

# Texas Register

Volume 14, Number 66, September 8, 1989

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## Texas Register

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

TAC stands for the *Texas Administrative Code*;

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



## Texas Register Publications

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# TAC Titles Affected

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# Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 20 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 4. AGRICULTURE

### Part II. Animal Health Commission

#### Chapter 49. Equine

##### • 4 TAC §49.2

The Texas Animal Health Commission adopts on an emergency basis an amendment to §49.2, concerning testing of equidae and the entry of untested equidae. All equidae must have a negative AGID or CELISA test for EIA six months prior to entering the state rather than 12 months. Equine entering the state for slaughter purposes are exempt from EIA testing provided they have been "S" branded and consigned directly to an approved slaughter establishment accompanied by a VS 1-27 permit.

Emergency adoption of this amendment is necessary because many more equine will be entering the state for racing purposes in the next few weeks. It is imperative that the shorter testing time frames for EIA be in place prior to the time the equine enter the state in order to protect the Texas equidae population from disease. There are large numbers of equine entering the state for slaughter purposes from neighboring states. Since two of these states require this class of equine to be "S" branded and accompanied by a VS 1-27, it is imperative that Texas recognize these shipments. This action will avoid additional restrictions on these equine.

The amendment is adopted on an emergency basis under the Agriculture Code, Texas Civil Statutes, Chapter 161, which grants rulemaking authority and sets forth the duty of this agency to protect domestic animals in this state from disease.

##### §49.2. Interstate Movement Requirements.

(a) Equine Infectious Anemia (EIA) requirements. In addition to the certificate of veterinary inspection, all horses, mules, asses, ponies, zebras, and any other equidae must have a negative agar gel immunodiffusion (AGID) test or a negative competitive enzyme-linked immunosorbent assay (CELISA) test for EIA within six [12] months prior to entering Texas. Only test results from USDA approved laboratories are acceptable and the test document (VS form 10-11 is recommended) must list the description of the equidae to include age, breed, color, sex, animal's name, and/or registration number (when applicable), and distinctive markings when present (brands, tattoos, scars, or blemishes). It must list owner's name, address, the animal's home

premise and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The EIA test document shall list one horse only, and must accompany the certificate of veterinary inspection. Exceptions to these requirements are:

(1) (No change.)

(2) Equidae that have been "S" branded and consigned directly to an approved slaughter establishment accompanied by a VS 1-27 permit;

(3)[(2)] Equidae may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a prior permit issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route.

(b) (No change.)

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

TRD-8907984

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

Effective date: August 30, 1989

Expiration date: December 28, 1989

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

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

##### • 4 TAC §51.1

The Texas Animal Health Commission adopts on an emergency basis an amendment to §51.1. This amendment concerns adding exotic livestock and exotic fowl to the list of livestock and poultry for which a certificate of veterinary inspection may be used and increases the length of time the certificate is valid. Under this amendment the certificate is valid for 45 days on livestock entering the state for exhibition purposes only at shows, fairs, and races.

Emergency adoption of this amendment is necessary because large numbers of equine

will be entering the state in the next few weeks for racing purposes, thus requiring certificates of longer duration. Additionally, ostriches and rhinoceros have been permitted into the state without proper health papers. In the last few months Texas has received ostriches and rhinoceros carrying an exotic tick which transmits Heartwater disease and can be fatal to domestic livestock. This amendment authorizes the commission to require the certificate of veterinary inspection to include these exotics when the need arises.

The amendment is adopted on an emergency basis under the Agriculture Code, Texas Civil Statutes, Chapter 161, which grants rulemaking authority and sets forth the duty of this agency to protect domestic animals in this state from disease.

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

Certificate of Veterinary Inspection—[The provisions of a certificate of veterinary inspection satisfies the requirements of a health certificate stated in the Agriculture Code, Chapter 161.] A document signed by an accredited veterinarian that shows the livestock, [or] poultry, exotic livestock, or exotic fowl listed were inspected and subjected to tests, immunizations, and treatment as required by the commission. The certificate is valid for 10 days for movement to a premise, for sale, or for show and sale, and valid for 45 days for movement for exhibition purposes only at shows, fairs, exhibitions, and races.

[Commission—The Texas Animal Health Commission.]

Entry Permit—A permit issued by the commission that allows livestock, poultry, exotic livestock, or exotic fowl to enter Texas provided movement criteria have been met. The permit is valid for 15 days.

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John W. Holcombe, DVM  
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Commission

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##### • 4 TAC §51.2

The Texas Animal Health Commission

adopts on an emergency basis an amendment to §51.2, concerning general requirements.

Emergency adoption of this section is necessary to conform to the 4 TAC, §51.1 definition of a certificate of veterinary inspection; and to avoid a conflict in interpretation of the section for the certificate as stated in §51.1.

The amendment deletes language concerning the timeframe stated for inspection of animals by an accredited veterinarian prior to entry of the animals into Texas and clarifies what the contents of a certificate of a veterinary inspection are.

