

TRD-8907756

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: September 20, 1989

Expiration date: January 18, 1990

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

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration Subchapter O. State Sales and Use Tax

##### • 34 TAC §3.319

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.319, for a 60-day period effective August 24, 1989. The text of amended §3.319 was originally published in the May 5, 1989, issue of the *Texas Register* (14 TexReg 2111).

Issued in Austin, Texas on August 24, 1989.

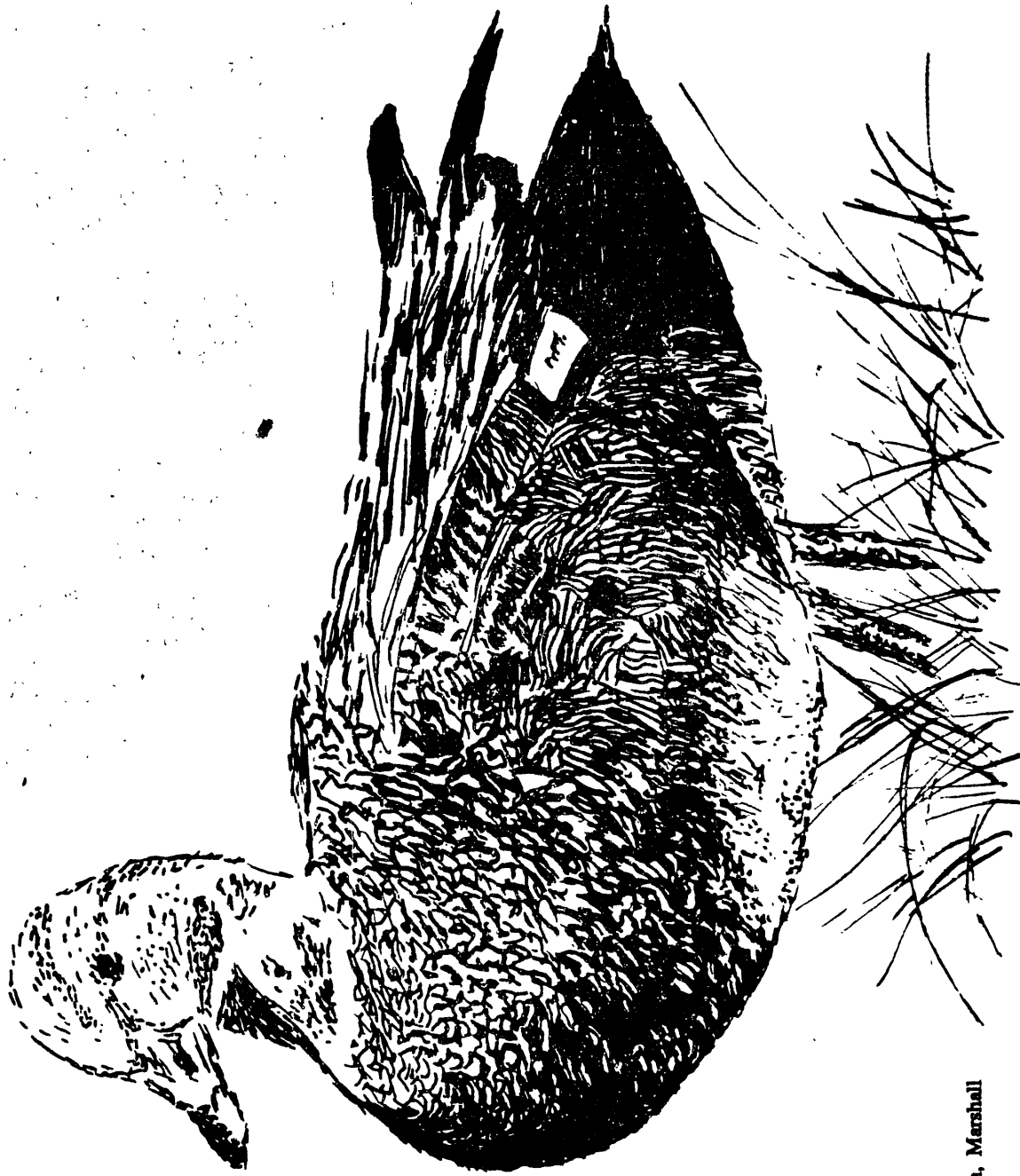
TRD-8907788

Wade Anderson  
Rules Coordinator  
Comptroller of Public  
Accounts

Effective date: August 24, 1989

Expiration date: October 23, 1989

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



Name: Andy Mehring  
School: Marshall High, Marshall

Andy Mehring

# Proposed Sections

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

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

## TITLE 1.

### ADMINISTRATION

#### Part IV. Secretary of State

##### Chapter 102. Health Spas

- 1 TAC §§102.1, 102.10, 102.20, 102.30, 102.40, 102.41, 102.70-102.73, 102.80, 102.90, 102.91

*(Editor's Note: The Secretary of State 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 Office of the Secretary of State proposes new §§102.1, 102.10, 102.20, 102.30, 102.40, 102.41, 102.70-102.73, 102.90, and 102.91, concerning the administration and enforcement of registering health spas pursuant to the Health Spa Act, Article 52211, Texas Civil Statutes. The new sections enact the provisions of House Bill 863 of the 71st Legislature.

These new sections are proposed due to the passage of House Bill 863 of the 71st Legislature which transfers the administration and enforcement of the Health Spa Act, Article 52211, Texas Civil Statutes from the Department of Labor and Standards to the Office of the Secretary of State effective September 1, 1989.

Jim Mathieson, attorney, 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 the sections.

Mr. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide the public with the information necessary to register as a health spa with the Office of the Secretary of State. 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 Jim Mathieson, Attorney, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, §4, and the Health Spa Act, Texas Civil Statutes, Article 52211, which provide the Office of the Secretary of State with rulemaking authority.

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

Issued in Austin, Texas on August 25, 1989.

TRD-8907843

Lorna Wassdorf  
Special Assistant  
Office of the Secretary of  
State

Earliest possible date of adoption: October 2, 1989

For further information, please call: (512) 463-5558

##### Chapter 103. Membership Camping Resorts

- 1 TAC §§103.1, 103.2, 103.10, 103.21

*(Editor's Note: The Office of the Secretary of State 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 Office of the Secretary of State proposes new §§103.1, 103.2, 103.10, and 103.21, concerning the administration and enforcement of registering membership camping resorts and membership camping resort brokers and sellers pursuant to the Texas Membership Camping Resort Act, the Property Code, §222.001 et seq. The new sections enact the provisions of House Bill 863 of the 71st Legislature.

These new sections are proposed due to the passage of House Bill 863 of the 71st Legislature which transfers the administration and enforcement of the Texas Membership Camping Resort Act, the Property Code, §222.001 et seq., from the Department of Labor and Standards to the Office of the Secretary of State effective September 1, 1989.

Jim Mathieson, attorney, 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 the sections.

Mr. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide the public with the information necessary to register as a membership camping resort or membership camping resort broker or seller with the Office of the Secretary of State. 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 Jim Mathieson, Attorney, Statutory Docu-

ments Section, P.O. Box 12887, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, §4, and the Texas Membership Camping Act, the Property Code, §221.001 et seq., which provide the Office of the Secretary of State with rulemaking authority.

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

Issued in Austin, Texas on August 25, 1989.

TRD-8907845

Lorna Wassdorf  
Special Assistant  
Office of the Secretary of  
State

Earliest possible date of adoption: October 2, 1989

For further information, please call: (512) 463-5558

##### Chapter 104. Wrestling Promoters

- 1 TAC §104.1, §104.10

*(Editor's Note: The Office of the Secretary of State 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 Office of the Secretary of State proposes new §104.1 and §104.10, concerning the administration of registering wrestling promoters pursuant to the Boxing and Wrestling Act, Article 8501-1, §1 et seq. The new sections enact the provisions of House Bill 863 of the 71st Legislature.

These new sections are proposed due to the passage of House Bill 863 of the 71st Legislature which transfers the administration of wrestling promoters from the Department of Labor and Standards to the Office of the Secretary of State effective September 1, 1989.

Jim Mathieson, attorney, 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 the section.

Mr. Mathieson 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 section will be to provide the public with the information neces-

sary to register as a wrestling promoter with the Office of the Secretary of State. 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 Jim Mathieson, Attorney, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, §4, which provide the Office of the Secretary of State with rulemaking authority.

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

Issued in Austin, Texas on August 25, 1989.

TRD-8907847

Lorna Wassdorf  
Special Assistant  
Office of the Secretary of  
State

Earliest possible date of adoption: October 2, 1989

For further information, please call: (512) 463-5558

◆ ◆ ◆  
**TITLE 31. NATURAL  
RESOURCES AND  
CONSERVATION**  
**Part III. Texas Air  
Control Board**

**Chapter 103. Procedural Rules  
Adjudicative Hearings**

◆ ◆ ◆  
• **31 TAC §103.42**

The Texas Air Control Board (TACB) proposes an amendment to §103.42, concerning hearing examiner. This amendment adds a new subsection (b) to allow enforcement under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14(n), for failure to comply with a subpoena or commission issued by an examiner.

Also, the amendment adds a new subsection (c) to permit an examiner to impose sanctions if a party abuses an examiner's orders of discovery or fails to comply with an examiner's order. The old subsection (b) is redesignated as subsection (d).

The TACB is proposing concurrently a new §103.66, concerning legislative continuances, to establish procedures for ruling upon any motion filed by a member of the Texas Legislature for a continuance based upon that member's obligation to attend to his or her legislative duties.

Mr. John Turney, general counsel, 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 units of government or small businesses as a result of enforcing or administering the section.

Mr. Turney also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated

as a result of enforcing the section will be to minimize the number of delays in adjudicative hearings and to enhance the agency's ability to resolve contested cases.

A public hearing on this proposal is scheduled for 10 a.m. on September 26, 1989, in the Auditorium of the TACB located at 6330 U. S. Highway 290 East, Austin, Texas 78723. Copies of the proposed section are available from Mr. Barry Irwin at the TACB central office and at all TACB regional offices. Public comments, both oral and written, are invited at the hearing. Written testimony received by 4 p.m. on September 26, 1989, at the TACB central office will be included in the hearing record. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Comments should be addressed to the Regulation Development Section.

The amendment is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

◆ ◆ ◆  
**§103.42. Hearing Examiner.**

(a) (No change.)

(b) In the case of failure to comply with a subpoena or commission to take deposition issued by the examiner, the agency or the party requesting the subpoena or commission may seek enforcement thereof pursuant to the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a, §14(n).

(c) Upon finding that a party has failed to comply with an examiner's order or that a party has abused orders compelling discovery entered pursuant to the APTRA, an examiner may impose sanctions for such noncompliance or abuse in making, seeking, or resisting discovery. Sanctions may include, but are not limited to, the following:

(1) recessing or continuing the hearing;

(2) denying the noncompliant person the right to participate in the hearing for a period of time or prescribing conditions for the person's participation;

(3) disallowing any further discovery of a particular kind or of any kind by the noncompliant party (except for discovery, if any, authorized by law over which the examiner has no discretion);

(4) disallowing, in part or whole, the noncompliant party's presentation of evidence or examination of witnesses on issues that were the subject of the discovery request;

(5) ruling that particular facts that shall be regarded as established for the purposes of the proceeding in

accordance with the claim of the party that obtained the discovery ruling or other relevant order;

(6) allowing written or documentary evidence to be presented that was not exchanged on the deadline for exchange of such evidence pursuant to §103.46(b) of this title (relating to Prehearing Conference);

(7) allowing the testimony of witnesses who were not listed by the deadline established for listing potential witnesses pursuant to §103.46(b) of this title (relating to Prehearing Conference); and

(8) dismissing the hearing without prejudice.

(d)[(b)] If a hearing examiner fails to complete an assigned case before a final order is rendered, the director of hearings may appoint another examiner on the hearings staff to complete the assigned case without the necessity of duplicating any duty or function performed by the previous examiner.

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

Issued in Austin, Texas on August 24, 1989.

TRD-8907794

Allen Ell Bell  
Executive Director  
Texas Air Control Board

Proposed date of adoption: December 15, 1989

For further information, please call: (512) 451-5711, ext. 354

◆ ◆ ◆  
• **31 TAC §103.66**

The Texas Air Control Board (TACB) proposes new §103.66, concerning legislative continuances. The new section will establish procedures for ruling upon any motion filed by a member of the Texas Legislature for a continuance based upon that member's obligation to attend to his or her legislative duties.

The TACB is proposing concurrently amendments to §103.42, concerning hearing examiner, to allow an examiner to impose sanctions and enforcement, if needed, during the process of a hearing.

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

Mr. Turney 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 certainty of specific time frames and criteria for ruling upon continuance motions. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.



A public hearing on this proposal is scheduled for 10 a.m. on September 26, 1989, in the auditorium of the TACB located at 6330 Highway 290 East, Austin, Texas 78723. Copies of the proposed section is available from Mr. Barry Irwin at the TACB central office and at all TACB regional offices. Public comments, both oral and written, are invited at the hearing. Written testimony received by 4 p. m. on September 26, 1989, at the TACB central office will be included in the hearing record. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written comments should be addressed to the Regulation Development Section.

The new section is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

**§103.66. Legislative Continuances.** In all hearings and in all matters ancillary to hearings, which require action by or the attendance of an attorney, excluding emergency orders, at any time within 30 days of a date when the legislature is to be in session, or at any time the legislature is in session, or when the legislature sits as a constitutional convention, it shall be mandatory that the hearing examiner continue the hearing if it shall appear to the hearing examiner, by affidavit, which need not be corroborated, that any party applying for continuance, or any attorney for any party to the case, is a member of the legislature, and will be or is in actual attendance on a session of the same. If the member of the legislature is an attorney for a party to the cause, his or her affidavit shall contain a declaration that it is his or her intention to participate actively in the preparation and/or presentation of the case. On the filing of such affidavit, the hearing examiner shall continue the hearing until at least 30 days after adjournment of the legislature. The affidavit shall be proof of the necessity for the continuance. The continuance shall be deemed one of right and shall not be charged against the movant upon any subsequent application for continuance. The right to a continuance shall be mandatory if the affidavit is filed within the deadline established in the hearing notice for requesting party status. At any other time, the right to such continuance shall be discretionary.

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

Issued in Austin, Texas on August 24, 1989.

TRD-8907793

Allen Eli Bell  
Executive Director  
Texas Air Control Board

Proposed date of adoption: December 15, 1989

For further information, please call: (512) 451-5711, ext 354

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter X. Pari-Mutuel Wagering

###### • 34 TAC §3.641

The Comptroller of Public Accounts proposes new §3.641, concerning pari-mutuel wagering. The new section details the responsibilities of horse and greyhound racing associations licensed by the Texas Racing Commission with regard to collection, deposit, reporting, and accounting for the state portion of pari-mutuel wagering revenues and related funds; minimum standards for pari-mutuel wagering equipment used to compute the state share of pari-mutuel wagering revenues; Comptroller audits of licensed horse and greyhound race associations; administrative appeals by licensed horse and greyhound race associations from Comptroller audit findings; and sanctions for violation of this section.

The Texas Racing Act created a new tax on pari-mutuel racing thereby creating the need for additional staff in the areas of enforcement, audit, revenue accounting, computer services, and automated collections.

Ben Lock, director of the Comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. The new section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock 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 from being insured that pari-mutuel revenues are timely deposited and properly accounted for. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the new section may be submitted to Larry Craddock, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §4.03, which provide the Comptroller with the authority to adopt rules for the enforcement of his powers and duties under the Texas Racing Act.

###### §3.641. Pari-Mutuel Wagering.

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

(1) Association—A horse or greyhound association licensed by the commission to conduct races with pari-mutuel wagering or the authorized agent of such an association.

(A) Class 1 association—An association licensed by the commission as a Class 1 association for the purpose of conducting horse races with pari-mutuel wagering.

(B) Class 2 association—An association licensed by the commission as a Class 2 association for the purpose of conducting horse races with pari-mutuel wagering.

(C) Class 3 association—An association licensed by the commission as a Class 3 association for the purpose of conducting horse races with pari-mutuel wagering.

(D) Greyhound association—An association licensed by the commission for the purpose of conducting greyhound races with pari-mutuel wagering.

(2) Commission—The Texas Racing Commission or an authorized agent of the Texas Racing Commission.

(3) Comptroller—The Comptroller of Public Accounts or an authorized agent of the Comptroller of Public Accounts.

(4) State approved depository—A bank approved as a depository of state funds by the state depository board.

(5) Totalisator company—A company selling, leasing, servicing, maintaining, or operating automated electronic computer hardware and software to calculate, record, display, and store pari-mutuel wagering information.

(b) Collection/deposit of state portion of pari-mutuel wagering revenues; reports to the Comptroller.

(1) In each locality with licensed Class 1, Class 2, or greyhound associations, the state treasurer has agreed to open an interest-bearing account in a local state-approved depository, to be used for deposit of the state share of pari-mutuel wagering proceeds.

(2) After each racing day, a representative of a Class 1, Class 2, or greyhound association shall deposit to the state account by 10 a.m. of the next banking day the state total share of the pari-mutuel pool for all races conducted since the last deposit.

(3) All deposits to the state account must be in cash or by check drawn on an association account in the state-approved depository bank or by telephone transfer from an association account in the state-approved depository bank.

(A) Upon making the deposit, Class 1, Class 2, and greyhound associations shall report by telephone to a data collection center designated by the state

treasurer, the information shown on a Pari-Mutuel Wagering Deposit Report form promulgated by the Comptroller. They shall also transmit a copy of the completed form to the Comptroller by telephone line and high-resolution facsimile equipment.

(B) Class 3 associations must transmit a check covering the amount of the state's share to the Comptroller by 10 a.m. of the next banking day after the performance by express mail for one day delivery. The check must be attached to the Performance Pari-Mutuel Summary Report.

(4) After each racing performance, information must be reported to the Comptroller.

(A) At the close of each racing performance, the association shall complete the Performance Pari-Mutuel Summary Report. This report shall be filed for each racing date authorized by the commission even if no races are held.

(B) Class 1, Class 2, and greyhound associations shall transmit a copy of the completed Performance Pari-Mutuel Summary Report to the Comptroller by facsimile equipment no later than 10 a.m. of the next banking day following a performance. Class 3 associations must transmit a completed Performance Pari-Mutuel Summary Report to the Comptroller along with the payment of the state's share by 10 a.m. of the next day by overnight or express mail.

(5) If problems exist in telephone transmission or other breakdown in the facsimile equipment and copies of the reports cannot be transmitted by telephone transmission and facsimile equipment because of these problems, then associations shall send such reports to the Comptroller by overnight mail or overnight private delivery service.

(6) Originals of the reports of which copies have been transmitted to the Comptroller by facsimile equipment shall be preserved in chronological order with other association records. Class 3 tracks shall preserve copies of the reports that have been mailed to the Comptroller in chronological order at association offices located at the track or at such other location as may be agreed to in writing by the Comptroller. These reports shall be available for audit inspection. Anytime the information on the reports does not reconcile with the amount deposited, the Comptroller will take prompt action to protect the state's interest.

(c) Associations with pari-mutuel wagering to post bond or other security.

(1) Associations will be responsible for the state share of the pari-mutuel pool from the time a ticket is sold and the money is collected until the money is deposited to the state account.

(2) All associations shall be bonded or otherwise secured in an amount estimated by the Comptroller to be five times the highest daily state share of the pari-mutuel pool for the period covered by the bond. The bond will cover the state share of the pari-mutuel pool.

(3) In order for the Comptroller to establish an appropriate amount for the bond or other security to be posted, associations shall provide the information that the Comptroller requests.