The amendment is adopted on an emergency basis under the Agriculture Code, Texas Civil Statutes, Chapter 161, which grants rulemaking authority and sets forth the duty of this agency to protect domestic animals in this state from disease.

#### §51.2. General Requirements.

(a) (No change.)

(b) Certificate of veterinary inspection.

(1) (No change.)

(2) The [contents of the] certificate of veterinary inspection shall state that:

[(A) the animals were inspected by an accredited veterinarian within 10 days before the day of entry into this state;]

[(A)][(B)] the veterinarian found the animals to be free of symptoms or evidence of communicable diseases determined by the commission to be dangerous to Texas animals; and

[(B)][(C)] the animals were subjected to tests, immunizations, and treatment required by rule of the Commission [; and]

[(3)] Animals that have been vaccinated or tested for any disease as required by the commission shall be individually identified on the certificate of veterinary inspection except that brucellosis vaccinated heifers under test age with tattoos and vaccination tags require only a statement by the veterinarian [issuing the certificate] that they are vaccinated and individually identified.

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

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

TRD-8907988

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

Effective date: August 30, 1989

Expiration date: December 28, 1989

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

## TITLE 28. INSURANCE

### Part I. State Board of Insurance

#### Chapter 33. Continuing Care Retirement Facilities

##### Subchapter A. General Provisions

###### • 28 TAC §§33.1-33.3

The State Board of Insurance adopts on an emergency basis amendments to §§33.1-33.3, concerning general provisions applicable to continuing care retirement facilities. An imminent peril to the public welfare requires adoption of these amendments on an emergency basis in order to remind persons operating or developing continuing care retirement facilities of the provision of recent legislation. The amendment to §3.1 and the amendment to the definition of the word "Act" in §33.2 update the reference to the Texas Continuing Care Facility Disclosure and Rehabilitation Act. The amendment to the definition of the term "continuing care" in §33.2 as well as the amendment to §33.3(3) reflects the changes by House Bill 1475 of the 71st Legislature to terminology in the Act.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

**§33.1. Purpose.** The provisions of this chapter implement the Texas Continuing Care Facility Disclosure and Rehabilitation Act [enacted as House Bill 677, 70th Legislature, 1987], first effective September 1, 1987, and codified as Texas Civil Statutes, Article 8876, as amended.

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

**Act**—The Texas Continuing Care Facility Disclosure and Rehabilitation Act [enacted as House Bill 677, 70th Legislature, 1987], first effective September 1, 1987, and codified as Texas Civil Statutes, Article 8876, as amended.

**Continuing care**—The furnishing, to an individual who is not related by consanguinity or affinity to the person furnishing the care, of a living unit [board and lodging], together with personal care services, [and] nursing services, medical services, or other health-related services, regardless of whether or not the services and the living unit [lodging] are provided at the same location, under a contractual [an] agreement that requires the payment of an entrance fee and that is effective either for the life of the individual or for a period of more than one year.

**§33.3. Scope.** This chapter shall apply to a person operating or developing a facility if all of the following conditions are met.

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

(3) A living unit is [Board an lodging are] furnished, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether or not the services and the living unit [lodging] are provided at the same location.

Issued in Austin, Texas on August 31, 1989.

TRD-8908099

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: September 1, 1989

Expiration date: December 30, 1989

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

##### Subchapter B. Facilities Qualifying for a Certificate of Authority under the Texas Continuing Care Facility Disclosure and Rehabilitation Act, §4(g)

###### • 28 TAC §§33.107, §33.108

The State Board of Insurance adopts on an emergency basis amendments to §33.107 and §33.108, concerning qualifying for a certificate of authority under the Texas Continuing Care Facility Disclosure and Rehabilitation Act (the Act), §4(g). An imminent peril to the public welfare requires adoption of these amendments in order to remind persons operating or developing continuing care retirement facilities of the provisions of recent amendments to the Act concerning licensing requirements. The amendment to §33.107 clarifies the inapplicability of the Act, §4(g), to facilities that were not in fact offering or entering into continuing care contracts as of September 1, 1987, even though they had previously done so. The amendment to §33.108 deletes the requirement of compliance with the Act, §8, concerning escrow requirements for facilities qualifying under the Act, §4(g).

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

**§33.107. Applicability of the Texas Continuing Care Facility Disclosure and Rehabilitation Act and Rules Thereunder to Facilities Covered by the Act, §4(g).** The entire Act and the provisions of this chapter apply to facilities qualifying for certificate of authority under the Act, §4(g), except as follows:

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



(3) The provisions of the Act, §4(g), shall not apply to a facility that suspended or discontinued offering or entering into continuing care contracts during any period prior to September 1, 1987, and did not resume offering or entering into continuing care contracts by September 1, 1987.

**§33.108. Transition Period.**

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

(c) The provider of a facility that was occupied by one or more residents on September 1, 1987, must comply with the escrow requirements imposed under the Act, [§8 and] §9, not later than September 1, 1990. If the commissioner determines that such provider is unable to comply with this section after making a good faith effort to do so, the commissioner may by order extend the time for compliance for a reasonable period of time, not to exceed 180 days.

Issued in Austin, Texas on August 31, 1989.

TRD-8908098

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: September 1, 1989

Expiration date: December 30, 1989

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

**Subchapter E. Escrow Accounts**

• 28 TAC §§33.401, 33.404, 33.405

The State Board of Insurance adopts on an emergency basis amendments to §§33.401, 33.404, and 33.405, concerning escrow accounts to be maintained by continuing care retirement facilities. An imminent peril to the public welfare requires adoption of these amendments on an emergency basis in order to remind persons operating or developing continuing care retirement facilities of the provisions of the Texas Continuing Care Facility Disclosure and Rehabilitation Act (the Act), concerning escrow accounts, as amended by House Bill 1475 of the 71st Legislature. The amendment to §33.401 deletes the requirement for facilities qualifying under the Act, §4(g), to comply, by September 1, 1990, with the Act, §8, concerning escrow accounts, and this subchapter. The amendments to §33.404 and §33.405 change terminology to conform with changes by House Bill 1475 to terminology in the Act. In addition, the amendment to §33.405 adds subsection (e) to provide that the loan reserve fund requirements may be met by establishing other reserve funds to meet long-term financing obligations, and if the provider meets the requirements in this manner, the provider must submit evidence to that effect.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-

related services and other continuing care to individuals in this state.

**§33.401. Entrance Fee Escrow Accounts.**

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

(e) The provider of a facility which was occupied by one or more residents on September 1, 1987, that enters into continuing care contracts on or after September 1, 1987, shall comply with the escrow requirements under the Act, §8, and this subchapter not later than September 1, 1990, unless the time is extended by the commissioner, pursuant to §33.108 of this title (relating to Transition Period.)

**§33.404. Release of Entrance Fees Before Facility is Complete.** The aggregate amount of entrance fees that may be released to the provider after the conditions of §33.403 of this title (relating to Release of Entrance Fees to Provider) have been met and before the date on which the loan reserve fund escrow is established as required by the Act, §9, may not exceed:

(1) (No change.)

(2) the amount of entrance fees received or receivable that are required to be maintained initially in the loan reserve fund escrow.

**§33.405. Loan Reserve Fund Escrow.**

(a) The provider of a facility which was not occupied by one or more residents on September 1, 1987, shall establish and maintain a loan reserve fund escrow pursuant to the Act, §9, with a bank or trust company located in Texas as escrow agent. The funds deposited therein shall be kept and maintained in an account separate and apart from the provider's business account and fully covered by federal deposit insurance or fully secured by the United States government.

(b)-(c) (No change.)

(d) Until the required aggregate amount is reached, the loan reserve fund escrow account shall be funded by depositing entrance fees:

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

(e) The loan reserve fund requirements may be met in whole or in part by the provider as provided under the Act, §9(a), by establishing other reserve funds held to meet long-term financing obligations. The provider shall submit sufficient evidence that the requirement has been met.

Issued in Austin, Texas on August 31, 1989.

TRD-8908097

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

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

**Subchapter F. Ongoing Regulatory Requirements**

• 28 TAC §§33.505, §33.506

The State Board of Insurance adopts on an emergency basis amendments to §§33.505 and §33.506, concerning ongoing regulatory requirements applicable to continuing care retirement facilities. An imminent peril to the public welfare requires adoption of these amendments on an emergency basis to assure that the activities and financial condition of continuing care retirement facilities are monitored as contemplated by the Texas Continuing Care Facility Disclosure and Rehabilitation Act (the Act), as amended by recent legislation, and to remind persons operating or developing continuing care retirement facilities of the provisions of the Act and of House Bill 1475 of the 71st Legislature. The amendment to §33.505 deletes subsection (d), concerning long-term debt sinking fund requirements, which would now conflict with the Act, §4a, as amended. The amendment to §33.506 changes the deadline for filing actuarial reviews from September 1, 1988, to September 1, 1989, in accordance with statutory change.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

**§33.505. Financial Condition**

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

(d) [Long-term debt sinking fund requirements. The establishment of a sinking fund as a result of the issuance of long-term debt shall be treated as separate and apart from the requirements of the Act, §9.]

[(e)] Requirements for basic financial statements. The basic financial statements to be filed with the disclosure statement for a nonprofit provider or facility shall satisfy the following requirements.

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

**§33.506. Actuarial Review Requirements.**

(a) (No change.)

(b) Initial filing requirements.

(1) Except as provided in paragraph (2) of this subsection, the provider of a facility subject to this section shall file with the commissioner its most current actuarial review, as defined in §33.2 of this title (relating to Definitions) before September 1, 1989 [1988].