(4) The bond or other security shall be approved by and filed with the Comptroller.

(A) The Comptroller may require the posting of new or additional bond or security if:

(i) the Comptroller determines the amount of bond or other security deposited to be inadequate; or

(ii) the Comptroller determines that an association is delinquent in payment of an amount due; or

(iii) if a surety gives the Comptroller written notice of its intent to withdraw as surety.

(B) If the amount of security posted is determined to be in excess of requirements, the Comptroller will allow as much of the bond or security as is determined to be in excess of requirements to be cancelled or withdrawn.

(C) Should the Comptroller decide either that the security posted is inadequate or that it is in excess of requirements, the association shall receive written notice.

(D) If new or additional bond or other security is required, the association shall furnish it within the time specified by the notice.

(5) The Comptroller will accept as security: cash; cashiers checks; surety bonds; irrevocable bank letters of credit; United States Treasury bonds that are readily convertible to cash; and irrevocable assignments (on forms approved by the Comptroller) of federally insured accounts in banks, savings and loan institutions, and credit unions. The Comptroller will not accept corporate stocks and bonds or personal guarantees as security.

(6) All surety bonds posted must be executed and issued by a surety company authorized to do business in the State of Texas on a form approved by the Comptroller. The surety bond must be signed by an attorney-in-fact appointed by the surety, and a notarized copy of the appointment shall be attached.

(7) A bond or other security must be in effect at all times while an association is conducting pari-mutuel wagering. The Comptroller will release the bond or other security upon determination that:

(A) there is no payment, penalty, or interest due and payable to the State of Texas;

(B) the association has ceased to conduct pari-mutuel wagering; and

(C) its license has been revoked or relinquished and will not be renewed.

(d) Equipment required; responsibilities of companies contracting to provide equipment.

(1) Each association licensed for pari-mutuel wagering shall use totalisator company equipment and software that satisfies the record-keeping and reporting requirements of the Comptroller.

(A) The minimum electrical specifications for the race association's computer room must include a dedicated electrical outlet for each processor. The outlet should be three wire, with a good earth ground, with no more than five volts AC between neutral and ground.

(B) The association must install two separate devices which will cause the tote system to stop betting. The primary device will be installed accessible to association stewards or judges to be used to issue the stop betting command during normal operations. The second device (backup) is to be installed in the pari-mutuel manager's office and used by the pari-mutuel manager to issue the stop betting command in cases where hardware malfunction or human error does not cause the tote system to stop betting at the appropriate time.

(C) The totalisator system must restrict cancelling of wagers to the last four tickets issued by a machine (to be cancelled by that machine). If the ticket is not in the last four it must be cashed through designated cash/sell terminals only with the appropriate approvals. All manually cashed wagers, cancelled wagers, and refunds issued must be recorded by the totalisator system for each cash/sell terminal. A detailed printed report of these transactions must be generated upon request of the Comptroller including a summary of each transaction type.

(D) The totalisator system must record all transactions of each sell/cash terminal by terminal. A printed

copy of these transactions for each sell/cash terminal must be generated if requested by the Comptroller.

(E) The totalisator system must restrict access to sell/cash terminals through assigned user passwords to facilitate cashier accountability.

(F) All tickets that were either manually refunded or cancelled must be preserved for audit inspection with information identifying the number of the window or machine where it was paid, the teller that cashed it, and whether it was cashed by the totalisator system or by manual override of the totalisator system. If these tickets are not present and this information is not provided during the audit, the association will be responsible for reimbursing the state for any money it would have received had the ticket not been cashed.

(G) A waiver may be granted from these requirements for totalisator systems temporarily installed at Class 3 tracks upon a showing to the Comptroller's satisfaction that unnecessary expense would be incurred in complying with the requirements and that the system can be made to function properly without meeting these requirements.

(2) A totalisator company is subject to inspection and regulation by the Comptroller to insure the integrity of the information obtained by use of its software and equipment. The association shall be held accountable for any loss of state money due to totalisator company error.

(3) The Comptroller must be notified 30 days in advance of any change, enhancement, or upgrade in the computer hardware or software that affects the calculation of the pari-mutuel tax or information referenced in subsection (d)(8). The totalisator company shall furnish such information as the Comptroller may request regarding such changes.

(4) The Comptroller may, at any time, inspect or have inspected totalisator company equipment and software which is or which has been on location at a Texas association. The association and the totalisator company shall permit such inspection without prior notice.

(5) Totalisator equipment must be installed on-site and a series of system checkout programs designated by the Comptroller must be executed by the totalisator company. At Class 1, Class 2, and greyhound tracks this shall occur at least 48 hours before the start of each racing meeting. No changes shall be made in the programming after the tests are completed without the permission of the Comptroller.

(6) Any malfunction of equipment hardware or software which results in

loss or delay of required report data and any processor down time, regardless of whether it results in loss or delay of required report data, shall immediately be reported to the Comptroller when the Performance Pari-Mutuel Summary Report form is filed.

(7) In addition, a separate written report shall be filed with the Comptroller within seven days after the malfunction occurs containing a full and complete sworn statement from an authorized association official which identifies the cause of malfunction and the data, if any, lost as a result.

(8) A totalisator system must be able to produce and provide to the Comptroller upon request:

(A) in a format prescribed by the Comptroller, a copy of the data necessary to recreate the wagering activity of any race performance that the Comptroller may wish to review;

(B) a copy of the system log in a format prescribed by the Comptroller;

(C) a copy of the compiled version of all system programs (object coding) in a format prescribed by the Comptroller; and

(D) other computer files as specified by the Comptroller.

(e) Audit; appeal of audit findings.

(1) Within 150 days after the close of each meet, each Class 1, Class 2, or greyhound association, shall have a full financial audit performed at its expense by an independent certified public accountant licensed by the State of Texas and a copy shall be kept on file at the association and furnished to the Comptroller on request.

(2) The Comptroller may audit to verify information reported by the association using any commonly accepted auditing method, including but not limited to, any auditing method used by the Comptroller to verify information and reports filed pursuant to the Tax Code.

(3) All computer tapes, computer programs, and books and records used to record, display, calculate, or report funds due the state maintained by the association or the totalisator company shall be stored in chronological order in a disaster-proof environment to insure the integrity of the data and made available for inspection in a format compatible with the Comptroller's equipment at any time without advance notice. Class 1, Class 2, and greyhound associations shall maintain their records at an association office at the track. Class 3 tracks shall preserve the originals of these records at association offices located at the track or at such other location as may be agreed to in writing by the Comptroller.

(4) The said records shall be kept at least four years unless the Comptroller gives written authority for earlier disposal. Any record relating to a Comptroller audit that is still open or which has been challenged by the association shall be kept until the audit is final and all disputed issues are finally resolved.

(5) An association may dispute any audit findings of the Comptroller through the same procedures available to dispute audit findings under the Tax Code. Such procedures are hereby adopted by reference in this section.

(f) Sanctions.

(1) The Comptroller will immediately certify to the commission the violation by the association or its agents of a section promulgated by the Comptroller; the failure or refusal of an association to pay all or any part of funds due the state or to file reports when due; the failure or refusal of an association to allow inspection of reports, records, or computer equipment or software, or the failure or refusal of an association to post bond in the amount required; or the failure or refusal of an association to keep and retain the records required by the Comptroller.

(2) If any payment to the state is due, the Comptroller will also notify the association and its sureties by a written demand for payment. If payment is demanded and is not made by the date specified in the demand notice, the Comptroller will forfeit as much of the bond or security then in effect as may be necessary to pay the proper amount due.

(3) Concurrently, the Comptroller will pursue the additional remedies authorized by law.

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

Issued in Austin, Texas on August 24, 1989.

TRD-8907783

Bob Bullock  
Comptroller of Public  
Accounts

Proposed date of adoption: October 2, 1989

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

◆ ◆ ◆  
TITLE 37. PUBLIC  
SAFETY AND  
CORRECTIONS  
Part I. Texas Department  
of Public Safety  
Chapter 13. Controlled  
Substances Regulations

• 37 TAC §§13.1-13.5, 13.7-13.9,  
13.12-13.14, 13.16, 13.17, 13. 24,

**13.27-13.30, 13.32-13.36, 13.38,  
13.43, 13.45-13.50, 13.52, 13.54**

The Texas Department of Public Safety proposes amendments to §§13.1-13.5, 13.7-13.9, 13.12-13.14, 13.16, 13.17, 13.24, 13.27-13.30, 13.32-13.36, 13.38, 13.43, 13.45-13.50, 13.52, and 13.54, concerning controlled substances regulations. The department is proposing amendments to the controlled substances regulations due to statutory amendments and codification of the Act which was passed by the 71st Legislature, 1989. These amendments are a compilation of all applicable rules and regulations pertaining to controlled substances in federal, state, and state health regulatory agency regulations. Definitions are added to include consultant pharmacist and long-term care facility. Amendments to other definitions are made to conform with current statutory amendments and codification. Other amendments add and delete language for clarification and for compliance with statutory provisions. These amendments relate to applications for registration, providing for appropriate time periods and for notification of acceptance or denial of an application by the director, administrative actions on controlled substances or peyote registrations to include denial or revocation for rule violations, clarification for the use of DEA order forms, requiring numerical and written quantities of controlled substances on all prescriptions, excluding veterinarians from the exceptions for the use of small amounts of controlled substances, exempting the use of triplicate prescriptions for animals in wildlife parks, exotic game ranches, etc., expanding pharmacist responsibilities when preparing prescriptions written for mixtures or compounds, and the addition of two provisions when making dispositions of unused triplicate prescription forms. Amendments to these sections will provide the authority necessary for the Texas Department of Public Safety to administer and enforce the provisions of the Controlled Substances Act which will be codified into the Health and Safety Code, Chapter 481.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

B. C. Lyon, captain, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure the public that proper controls over the possession and/or dispensing of controlled substances will meet the requirements of legislative intent to decrease the abuse of controlled substances. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendments are proposed under the Health and Safety Code, §481.064, which

provides the Texas Department of Public Safety with the authority to promulgate rules and regulations to administer the provisions of this Act.

**§§13.1. General Information.**

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

(1) Act—The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481 [Texas Civil Statutes, Article 4476-15].

(2) Administer—To directly apply [The direct application of] a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

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

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

(5) Consultant pharmacist—A pharmacist currently licensed by the Texas State Board of Pharmacy in good standing to practice pharmacy, who acts as a consultant pharmacist to a long-term care facility and, as such, is responsible for obtaining controlled substances registration for a facility desiring emergency medical kits in the facility.

(6)[(5)] Controlled substance—A substance, including a drug and an immediate precursor, listed in Schedules I-V or Penalty Groups 1-4 of the Act [A drug, substance, or immediate precursor listed in Schedules I-V and Penalty Groups I-IV of the Texas Controlled Substances Act. The triplicate prescription forms will be used only for the administering, dispensing, prescribing, or delivering of Schedule 11 narcotic or Schedule IIN (nonnarcotic) controlled substances].

(7)[(6)] Counterfeit/simulated controlled substance—

(A) a substance that is purported to be a controlled substance but is chemically different from [than] the controlled substance it is purported to be; or

(B) (No change.);

(8)[(7)] Deliver—To transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia [or delivery—The actual or constructive transfer from one person to another of a controlled substance, counterfeit/simulated controlled substance, or drug paraphernalia, whether or not there is an agency relationship. For purposes of this Act, it also includes an

offer to sell a controlled substance, counterfeit/simulated controlled substance, or drug paraphernalia. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree].

(9) Delivery or drug transaction—The act of delivering.

(10) Department—The Texas Department of Public Safety.

(11)[(8)] Designated agent—An individual designated under the Act, §481.073 to communicate a practitioner's instructions to a pharmacist. [or authorized agent -]

[(A) An individual under the supervision of a practitioner, designated in writing by the practitioner, and for whom the practitioner assumes responsibility, who communicates the practitioner's instructions to the pharmacist. The written designation of an agent authorized to communicate prescriptions shall be maintained in the usual place of business of the practitioner and for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety.

[(B) When a practitioner changes a designated agent, the procedure described in subparagraph (A) of this paragraph must be followed prior to utilizing the new agent to communicate the practitioner's instructions to the pharmacist.]

(12)[(9)] Director—The director of the department [Texas Department of Public Safety] or an employee of the department designated by the director [him].

(13)[(10)] Dispense—The delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery [To deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery].

(14)[(11)] Dispenser—A [An individual] practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.

(15)[(12)] Distribute—To deliver a controlled substance other than by administering or dispensing the [a controlled] substance.

(16)[(13)] Distributor—A person who distributes.

(17)[(14)] Drug—A substance, other than a device or a component, part, or accessory of a device that is:

(A) [Any substance] recognized as a drug in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, [or] official *National Formulary*, or a [any] supplement to either pharmacopoeia or the formulary [any of them];

(B) [Any substance] intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) [Any substance (other than food)] intended to affect the structure or [any] function of the body of man or animals but is not food; or [and]

(D) [Any substance] intended for use as a component of a [any] substance described [specified] in subparagraphs (A)–(C) of this paragraph [subsection]. [It does not include devices or their components, parts, or accessories.]

(18)[(15)]> Drug Enforcement Administration—The Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(19)[(16)] Federal Controlled Substances Act—The Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 United States Code, §801 et seq.) [(Public Law 91-513)] or its successor statute.

(20)[(17)] Hospital—

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

(21)[(18)] Institutional practitioner—An intern, resident physician, fellow, or person in an equivalent professional position who [is]:

(A) Is not licensed by the appropriate state professional licensing board;

(B) enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the [Federal] Drug Enforcement Administration; and

(C) Is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(22)[(19)] Lawful possession—The possession of a controlled substance that has been obtained in accordance with state or federal law [which has been lawfully obtained].

(23) Long-term care facility—An establishment licensed by the Texas Department of Health, Bureau of Long Term Care, which maintains emergency medical kits and furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners or services which meet some need beyond the basic provisions of food, shelter, and laundry.

(24)[(20)] Manufacture—The production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, [either] directly or indirectly by extraction from substances of natural origin, [or] independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the [any] packaging or repackaging of the substance or labeling or relabeling of its container.[.] However, the [except that this] term does not include the preparation, compounding, packaging, or labeling of a controlled substance: |

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of [his] professional practice; or

(B) by a practitioner, or by an [his] authorized agent under the [his] supervision of the practitioner, for [the purpose of, ] or as an incident to[,] research, teaching, or chemical analysis and not for delivery.

(25)[(21)] Medical purpose—The use of a controlled substance for relieving or curing a mental or physical disease or infirmity [utilization of controlled substances for the purpose of relieving or curing mental or physical diseases or infirmities].

(26)[(22)] Medication order—An order from a practitioner to dispense a drug to a patient in a hospital [in-patient] for immediate administration while the patient is in the [a] hospital or for emergency use on the patient's [upon] release from the hospital [Upon release from the hospital, any controlled substance in the patient's possession for emergency use must have been dispensed while a hospital in-patient, must be in a properly labeled container, and the quantity may not exceed a seven-day supply].

(27)[(23)] Official prescription blank—The triplicate prescription form supplied to practitioners at cost by the department [Texas Department of Public Safety] for prescribing, administering, dispensing, or delivering Schedule II controlled substances.

(28)[(24)] Patient—A human for whom or an animal [Any human or animal] for which a drug is administered, dispensed, delivered, or prescribed by a practitioner.

(29)[(25)] Person—An [Any] individual, corporation, government [or governmental subdivision or agency], business trust, estate, trust, partnership, [or] association, or any other legal entity.

(30)[(26)] Pharmacist—A person licensed by the Texas State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(31)[(27)] Pharmacist-in-charge—The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the [a] pharmacy's compliance with the Act and other laws relating to pharmacy [the laws, record-keeping requirements, and rules pertaining to the practice of pharmacy].

(32)[(28)] Pharmacist intern—An undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the Texas State Board of Pharmacy and participating in a school-based, board-approved internship program or a graduate of a college of pharmacy who is participating in a board-approved internship.

(33)[(29)] Pharmacy—A facility licensed by the Texas State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law [Every store or other place of business where prescriptions are compounded, dispensed, or sold by a pharmacist and prescriptions for controlled substances are received or processed in accordance with the federal law, the pharmacy laws and regulations, and the state laws and regulations].

(34)[(30)] Physician assistant, assistant, or P.A.—Refer specifically to a person who is a graduate of a physician assistant training program approved by the Council on Allied Health Education Accreditation of the American Medical Association or a person who has passed the examination given by the national commission on the certification of physician's assistants.

(35)[(31)] Possession—Actual care, custody, control, or management.

(36)[(32)] Practitioner—

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, [licensed person who is currently] registered, or [is] otherwise permitted to distribute, dispense, analyze, [or] conduct research with respect to, or [to] administer a controlled substance in the course of professional practice or research in this state; [or]

(B) a pharmacy, hospital, or other institution licensed, [currently] registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state; or[.]

(C) a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in that state.

(37)[(33)] Prescribe—The act of a practitioner [physician, dentist, podiatrist, or veterinarian] to authorize a controlled substance to be dispensed to an ultimate user.

(38)[(34)] Prescription—An order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically; and

(D) directions for the use of the drug, [A written order, and in cases of emergency, an oral or telephonic order, by a physician, dentist, podiatrist, or veterinarian currently registered by the Texas Department of Public Safety and Drug Enforcement Administration (or his agent as designated in writing and upon request, furnished to the pharmacist) to a pharmacist for a controlled substance for a particular patient, which specifies the date of its issue, the true name, current address, and age of the patient (and, if such controlled substance is prescribed for an animal, the species of such animal, owner's name, and address), the name and quantity of the controlled substance prescribed, and the directions for use of such drug.]

(39)[(35)] Principal place of business—A location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location

where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location [Includes all locations where the applicant manufactures, distributes, dispenses, analyzes, or possesses controlled substances, but does not include those locations where the practitioner dispenses the controlled substance on an outpatient basis unless such controlled substances are kept or stored at such location].

(40)[(36)] Processing fee—The fee charged each applicant for registration or reregistration for the costs necessary for processing the application and administration of the Act [the Texas Controlled Substances Act, Subchapter 3].

(41)[(37)] Production—Includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(42)[(38)] Readily retrievable—The maintenance of records required to be kept by the Act or these rules by automatic data processing or mechanized record-keeping systems in such a manner that they can be separated from all records in a reasonable time or records maintained in a manner on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(43)[(39)] Registrant—A person who is registered under the Act, §481.063 [or a pharmacy that is currently registered to manufacture, distribute, analyze, or dispense a controlled substance within this state pursuant to this Act, §3.03].

(44)[(40)] Registration fee—The processing fee.

(45)[(41)] Substitution—The dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(46)[(42)] Supervising physician—A physician licensed by the Texas State Board of Medical Examiners either as a doctor of medicine or doctor of osteopathic medicine who is assuming responsibility and legal liability for the services rendered by the physician assistant and who has been approved by the board to supervise a specific physician assistant.

(47)[(43)] Triplicate prescription form [forms] —An [The] official department [Texas Department of Public Safety] prescription form used [utilized] to administer, dispense, prescribe, or deliver a Schedule 11 controlled substance to an ultimate user.

(48)[(44)] Ultimate user—A person who has lawfully obtained and possesses a controlled substance for the person's [his] own use, [or] for the use of a member of the person's [his] household, or for administering to an animal owned by

the person [him] or by a member of the person's [his] household.

(b) Special instructions. Information and special instruction information regarding procedures under these rules and regulations will be furnished upon request by writing to the Registration Section or Triplicate Prescription Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0001.