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

(c)-(d) (No change.)

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463-6327

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 1. Presumptive Medicaid Eligibility for Pregnant Women

##### Eligibility Requirements

##### • 40 TAC §§1.1, 1.3, 1.5, 1.7, 1.9

The Texas Department of Human Services (DHS) adopts on an emergency basis new §§1.1, 1.3, 1.5, 1.7, and 1.9, concerning, presumptive Medicaid eligibility for pregnant women, and early access to care before birth (prenatal care). The Omnibus Budget Reconciliation Act of 1986 (OBRA), Public Law 99-509, gives states the option of providing a period of presumptive eligibility for pregnant women. The new chapter is in response to Texas Senate Bill 1678, which mandates that DHS promulgate rules to take effect on September 1, 1989, in order to implement that option.

The new chapter will improve maternal and child health outcomes by offering pregnant women temporary Medicaid coverage for ambulatory prenatal care while formal eligibility for Medicaid is being determined. In addition, the new chapter will establish an application process and identify the type of commitments a qualified provider must make to assure that the intent of presumptive eligibility is met. The new chapter is simultaneously proposed in this issue of the *Texas Register* for review and comment.

Presumptive eligibility provides temporary Medicaid coverage for ambulatory prenatal care to pregnant women whose income does not exceed the state's Medicaid eligibility limit. Eligibility is determined by a qualified provider designated by DHS.

The Presumptive Medicaid Eligibility Ad Hoc Committee was appointed to establish the requirements for qualified provider enrollment. This committee consisted of 12 members, who represented major hospital districts, state teaching schools, community health centers, the Texas Department of Health, the Texas Medical Association, and DHS. The committee met on June 30, 1989, to recommend rules that comply with the federal law on presumptive eligibility. These rules, adopted as Chapter 1 of this title, clarify the eligibility requirements for the client population. Furthermore, they define requirements for prenatal care providers who are capable of determining eligibility, offering early access to prenatal care, and meeting the federal requirements for qualified providers.

The Social Security Act, 42 United States Code §1920(b)(2) specifies four of the eligibility criteria for qualified providers. One of these criteria stipulates that a provider must receive funds from, or participate in a program established under, one of several programs. One of these programs is a state perinatal program, which provides services in the period shortly before and after birth.

In discussing the interpretation of what constitutes a state perinatal program, the committee members agreed that the Maternal and Infant Health Improvement Act (MIHIA), Texas Civil Statutes, Article 4447y, which authorize the MIHIA program, is currently the only perinatal program in Texas. However, the proposed chapter is not intended to restrict the future interpretation of a state perinatal program only to the MIHIA program. If MAHIA is not continued by the legislature, DHS will reexamine the interpretation of MIHIA as being the only perinatal program in Texas and seek to identify other state-funded programs that would qualify a provider as a state perinatal program.

The new sections are adopted on an emergency basis 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. The department adopts these new sections on an emergency basis to be effective September 1, 1989, to comply with legislation passed by the 71st Texas Legislature.

##### §1.1. Client Eligibility Requirements.

(a) Application procedures. Applicants for presumptive Medicaid eligibility must apply at a qualified provider site designated by the Texas Department of Human Services (DHS); in all other respects, applicants follow the application procedures specified in §3.301(a)(1) of this title (relating to Responsibilities of Clients and DHR), §3.303(a) of this title (relating to Receipt of Application-Acceptability Factors), and §3.304(a)(1)-(2) of this title (relating to Application Interview).

(b) Eligible group. Pregnant women are eligible if their family income does not exceed the limits for pregnant women in the Medicaid program, as specified in §4.1010 of this title (relating to Determining Income Eligibility).

(c) Requirements for application. To be eligible for presumptive Medicaid eligibility, pregnant women must meet the following requirements.

(1) Citizenship. Citizenship requirements are the same as those requirements specified for AFDC applicants in 45 Code of Federal Regulations, §233.50. Citizenship requirements for aliens applying for Medicaid are as specified in §5.1002 of this title (relating to Legal Basis).

(2) Residency. Residency requirements are those specified for AFDC applicants in §3.1401(a) of this title (relating to Aid to Families with Dependent Children and Food Stamp Residence Requirements).

(3) Income. Income requirements are those specified in §4.1010 of this title (relating to Determining Income Eligibility) for pregnant women in the Medicaid program.

(d) Determining income eligibility. The qualified provider determines income eligibility using the Medicaid income eligibility requirements for pregnant women. The requirements are those for the Medicaid program that are specified in §4.1010 of this title (relating to Determining Income Eligibility).

(e) Medicaid eligibility. The period of presumptive Medicaid eligibility is specified in the Social Security Act, 42 United States Code, §1920(b)(1).

§1.3. Service Limitations. Medicaid coverage for presumptive eligibility is limited to:

(1) one presumptive eligibility period per pregnancy; and

(2) medically necessary services except labor, delivery, inpatient services, and early and periodic screening, diagnosis, and treatment (EPSDT) medical and dental services.