### §13.2. Other State or Federal Laws.

(a) Applicability of Texas Penal Code. Pursuant to the Penal Code, [Texas Civil Statutes,] §1.03(b), the provisions of the Penal Code, Chapter 7, concerning criminal responsibility for conduct of another are applicable to the [Texas Controlled Substances] Act.

(b) (No change.)

### §13.3. Persons Required to Register.

(a) Every person who manufactures, distributes, analyzes, dispenses, or conducts research of any controlled substance under the [Texas Controlled Substances] Act shall obtain an annual registration from the department [Texas Department of Public Safety], unless exempted by law or pursuant to these sections. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. For example, a stockholder, or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.

(b) Persons registered by the department [Texas Department of Public Safety] under the [Texas Controlled Substances] Act to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of the Act.

### §13.4. Registration Requirements.

(a) The director shall register an applicant to manufacture or distribute controlled substances included in Schedules II-V if:

(1) (No change.)

(2) there is an exception to paragraph (1) of this subsection that only requires an applicant to register with the department when the controlled substances are not listed in the Federal Controlled Substances Act, provided the applicant is licensed by the appropriate state licensing board.

(3)(2) the applicant has made proper application and paid the applicable fee; and

(4)(3) the applicant has not been found by the director to have violated any provision of the Act, §481.063 [§3.04].

(b) The director shall register an applicant to dispense any controlled substances in Schedules II-V or to conduct research with controlled substances in Schedules II-V if:

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

(3) the applicant has not been found by the director to have violated any provision of the Act, §481.063 [§3.04].

(c) The director shall register an applicant to conduct research with controlled substances in Schedule I, if:

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

(3) the applicant has furnished the department [Texas Department of Public Safety] a complete resume of all research purposes relative to any controlled substances. Such resume may be a duplicate of an application submitted to the Drug Enforcement Administration, Washington, D. C., for research authority, and becomes a part of the applicant's application for all purposes. If approved by the department [Texas Department of Public Safety], such research shall be conducted in the manner as detailed in said resume and utilizing only controlled substances specifically set forth in said resume. The furnishing of false or fraudulent material information in any application filed under this Act shall be grounds for revocation or suspension under the [this] Act; §481.063 [§3.04].

(4) (No change.)

(5) the applicant has not been found by the director to have violated any provision of the Act §481.063 [§3.04].

(A) Persons lawfully authorized under the [Texas Controlled Substances] Act and the Federal Controlled Substances Act to conduct research in the use and effects of controlled substances are granted permission to withhold names and other identifying characteristics of individuals who are the subjects of the research.

(B) Persons lawfully authorized under the [Texas Controlled Substances] Act and Federal Controlled Substances Act to conduct research may possess, plant, and cultivate controlled substances and are exempt from state prosecution for possession of controlled substances to the extent of the authorization. |

(d) The director shall register an applicant to analyze controlled substances in Schedules I-V, if:

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

(3) the applicant has not been found by the director to have violated any provision of the Act, §481.063 [§3.04].

### §13.5. Consent Form.

(a) No registration to manufacture, distribute, analyze, or conduct research with controlled substances shall be issued without a signed consent form executed by the applicant granting the director [of the Texas Department of Public Safety or his designee] the right to inspect the controlled premises as defined in the [Texas Controlled Substances] Act, [Subchapter 5].

(b) No registration to dispense controlled substances shall be issued without a signed consent form executed by the applicant granting the director [of the Texas Department of Public Safety or his designee] the right to inspect records required to be kept by the [Texas Controlled Substances] Act and these rules and regulations.

### §13.7. Persons Exempt from Registration.

The following persons need not register and may lawfully possess controlled substances under this Act.

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

(3) a practitioner engaged in research with nonnarcotic controlled substances in Schedules II-V, where the registrant is already registered under the [Texas Controlled Substances] Act in another capacity. Only practitioners registered under federal law to conduct research with or analyze Schedule I substances may conduct research with or analyze Schedule I substances within this state upon furnishing the director evidence of that federal registration.

(4) (No change.);

(5) an official of the Texas Department of Health, a medical school researcher, or a research program participant possessing tetrahydrocannabinols and their derivatives as authorized under the [this] Act Subchapter G [7];

(6)-(9) (No change.)

### §13.8. Application Requirements.

(a) All applications for registration or reregistration shall be made on forms provided by the department [director of the Texas Department of Public Safety] and shall be submitted as per instruction of §13.14 of this title (relating to Fee [(Subject to Change)]), and shall be filed with the Registration Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0001.

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

(3) Each application and each additional document or statement required by the director shall be signed by the applicant, if an individual; by a general partner

of the applicant, if a partnership; or by an officer of the applicant if a corporation or other entity. An exception to this section is that each application and each additional document or statement required by the director shall be signed by the administrator of the applicant, if a hospital; by the pharmacist-in-charge of the applicant, if a pharmacy; or by the consultant pharmacist of the applicant, if a long-term care facility. This signature as required for application will be the applicant's consent granting the director [or his designee] the right to inspect the controlled premises or records as provided for in [the Texas Controlled Substances Act, Subchapter 3,] the Act, §481.063 [§3.01, paragraphs (C) and (D)].

(b) Application forms and contents.

(1) New applications.

(A) Any person who is required to be registered and is not so registered may apply for registration at any time. Forms [Department of Public Safety forms] for original application may be obtained by writing the Registration Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0001.

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

(2) Applications for renewal.

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

(C) The DPS forms for renewal will be mailed as applicable to each registered person approximately 60 days before the expiration date of his registration; if any registered person does not receive such form within 45 days before the expiration date of his registration, he must promptly give notice of such fact and request such forms by writing to the Registration Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0001.

### §13.9. Acceptance for Filing; Defective Applications.

(a) Applications submitted for filing are dated upon receipt. If found to be complete the application will be accepted for filing. The director will within 45 days submit written notice informing each applicant either that the application submitted is complete and accepted for filing or that it is deficient. Applications failing to comply with the requirements of these regulations will not generally be accepted for filing. In the case of minor defects as to completeness, the director may accept the application for filing with the request to the applicant for additional information. A defective application will be returned to the applicant following its receipt with a state-

ment of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time. For timely filed renewal applications, no notice will be issued for filing, since the existing license or other authorization remains in effect until the director has made a final determination of the application. The director shall determine whether to deny or issue a license or other authorization within 60 days after a complete application has been filed.

(b) An applicant may appeal for a timely resolution of any dispute arising from a violation of a period set forth by filing a written request addressed to the director requesting review of the application to determine whether the established 60-day period was exceeded for issuance or denial of a license or other authorization listed therein. The director shall dismiss as untimely any such appeal filed more than 30 days after the department has notified the applicant that an application has been approved or denied.

(c)[(b)] The responsibility for the application lies with the applicant and the fact that these forms for any reason are not received does not relieve the applicant from making timely application and paying his fee.

(d)[(c)] Accepting an application for filing has no bearing on whether the application will be granted.

#### *§13.12. Certificate of Registration; Denial of Registration.*

(a) The director shall issue a certificate of registration, DPS Form NAR-79, to an applicant if the issuance of registration or reregistration is required under the applicable provisions of the [Texas Controlled Substances] Act, Subchapter C [3.]. In the event that the issuance of registration or reregistration is not required, the director shall deny the application. Before denying any application the director shall show cause, in writing, to the applicant.

(b) (No change.)

#### *§13.13. Expiration Date for the Respective Specialties or Business Activities.*

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

(d) August 31 [- pharmacy.];

(1) pharmacy;

(2) pharmacy-long-term care facility emergency kits;

(e) November 30:

(1) podiatrist, D.P.M.;

(2) hospitals;

(3) researchers;

(4) analyst;

(5) mental health/mental retardation;

(6) teaching institutes;

(7) manufacturer;

(8) distributors;[.]

(9) ambulatory surgical centers.

#### *§13.14. Fee [(Subject to Change)].*

(a) (No change.)

(b) For each application for reregistration to manufacture, distribute, analyze, dispense, or conduct research of a controlled substance, the registrant shall pay an annual processing fee of \$5.00.

(1) Practitioners licensed under the laws of the state to dispense any controlled substances in Schedules II-V or conduct research with controlled substances in Schedules II-V shall submit the annual registration fee of \$5.00, with their application for registration or reregistration directly to the Registration Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 15999 [4087], Austin, Texas 78761-5999 [78773]. Payment shall be made in the form of a certified or cashier's check, or money order, payable to the Texas Department of Public Safety. Payments made in the form of stamps, foreign currency, or third-party endorsed checks will not be accepted.

(2) Applications to manufacture, distribute, or analyze controlled substances.

(A) Applicants to analyze controlled substances in Schedules I-V shall submit their annual registration fee of \$5.00, with their application for registration or reregistration directly to the Registration Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 15999 [4087], Austin, Texas 78761-5999 [78773]. Payment shall be made in the form of a certified or cashier's check, or money order, payable to the Texas Department of Public Safety. Payments made in the form of stamps, foreign currency, or third-party endorsed checks will not be accepted.

(B) Applicants to manufacture or distribute controlled substances in Schedules II-V shall submit their annual registration fee of \$5.00, with their application for registration or reregistration directly to the Registration Section, Narcotics Service, Texas Department of Public Safety, P. O. Box 15999 [4087], Austin, Texas 78761-5999 [78773]. Payment shall be made in the form of a certified or cashier's check, or money order, payable to the Texas Department of Public Safety. Payments made in the form of stamps, foreign currency, or third-party endorsed checks will not be accepted.

(c) (No change.)

*§13.16. Administrative Review-General-ly.* The director may inspect or cause to be inspected the establishment of an applicant or registrant pursuant to the [the Texas Controlled Substances] Act, Subchapter F [subchapter 5]. The director shall review the application for registration and other information gathered by the department regarding the applicant in order to determine whether the applicable standards of the [Texas Controlled Substances] Act, Subchapter C [3] have been met.

#### *§13.17. Grounds for Revocation and Suspension.*

(a) A registration to manufacture, distribute, analyze, or dispense a controlled substance may be suspended, denied, or revoked in accordance with the [Texas Controlled Substances] Act upon finding that the registrant:

(1) has furnished false or fraudulent material or information in any application filed under the [Texas Controlled Substances] Act;

(2) has been convicted of a felony [offense under any state or federal law relating to any controlled substance or convicted of any other felony];

(3) has had his registration or application for registration under the Federal Controlled Substances Act suspended, denied, or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) (No change.)

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels, as provided by federal regulations or laws now in effect or as set out in applicable sections of this title relating to security; [or]

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by the [Texas Controlled Substances] Act, Subchapter (F) [5]; [.] or

(7) has violated a provision of this Act or a rule adopted under this Act.

(b) (No change.)

(c) If a registration is suspended or revoked, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application thereof, orders the sale of perishable substances and the deposit of the proceeds of



the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state as provided under the Code of Criminal Procedure, Chapter 59, the Texas Controlled Substances Act, §5.04.

(d) If a registration is suspended, revoked, denied, [or] cancelled, or surrendered, all unused triplicate prescription forms issued under the Act, §481.075 (a) subsection (A), §3.09, of this Act] shall within seven days after the suspension, revocation, denial [or] cancellation, or surrender becomes effective be returned to the department.

(e) The purpose of the [Texas Controlled Substances] Act being to promote the public health and welfare by the control of the illegal drug traffic, the operation of any registrant in violation of the regulations specified in this section is hereby declared to be a public nuisance, and the director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the registration of the offender [officer].

(f) (No change.)

(g) The director shall promptly notify the Drug Enforcement Administration [bureau] and state agencies of all orders suspending or revoking registration and all forfeitures of controlled substances.

#### §13.24. Minimum Security Requirements for Triplicate Prescription Forms.

(a) (No change.)

(b) Each practitioner who obtains triplicate prescription forms from the department [Texas Department of Public Safety] will be held accountable for each numbered form.

(c)-(h) (No change.)

(i) Lost or stolen triplicate prescription forms must be reported immediately upon discovery to the local police department or sheriff's office and the [Texas Department of Public Safety.] Triplicate Prescription Section of the department in Austin, (512) 465-2189.

(j) Upon recovery of triplicate prescription forms which have previously been reported lost or stolen, a practitioner must immediately notify the police agency to which the loss/theft was reported and to the [Texas Department of Public Safety.] Triplicate Prescription Section, (512) 465-2189. This action must be taken in order for the forms to be removed from the stolen and wanted files and prior to the recovered forms being issued to patients.

(k) Voided triplicate prescription forms will be accounted for by sending the voided forms to the Texas Department of Public Safety, Triplicate Prescription Section, P. O. Box 4087, Austin, Texas 78773-0001.

(1) Failure to maintain strict security and proper accountability of lost, stolen, or voided forms may also be considered a record-keeping violation as provided in the [Texas Controlled Substances] Act, §481.128 [§4.08], as well as a security requirement violation.

#### §13.27. Inspections.

(a) The department [Texas Department of Public Safety] shall inspect the controlled premises and records of applicants and registrants pursuant to the Act, §481.063 [the Texas Controlled Substances Act, Subchapter 3, §3.01, paragraphs (c) and (d)].

(b) As used in this section, the term "controlled premises" means:

(1) places where original or other records or documents required under the [Texas Controlled Substances] Act are kept or required to be kept; and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under the [Texas Controlled Substances] Act may lawfully hold, manufacture, analyze, distribute, dispense, administer, possess, or otherwise dispose of controlled substances.

(c) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made and otherwise facilitating the carrying out of his functions under the [Texas Controlled Substances] Act, the director [or his designee] is authorized to enter controlled premises and to conduct inspections thereof, and of the things specified relevant to those functions.

(d) An officer or employee of the director shall have the right to:

(1) inspect and copy records, reports, and other documents required to be kept or made under the [Texas Controlled Substances] Act;

(2) inspect, within reasonable limits and in a reasonable manner, security of controlled premises and all pertinent equipment, finished and unfinished drugs, and other substances or materials, containers, and labeling found therein, and, except as provided in subsections (e) and (f) of this section, all other things therein, including records, files, papers, processes, controls, and facilities appropriate for verification of the records, reports, and documents required to be kept under the [Texas Controlled Substances] Act or otherwise bearing on the provisions of the [Texas Controlled Substances] Act;

(3) (No change.)

(4) examine any hypodermic syringe, needle, pipe, or other instrument, device, or contrivance, equipment, control, container, label, or facility relating to possi-

ble violation of the [Texas Controlled Substances] Act, or any material used, to be used, or capable of use in diluting or adulterating a controlled substance.

(e) (No change.)

(f) Except as provided in the Act, §481.074(b) or §481.075(c), [subsection [(a)] of §3.08 or subsection (c) of §3.09 of this Act,] a practitioner engaged in authorized medical practice or research may not be required or compelled to furnish the name or identity of a patient or research subject to the department [Texas Department of Public Safety], the director of the State Program on Drug Abuse, or to any other agency, public official, or law enforcement officer, and a practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential. The confidentiality of the patient records shall be respected provided the practitioner maintains separate records relating to controlled substances respective to the [Texas Controlled Substances] Act.

#### §13.28. Records.

(a) Persons registered under the Act to manufacture, distribute, analyze, dispense, or conduct research with controlled substances shall keep and maintain inventories and records required to be kept under the Act or these rules for two years from the date such inventory and records are made. Such inventories and records shall be available for inspection and copying by authorized employees of the department [Texas Department of Public Safety], the [Federal] Drug Enforcement Administration, or appropriate state health regulatory agency.

(b) For the purpose of §§13.28-13.33 of this title (relating to Controlled Substances Regulations), the term "record" means any notification, order form, statement, invoice, prescription, inventory information, or other document for the acquisition or disposal of controlled substances in any manner by persons registered to manufacture, distribute, analyze, or dispense controlled substances in conformance with record-keeping and inventory requirements of federal law, the [Texas Controlled Substances] Act, or rules adopted under the [Texas Controlled Substances] Act.

(c) A controlled substance listed in Schedule V of the [Texas Controlled Substances] Act, which is not a prescription drug under the Act or the Federal Food, Drug, and Cosmetic Act [or the Texas Controlled Substances Act], may be dispensed by a pharmacist without a prescription to a purchaser at retail provided that:

(1) such dispensing is made only by a licensed pharmacist or pharmacist-intern of this state and not by

a nonpharmacist employee even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist);

(2)-(6) (No change.)

(d) Practitioners [as defined in the Texas Controlled Substances Act, §1.02 (24)(a),] shall keep complete and accurate records of purchases (to include samples received from pharmaceutical manufacturer representatives) and disposals of controlled substances in Schedules 1-V.

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

#### §13.29. Inventories

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

(g) On the effective date of a rule by the administrator of the Drug Enforcement Administration pursuant to §§1308.48-1308.50 Code of Federal Regulations, or by Acts of the state legislature, adding a substance was, immediately prior to that date, not listed on any such schedule, every registrant required to keep records who possesses that substance shall take a inventory of all stocks of the substance on hand. Thereafter, such substance shall be included in each inventory of all stocks of the substance on hand. Thereafter, such substance shall be included in each inventory made by the registrant.

(h) (No change.)

(i) Physicians, dentists, veterinarians, or podiatrists shall be deemed in compliance of subsection (h) of this section provided they maintain records and inventories as required in §13.28(d) [f] of this title (relating to Records).

(j)-(k) (No change.)

#### §13.30. Order Forms (DEA Form 222C).

(a) Controlled substances in Schedules I and II of the Act or of the Federal Controlled Substances Act may [shall] not be ordered or distributed by a registrant to or from another registrant except [only] pursuant to a Drug Enforcement Administration Order Form 222C or its subsequent replacement form. Compliance with the provisions of federal law respecting use of this form shall be deemed compliance with these rules and regulations.

(b) Those substances in the [Texas Controlled Substances] Act in Schedules I and II which are in a lower schedule or omitted from federal regulations shall [will] not be ordered or distributed by a registrant to or from another registrant except upon receipt of written request [as follows].

(1) Drugs in Schedules I and II as defined in subsection (a) of this section shall be distributed by a registrant to an-

other registrant only upon receipt of written request.]

(1)(2) This written request must contain the following:

(A) name and address of registrant;

(B) Drug Enforcement Administration registration number;

(C) Texas [Department of Public Safety] controlled substances registration number; and

(D) name, quantity, and strength of drug requested.

(2)(3) Each written request shall be signed and dated by the registrant or his designee who must be authorized to obtain and execute order forms in compliance with federal law.

#### §13.32. Records of Hospital Pharmacies.

(a) Maintenance of records. Every inventory or other record required to be kept under this section, shall be kept by the hospital pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the department [Department of Public Safety], Texas State Board of Pharmacy, or Drug Enforcement Administration.

(b) Outpatient records.

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

(3) Controlled substances listed in Schedule 11 shall be written on a triplicate prescription form in accordance with the Act, §481.075 [§3.09], and §13.45 of this title (relating to use of Triplicate Prescription Forms), unless exempted by §13.47 of this title (relating to Exceptions to Use of Triplicate Prescription Forms). Outpatient prescriptions for Schedule II controlled substances that are exempted from the triplicate prescription requirement shall be manually signed by the practitioner.

(c) (No change.)

#### §13.33. Written and Oral Prescriptions.

(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the [Texas Controlled Substances] Act,

§481.074 [§3.08], and the person knowingly filling such a purported prescription, as well as the person issuing it, may be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

(b) (No change.)