§1.5. Eligibility Requirements for Providers. A qualified provider must meet the following criteria:

(1) be an eligible Medicaid provider;

(2) offer services of the type provided in outpatient hospitals, rural health clinics, or clinics furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician. These services are described further in the Social Security Act, 42 United States Code, §1905(a)(2)(A) or (B) or both, or in §1905(a)(9);

(3) receive funds from, or participate in, a program established under, one of the following:

(A) migrant health centers;

(B) community health centers;

(C) the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, 242, 297, 607, 628;

(D) maternal and child health services block grant programs;

(E) the Indian Health Care Improvement Act, Public Law 94-437, 95-83, 96-537, 100-579, 100-690, 100-713;

(F) Special Supplemental Food Program for Women, Infants, and Children (WIC);

(G) Commodity Supplemental Food Program of the Agriculture and Consumer Protection Act of 1973, Public Law 93-86, 125, 347; 94-273; 95-113, 313; 98-8, 92; 99-198;

(H) a state perinatal program;

(I) the Indian health service or a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act, Public Law 93-638, 99-221, 100-202, 100-446, 100-472;

(4) be determined by DHS to be capable of making presumptive eligibility determinations;

(5) apply to DHS to be a qualified provider for presumptive eligibility. Applications can be requested from the Texas Department of Human Services, Income Assistance Branch, 518-E, P.O. Box 149030, Austin, Texas 78714-9030;

(6) develop an operating plan with the regional director of the local DHS income assistance program before receiving final approval as a qualified provider. This plan must be submitted to DHS after preliminary approval of the criteria outlined in paragraphs (1)-(5) of this section has been received. The plan must specify the operating procedures between the local DHS office and the provider. It must include information concerning how the provider meets the basic intent of the presumptive eligibility program. It must also specify how the provider intends to do the following:

(A) provide access to prenatal care services as a part of the facility's ongoing service package;

(B) provide or assure verification of pregnancy;

(C) assure an appointment for prenatal care within 10 working days of the presumptive eligibility decision. DHS can allow an exception to this requirement on a provider-by-provider basis. If the exception is granted, the provider must submit quarterly updates on the progress made toward meeting the requirement;

(D) designate and train staff necessary to complete the required interview and budget process for each pregnant woman;

(E) monitor the accuracy of the presumptive eligibility determinations with the understanding that qualified provider status can be cancelled for intentional misrepresentation of program eligibility re-

quirements, or for gross negligence in the eligibility determination process;

(F) deliver presumptive eligibility application packets to a DHS service site within one working day of the presumptive eligibility decision;

(G) ensure that staff are trained by DHS in order to make accurate presumptive eligibility determinations;

(H) maintain records on all certified and denied presumptive eligibility transactions for three years from the date of the action;

(I) submit required reports to the DHS income assistance regional director;

(J) assist the client in preparation for the DHS interview process by providing the client with a list of required documents and an explanation of the verification requirements for the interview;

(K) assure the confidentiality of the client's financial information; and

(L) provide services without discrimination on the grounds of race, color, national origin, age, sex, or handicap.

**§1.7. Qualified Provider Notification.** DHS may verify with a third party agency that an applicant meets the criteria specified in §1.5 of this title (relating to Qualified Provider Requirements). DHS will notify the applicant of approval or disapproval as a qualified provider for presumptive eligibility.

**§1.9. Qualified Provider Monitoring.** DHS monitors each qualified provider to ensure compliance with requirements. DHS may discontinue presumptive eligibility operations with any provider who no longer meets the qualified provider requirements or who fails to comply with the local operating plan.

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Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

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

## Chapter 3. Income Assistance Services

### Subchapter V. Medicaid Eligibility

#### • 40 TAC §3.2207

The Texas Department of Human Services adopts on an emergency basis new §3.2207, concerning children born to mothers in prison. House Bill 1770 requires that DHS provide medical coverage to children born to mothers in the Texas Department of Corrections. The department adopts the new section on an emergency basis effective September 1, 1989, to comply with state legislation passed by the 71st session of the Texas State Legislature.

The section is adopted on an emergency basis 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.

**§3.2207. Children Born to Mothers in Prison.** DHS provides medical coverage for children born to mothers incarcerated in a Texas Department of Corrections facility if the child is not eligible for Medicaid and there is no other means to pay the medical bills. Eligibility is limited to the child's first 28 days of life. However, if a child is admitted or readmitted to a hospital during the first 28 days of life and remains in the hospital after the first 28 days of life, eligibility continues until the child's discharge from the hospital. Coverage is limited to the same services paid for by Medicaid. Reimbursement for covered services is subject to the reimbursement methodologies and limitations of the Texas Medical Assistance Program.