(c) No controlled substance in Schedule II may be administered, dispensed, prescribed, or delivered without the written prescription of a practitioner on an official prescription form, except that in emergency situations, as defined by rules as follows, Schedule II controlled substances may be dispensed upon oral or telephonically communicated prescription of a practitioner or a practitioner's designated agent reduced promptly to writing by the pharmacy and filed by the pharmacy. Within 72 hours after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written triplicate prescription, with the "check if emergency" block marked and indicating the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to other requirements of Title 21 of the Code of Federal Regulations, Chapter 2, Part 1306.05, the prescription shall have written on its face "authorization for emergency dispensing" and the date of the oral order. This federal regulation will be satisfied by marking the block at bottom of triplicate prescription form indicating "check if emergency" and filling in "date issued" space at top of form. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be post-marked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach Copy 2 of the triplicate prescription to the oral emergency prescription which has earlier been reduced to writing. The dispensing pharmacist shall send Copy 1 of the triplicate prescription to the department [Texas Department of Public Safety] within 30 days from the date the prescription is filled. Copy 2 of the triplicate prescription, along with the copy of the oral emergency prescription, will be retained by the pharmacy for two years for inspection purposes. No prescription for a Schedule II controlled substance may be refilled and practitioners, as well as pharmacies, shall retain their copies for a period of two years for record-keeping purposes.

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

(f) The registered nurse, licensed vocational nurse, physician assistant, or paramedic-emergency medical technician who administers a Schedule II controlled substance in an emergency situation, at the directions of a practitioner, shall comply with the requirements of the Act, §481.074(a) and §481.075(d) [the Texas Controlled Substances Act,] §3.08(a)(1) and §3.09(d).

(g) All prescriptions for Schedule II controlled substances must be on the [offi-

cial Texas Department of Public Safety] triplicate prescription form and contain all information required in the ACT, §481.075(d) and (e) [the Texas Controlled Substances Act, §3.09(c)]

(1) All information on the prescription must be legible and it must be manually signed and dated on its face by the practitioner [when filled].

(2) The prescription must be signed and dated on its face when filled by the pharmacist.

(3)(2) No prescription for Schedule II controlled substances shall be filled after the end of the second day following the day on which the prescription was issued.

(h)-(i) (No change.)

(j) A practitioner[, as defined in the Act, §1.02, subsection (24)(a),] violates the Act, §481.074 [§3.08] or §481.075 [§3.09], if such practitioner:

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

### §13.34. Labeling Requirements of Controlled Substances.

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

(d) Lawful possession. Unless an ultimate user[, as defined in the Texas Controlled Substances Act, §1.02,] has lawfully obtained a controlled substance, the ultimate user is in illegal possession of the controlled substance.

(e) (No change.)

§13.35. Persons Required to Register. Every person who sells peyote to members of the Native American Church with not less than 25% Indian blood for bona fide religious ceremonies shall make application for registration under the [Texas Controlled Substances] Act and obtain an annual registration from the department [Texas Department of Public Safety]. This registration will be issued [by the Texas Department of Public Safety] to expire on July 1 of each year.

(1) (No change.)

(2) If application for registration is approved, applicant will be issued certificate of registration, Form NAR-96, and peyote distributor authorization card, Form NAR-96A, by the department [Texas Department of Public Safety] to expire on July 1 of each year.

(3) (No change.)

(4) Each licensed peyote distributor shall furnish to the department's [Texas Department of Public Safety,] Controlled Substances Registration Section[,] the names of his employees. If an employee's name has not been indicated on his application for registration, he shall advise the department [Texas Department of Pub-

lic Safety] in writing at such time as he hires a new employee.

(5) Each licensed peyote distributor will be furnished an authorization letter and a peyote employee authorization card by the [Texas Department of Public Safety,] Controlled Substances Registration Section, certifying that the employee mentioned is an employee of the licensed peyote distributor and is authorized to cut and deliver peyote directly to the licensed distributor. The authorization letter shall be displayed at the location where the peyote distributor is registered, which should be the address appearing on the certificate of registration. The peyote employee authorization card must be in possession of the employee of the licensed peyote distributor at all times.

(6) (No change.)

(7) If the licensed peyote distributor's certificate is suspended, revoked, [or suspended], denied, cancelled, or surrendered, the peyote distributor shall return the following directly to the department [Texas Department of Public Safety] for cancellation:

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

### §13.36. Requirements for Selling Peyote to Authorized Individual.

(a) A licensed peyote distributor cannot sell peyote to an individual unless such individual meets the following requirements.

(1) (No change.)

(2) Such individual is a licensed peyote distributor licensed by the department [Texas Department of Public Safety, Controlled Substances Registration Section].

(b) Before a licensed peyote distributor can sell peyote to a member of the Native American Church with not less than 25% Indian blood, one of the following two methods must be followed.

(1) The individual purchasing or harvesting [handling] peyote for the Native American Church to be used in bona fide religious ceremonies shall furnish a certificate of authorization made out in the name of the individual who is actually purchasing or harvesting peyote. The certificate of authorization shall be on official stationery and shall contain the following:

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

(2) (No change.)

(c) (No change.)

§13.38. Security Requirements. Compliance with applicable provisions of §13.23 of this title (relating to Minimum Security Controls For All Other Registrants) and §13.26 of this title (relating to Other Secu-

rity Controls) pertaining to the [Texas Controlled Substances] Act shall be deemed compliance with security requirements for licensed peyote distributors.

### §13.43. Purpose of Issuing Triplicate Prescription.

(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Act, §481.074 [the Texas Controlled Substances Act, §3.08] and the person knowingly filling such a purported prescription, as well as the person issuing it, may be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

(b) Prescriptions for Schedule II controlled substances whether classified as narcotic or non-narcotic shall be issued on the official Texas triplicate prescription form only and shall not be refilled.

(c) For the purpose of these rules, a non-narcotic Schedule II controlled substance is any substance that does not contain an opium or opiate derivative.

### §13.45. Use of Triplicate Prescription Forms.

(a) Every practitioner who administers, dispenses, prescribes, or delivers any quantity of controlled substance in Schedule II must complete a triplicate prescription form, by legibly filling in the spaces provided. The required information on each individual patient receiving the controlled substance or controlled substance prescription will be recorded as follows:

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

(7) drug quantity [dosage] shown numerically followed by the number written as a word;

(8) (No change.)

(9) manually signed in the proper signature block advising the pharmacist/pharmacy one of the following:

(A) (B) (No change.)

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

(e) When a practitioner administers and/or dispenses directly to a patient, the completed triplicate prescription form will be processed as follows: detach Copy 1 and Copy 2 (attached together by tab on right-

hand side) and send both copies to the Texas Department of Public Safety, Triplicate Prescription Section, P. O. Box 4087, Austin, Texas 78773-0001, within 30 days from the date the prescription is administered and/or dispensed.

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

(h) When veterinarians conduct only an examination on animals brought to his or her office by animal owners or animal custodians, administer and/or dispense a Schedule II controlled substance, and then release the animal, the triplicate prescription form will be completed and processed as in subsections (c)-(e) of this section.]

(h)(i) When a surgical procedure is performed using a Schedule II controlled substance as a general anesthetic in a surgical facility, not located in a hospital setting, the triplicate prescription shall be completed as follows:

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

**§13.46. Utilization of Triplicate Prescription Forms by Practitioners, Other Than Veterinarians, for Small Amounts of Controlled Substances.** When it is not desirable to issue a triplicate prescription for each administering [administration] or dispensing of small amounts (not to exceed 100 milligrams by injection, 150 milligrams orally, or used topically) of Schedule II controlled substances for minor office procedures, it must be recorded on the triplicate prescription form as follows:

(1) (No change.)

(2) the complete list, [along] with Copy 1 and Copy 2 of a completed triplicate prescription form, will be submitted to the Texas Department of Public Safety, Triplicate Prescription Section, P. O. Box 4087, Austin, Texas 78773-0001, on the first working day of the month following the month of patient's visit. This may be submitted [done] on a biweekly basis, but is mandatory monthly;

(3) a separate triplicate prescription form and list will be required for each drug administered and the triplicate prescription form [list] will be completed as follows:

(A) (No change.)

(B) the total amount of Schedule II controlled substance administered for the reported month (or reporting period) [along] with the total number of patients on the attached list. Example: 10 cc's of 4.0% cocaine solution administered to 65 patients;

(C) in "Date Issued" space record month and year. Example: January 1990 [1982], February 1990 [1982], etc;

(D) the practitioner will manually sign the completed triplicate prescription form in the "Dispense as Written" space;

(E) (No change.)

(F) attach [both] Copy 1 and Copy 2 to the patient name list and submit as outlined in paragraph (2) of this section [subsection].

**§13.47. Exceptions to Use of Triplicate Prescription Forms.**

(a) A prescription written for a patient who is admitted to a hospital at the time the prescription is written and filled is not required to be on a triplicate prescription form.

(1) (No change.)

(2) The term "admitted to a hospital," as used in this subsection, will include the following:

(A) general hospitals, special hospitals, ambulatory surgical centers (if licensed),[and] surgical suites in dental schools, and veterinary medical schools;

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

(D) administering or dispensing to animals by a veterinarian while the animals are permanent residents of a zoo, wildlife park, exotic game ranch, wildlife management program, or state/federal research facility;

(E) if any medical procedure other than an examination is performed on animals admitted to animal hospitals, animal clinics, or veterinarian offices in addition to administering or dispensing a Schedule II controlled substance prior to releasing the animal;]

(E)(F) administering or dispensing to inmates in the Texas Department of Corrections prison system;

(F)(G) administering of denatured sodium pentobarbital for the purpose of destroying injured, sick, homeless, or unwanted animals at a humane society or animal control agency, if the humane society or animal control agency is registered with the Drug Enforcement Administration or its successor agency;

(G)(H) when animal owners or animal custodians bring animals to a veterinarian for euthanasia.

(b) (No change.)

**§13.48. Use of Triplicate Prescription by Methadone Clinics.** The following procedure is established for practitioners in methadone clinics reference administering or dispensing of methadone in compliance with the Triplicate Prescription Program.

(1) maintain a record of the amount of methadone administered or dispensed to each patient;

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

(4) the date for the report period will be recorded in the "Date Issued" space (month and year);

(5) return Copy 1 and Copy 2 of the completed triplicate prescription form to the Texas Department of Public Safety, Triplicate Prescription Section, P. O. Box 4087, Austin, Texas 78773-0001, monthly [immediately whether completed on a monthly or weekly basis].

**§13.49. Pharmacist Responsibilities.**

(a) Upon receipt of Copy 1 and Copy 2 of a properly completed triplicate prescription from a practitioner, each dispensing pharmacist shall utilize the "Pharmacy Use Only" section and record the following:

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

(5) indicate on Copy 1 and Copy 2 of the triplicate prescription form if a quantity other than the quantity prescribed is dispensed to the patient; and

(6) enter on the back of the prescription the brand name, or if none, the generic name of the drug, and the strength, quantity, and dosage form of Schedule II controlled substance(s) used to prepare the mixture or compound, such as Brompton's Mixture, etc.

(b) A pharmacist who dispenses a Schedule II controlled substance pursuant to an orally or telephonically communicated prescription from a practitioner or his designated agent for an "emergency situation," as such term is defined in §13.33(b) of this title (relating to Written and Oral Prescriptions), shall promptly reduce such prescription to writing to include the following:

(1) name, address, and [Federal] Drug Enforcement Administration number of the dispensing practitioner;

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

(c)-(e) (No change.)

(f) Within 30 days from the date a pharmacy fills a triplicate prescription form, the pharmacy is required to mail Copy 1 of the form to the Texas Department of Public Safety, Triplicate Prescription Section, P. O. Box 4087, Austin, Texas 78773-0001.

(g) (No change.)

(h) In an effort to more evenly distribute the work load on personnel processing the triplicate forms, [the] pharmacies

are encouraged to mail the forms in as soon as possible, rather than waiting the full 30 days permitted by law.

(i) Should a prescription be written on a triplicate prescription form by a practitioner for a controlled substance other than a Schedule II, the pharmacist will be permitted to fill the prescription, but will mark the prescription in such a way as to alert personnel of the department's Triplicate Prescription Section that the drug is not a Schedule II. Continued misuse of triplicate prescription forms by a practitioner will result in a letter of admonition from the department [Texas Department of Public Safety].

**§13.50. Questionable, Lost, or Stolen Prescriptions.** Pharmacists receiving triplicate prescription forms that create questions or doubts should communicate with the practitioner (when practical) prior to or in addition to utilizing the following program which is part of the Texas Crime Information Center (TCIC). Stolen or lost triplicate prescription form control numbers will be entered into the stolen and wanted file. This control number is the printed number appearing on the lower right-hand corner of the form [do not confuse with the red number in the upper right-hand corner].

(1) Should a question arise in regard to the authenticity of a triplicate prescription, a pharmacist should contact the local police department, sheriff's department, or Texas Department of Public Safety office with communication facilities.

(2) The pharmacist should state: "I need to have a check made of the stolen or wanted file on a triplicate prescription number" (giving the control number on the prescription).

(3) If the number has been reported stolen or lost, the pharmacist can assume it is a forged prescription and should coordinate with the law enforcement agency as to what course of action to follow.

**§13.52. Disposition of Unused Triplicate Prescription Forms.**

(a) In the following situations, unused triplicate prescription forms are invalid and must be returned to the department with a letter of explanation within the time periods as set forth in paragraphs (1)-(6) of this subsection for each situation: [Unused triplicate prescription forms must be returned to the Texas Department of Public Safety along with a letter of explanation in the following situations]:

- (1) deceased (30 days);
- (2) discontinue practice (30 days);
- (3) move out-of-state (30 days);

(4) license to practice, Texas controlled substances registration number, or [Federal] Drug Enforcement Administration number cancelled, revoked, suspended, denied, surrendered, or amended to exclude the handling of Schedule II controlled substances (seven days after the actions);

(5) a new Texas controlled substances registration number issued as a result of action initiated in paragraphs (2)-(4) of this subsection; or

(6) a Texas controlled substances registration number issued after institutional practitioner permit or similar number has expired.

(b) Interns, residents, fellows, or their equivalent must return all unused triplicate prescription forms to the administrator of the base hospital or training institution upon completion or termination of all training programs at that particular base hospital or training institution (including any satellite facility). It is the responsibility of the administrator of the base hospital or training institution to return the unused triplicate prescription forms to the department [Texas Department of Public Safety] within 30 days after completion or termination of all training programs by any intern, resident, fellow, or their equivalent.

(c) In no instance shall an intern, resident, fellow, or the equivalent continue to use triplicate prescription forms issued under the institutional practitioner permit number or similar number after being properly licensed as a practitioner by the appropriate licensing board.

(d)[(e)] Return only unused triplicate prescription forms. The pink copy (Copy 3) of the triplicate prescription form must be retained by the practitioner for a period of two years from the date issued.

(e)[(d)] Any unused triplicate prescription forms should be returned to the Texas Department of Public Safety, Triplicate Prescription Section, P. O. Box 4087, Austin, Texas 78773-0001.

**§13.54. Purpose for True Name, Current Address, and Age Requirements.**

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

(e) The requirements in subsections (b)-(d) of this section must be met in order to comply with the requirements of the Act, §481.075(d) [the Texas Controlled Substances Act §3.09(c)].

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

Issued in Austin, Texas, on August 16, 1989.

TRD-8907768

Joe E. Milner  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: October 2, 1989

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

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 35. Pharmacy Services**

**Subchapter A. Participation**

**• 40 TAC §§35.101, 35.102, 35.107**

The Texas Department of Human Services (DHS) proposes amendments to §§35.101, 35.102, and 35.107, concerning pharmacy services. The purpose of the amendment to §35.101 is to change contracting requirements to ensure that eligible recipients obtain services under the Medicare Catastrophic Coverage Act, Public Law 100-360. The purpose of amendments to §35.102 and §35.107 is to clarify DHS procedures for handling specialized contracting situations.

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 no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to enable eligible persons to receive services under the Medicare Catastrophic Coverage Act, Public Law 100-360. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-483, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

**§35.101. Requirements for Participation.**

(a) Any pharmacy or pharmacist [,] who has a current license or registration with the Texas State Board of Pharmacy or is licensed under the laws of his respective state and is free from any pharmacy board restriction [,] may apply to become a provider in this program.

(b) Prescribing practitioners [,] who are authorized and licensed to practice the healing arts, as defined and limited by federal and state laws, and choose to provide their own pharmaceuticals [,] may also apply to become providers.

(c) Participants in the Vendor Drug Program are required to be provid-

ers of prescription drugs under the provisions of the Medicare Catastrophic Coverage Act, Public Law 100-360.

**§35.102. Applications for Participation.**

(a) Applications for participation must be [are] made to: Vendor Drug Program Provider Enrollment, Texas Department of Human Services, P.O. Box 149030, Mail Code 546-E [2960], Austin, Texas 78714-9030 [78769].

(b) (No change.)

(c) Contracted providers who serve a specialized population or stock a limited formulary may be subject to special negotiated reimbursement arrangements.

**§35.107. Termination of Participation.**

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

(c) DHS may refuse to contract with any applicant for participation.

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907808

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: November 1, 1989.

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



# 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 1.

### ADMINISTRATION

#### Part V. State Purchasing and General Services Commission

##### Chapter 113. Central Purchasing Division

##### Purchasing

###### • 1 TAC §113.14

The State Purchasing and General Services Commission adopts an amendment to §113.14, without changes to the proposed text as published in the June 30, 1989, issue of the *Texas Register* (14 TexReg 3177).

The amendment to §113.14 is adopted to reduce or eliminate unnecessary pre-payment purchase voucher audits and permit more efficient and timely payments to vendors for spot purchases in amounts up to \$1,000. These purchases are made by individual state agencies under their delegated purchasing authority and do not require formal competitive bidding.

The amendment instructs agencies to transmit purchase vouchers for spot purchases in amounts up to \$1,000 directly to the Comptroller for payment. Other purchase vouchers will continue to be transmitted to the commission for pre-payment purchasing audits.

Two written comments were received. One commenter expressed firm support for the amendments and stated that it would definitely speed up vendor payments and at the same time save state funds. The second commenter pointed out that Senate Bill 317, Acts, 71st Legislature, 1989, gives the commission the discretion to delegate purchasing audit authority to the Comptroller for purchases that do not exceed \$500 or a greater amount determined by the commission. The commenter recommended further amendments to delegate such audit authority to the Comptroller to fully utilize the authority of Senate Bill 317; eliminate the necessity of either the commission or the Comptroller continuing to audit spot purchases.

The University of Texas at Arlington commented in favor of the amendment. The Comptroller of Public Accounts commented against the amendment.

The commission agrees that Senate Bill 317 authorizes it to delegate full purchasing audit authority to the Comptroller. Nonetheless, the commission elects not to fully utilize that authorization at this time. The amendment improves efficiency by reducing unnecessary paperwork, but also retains to the commission responsibility for ensuring compliance

with purchasing law, which the commission believes continues to be necessary and within its statutory authority.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3, which provides the State Purchasing and General Services Commission with the authority to audit and approve purchase vouchers for payment.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907785

John R. Neal  
General Counsel  
State Purchasing and  
General Services  
Commission

Effective date: September 13, 1989

Proposal publication date: June 30, 1989

For further information, please call: (512) 463-3446

## TITLE 4. AGRICULTURE

### Part II. Animal Health Commission

#### Chapter 35. Brucellosis

##### Subchapter A. Eradication of Brucellosis

###### • 4 TAC §35.1

The Texas Animal Health Commission adopts amendments to §35.1, without changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3133) and in the June 30, 1989, issue of the *Texas Register* (14 TexReg 3177) respectively.

The amendments were necessary to redefine and clarify the definitions for an adjacent herd as one that borders an affected herd; a herd is all cattle on one premise; a high risk herd states a state/federal veterinarian can determine when a herd is at high risk and clarifies that a herd need not be located on the same premise as an affected or adjacent herd to be at high risk; an official backtag is referred to several times throughout this regulation and refers to a official backtag approved by USDA which uniquely identifies each animal numerically; the premise definition eliminates the requirement that it be defined by physical barriers that prevent cattle from crossing; a spayed heifer is an animal which has been neutered and identified with an eartag and brand.

The defined words and terms will assist anyone reading the regulation to understand how

that word or term is used in the brucellosis regulations.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provide the commission with authority to adopt rules and sets forth the duties of the commission to protect livestock in the state from disease.

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

Issued in Austin, Texas on August 25, 1989

TRD-8907829

John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: September 20, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 479-6697

###### • 4 TAC §35.2

The Texas Animal Health Commission adopts an amendment to §35.2, with changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3133).

Wording was deleted from the proposed text because it was determined to be a duplication.

The amendment requires the removal of heifer calves born in an infected herd.

The amendment states that heifer calves must be removed from quarantined herds immediately after they are weaned and must be moved either to a market, quarantined pasture, quarantined feedlot, or slaughter or they can be kept as a separate heifer herd under quarantine. A herd is eligible for quarantine release following two consecutive herd blood tests that are classified negative and the weaned heifers have been removed from the herd.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provide the commission with authority to adopt rules and sets forth the duties of the commission to protect livestock in the state from disease.

**§352. General Requirements.**

**(a)-(j) (No change.)**

(k) Removal of heifer calves from quarantined herds. Heifers born in an infected herd shall be removed from the herd immediately after they are weaned and moved to a market, quarantined pasture, quarantined feedlot, or slaughter or kept as a separate heifer herd under quarantine.

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

(1) The herd of which the reactor or the suspect was a part shall be placed under quarantine.

(2) All cattle in the herd except bulls less than 18 months of age, steers, and spayed heifers are included in the quarantine. Any movement of quarantined cattle shall conform to subsections (h) and (i) of this section, concerning identification and movement of reactor, exposed, or suspect cattle. Release of the quarantine will be as described in paragraph (7) of this subsection.

(3) An initial test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent or high risk herds will be conducted within a time set by state federal personnel upon consultation with each herd owner. If the executive director determines, based on epidemiological principles, that immediate action is necessary, the time for testing may be set without consultation with the herd owner.

(4) The results of the initial herd test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent or high risk herds will be used to determine the need for, and development of, an individual herd plan for prevention or elimination of brucellosis in that herd. The plan shall be developed by a state-federal veterinarian of the brucellosis control program in consultation with the herd owner or caretaker and his veterinarian (if so requested by the owner). The plan developed by the commission shall be final and the owner or caretaker will be provided a copy. Any proposed herd plan which has identified special management requirements will be reviewed by a regional epidemiologist who will either support or modify the plan. A regional epidemiologist may waive vaccinating cattle over eight months of age in infected herds. The terms and conditions of a herd plan may be amended in writing by the commission upon good cause.

(5) The plan will consist of the following.

**(A) Testing procedures.**

(i) All eligible cattle in the herd including all nonvaccinated heifers over six months of age shall be presented for testing or retesting at intervals stated in

the herd plan until the quarantine is released.

(ii) All cattle to be added to the herd shall be tested prior to commingling with the herd.

(iii) All stray cattle found in the herd shall be presented for testing.

(iv) Cattle identified as reactors shall be removed in accordance with subsection (j) of this section.

(v) Heifers born in the herd shall be removed in accordance with subsection (k) of this section.

(vi) All test-eligible cattle in the herd shall be presented for a postquarantine retest to be conducted not less than 10 months nor more than 16 months after the removal of the last reactor.

**(B) Vaccination procedures.**

(i) All nonvaccinated heifers shall be presented as soon as possible after they reach the age of four months and before the age of six months for dairy heifers and eight months for beef heifers to be vaccinated with Strain 19, *B. abortus* vaccine.

(ii) All female cattle over eight months of age in beef herds and six months of age in dairy herds shall be presented to be adult vaccinated within 10 days of their negative serological test with Strain 19, *B. abortus*-vaccine.

(iii) Replacement female cattle over eight months of age for beef or over six months of age for dairy shall be presented within 10 days after a negative test, to be adult vaccinated prior to their addition to an already vaccinated herd. The epidemiologist will determine if adult vaccination of replacements must continue if the quarantine extends past 18 months, or if only calfhood vaccines may be added.

(iv) Previously vaccinated negative female cattle shall be presented for revaccination with Strain 19, *B. abortus* vaccine as determined by the epidemiologist.

(6) A person may protest an initial test or a herd plan for the prevention or elimination of brucellosis in each herd classified as affected, adjacent or high risk due to a reactor or suspect animal, after consultation with the state/federal veterinarian of the Brucellosis Control Program.

(A) To protest, the herd owner must request a meeting, in writing, with the executive director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(i) the meeting will be set by the executive director no later than 21

days from receipt of the request for a meeting;

(ii) the meeting or meetings shall be held in Austin; and

(iii) the executive director shall render his decision in writing within 14 days from date of the meeting.

(B) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(C) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(D) If the executive director determines, based on epidemiological principles, that immediate action is necessary, the executive director may shorten the time limits as set out in Subparagraphs (A) and (B), to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

**(7) Quarantine release.**

(A) A herd is eligible for quarantine release after two consecutive herd blood tests have been classified as negative. The first negative test shall be conducted at least 30 days after the last reactor is removed from the herd. The second negative test shall be conducted at least 180 days after the last reactor is removed from the herd.

(B) Heifers born in the herd and were removed from the herd and kept separately shall remain under quarantine until they test negative 30 days following calving.

(C) On the releasing test, official vaccinates that demonstrate suspect titers on the approved supplemental test, shall be classified as suspects. After suspects are stabilized, the remainder of the herd may be released from quarantine. These suspects shall remain under a hold order.

(D) Epidemiological data may be considered in the release of the quarantine.

(8) Postquarantine test. Upon release of quarantine owner/caretaker shall retest all test-eligible cattle in not less than 10 months nor more than 16 months from



the removal of the last reactor from herds found to be infected. When brucellosis free herd certification is desired, the postquarantine test must be conducted pursuant to §35.3 (d)(1)(B) of this title (relating to Certified Brucellosis Free Herd of Cattle.)

(1)-(u) (No change.)

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907828 John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: September 20, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 479-6697

#### • 4 TAC §35.4

The Texas Animal Health Commission adopts an amendment to §35.4, without changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3135).

It was necessary to amend the entry and change of ownership requirements concerning nonvaccinated female cattle, under test age moving from a farm-of-origin, or coming into the state from an out-of-state market, because the previous requirement for a form of identification and an accompanying "S" Permit were causing an undue hardship on industry since these requirements could be relaxed as amended and continue to maintain control over entry of this class of cattle into the state.

Nonvaccinated female cattle under test age coming from out-of-state and moving directly from a farm-of-origin can move on a waybill and be consigned to a market, slaughter or quarantined feedlot. Those heifers consigned to market can be vaccinated if they are under 12 months of age; otherwise, they would have to be sold for movement to slaughter or quarantined feedlot and accompanied by an "S" permit. Nonvaccinated female cattle under test age moving from an out-of-state market can enter the state and move to a market, slaughter, or quarantined feedlot if they are accompanied by an "S" permit or certificate of veterinary inspection. Individual identification is not required. Heifers moved to a market will be handled the same as heifers moving from an out-of-state premise; an explanation was added concerning entry of cattle into the State of Texas from Class "C" states or areas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provide the commission with authority to adopt rules and sets forth the duties of the commission to protect livestock in the state from disease.

This agency hereby certifies that the rule as

adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on August 25, 1989

TRD-8907827 John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: September 20, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 479-6697

### Chapter 49. Equine

#### • 4 TAC §49.1

The Texas Animal Health Commission adopts an amendment to §49.1, without changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3136).

The amendment was necessary to specify the name of the document used to identify tested horses and to advise which laboratory is used for retesting of blood samples and to assure that infected horses are quarantined in isolation from other horses.

A horse which has been disclosed as a reactor may be retested prior to branding. Such retest must be conducted within 30 days after date of the original test and the blood sample must be submitted to one of the Texas Veterinary Medical Diagnostic Laboratories at College Station or Amarillo. An animal infected with EIA must be maintained under quarantine and kept in isolation 200 yards from noninfected horses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provide the commission with authority to adopt rules and sets forth the duties of the commission to protect livestock in the state from disease.

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

Issued in Austin, Texas on August 25, 1989

TRD-8907828 John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: September 20, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 479-6697

### Chapter 51. Regulations Governing Entry of Livestock and Poultry into Texas and Admission into Shows, Fairs and Exhibitions, both Intra and Interstate

#### • 4 TAC §51.2

The Texas Animal Health Commission adopts an amendment to §51.2, without changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3136).

The amendment was necessary to allow test-eligible cattle entering the state from sources other than a farm-of-origin for slaughter or quarantined feedlot purposes to be accompanied by a VS 1-27 permit rather than require a health certificate.

Test-eligible cattle can enter the State of Texas for slaughter or quarantined feedlot purposes and move from a source other than a farm-of-origin if accompanied by a VS Form 1-27 indicating the animal has been tested.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of the commission to protect livestock in the state from disease.

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

Issued in Austin, Texas on August 15, 1989

TRD-8907825 John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: September 20, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 479-6697

### Chapter 57. Poultry

#### • 4 TAC §57.11

The Texas Animal Health Commission adopts an amendment to §57.11, without changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3137).

The amendment was necessary for the commission to have authority to quarantine and dispose of a poultry flock when a case of fowl typhoid *S. Gallinarum* infection is confirmed in that flock.

When a case of fowl typhoid *S. Gallinarum* infection has been confirmed in a poultry flock the flock will be placed under quarantine and then depopulated; and for the premises must be cleaned and disinfected and kept free of poultry for 180 days. Repopulation of the premises is allowed provided the poultry have been tested negative to fowl typhoid.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of the commission to protect livestock in the state from disease.

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907824      John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: September 20, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 479-6697

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Community Affairs

#### Chapter 1. Administration

#### Subchapter C. Administrative Hearings

##### • 10 TAC §1.21

The Texas Department of Community Affairs adopts an amendment to §1.21, without changes to the proposed text as published in the July 14, 1989, issue of the *Texas Register* (14 TexReg 3383).

The agency is adopting the amendment to this section in order to clarify that both state and federal statutes may govern the conduct of agency hearings; to expedite the hearing process by requiring that a request for a hearing be submitted within 15 days of receipt of notice of the action giving rise to the request for hearing and by requiring that party requesting a hearing notify the agency of the specific grounds upon which the request is based; to add a provision governing the computation of time; and to shorten the section by deleting the provisions relating to the rules of evidence, official notice, and action after the hearing. These later provisions will be re-adopted as separate sections of Subchapter C.

The effect of the amended section will be to require parties to request hearings within 15 rather than 30 days after receipt of notice of the action appealed. The amended section will also require parties to state with specificity the basis for the request for hearing. As amended, §1.21 will no longer govern the rules of evidence, official notice, and action after the hearing.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(201), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt or re-

peal such rules and regulations as may be necessary to carry out its programs and responsibilities.

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

Issued in Austin, Texas on August 24, 1989.

TRD-8907818      Roger A. Coffield  
General Counsel  
Texas Department of  
Community Affairs

Effective date: September 15, 1989

Proposal publication date: July 14, 1989

For further information, please call: (512) 834-6016

##### • 10 TAC §1.23

The Texas Department of Community Affairs adopts new §1.23, without changes to the proposed text as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3449).

The agency is adopting §1.23 in order to provide rules of evidence and official notice to govern the conduct of agency hearings.

The new §1.23, contains the rules of evidence and official notice exactly as they existed under the previous §1.21(j)(7)(A)-(F). The agency is adopting the provisions relating to the rules of evidence and official notice as a separate section in order to make it easier to find the appropriate rule in the table of contents in Chapter 1.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4413(201), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt or repeal such rules and regulations as may be necessary to carry out its programs and responsibilities.

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

Issued in Austin, Texas on August 24, 1989.

TRD-8907817      Roger A. Coffield  
General Counsel  
Texas Department of  
Community Affairs

Effective date: September 15, 1989

Proposal publication date: July 18, 1989

For further information, please call: (512) 834-6016

##### • 10 TAC §1.25

The Texas Department of Community Affairs adopts new §1.25, without changes to the proposed text as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3450).

The agency is adopting §1.25 in order to provide a rule governing action after the hearing for agency hearings.

The new §1.25 contains the rules governing action after the hearing exactly as they existed under the previous §1.21(j)(7)(G). The agency is adopting the provisions relating to action after the hearing as a separate section in order to make it easier to find the appropriate rule in the table of contents to Chapter 1.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4413(201), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt or repeal such rules and regulations as may be necessary to carry out its programs and responsibilities.

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

Issued in Austin, Texas, on August 24, 1989.

TRD-8907821      Roger A. Coffield  
General Counsel  
Texas Department of  
Community Affairs

Effective date: September 15, 1989

Proposal publication date: July 18, 1989

For further information, please call: (512) 834-6016

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 15. Drivers License Rules

#### Examination Requirements

##### • 37 TAC §15.58

The Texas Department of Public Safety adopts an amendment to §15.58, without changes to the proposed text as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3460).

The amendment will allow an applicant for a driver's license to demonstrate or present proof of their ability to safely operate a motor vehicle; therefore, eliminating the unnecessary delay and expense of medical evaluation.

The amendment to paragraph (1)(A)(ii) deletes and adds new language requiring applicants with telescopic lenses to successfully complete a road test before licensure, and therefore, not refer the physical condition to the medical advisory board for evaluation. Paragraph (1)(G) is added to enable determination of musculoskeletal disorder referral or road test requirement for licensure. Language is added to paragraph (4)(A) to clarify the definition of "under the care of a physician" when the condition was diagnosed over 12 months ago and the treatment consists of only periodic visits to a physician. Paragraph (5) is added promulgating guidelines for referral of applicants completing a treatment program for alcohol or drug dependency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6687b, §1A, and the Texas Government Code, §411.004(3), which provides the Texas Department of Public Safety with the authority to adopt rules that it determines necessary to effectively administer this Act.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907787

Joe E. Milner  
Director  
Texas Department of  
Public Safety

Effective date: September 13, 1989

Proposal publication date: July 18, 1989

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 6. Disaster Assistance Program

##### General Information

The Texas Department of Human Services (DHS) adopts amendments to §§6.1, 6.2, 6.103, 6.301, and 6.304, without changes to the proposed text as published in the May 26, 1989, issue of the *Texas Register*.

The amendments to §§6.1, 6.2, and 6.103 result from changes in federal regulations which specify assistance available through the Individual and Family Grant (IFG) Program. The amendments to §§6.301 and 6.304 result from changes in the procedure for notifying clients regarding lost warrants and voluntary withdrawals.

The sections will function by making current IFG program eligibility criteria available in DHS's Disaster Assistance Program rules.

No comments were received regarding adoption of the amendments.

##### • 40 TAC §6.1, §6.2

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907808

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Effective date: October 16, 1989

Proposal publication date: May 26, 1989

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

### Eligibility Criteria for Individual Family Grants

##### • 40 TAC §6.103

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907809

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Effective date: October 16, 1989

Proposal publication date: May 26, 1989

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

### Case Decision, Review, and Closing

##### • 40 TAC §6.301, §6.304

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907810

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Effective date: October 16, 1989

Proposal publication date: May 26, 1989

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

### Chapter 7. Refugee Cash Assistance Program

#### Subchapter C. Eligibility Determination

##### • 40 TAC §7.302

The Texas Department of Human Services (DHS) adopts an amendment to §7.302, without changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3528).

The justification for the section is to include Amerasians in the Refugee Resettlement

Program. This will lessen the reliance of these individuals on local resources for assistance.

The amendment, which results from a change in federal regulations, adds Amerasians as a group eligible for assistance under the Refugee Resettlement Program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 25, 1989.

TRD-8907807

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Effective date: September 15, 1989

Proposal publication date: July 21, 1989

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

### Part V. Veterans Land Board

#### Chapter 175. General Rules of the Veterans Land Board

##### • 40 TAC §175.18

The Veterans Land Board adopts an amendment to 40 TAC §175.18, with changes to the proposed text as published in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1269). The text has been changed to correct a typographical error, and to eliminate the automatic expiration provision contained in subsection (c)(1)(B).

The amendment provides flexibility to the staff of the board in disposing of the large number of forfeited tracts of land which the Veterans Land Board has in its inventory and prevents any loss of funds due to or by delaying a sale.

The amendment provides that the board shall set the terms and condition of the resale of forfeited land, and provides that the chairman of the board shall be authorized to review bids when and as received and accept the first acceptable bid on certain tracts. It also provides a mechanism for obtaining the assistance of local real estate professionals in the disposal of these tracts of land.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the provisions of the Natural Resources Code, §161.061 and §161.063, which provides the Veterans Land Board with the authority to adopt rules that it considers necessary or advisable.

*§175.18. Resale of Forfeited Land.*

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

(c) Sale of forfeited tracts.

(1) Qualified purchasers.

(A) (No change.)

(B) Any Type I tract not awarded by the board on the bid deadline date shall be immediately reclassified as Type II land. Type II tracts may be offered

for sale or lease to both nonveterans and eligible veterans. Bids on Type II tracts may be reviewed by the chairman who may, in his or her sole discretion, award any Type II tract to the highest bidder.

(2)-(7) (No change.)

(d) (No change.)

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

Issued in Austin, Texas, on August 24, 1989.

TRD-8907832

Garry Mauro  
Chairman  
Veteran's Land Board

Effective date: September 15, 1989

Proposal publication date: March 10, 1989

For further information, please call: (512) 463-5009



# Open Meetings

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

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

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

## Texas Department of Agriculture

**Wednesday, September 13, 1989, 10 a.m.** The Department of Agriculture will meet in the District Office, Expressway 83, (two blocks west of Morningside Road), San Juan. According to the agenda, the department will conduct an administrative hearing and review an alleged violation of Texas Agriculture Code, §103.001, by Pat Womack, Inc., doing business as Quality Valley Growers, Inc. as petitioned by C.E. Duncan Produce.

**Contact:** Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

**Filed:** August 24, 1989, 10:18 a.m.

TRD-8907784

## Bond Review Board

**Monday, August 28, 1989, 2 p.m.** The Bond Review Board staff met for an emergency meeting in Room 710, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the staff discussed implementation of the Public School Facilities Funding Act. The emergency status was necessary because of implementation of legislation taking effect September 1, 1989.

**Contact:** Tom K. Pollard, Room 506, Sam Houston Building, Austin, Texas 78701, (512) 463-1741.

**Filed:** August 25, 1989, 1:44 p.m.

TRD-8907816

## Child Care Development Board

**Tuesday, September 5, 1989, 1:30 p.m.** The Child Care Development Board will meet in Room 831, General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the board will elect officers; approve by-laws; appoint an advisory committee; and consider initial parameters for the center.

**Contact:** Lynn Leverty, P.O. Box 12608, Austin, Texas 78711, (512) 463-6000.

**Filed:** August 28, 1989, 3:23 p.m.

TRD-8907880

## Texas Department of Commerce

**Thursday, August 24, 1989, 4 p.m.** The State Job Training Coordinating Council, Worker Adjustment/Economic Development Committee met for an emergency meeting in the Harvey Hotel, 3100 I-40 West, Amarillo. According to the revised agenda, the committee considered the action item of displaced homemakers as part of the eligible service population under Title III programs. The emergency status was necessary because the Title III state plan must be amended to reflect the decision on displaced homemaker population to satisfy the federal requirements.