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

## Chapter 14. County Indigent Health Care Program

### Subchapter A. Program Administration

The Texas Department of Human Services (DHS) adopts on an emergency basis amendments to §§14.1, 14.202, 14.203, and 14.204, concerning county program administration; exclusions and limitations; payments for mandatory services; and services and payment liability, limitations, and options. With the publication of this issue of the *Texas Register*, DHS is simultaneously proposing the amendments for review and comment. DHS adopts the amendments on an emergency basis to comply with mandated legisla-

five changes effective September 1, 1989.

Section 14.1 is amended to require counties to provide annual public notice of its eligibility standards, to permit counties to change eligibility standards, and to eliminate certain city-owned public hospitals and other hospitals from the definition of public hospitals. The counties in which these hospitals are located must assume responsibility for providing all CIHCP services to eligible residents of the hospital's service area. Section 14.1 is also amended to permit a county contracting with a state-maintained or operated hospital to credit the cost of services provided to persons meeting less restrictive eligibility standards than mandated by DHS. These costs are credited toward the county's 10% GRTL liability and eligibility for state assistance funds. In addition, counties selling leased public hospitals may credit the value of services provided under sales contracts toward their eligibility for state assistance funds.

Sections 14.202, 14.203, and 14.204 are amended to permit reimbursement for medically necessary physician services provided by licensed dentists and podiatrists if these services are covered when provided by a licensed physician (M.D. or D.O.). Laboratory and x-ray services required to provide these physician services are also covered. The dentist or podiatrist must be able to provide these physician, laboratory, and x-ray services within the scope of his license.

The department adopts the amendments on an emergency basis effective September 1, 1989, to comply with state legislation passed by the 71st session of the Texas State Legislature.

#### • 40 TAC §14.1

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

#### §14.1. County Program Administration

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

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

(6) Public hospital—A hospital owned, operated, or leased by a county, city, town, hospital authority, or other political subdivision of the state, excluding a hospital district and hospital authority. A hospital is not considered to be a public hospital for the purposes of providing indigent care if the hospital:

(A) is owned, operated, or leased by a city with a population of less than 5,500, according to the most recent federal decennial census;

(B) was leased before January 1, 1981, by a city that at the time of the lease did not have a legal obligation to provide indigent care;

(C) was established under Texas Civil Statutes, Article 4494i-1; or

(D) was leased to a nongovernmental person or entity at the time of sale and was sold on or after January 1, 1988, to a nongovernmental purchaser.

(7) (No change.)

(b) (No change.)

(c) General administrative requirements. Each county required to administer a program must:

(1) provide public notice and make a reasonable effort to notify the public, at the beginning of the state's fiscal year, of the county's eligibility standards, and the county's application, documentation, and verification procedures and the verification and documentation procedures that applicants must comply with to establish eligibility;

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

(d) County administrative option.

(1) (No change.)

(2) Counties may change eligibility standards to make them more or less restrictive than their preceding standards. However, the new standards can be no more restrictive than those contained in Subchapter B of this chapter (relating to Determining Eligibility.)

(3) [(2)] If a city in the county with a population below 15,000 according to the last federal census owns, operates, or leases a public hospital, the city and county may enter into an agreement transferring part of the public hospital's indigent health care responsibility to the county. The transfer agreement is irrevocable and cannot be amended. It must:

(A) specify that the county is assuming the hospital's responsibility for paying other providers for services delivered to eligible city residents on an emergency basis or because the service is unavailable at the hospital;

(B) require that the city public hospital continues to otherwise provide health care services to eligible city residents as required by law;

(C) occur by August 31, 1989, by adoption of an ordinance, resolution, or order by the commissioner's court and city governing body; and

(D) take effect on a September 1, within two years after the date of the agreement.

(4) [(3)] The county and city must establish coordinated application and eligibility verification procedures that com-

ply with subsection (c) of this section and the Indigent Health Care and Treatment Act, §10.03. These procedures must ensure the efficient and timely referral of the eligible city residents to the proper city or county entity. County expenditures for services made under the terms of the agreement are creditable towards the county's 10% limit if the city resident otherwise meets the eligibility standards contained in Chapter 4 of this title (relating to Determining Eligibility). County expenditures for coordinating application and verification procedures cannot be credited towards the county's 10% limit. Within 30 days after the agreement is made, the city and county must notify the department of the agreement and its effective date and send the department a copy of all ordinances, resolutions, or other orders pertaining to the agreement.

(e) State assistance fund.

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

(3) Counties may not credit expenditures towards eligibility for state assistance if the expenditures are for a resident eligible under less restrictive eligibility standards but ineligible under the DHS eligibility standards. If a county has a contract with a state agency to provide mandatory services to eligible county residents in a hospital maintained or operated by the state agency, the county may credit all expenditures for a county resident eligible under DHS or less restrictive county standards.

(4) (No change.)

(f) Eligibility requirements for counties applying for state assistance.