**Contact:** Brenda Lovett, 8317 Cross Park Drive, Austin, Texas 78754, (512) 834-6312.

**Filed:** August 24, 1989, 1:35 p.m.

TRD-8907786

## Texas Department of Criminal Justice

**Tuesday, September 12, 1989, 9 a.m.** The Texas Department of Criminal Justice Board will meet in Room 105 and Room 106, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the board will meet in executive session to consider: Windham School Board, consent items--new employee contracts, dual employment requests, second appraisers, career ladder policy, appraisal of teacher policy employee hearings; regular session, discuss consolidation, appointment of interim director, committees, advisory committee, construction consultant contract, architect selection, authorization of construction/remodeling projects, consent items including: interagency contracts, requests for dual employment, easement re-

quest and 1990 operating budget.

**Contact:** James A. Lynaugh, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2101.

**Filed:** August 29, 1989, 9:09 a.m.

TRD-8907900

## Advisory Commission of State Emergency Communications

**Thursday, September 7, 1989, 9 a.m.** The Advisory Commission of State Emergency Communications Regional Plan Committee will meet in Room 106, John H. Reagan Building, Austin. According to the agenda, the committee will recognize guests; review and consider approval of South East Texas Regional Planning Commission's 9-1-1 plan; Central Texas Council of Governments' 9-1-1 plan; consider any new business and hear public comment.

**Contact:** Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

**Filed:** August 28, 1989, 1:07 p.m.

TRD-8907871

**Friday, September 8, 1989, 10 a.m.** The Advisory Commission of State Emergency Communications Finance Committee will meet in the Commission Offices, Austin. According to the agenda, the committee will consider the update on Southwestern Bell's proposed 9-1-1 tariff; update on GTE-Southwest's proposed 9-1-1 tariff; discuss and consider proposed clarification of definition of terms in statute; financial report - revenues; review financial impact of 9-1-1 regional plan on equalization surcharge fund; new business and hear public comment.

**Contact:** Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

**Filed:** August 28, 1989, 1:07 p.m.

TRD-8907870

## Texas Employment Commission

**Tuesday, September 5, 1989, 2 p.m.** The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve prior meeting notes; present awards to employees; executive session on Mary B. Freed and Tighe H. Freed vs Thrikiel F. Thompson and the commission; consider actions, if any, resulting from executive session; discuss/approve reroofing of agency-owned building in Lubbock, painting and carpeting in Victoria; internal procedures of commission appeals; consider/act tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 36, and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 28, 1989, 3:54 p.m.

TRD-8907887

## Texas Housing Agency

**Tuesday, September 5, 1989, 3 p.m.** The Texas Housing Agency Personnel and Programs Committee will meet in the THA Conference Room, Suite 300, 811 Barton Springs, Austin. According to the agenda summary, the committee will review, consider and possibly act on: personnel issues as they relate to the budget; proposed changes to THA employee policy manual; bond structure and issuance of remaining 1989 bond volume allocation; staff allocation report concerning the local initiative focused rate mortgage program; association for retarded citizens of Texas loan commitment for the purpose of making recommendations to the board; executive session pursuant to Texas Civil Statutes, Article 6252-17, §§2(e) and 2(g), to consider and possibly act on pending or potential litigation on advice of attorney, evaluation, duties and discipline of employees, and to act on executive session items as required in open session.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 28, 1989, 4:25 p.m.

TRD-8907892

## State Board of Insurance

**Tuesday, September 5, 1989, 9 a.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing to consider Docket No. 10459, if disciplinary action should be

taken against Joseph Parillo, Forney, Texas, who holds a Group I, legal reserve life insurance agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:49 p.m.

TRD-8907882

**Tuesday, September 5, 1989, 10 a.m.** The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda summary, the commission will take emergency actions, extension, and proposals of rules in 28 TAC, Chapter 1, Subchapter G, §7.31, §7.68; for procedures for cease and desist orders and emergency cease and desist orders, retaliatory taxes and annual statement forms, respectively; exemption of American Risk Funding Insurance Company from worker's comp pool; appeals from Texas Catastrophe Property Insurance Association--actions concerning Ocean Vista Towers, Executive Condominium and individual owners; interpretation of finality of commissioner's orders; AG's opinion on nonresident agents; appointments to property and casualty and title guaranty associations; HMO solvency surveillance and advisory committees, health risk pool directors; personnel, solvency matters, pending and contemplated litigation.

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

Filed: August 28, 1989, 4:31 p.m.

TRD-8907895

**Wednesday, September 6, 1989, 1:30 p.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10488, to consider whether disciplinary action should be taken against Bruce Heaton Butler, Abilene, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:49 p.m.

TRD-8907883

**Wednesday, September 6, 1989, 1:30 p.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10466, to consider whether disciplinary action should be taken against Robert Golden Wilson, Muleshoe, Texas, who holds a Group I, legal reserve life insurance agent's license, a Group II, life, health and

accident insurance agent's license and a local recording agent's license.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:40 p.m.

TRD-8907884

**Friday, September 8, 1989, 9 a.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10480, to consider whether disciplinary action should be taken against Wallace Bernard Harrington, Austin, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:48 p.m.

TRD-8907885

**Friday, September 8, 1989, 1:30 p.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearings section will conduct a public hearing on Docket No. 10484, to consider the renewal application of Gene Kelley, Dallas, Texas, for a Group I, legal reserve life insurance agent's license.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:48 p.m.

TRD-8907886

**Monday, September 11, 1989, 9 a.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 104160, to consider whether disciplinary action should be taken against Southern Educators Life Insurance Company, Norcross, Georgia.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:48 p.m.

TRD-8907888

**Monday, September 11, 1989, 1:30 p.m.** The State Board of Insurance Commissioner's Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10498, to consider the application of James Ralph Miller, Tyler, Texas, for a Group I, legal reserve (combination or industrial) life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto

Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 28, 1989, 3:48 p.m.

TRD-8907889

## Texas Department of Licensing and Regulation

**Tuesday, September 12, 1989, 10 a.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in Room 102, Memorial Civic Center, 1501 6th Street, Lubbock. According to the agenda, the division will receive public comments on revisions to the administrative rules for tow trucks and vehicle storage facilities.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:39 a.m.

TRD-8907863

**Tuesday, September 12, 1989, 6 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet at the Arlington Chamber of Commerce, 316 West Main, Arlington. According to the agenda, the division will receive public comments on administrative rules proposed under the Texas Talent Agency Act, Article 5221a-9, Texas Civil Statutes.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:38 a.m.

TRD-8907855

**Thursday, September 14, 1989, 1 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet at in the City Council Chambers, Second Floor, #2 Civil Center Plaza, 300 Durango Street, El Paso. According to the agenda, the division will receive public comments on revisions to the administrative rules for tow trucks and vehicle storage facilities.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:38 a.m.

TRD-8907856

**Wednesday, September 20, 1989, 1 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in Room 103, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the division will receive public comments on revisions to the career counseling service administrative rules and proposed new rules for personnel employment services.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:38 a.m.

TRD-8907857

**Wednesday, September 20, 1989, 3 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in Room 103, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the division will receive public comment on proposed revisions to the administrative rules for the auctioneer industry.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:38 a.m.

TRD-8907858

**Monday, September 25, 1989, 1 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in the Harris County Commissioners' Courtroom, 9th Floor, 1001 Preston, Houston. According to the agenda, the division will receive public comment on revisions to the career counseling service administrative rules and proposed new rules for personnel employment services.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:37 a.m.

TRD-8907861

**Monday, September 25, 1989, 3 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in the Harris County Commissioners' Courtroom, 9th Floor, 1001 Preston, Houston. According to the agenda, the division will receive public comment on proposed revisions to the administrative rules for the auctioneer industry.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:37 a.m.

TRD-8907862

**Thursday, September 28, 1989, 1 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in the Dallas Public Library Auditorium, 1515 Young Street, Dallas. According to the agenda, the division receive public comment on revisions to the career counseling service administrative rules and proposed new rules for personnel employment services.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:37 a.m.

TRD-8907859

**Thursday, September 28, 1989, 3 p.m.** The Texas Department of Licensing and Regulation Program Management Division will meet in the Dallas Public Library Auditorium, 1515 Young Street, Dallas. According to the agenda, the division will receive public comment on proposed revisions to the administrative rules for the auctioneer industry.

Contact: Joseph Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: August 28, 1989, 10:37 a.m.

TRD-8907860

## Texas State Board of Medical Examiners

**Friday, August 25, 1989, 1:30 p.m. and Saturday, August 26, 1989, 8 a. m.** The Texas State Board of Medical Examiners met for an emergency meeting at 1101 Camino LaCosta, Austin. According to the revised agenda summary, the board considered additional board orders for approval; duplicate license listing; and executive sessions for discussion of personnel and pending litigation. The emergency status was necessary because information was received by the agency and required board attention before the next scheduled meeting.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 7871, (512) 452-1078.

Filed: August 24, 1989, 4:36 p.m.

TRD-8907790

## Texas Department of Mental Health and Mental Retardation

**Friday, September 8, 1989, 9:15 a.m.** The Board of Mental Health and Mental Retardation will meet in the Central Office Auditorium, 909 West 45th Street, Austin. According to the agenda summary, the board will hear citizen's comments; approve minutes of July 28, 1989, meeting; issues to be considered; emergency adoption of new rule governing lease of TDMHMR surplus property; pending litigation--Petty vs. TDMHMR. If deaf interpreters are required, notify Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 465-4585.

Filed: August 25, 1989, 2:41 p.m.

TRD-8907822

**Friday, September 8, 1989, 10:15 a.m.** The Business and Asset Management Committee will meet in the Central Office Auditorium, 909 West 45th Street, Austin. According to the agenda summary, the committee will hear the status report on development of a lease for surplus property at the Austin State Hospital; and consider the fiscal year 1990 operating budget. If deaf interpreters are required, notify Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 465-4585.

Filed: August 25, 1989, 2:41 p.m.

TRD-8907823

### Board of Pardons and Paroles

**Tuesday, September 5, 1989, 1:30 p.m.** The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board 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 sentence; other reprieves, remissions and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: August 25, 1989, 11:25 a.m.

TRD-8907813

**Tuesday-Thursday, September 5-7, 1989, 1:30 p.m. and Friday, September 8, 1989, 11 a.m.** The Board Panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board panel 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: August 25, 1989, 11:25 a.m.

TRD-8907812

### Texas Parks and Wildlife Department

**Wednesday, September 6, 1989, 2 p.m.** The Board for Lease of State-owned Lands will meet in room 833, the General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the board will approve minutes of the previous board meeting; and consider easement applications.

Contact: Linda K. Fisher, 1700 North Congress, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: August 28, 1989, 4:25 p.m.

TRD-8907893

### Public Utility Commission of Texas

**Monday, September 11, 1989, 10 a.m.** The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800

Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference on Docket No. 9000--application of JAC Electric Cooperative, Inc. to revise the PCRF factor.

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

Filed: August 28, 1989, 3:58 p.m.

TRD-8907890

**Monday, September 11, 1989, 2 p.m.** The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference on Docket No. 8990--application of Erath County Electric Cooperative Association, for the authority to change rates.

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

Filed: August 28, 1989, 3:57 p.m.

TRD-8907891

### Railroad Commission of Texas

**Monday, August 28, 1989, 11:30 a.m.** The Railroad Commission of Texas met for an emergency meeting in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress, Austin. According to the revised agenda, the commission considered whether to use state funds to plug a leaking well: Runnels oil and gas, pluger lease, well no. 1X, wildcat field, Runnels County, Texas. The emergency status was necessary because the well was flowing a strong two-inch stream of saltwater into a stock tank, causing an imminent threat to the public's health and safety.

Contact: Willis C. Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: August 28, 1989, 8:59 a.m.

TRD-8907836

### Texas Rehabilitation Commission

**Thursday, September 7, 1989, 2 p.m.** The Texas Rehabilitation Commission Planning Council for Developmental Disabilities will meet at the Holiday Inn-Northwest Plaza, 8901 Business Park, Austin. According to the agenda summary, the council will take public comments; approve minutes; receive 1990 task force report and discuss recommendations; chairman's report and discuss council position on MHMR state facilities; recess until September 8, 1989 at 9 a.m., 4900 North Lamar, Public Hearing Room no. 1420.

Contact: Roger A. Webb, 4900 North

Lamar, Austin, Texas 78759, (512) 483-4081.

Filed: August 25, 1989, 10:20 a.m.

TRD-8907814

**Friday, September 8, 1989, 9 a.m.** The Texas Rehabilitation Commission Planning Council for Developmental Disabilities will meet in the Public Hearing Room, no. 1420, 4900 North Lamar Boulevard, Austin. According to the agenda summary, the council will continue with unfinished business; take public comments; plan and evaluate committee reports: fiscal year 1990 funding activities, advocacy and public information issues, state legislation/policy, federal legislation/policy; and the executive director's report.

Contact: Roger A. Webb, 4900 North Lamar, Austin, Texas 78751-2316, (512) 483-4081.

Filed: August 25, 1989, 10:20 a.m.

TRD-8907815

### School Land Board

**Tuesday, September 5, 1989, 10 a.m.** The School Land Board will meet in Room 831, General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the board will approve minutes of the previous meeting; pooling applications; final approval of repeal of 31 TAC, Chapters 2, 3, and 9, §§11.11-11.17, §§153.11-153.13, §§153.21-153.34, §153.37, §§153.61-153.66, and §153.71; final adoption of proposed rules, 31 TAC, Chapter 9 and the amendment to 31 TAC §1.91; consider applications to patent under the Texas Constitution, Article VII, §4A; application to purchase excess acreage; coastal public lands--report on master planning activity for the village area of the John F. Kennedy causeway; coastal public lands--memorandum of agreement on leasing activities within the highway right-of-way of John F. Kennedy causeway; 12 commercial lease renewals, commercial lease applications, easement applications, lease applications, structure permits; executive session to consider three acquisitions and land trade participants; direct land sales, and pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: August 28, 1989, 4:25 p.m.

TRD-8907894

### Teacher Retirement System of Texas

**Friday, September 8, 1989, 9 a.m.** The Board of Trustees will meet in the Board Room, 1001 Trinity, Austin. According to



the agenda summary, the board will receive report of committee to nominate officers; approve minutes; review investments for quarter and year ending August 31, 1989; review discussion and recommendations of IAC meeting; discuss economic outlook and market conditions; consider sale of one Eldridge Place by TRST Eldridge Corporation; building expansion construction project report; consider proposed rule changes; member benefits division report; Texas public school retired employees group insurance program report; report of general counsel concerning litigation; and executive session to discuss personnel.

Contact: Mary Godzik, 1001 Trinity, Austin, 78701, (512) 397-6400.

Filed: August 29, 1989, 9:35 a.m.

TRD-8907909

Friday, September 8, 1989, 11:30 a.m. The Board of Trustees Building Committee will meet in the Board Room, 1001 Trinity, Austin. According to the agenda, the committee will discuss Phase 3 building program.

Contact: Mary Godzik, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: August 29, 1989, 9:35 a.m.

TRD-8907908

## Texas A & M University

Wednesday, August 30, 1989, 5 p.m. and Thursday, August 31, 1989, 8:30 a.m. The Board of Regents Presidential Selection Committee for Prairie View A&M University met for an emergency meeting in the MSC Annex, Texas A&M University, College Station. According to the agenda, the committee considered any and all things leading to the selection of the president of Prairie View A&M University. The emergency status was necessary because of the need to select a president by the first of the year.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: August 28, 1989, 8:49 a.m.

TRD-8907910

Thursday, August 31, 1989, 10:30 a.m. The Board of Regents, Audit Committee, met in the MSC Annex, Texas A&M University, College Station. According to the agenda, the committee discussed follow up actions from state auditor's exit conference and other related issues.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604

Filed: August 28, 1989, 8:48 a.m.

TRD-8907852

Thursday, August 31, 1989, 2:45 p.m. The Board of Regents Planning and Building Committee met in the MSC Annex,

Texas A&M University, College Station. According to the agenda, the committee initiated major construction projects; report on contract actions by chancellor; report of contract action by the presidents or deputy chancellors; construction projects appropriations/authorizations by chancellor; actions on bids; appropriations for designs; special appropriation of funds; authorization to negotiate the terms and a site for a U.S. Postal Service facility; status report of the master plan for Texas A&M University.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: August 28, 1989, 8:48 a.m.

TRD-8907851

Thursday, August 31, 1989, 4:45 p.m. The Board of Regents Committee for Service Units met in the MSC Annex, College Station. According to the agenda, the committee considered authorization for easements, license agreements; granting of emeritus titles; and approval of contracts and accounts.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: August 28, 1989, 8:48 a.m.

TRD-8907853

Thursday, August 31, 1989, 1:40 p.m. and Friday, September 1, 1989, 8:45 a.m. The Board of Regents Executive Committee met in the MSC Annex, College Station. According to the agenda, the committee approved budgets; designation to approve vouchers, gifts, grants, loans and bequests; budget and fiscal transfers; appropriations; adoption of bank depository agreements and list of approved bond depositories; appointments and promotions, terminations, tenure; transfer of control for component institutions of university system of South Texas; adoption of rules concerning the development foundation; government classified contracts; adoption of resolutions; naming of facilities; appointments to committees; revision of bylaws of the board; land matters and litigation.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: August 28, 1989, 8:47 a.m.

TRD-8907864

Thursday, August 31, 1989, 1:30 p.m. and September 1, 1989, 4 p.m. The Board of Regents met in the MSC Annex, Texas A&M University, College Station. According to the agenda, the board approved budgets; designated approval of vouchers; gifts, grants, loans and bequests; budget and fiscal transfers; appropriations; adopted bank depository agreements and list of approved bond depositories; appointment and promotions; terminations, tenure; transfer of control for component institutions of university system of South Texas; adopted rules concerning the development foundation; government classified contracts; adopted reso-

lutions; named facilities; appointed to committees; revised bylaws of board; land matters; litigation; initiated major construction projects; authorized easements, license agreements; emeritus titles; approved agreements, quasi-endowments, fees, contracts and accounts; adopted policies; established institutes, centers; authorized delay of implementation of new rules.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: August 28, 1989, 8:49 a.m.

TRD-8907850

Friday, September 1, 1989, 8:30 a.m. The Board of Regents Committee for Academic Campuses will meet in the MSC Annex, College Station. According to the agenda, the committee will adopt policies; establish institutes, centers; approve agreements, contracts, fees; authorize license agreements; quasi-endowments; grant emeritus titles; authorize delay of implementation of new rules.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: August 28, 1989, 8:47 a.m.

TRD-8907854

## Texas State Technical Institute

Tuesday, August 29, 1989, 11 a.m. The Committee of the Board of Regents Executive Committee and Real Estate Oversight Committee met in Room 109, Conference Call Meeting Room, Systems Building 32-1 TSTI, Waco Campus, Waco. According to the agenda summary, the committees via conference call to ratify board policies of reduction in force and grievances, discipline and dismissal of employees; approve new procedures implementing policies; set effective date and give notices; approve option to lease 100 acres of land on TSTI Waco Airport to Raymond G. Byrd, trustee; approve sale of house or require TSTI Waco, President to occupy property and set effective date; approve facsimile signature for TSTI self funded group health insurance program.

Contact: Murray, Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

Filed: August 25, 1989, 9:08 a.m.

TRD-890779

Tuesday, August 29, 1989, 11 a.m. The Executive Committee of the Board of Regents met via a conference call, Waco. According to the agenda summary, the board authorized the chancellor to execute an easement with the City of Harlingen for the purpose of widening a city street for use as an entrance and exit to the Harlingen airport, and authorize the Harlingen President to negotiate with the City of Harlingen to

tie into the city's drainage system for storm drainage of the Harlingen campus.

Contact: Murray Watson Jr., 2600 Washington Avenue, Waco, Texas, (817) 753-0913.

Filed: August 25, 1989, 4:35 p.m.