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

(3) Counties may also credit toward eligibility for state assistance the value of health care services credited or paid in a state fiscal year and provided to county residents eligible under the eligibility and payment standards established by DHS in Subchapters B-D of this chapter (relating to Determining Eligibility, Providing Services, and Care Management) under the following types of contracts:

(A) A health care provider and a county entered into a contract, on or before January 1, 1985, require that the provider furnish a certain level of mandatory health care services to eligible county residents.

(B) The terms of a sales contract between a county and a purchaser of the county's hospital require the purchaser to provide inpatient and outpatient hospital services. The sale must have occurred on or after January 1, 1985, and the hospital must have been:

(i) leased to a nongovernmental person or entity at the time of sale; and

(ii) purchased by a non-governmental person or entity.

(g)-(h) (No change.)

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Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

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

### Subchapter C. Providing Services

#### • 40 TAC §§14.202-14.204

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

#### §14.202. Exclusions and Limitations.

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

(d) Limited services. The following services and supplies are excluded unless the specified conditions are met:

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

(6) dental and podiatric care unless the service is covered as a physician service when [and is] provided by a licensed physician, and the dentist or podiatrist can provide the service within the scope of his license.

(7)-(10) (No change.)

(e)-(g) (No change.)

#### §14.203. Payments for Mandatory Services.

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

(c) The payment standards for the individual mandatory services are:

(1) (No change.)

(2) Physician, laboratory, and x-ray services. The payment standard for the procedures DHS identifies as the most commonly performed procedures in the Medicaid Program is the average Texas Medicaid payment for the procedure.

(A) If providers perform a procedure that DHS has not identified as a common Medicaid procedure, counties may use either the:

(i)[(A)] amount billed, if the provider certifies in writing that the

billed amount is consistent with the amount the provider charges all other patients for the procedure; or

(ii)[(B)] average Medicaid payment for the uncommon procedure. The county must contact DHS for payment information for uncommon procedures.

(B) Dentists and podiatrists may also be paid for allowed physician, laboratory, and x-ray services if these services are:

(i) permitted within the scope of their license; and

(ii) required to perform the allowed physician services.

(3)-(6) (No change.)

(d) (No change.)

#### §14.204. Services and Payment Liability, Limitations, and Options.

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

(c) County liability for services and payments is limited to:

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

(6) payments to providers who certify in writing that:

(A) the service was medically necessary. This applies only to physicians, and dentists and podiatrists providing physician services;

(B) (No change.)

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

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Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

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

### Chapter 79. Legal Services

#### Subchapter Q. Contract Appeals

#### • 40 TAC §79.1614

The Texas Department of Human Services (DHS) adopts on an emergency basis an amendment to §79.1614, concerning contract appeals, in its Legal Services chapter. The amendment is simultaneously proposed in this issue of the *Texas Register* for public review and comment. The amendment will give parties to the hearing process knowledge of time by which a motion for rehearing must be received by the administrative law judge. The amendment also requires that ad-

ministrative law judges send decisions by certified mail, thus ensuring the department's knowledge of their receipt.

The department adopts the amendments on an emergency basis effective September 1, 1989, to comply with state legislation passed by the 71st session of the Texas State Legislature.

The amendment is adopted on an emergency basis under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

#### §79.1614. Decisions.

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

(e) The administrative law judge must send the final decision by first class certified mail, return receipt requested, to the attorneys of record, or, if a party is not represented by an attorney of record, to that party. The Hearings Division must keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision is presumed to have been notified on the date such notice is mailed. [The decision is mailed by certified mail, return receipt requested, or personally delivered to the petitioner or his attorney and to the respondent.]

(f) Either party may file a written motion for [a] rehearing. The [This] motion must be addressed to the administrative law judge and must be filed so that it is received by the clerk of the Hearings Division within 20 days after the date the party or his attorney of record is notified of the final decision as required by subsection (e) of this section [within 15 days after the date that the final decision has been rendered]. Replies to a motion for [a] rehearing must be filed so as to be received by the clerk of the Hearings Division within 30 days after the date of mailing of the final decision [within 25 days after the date that the final decision was rendered]. The administrative law judge either grants or denies the motion for [a] rehearing within 45 days after the date of [that] the final decision [was rendered].

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Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

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

## TITLE 43.

### TRANSPORTATION

## Part I. State Department of Highways and Public Transportation

### Chapter 1. Administration

#### Contested Case Procedure

##### • 43 TAC §1.21

The State Department of Highways and Public Transportation adopts on an emergency basis an amendment to §1.21, concerning definitions, to include the deputy engineer-director in the term "engineer-director." The amended section will allow the deputy engineer-director to perform certain administrative functions assigned to the engineer-director by 43 TAC Chapter 1, when for good and valid reasons, the engineer-director may not be readily available.

Adoption on an emergency basis is necessary to allow the department to fulfill essential functions and duties of the engineer-director in a timely and effective manner, all to the immediate public welfare and benefit, where in certain instances the engineer-director may not be readily available, thus requiring the deputy engineer-director to act in his stead.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

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

**Engineer-director**—The state engineer-director for [chief administrative officer of the State Department of] highways and public transportation or, in his absence, the deputy engineer-director.