TRD-8907834

## Texas Woman's University

Wednesday, August 30, 1989, 9 a.m. Board of Regents Fund Raising/Public Relations Committee met in the Administration and Conference Tower, 16th Floor, TWU, Denton. According to the agenda, the committee approved minutes of the June 7, 1989 meeting; considered a report on alumnae relations; development and public information activities of the office of institutional advancement and report of the chair.

Contact: Shirley S. Chater, Denton, Texas 76204, (817) 898-3201.

Filed: August 25, 1989, 9:08 a.m.

TRD-8907801

Wednesday, August 30, 1989, 9:20 a.m. The Board of Regents Student Affairs Committee met in the Administrative and Conference Tower, 16th Floor, TWU, Denton. According to the agenda, the committee approved minutes of the June 7, 1989 meeting; considered approval of the proposed policy on Aids; accepting the revised student handbook and report of the chair.

Contact: Shirley S. Chater, Denton, Texas 76204, (817) 898-3201.

Filed: August 25, 1989, 9:08 a.m.

TRD-8907800

Wednesday, August 30, 1989, 10 a.m. The Board of Regents Academic Affairs Committee met in the Administrative and Conference Tower, 16th Floor, TWU, Denton. According to the agenda, the committee considered approval of minutes of June 7, 1989 meeting; TWU's institutional plan under the Texas educational opportunity plan for higher education; approval of small class report; policy providing that a mandatory retirement age will not be imposed for tenured faculty, as well as other employees of TWU; and report of the chair.

Contact: Shirley S. Chater, Denton, Texas 76204, (817) 898-3201.

Filed: August 25, 1989, 9:08 a.m.

TRD-8907802

Wednesday, August 30, 1989, 10:45 a.m. The Board of Regents Finance Committee met in the Administrative and Conference Tower, 16th Floor, TWU, Denton. According to the agenda summary, the committee considered approval of minutes of June 7, 1989 meeting; the Executive Director, Houston center; personnel additions and changes, gifts, grants, agreements and con-

tracts; allocation of federal funds; renewal and extension of insurance; certificates of substantial completion; change orders; grant approval to retain 2% of interest earned on Jackie Greer Enrichment Fund during 1989 as a permanent addition to the principal of the fund as provided in the agreement; granted authorization for tuition to be paid in installments effective fall of 1989; operating budget for fiscal 1990; university policy statement regarding waiver of selected enrollment fees for full-time faculty, staff and their dependents; renovation of the student center basement, and admissions/registration area; and the chair report.

Filed:

Contact: Shirley S. Chater, Denton, Texas 76204, (817) 898-3201.

Filed: August 25, 1989, 9:08 a.m.

TRD-8907804

Wednesday, August 30, 1989, 1:30 p.m. The Board of Regents of the Texas Woman's University met in the Administration and Conference Tower, 16th Floor, TWU, Denton. According to the agenda summary, consider: executive session--approval of June 7, 1989 meeting; considered Executive Director, Houston center; personnel additions and changes; gifts, grants, agreements and contracts; allocation of federal funds; insurance; certificates of substantial completion; change orders; adding 2% of interest earned on Jackie Greer Enrichment Fund in 1989 to principal; authorize tuition to be paid in installments effective fall of 1989; fiscal 1990 operating budget; waiver of selected enrollment fees for full-time faculty, staff and their dependents; renovation of student center basement and the administration/registration area; report of alumnae relations, development and public information activities of office of institutional advancement; Aids policy; student handbook; institutional plan; small class report; mandatory retirement age policy; fund raising/public relations, student affairs, academic affairs and finance committee chair reports; report from the President.

Contact: Shirley S. Chater, Denton, Texas 76204, (817) 898-3201.

Filed: August 25, 1989, 9:08 a.m.

TRD-8907803

## University of Houston System

Thursday, August 31, 1989, 1:30 p.m. The University of Houston Board of Regents met in the South Ballroom, Conrad Hilton College Hotel, 4800 Calhoun, Houston. According to the agenda, the board discussed and/or acted upon the following: the appointment of a chancellor and an agreement to provide student housing.

Contact: Peggy Cervenka, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: August 28, 1989, 11:17 a.m.

TRD-8907866

## University Interscholastic League

Tuesday, August 29, 1989, 3 p.m. The University Interscholastic League State Executive Committee (3 panel member) met in Salon F and G, Marriott Capitol, 11th and IH35, Austin. According to the agenda summary, the committee continued a hearing from August 8, 1989, Laredo ISD, an alleged violation of §1111(c)(1) and (2), school district personnel, Martin High School.

Contact: Bonnie Northcutt, P.O. Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

Filed: August 25, 1989, 10:38 a.m.

TRD-8907797

Thursday, August 31, 1989, 1 p.m. The University Interscholastic League Waiver Review Board met in Room 2.110, Thompson Conference Center, UT Campus, 26th and Red River, Austin. According to the agenda summary, the board met to hear the appeals from Texas public school students who want a waiver of a UIL rule.

Contact: Bonnie Northcutt, P.O. Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

Filed: August 25, 1989, 10:13 a.m.

TRD-8907796

## University of Texas System

Tuesday, August 29, 1989, 10 a.m. The University of Texas System Land and Investment Committee of the Board of Regents met in the Regents' Conference Room, 9th Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda, the board met to consider additional terms for the request for a proposal regarding the master trust custodian for the permanent university fund of the UT System.

Contact: Arthur H. Dilly, P.O. Box N, U. T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: August 25, 1989, 2:31 p.m.

TRD-8907820

Wednesday, August 30, 1989, 12 noon The University of Texas System Intercollegiate Athletics for Women met in the Faculty Center (Walter Webb Hall), 25th and Guadalupe Street, Austin. According to the agenda summary, they approved minutes of previous meetings, considered information reports, and old and new business.

Contact: Donna Lopiano, BEL 606, U.T.

Campus, Austin, Texas, (512) 471-7693.

Filed: August 25, 1989, 4:31 p.m.

TRD-8907833

**Thursday, August 31, 1989, 9 a.m.** The University of Texas System Board of Regents met in the Regents' Room, 9th Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda, the board met in executive session to consider personnel matters related to the possible election and employment of a chief administrative officer for the University of Texas at San Antonio, pursuant to Texas Civil Statutes, Article 6252-17, §2(g). The meeting was to interview prospective candidates, no formal action was taken.

Contact: Arthur H. Dilly, P.O. Box N, U. T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: August 25, 1989, 2:31 p.m.

TRD-8907819

## Texas Water Commission

**Wednesday, September 6, 1989, 9:30 a.m.** The Texas Water Commission Water Well Drillers Board will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the board will consider approval of the minutes of July 12, 1989, meeting, elect officers for the fiscal year 1990, certification of applicants for registration, applications for driller-trainee registration, consider whether to set the following complaints for formal public hearing before the board or appropriate legal action: Fernando Galindo, Mitchell M. Bernhard, Charles Willingham, Stephen L. Bufkin, A.S. McNeil, L. T. Davis, Jack R. Devaney, Allen Watts, Joe Byron Dixon, Darold Havarad, Randy Johnson, John Leonard, Michael Miller, James Smith, Milton Spurgin, and James Vernon Young, Sr., and consider staff problems.

Contact: Larry Persky, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: August 29, 1989, 9:36 a.m.

TRD-8907906

**Wednesday, September 6, 1989, 1:30 p.m.** The Texas Water Commission Water Well Drillers Board will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the board will consider the revocation or suspension of the water well drillers license or imposition of an administrative penalty in the following: WWDB-89-11, Jerry Owens and Cor-Del Drilling Company, I license No. 2193W; WWDB-89-12; Clay Earle, License No. 2539W; WWDB-89-13, Sammy Smith, License No. 2603W; WWDB-89-14, Walter Rutherford, Jr., License No. 1447W.

Contact: Larry Persky, P.O. Box 13087,

Austin, Texas 78711, (512) 463-8069.

Filed: August 29, 1989, 9:36 a.m.

TRD-8907907

**Thursday, September 14, 1989, 10 a.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: August 24, 1989, 2:49 p.m.

TRD-8907789

**Tuesday, October 17, 1989, 10 a.m.** The Texas Water Commission will hear the application of Tyler Fish Farms, Inc. (Re-0279) for approval of preliminary plans for construction of a levee or other improvement in Van Zandt County, Texas.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 28, 1989, 3:04 p.m.

TRD-8907879

## Regional Meetings

### Meetings Filed August 24, 1989

**The Leon County Central Appraisal District, Board of Directors met in the District Office, Gresham Building, Centerville, August 28, 1989, at 7:30 p.m.** Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

**The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees met in the Board Room, 38th and Avenue J, Lubbock, August 28, 1989, at 12 p.m.** Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401.

**The Region III Education Service Center, Board of Directors met at 1905 Leary Lane, Victoria, August 30, 1989, at 4 p.m.** Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901.

**The Texas Panhandle Mental Health Authority, Board of Trustees met in the Killgore Atrium, 1200 Wallace Boulevard, Amarillo, August 31, 1989, at 10:30 a.m.** Information may be obtained from Claire

Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

**The West Central Texas Municipal Water District, met in Suite 300, 401 Cypress Street, Abilene, August 31, 1989, at 9:30 a.m.** Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

**The Wise County Appraisal District, will meet in the Board Room, 206 South State Street, Decatur, September 14, 1989, at 9 a.m.** Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081.

TRD-8907778

### Meetings Filed August 25, 1989

**The Hunt County Tax Appraisal District, Appraisal Review Board met in the Board Room, District Office, 4801 King Street, Greenville, August 29, 1989, 8 a.m.** Information may be obtained from Joe P. Davis or Linda S. Haynes, P. O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

**The Liberty County Central Appraisal District, Board of Directors met at 1820 Sam Houston, Liberty, August 30, 1989, at 7 p.m.** Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

**The Mental Health and Mental Retardation Regional Center of East Texas, Board of Trustees met in the Board Room 2323 West Front Street, Tyler, August 31, 1989, at 3:30 p.m.** Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas, 75712, (214) 597-1351.

**The Region One Education Service Center, Board of Directors met at 1900 West Schunior, Edinburg, August 30, 1989, at 8 p.m.** Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas, (512) 383-5611.

**The South Texas Development Council, Border Area Nutrition Council will meet in the Wing Conference Room, 600 South Sandman, Laredo, September 7, 1989, 2 p.m.** Information may be obtained from Jesse J. Padilla, BANC, P.O. Box 2909, Laredo, Texas 78044-2909, (512) 722-5000.

**The West Central Texas Municipal Water District, met in Suite 300, 401 Cypress Street, Abilene, August 31, 1989, at 9:30 a.m.** Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

**The Wheeler County Appraisal District, Board of Directors will meet in the District Office, County Courthouse Square, Wheeler, September 11, 1989, at 2 p.m.** Information may be obtained from Larry M. Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900.

TRD-8907791

**Meetings Filed August 28,  
1989**

**The Bexar Appraisal District, Appraisal Review Board** will meet at 535 South Main, San Antonio, September 1, 1989 at 8:30 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

**The Bexar Appraisal District, Appraisal Review Board** will meet at 525 South Main, San Antonio, September 5-8, 11-14, 18-22, and 25-28, 1989, at 8:30 a.m. Information may be obtained from Walter Stoneham, 525 South Main, San Antonio, Texas 78204, (512) 224-8511.

**The Bosque Central Appraisal District, Board of Directors** met in the District Office, 104 West Morgan Street, Meridian, August 31, 1989, at 8 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665.

**The Capital Area Rural Transportation System, Board of Directors** met in the Conference Room, 5111 East First Street, Austin, August 31, 1989, at 9:30 a.m. Information may be obtained from Edna M. Borroughs, 5111 East First Street, Austin, Texas 78702, (512) 389-1011.

**The Ellis County Appraisal District, met** at 406 Sycamore Street, Waxahachie, August 31, 1989, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

**The Fisher County Appraisal Review, Board of Directors** will meet in the Com-

missioner's Courtroom, Fisher County Courthouse, Roby, September 11-15, 1989, at 9 a.m. Information may be obtained from Teddy Kral, P.O. Box 516, Roby, Texas 79543, (915) 776-2733.

**The Kendall County Appraisal District, Appraisal Review Board** will meet in the Grand Jury Room-Second Floor, Kendall County Courthouse, 204 East San Antonio Street, Boerne, September 6, 1989, at 9 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

**The Region One Education Service Center, Board of Directors** met at 1900 West Schunior, Edinburg, August 30, 1989, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas, (512) 383-5611.

**The Region XVII Education Service Center, Board of Directors** will meet in the Board Room, ESC Region XVII, 1111 West Loop 289, Lubbock, September 12, 1989, at 10 a.m. Information may be obtained from Weldon E. Day, 1111 West Loop 289, Lubbock, Texas 79416, (806) 792-4000, ext. 202.

**The Rio Grande Valley Municipal Water Authority, will meet** at the Best Western Palm Aire Motor Inn, Brownsville, September 20, 1989, at 12 noon. Information may be obtained from Ersei G. Lantz, 3505 Boca Chica, #303, Brownsville, Texas 78520, (512) 541-1660.

**The Sabine Valley Regional MHMR Center, Board of Trustees** will meet in the Administrative Building, 107 Woodbine Place, Longview, September 11, 1989, at 7

p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 297-2191.

**The South Texas Development Council, Board of Trustees** met for an emergency meeting in the Commissioners Courtroom, Courthouse Annex, Zapata, August 31, 1989, at 10 a.m. Information may be obtained from Robert Mendiola, 600 South Sandman, P.O. Box 21287, Laredo, Texas 78044-2187, (512) 722-3995.

**The South Texas Development Council, Board of Directors** met in the Commissioners Courtroom, Courthouse Annex, Zapata, August 31, 1989, 11 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (512) 722-3995.

**The Tyler County Appraisal District, Appraisal Review Board** met at 806 West Bluff, Woodville, August 31, 1989, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

**The Tyler County Appraisal District, Board of Directors** will meet at 806 West Bluff, Woodville, September 5, 1989, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

**The Wood County Appraisal District, Appraisal Review Board** will meet in the Conference Room, Wood County Appraisal District, 217 North Main, Quitman, September 1, 1989, at 10 a.m. Information may be obtained from W. Carson Wages, 217 North Main, Quitman, Texas 75783.

TRD-8907835

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Air Control Board Correction of Error

The Texas Air Control Board submitted a proposed which contained errors as published in the July 28, 1989, issue of the *Texas Register*.

There were two repeated typographical errors that appear whenever the degree sign, as in 70° should appear it is replaced with an "x". The other repeated typographical error appears whenever the agencies submission had a subscript such that the number was not raised above the level of the other type.

In §115.212(a)(2) should read: "(2) When loading or unloading is effected through the hatches of a tank truck or trailer or railroad tank car with a loading arm equipped with a vapor collection adapter, then pneumatic, hydraulic, or other mechanical means shall be provided to force a vapor-tight seal between the adapter and the hatch. A means shall be provided to prevent liquid drainage from the loading device when it is removed from the hatch of any tank truck, trailer, or railroad tank car, or to accomplish complete drainage before such removal. When loading or unloading is effected through means other than hatches, all loading and vapor lines shall be:"

In §115.532(1)(B) should read: "(B) All storage tanks that store volatile organic compounds shall have pressure vacuum conservation vents installed which are set at ±0.8 inches of water (+ 0.2 kPa), unless a more effective control system is used."

## Extension of Deadline for Written Comments

In the July 18, 1989, issue of the *Texas Register* (14 TexReg 3545), the Texas Air Control Board (TACB) published a notice of public hearings on proposed rule amendments to be held August 15, 16, and 17, 1989. The purpose of the hearings was to receive testimony on proposed revisions to TACB Regulation V, concerning control of air pollution from volatile organic compounds. The deadline of August 18, 1989, for written comments has been extended to September 8, 1989. All comments at the hearings, as well as written comments received by 4 p.m. on September 8, 1989, in the TACB central office in Austin, will be considered by the board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the central office of the TACB located at 6330 U. S. Highway 290 East, Austin, Texas 78723, and at all regional offices of the agency. For further information, call Pier Bartow at (512) 451-5711.

Issued in Austin, Texas on August 25, 1989.

TRD-8907840

Allen Eli Bell  
Executive Director  
Texas Air Control Board

Filed: August 28, 1989

For further information, please call: (512) 451-5711, ext. 354

## Notice of Contested Case Hearing

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not Operating Permit Number R-695 held by Nido, Inc. doing business as Beck Readymix Concrete Company (the applicant), to operate an asphaltic concrete plant at 8570 Grissom Road, San Antonio, Bexar County, should be continued.

The Examiner has set the hearing to begin at 1:30 p.m. on October 10, 1989, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin.

This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13. It is generally conducted like a trial in district court. The applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet any applicable specifications and requirements of the Texas Clean Air Act (the Act), Texas Civil Statutes, Article 4477-5, and TACB Rules. These requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted continuance; the facility has appropriate means to measure the emission of significant air contaminants as determined by the executive director; the facility uses control technology determined by the executive director to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area; and the emissions from the facility meet at least the requirements of any applicable new source performance standards and any applicable emission standard for hazardous air pollutants promulgated by the Environmental Protection Agency. Review of the compliance history of the facility will also be considered as specified by TACB Rule §116.12(b)(2).

At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB staff. Any person who may be affected by emissions from the facility who wants to be made a party must send a specific written request for party status to Hearings Examiner, Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723, by 5 p.m. on September 8, 1989. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. The examiner will make a final decision on party status at the prehearing conference.

The examiner has scheduled a prehearing conference on September 26, 1989, at 1:30 p.m., at the TACB Central

Office, Room 332, 6330 Highway 290 East, Austin. At this conference, the examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, at (512) 451-5711, extension 350, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Legal Division at (512) 451-5711, extension 350, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information about the application and copies of the TACB's Rules and Regulations are available at the TACB Regional Office located at 4335 Piedras West, Suite 101, San Antonio, Texas 78228, and at the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723.

This hearing is called and will be conducted under the authority of the Act, §§3.15, 3.16, 3.17, and 3.271 and TACB Procedural Rules, §§103.11(3), 103.31 and 103.41.

Issued in Austin, Texas on August 28, 1989.

TRD-890784E Allen Eli Bell  
Executive Director  
Texas Air Control Board

Filed: August 28, 1989

For further information, please call: (512) 451-5711, ext. 354

## Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act (TCAA), Texas Civil Statutes, Article 4477-5, §3.09; the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Procedural Rules of the Texas Air Control Board (TACB), §103.11(4), the TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

The TACB proposes to add two new subsections to §103.42, concerning hearing examiner. The first will allow enforcement under the Administrative Procedure and Texas Register Act for failure to comply with a subpoena or commission issued by an examiner. The second subsection will permit an examiner to impose sanctions if a party abuses or fails to comply with an examiner's orders of discovery. In addition, the TACB proposes a new section, §103.66, concerning legislative continuances, to establish procedures for ruling upon any motion filed by a Texas Legislator for a continuance based upon that member's obligation to attend to legislative duties.

The hearing will be held at 10 a.m. on September 26, 1989, in the auditorium of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723. The hearing is structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to answer questions informally.

Written comments not presented at the hearing may be submitted to the TACB central office in Austin prior to

and including September 26, 1989. Material received by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the central office of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. For further information, call Barry Irwin at (512) 451-5711.

Issued in Austin, Texas on August 24, 1989.

TRD-8907795 Allen Eli Bell  
Executive Director  
Texas Air Control Board

Filed: August 25, 1989

For further information, please call: (512) 451-5711, ext. 354

## Texas Antiquities Commission Notice of Memoranda of Agreement

Notice is given that the Texas Antiquities Committee (TAC) has entered into a Memorandum of Agreement (MOA) with the Lower Colorado River Authority (LCRA) for the issuance of an annual, year-long Texas Antiquities permit. The permit, to be issued in January of each calendar year, creates a more efficient administrative and cultural resource management system between LCRA and the TAC as it relates to archeological surveys of properties owned or controlled by the LCRA.

The MOA is made pursuant to the Antiquities Code of Texas, Chapter 442, Government Code of Texas, redefined as Texas Natural Resources Code of 1977. The Resource Code, Title 9, Chapter 191, pertains to the Antiquities Committee.

A copy of the MOA may be inspected in the offices of the committee at 105 West 16th Street, Austin, Texas 78701, or at the LCRA offices, 3001 Lake Austin Boulevard, Austin, Texas 78767.

Issued in Austin, Texas on August 24, 1989.

TRD-8907798 Molly F. Godwin  
Administrative Technician  
Texas Antiquities Committee

Filed: August 25, 1989

For further information, please call: (512) 463-6098

## Texas Cancer Council Texas Cancer Council Job Announcement

The Texas Cancer Council seeks an executive director to assume duties on November 1, 1989. The executive director shall perform those duties assigned by the Texas Cancer Council and assume responsibility for functions delegated by the council. The executive director shall implement actions for the council, coordinate preparation of reports, supervise staff, develop operational and administrative procedures, and maintain liaison with the legislature and other agencies and organizations involved in the implementation of the Texas Cancer Plan. Although headquarters is in Austin, duties may require travel within Texas approximately 20% of the time.

Minimum requirements include a degree from an accredited college or university and comprehensive knowledge and experience in public health, public administration, and governmental operations.

The salary is \$4,530 a month. This search began on August 21, 1989, and will be closed on September 21,

1989. Interested persons should submit a letter of application with a detailed resume to the Acting Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711.

Issued in Austin, Texas on August 21, 1989.

TRD-9007750

Jack L. Franklin, Ph.D.  
Acting Executive Director  
Texas Cancer Council

Filed: August 23, 1989

For further information, please call: (512) 463-3190

## Texas Board of Chiropractic Examiners

### Correction of Error

The Texas Board of Chiropractic Examiners submitted an open meeting which contained an error as published in the August 11, 1989, issue of the *Texas Register* (14 TexReg 3993).

The meeting should read: "Texas Board of Chiropractic Examiners, Thursday, August 17, 1989, 7:30 a.m., Friday and Saturday, August 18 and 19, 8:30 a.m. The Board will meet at D/FW Airport Marriott, 8440 Freepoint Parkway, Irving. According to the agenda summary, the board will give exams at the Parker Chiropractic College and a meeting will follow the completion of exams. The board will elect officers; give oath of office; appoint committees; approve February 23-25, 1989, board meeting minutes; schedule board meetings and peer review; discuss §§77.2, 78.1 and 77.5; doctors treating family members and charging insurance companies; certifying licenses of those qualified by exam and reciprocity; discuss testing changes; board committee reports; reciprocity interviews; executive officers report from the association; enforcement committee report, license renewal requirements; conduct of board members; discuss issuing temporary and special licenses; discuss legislative changes to the Chiropractic Act of Texas; agency operations, including 1990 budget and the need for a computer; hearing: Bobbye Ferris; and new or unfinished business."

## 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 1988 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, August 7, 1989-August 18, 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 August 18, 1989: \$48, 251,166.

Total amount of state ceiling remaining unreserved for the \$209,812,500 subceiling for state-voted issues under the Act as of August 18, 1989: \$164,812, 500.

Total amount of state ceiling remaining unreserved for the \$349,687,500 subceiling for all other bonds under the Act as of August 18, 1989: \$2,500.

Total amount of the \$839,250,000 state ceiling remaining unreserved as of August 18, 1989: \$213,066,166.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from August 7, 1989-August 18, 1989: none.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from August 7, 1988-August 18, 1989: none.

Issued in Austin, Texas, on August 23, 1989.

TRD-9007777

William D. Taylor  
Interim Executive Director  
Texas Department of Commerce

Filed: August 24, 1989

For further information, please call: (512) 472-5059

## 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 <sup>(3)</sup> /Agri- cultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a) (1)	08/28/89-09/03/89	18.00%	18.00%
Monthly Rate Art. 1.04(c) (1)	08/01/89-08/31/89	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a) (2)	07/01/89-09/30/89	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	07/01/89-09/30/89	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) <sup>(3)</sup>	07/01/89-09/30/89	17.31%	N.A.
Standard Annual Rate - Art. 1.04(a) (2) <sup>(2)</sup>	07/01/89-09/30/89	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	07/01/89-09/30/89	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:	07/01/89-09/30/89	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	09/01/89-09/30/89	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 August 21, 1989.

TRD-8907786 Al Endsley  
Consumer Credit Commissioner

Filed: August 23, 1989

For further information, please call: (512) 479-1280

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**Credit Union Department**  
**Correction of Error**

The Credit Union Department submitted rules in the August 25, 1989, issue of the *Texas Register* (14 TexReg 4304) which contained errors as published in the adopted section. The certification to the rules should have read: "John R. Hale, Commissioner, Credit Union Department."  
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**Office of the Governor**  
**Legislative Budget Board Contingent**  
**Order**

The Legislative Budget Board met on August 24, 1989, to consider, among other items, the Governor's Budget Execution Proposal to authorize the Department of Human Services to spend appropriated funds to implement provisions of the Omnibus Budget Reconciliation Act of 1987 only after approval by the governor and the Legislative Budget Board of a comprehensive implementation plan. The governor's proposal was published in the *Texas Register* on August 4, 1989. After holding a public hearing on the proposal and after appropriate deliberation, the Budget Board adopted a motion on August 24, 1989, to change the proposal so that it reads as follows.

As authorized by the Texas Government Code, §317.002(a), relating to budget execution authority and in



accordance with Article V, §128, page V-102, and Article II, Special Provisions, §5, Page II-93, of Senate Bill Number 222, 71st Legislature, Regular Session, I make the following budget execution proposal.

I propose that the Texas Department of Human Services (DHS) be prohibited from spending those monies appropriated for the fiscal year ending August 31, 1990, in Item 21, Implementation of Omnibus Budget Reconciliation Act of 1987, Page II-36 of Senate Bill Number 222, 71st Legislature, Regular Session, unless and until I and the Legislative Budget Board approve the comprehensive implementation plan required under Article II, Special Provisions, §5, Page II-93, of Senate Bill Number 222. If that plan is approved, the monies shall be expended through interagency contracts with the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Department on Aging for pre-admission screening and annual resident review programs and for nurse aide training programs, as detailed in the plan. The plan must include the dollar amounts of the contracts and the responsibilities of the contracting agencies. The plan must be submitted to me and to the Legislative Budget Board by August 15, 1989. If subsequent actions by the United States Congress substantially affect the aforementioned comprehensive implementation plan, if approved by me and the Legislative Budget Board, then DHS may request that the plan be amended. Such amendments would only take effect upon written approval of the amendments by the directors of my Office of Budget and Planning and the Legislative Budget Board.

As a final stipulation to approval of the implementation plan, if approval is given, and in recognition of the uncertainties as of this date associated with federal regulations, cost estimates, staffing requirements, implementation dates, and client outcomes, the affected agencies shall jointly prepare an updated implementation plan for the last six months of fiscal 1990 which shall reflect the most recent interpretation of federal regulations, revised cost estimates and provide/client data, and new policy issues which have been identified. The updated implementation plan for the last six months of 1990 shall be submitted to the governor and the Legislative Budget Board by February 15, 1990, for approval.

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**Texas Higher Education Coordinating Board**

**Notice of Public Hearing**

A public hearing regarding the Task Force to update the Postsecondary Section of the Master Plan for Vocational Education will be held on Thursday, September 7, 1989, from 10 a.m.-12 noon at the Coordinating Board, Room 255 in Austin. Please contact Dr. Sally Andrade by phone or in writing if you wish to testify. Written testimony will be accepted in lieu of personal testimony up to September 7, 1989. For additional information please contact Dr. Sally Andrade at (512) 462-6300.

Issued in Austin, Texas, on August 23, 1989.

TRD-8907785 James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Filed: August 24, 1989

For further information, please call: (512) 462-6420

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**Houston-Galveston Area Council  
Consultant Proposal Request**

The Houston-Galveston Area Council of Governments is requesting proposals for an audit of all grants, programs, and general operations. This audit is for the period beginning January 1, 1989, and ending December 31, 1989. This request is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The audit must be conducted under the guidelines of generally accepted auditing standards and other guidelines as highlighted in the council's request for proposal. The proposals will be reviewed by the Houston Galveston Area Council of Governments and a contract will be awarded on the basis of the firm's experience, firm knowledge of the work performed, the proposed audit cost, and the firm size. Firms submitting proposals must be members of the quality assurance program (peer review) to be considered.

Request for proposal packages may be obtained by contacting, Ruth A. Luker, Controller for Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. All proposals must be received no later than 5 p.m. on September 29, 1989.

Issued in Houston, Texas, on August 25, 1989.

TRD-8907837 Jack Steele  
Executive Director  
Houston-Galveston Area Council of  
Governments

Filed: August 28, 1989

For further information, please call: (713) 627-3200

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**Texas Department of Human Services  
Correction of Error**

The Texas Department of Human Services submitted an Extension of Award which contained an error as published in the August 18, 1989, issue of the *Texas Register* (14 TexReg 4147).

The signature paragraph of the Extension of Award should read: "TRD-8906989, Ron Lindsey, Commissioner, Texas Department of Human Services, Filed: August 9, 1989. For further information, please call: (512) 450-3765."

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**Notice to Amend Public Hearing**

The Texas Department of Human Services (DHS) files this notice to amend the public hearing notice that appeared in the August 22, 1989, issue of the *Texas Register* to include public comments on proposed rate adjustments for community-based Level I intermediate care facilities for the mentally retarded (ICF-MR) and for large, community-based Level V and Level VI ICF-MRs. The hearing will be held on September 7, 1989, at 9 a.m. at the department's public hearing room, first floor, east tower, 701 West 51st Street, Austin. For more information, please contact Carolyn Pratt, P.O. Box 149030 (MC 142-E), Austin, Texas 78714-9030, (512) 450-4057.

Issued in Austin, Texas, on August 28, 1989.

TRD-8907839 Ron Lindsey  
Commissioner  
Texas Department of Human Services

Filed: August 28, 1989.

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

Filed: August 28, 1989.

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

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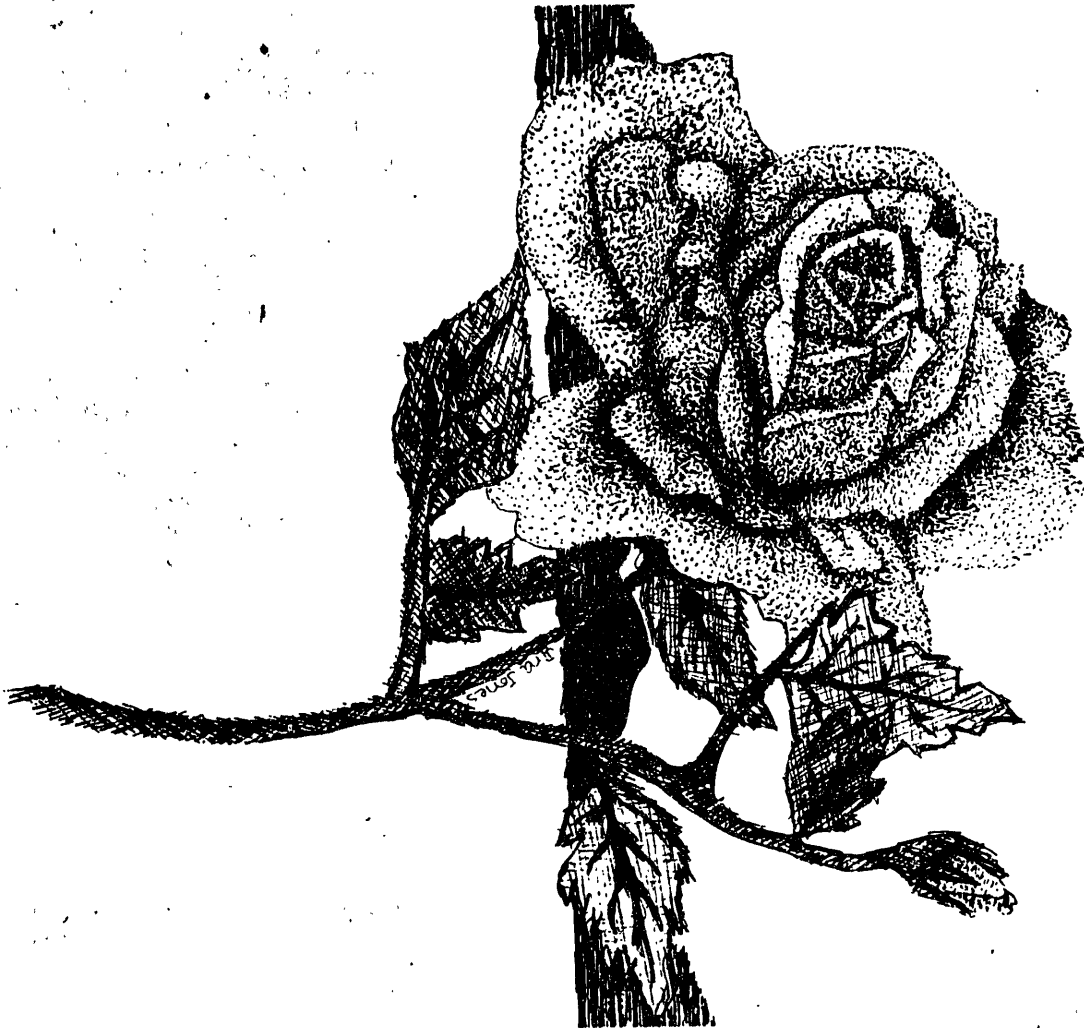
### Notice of Correction of Public Hearing

The Texas Department of Human Services (DHS) submitted a request for a public hearing to receive comments to increase the per diem rate for six-bed or less intermediate care facilities for the mentally retarded. The proposed per diem rate of \$89.68 is for Level V. The notice appeared in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4251).

Issued in Austin, Texas, on August 28, 1989.

TRD-8907838

Ron Lindsey  
Commissioner  
Texas Department of Human Services



Name: Jina Jones

School: Marshall High, Marshall



Name: John Hale  
Grade: 9  
School: Carter Jr. High, Arlington

Issued in Austin, Texas on August 28, 1989.

TRD-8907841 Ron Lindsay  
Commissioner  
Texas Department of Human Services

Filed: August 28, 1989.

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

## Middle Rio Grande Development Council

### Waiver Request

The Middle Rio Grande Development Council Substate Area is requesting a waiver on its approved 1989 Title III EDWAA Plan. The waiver request is to reduce the existing 40% retraining cost limitation to 30%, and increase the existing 20% basic readjustment services to 30%. The total number of participants to be served will remain the same.

The proposed waiver request along with the approved 1989 Title III EDWAA plan will be available for public review and comment at the following office: Middle Rio Grande Development Council, 407 East Nopal, Carrizo Springs, Texas 78834.

Issued in Austin, Texas on August 23, 1989.

TRD-8907787 Michael M. Patterson  
Certifying Official  
Middle Rio Grande Development Council

Filed: August 24, 1989

For further information, please call: (512) 876-3533

## Texas State Board of Pharmacy

### Correction of Error

The Texas State Board of Pharmacy submitted an emergency which contained an error as submitted and a proposed amendment which contained an error as published in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4029, 4040).

In §291.32 (H)(C)(2)(B)(1)-(2) should be "(H)(c)(2)(B)(i)-(ii)."

On page 4040, the sigblock of §291.32, §291.36 should read: "Issued in Austin, Texas, on August 7, 1989, TRD-8907060, Fred S. Brinkley, Jr. R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy."

## Profiles

### Correction of Error

In the August 18, 1989, issue of the *Texas Register* (14 TexReg 4157) a Profile of the State Auditor's Office contained an error as published. Responsibility for a uniform statewide accounting system was incorrectly attributed to the State Auditor. The sentence should read: "In 1987, Legislation was passed requiring the State Comptroller to develop a uniform statewide accounting system."

## Texas Department of Public Safety

### Correction of Error

The Texas Department of Public Safety submitted an In Addition which contained an error as published in the August 11, 1989, issue of the *Texas Register* (14 TexReg 4009).

The public hearing notice should read: "The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and Article 6701d, §139, is holding a public hearing August 29, 1989, at 10 a.m. in the Department of Public Safety Training Academy Auditorium, 5805 North Lamar Boulevard, Austin.

The purpose of the hearing is to receive testimony regarding adoption of amendments to the administrative rule regarding regulations governing transportation of hazardous materials-37 TAC §3.59, and new administrative rule regarding transportation safety-37 TAC §3.62, promulgated pursuant to authority of Texas Civil Statutes, Article 6701d, §139.

Interested parties may submit advanced written notice of their intent to attend the hearing and present, at the time of the hearing, any remarks they wish to make. Written comments should be received by the close of the hearing to be considered. Written comment and letters of intent to attend the hearing must be addressed to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001.

This hearing will be conducted in accordance with the Texas Department of Public Safety's general rules of practice and procedure rules, 37 TAC §§29. 1-29.49.

## Public Utility Commission of Texas

### Notices of Application to Revise a Telephone Service Base Rate Area

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 9, 1989, to revise a base rate area pursuant to the Public Utility Regulatory Act, §§16(a), 18(b) and 37. A summary of the application follows.

**Docket title and number.** Application of Southwestern Bell Telephone Company for a proposed revision to the Lubbock exchange base rate area, Docket Number 8988, before the Public Utility Commission of Texas.

**The application.** In Docket Number 8988, Southwestern Bell Telephone Company filed an application to extend the Lubbock exchange base rate area boundary to include territory in Lubbock County where increasing residential and commercial growth is occurring.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on August 24, 1989.

TRD-8907831 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 25, 1989.

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 8, 1989, to revise a base rate area pursuant to the Public Utility Regulatory Act, §§16(a), 18 (b) and 37. A summary of the application follows.

**Docket title and number.** Application of GTE Southwest, Inc., for proposed revision to the Georgetown base rate area, Docket Number 8989, before the Public Utility Commission of Texas.

**The application.** In Docket Number 8989, GTE Southwest, Inc. filed an application to revise the official base rate area map to reflect recent expansions approved in Docket Number 8383, adding two subdivisions to the southwestern section of the base rate area.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on August 24, 1989.

TRD-8907830      Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 25, 1989

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

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## Texas Water Commission Public Hearing Notice

A representative of the Texas Water Commission will conduct a public hearing on Thursday, September 28, 1989, 7 p.m., Humanities and Business Building, Room 2.0124, Campus of the University of Texas, San Antonio.

This hearing is held pursuant to the Water Code, §5.103 and §26.046, to receive public comment on proposed amendments to commission rules relating to the protection of the Edwards Aquifer and to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution.

Persons who are interested in obtaining copies of the *Texas Register* in which the proposed Edwards Aquifer rules appeared, you may call the *Texas Register* at (512) 463-5561.

If you have a change of address, please notify the Texas Water Commission, Legal Division in writing at P.O. Box 13087, Austin, Texas 78711, if you wish to remain on the permanent mailing list to receive notices of the Edwards Aquifer hearings.

Persons who have questions concerning the hearing or who wish to submit written comments prior to the hearing should contact Mark Jordan, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Issued in Austin, Texas on August 28, 1989.

TRD-8907842      Jim Haley  
Director, Legal Division  
Texas Water Commission

Filed: August 28, 1989

For further information, please call: (512) 463-8087

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