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TRD-8908050

Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

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Expiration date: December 29, 1989

For further information, please call: (512) 463-8630

### Chapter 25. Maintenance and Operations Division

#### Oversize And/Or Overweight Permits

##### • 43 TAC §25.60

The State Department of Highways and Public Transportation adopts on an emergency basis new §25.60, concerning purpose. The

new section applies to permits issued pursuant to Texas Civil Statutes, Article 6701a, for the operation of oversize and/or overweight vehicles transporting cargo that cannot be reasonably dismantled due to the gross size or weight exceeding the limits allowed by law.

Adoption on an emergency basis is necessary in order to assist in differentiating between the requirements and procedures applicable to permits issued under existing 43 TAC §§25.61-25.77 of this undesignated head concerning oversize and/or overweight permits and those issued under 43 TAC §25.81 (concerning permit for over axle and over gross weight tolerances), which is simultaneously being adopted on an emergency basis to be effective September 1, 1989.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6701a, which authorize the department to issue oversize and/or overweight permits, and Texas Civil Statutes, Article 6666, which provides the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

**§25.60. Purpose.** In accordance with Texas Civil Statutes, Article 6701a, the State Department of Highways and Public Transportation may issue permits for the operation of oversize and/or overweight vehicles for the transportation of such cargo that cannot be reasonably dismantled where the gross size or weight exceeds the limits allowed by law. The following sections under this undesignated head set forth the requirements and procedures applicable to those permits.

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Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

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For further information, please call: (512) 463-8630

#### Special Tolerance Permits

##### • 43 TAC §25.81

The State Department of Highways and Public Transportation adopts on an emergency basis new §25.81, concerning permit for over axle and over gross weight tolerances. The new section authorizes under certain conditions the issuance of an annual permit to vehicles that exceed the maximum allowable axle weight by 10% and allowable gross weight by 5.0% on all state highways excluding the interstate system, and on county roads and bridges. The section prescribes tolerance permit policies and procedures, including scope of coverage, eligibility, applicant requirements, posting of security, limitations on usage, notice to counties, transfer or termination, and exceptions.

Adoption on an emergency basis is necessary due to the recent passage of House Bill 2080, 71st Legislature, 1989, effective September 1, 1989, and in order to implement the legislative mandate in a manner that will safeguard the motoring public.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6701d-11, which authorize the department to issue overweight permits, and Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

##### §25.81. Permit for Over Axle and Over Gross Weight Tolerances.

(a) Purpose. In accordance with Texas Civil Statutes, Article 6701d-11, §5B, the State Department of Highways and Public Transportation is authorized under certain conditions to issue annual permits for the operation of vehicles within certain tolerances above allowable axle and gross weight limits. This section sets forth requirements and procedures to be used in issuing the annual permit.

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

(1) Applicant—An owner or operator of a vehicle, whether an individual, firm, partnership, or corporation who makes an application for a permit in accordance with subsection (f) of this section.

(2) Apportioned trailer—A semitrailer, in combination with a Texas-based commercial power unit that operates interstate in states which have apportioned or prorated the license fees of the various other states.

(3) Combination license plate—A single license plate for a truck or truck tractor having a manufacturer's rated carrying capacity in excess of one ton, operated in combination with semitrailers which have a gross weight in excess of 6,000 pounds.

(4) Department—The State Department of Highways and Public Transportation.

(5) Permit—Permit issued under the authority of Texas Civil Statutes, Article 6701d-11, §5B.

(6) State highway system—A system of state highways as defined in Texas Civil Statutes, Article 6674b.

(7) Token trailer—A semitrailer having a gross weight in excess of 6,000 pounds and pulled by a power unit displaying a combination license plate.

(8) Vehicle—A commercial motor vehicle, truck tractor, trailer, semitrailer, or combination thereof.



(c) Permit. By permit, duly issued under this section, a person may operate a vehicle that exceeds the allowable axle weight by a tolerance of 10% and the allowable gross weight by a tolerance of 5.0% on any county road or those designated by a county, and on the state highway system, excluding the national system of interstate and defense highways. For a vehicle operated on a road, highway, or bridge subject to Texas Civil Statutes, Article 6701d-11, §5-1/2, the terms, "allowable axle weight" and "allowable gross weight" shall be the respective maximum weights established and posted pursuant to that provision of law.

(d) Eligibility. To be eligible for a permit under this section, a vehicle must first be registered under Texas Civil Statutes, Article 6675a-1 et seq., for the maximum gross weight applicable to the vehicle under Texas Civil Statutes, Article 6701d-11, §5, not to exceed 80,000 pounds in total gross weight.

(e) Security.

(1) Before a permit may be issued under this section, an applicant, other than an applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips, cotton, or agricultural products in their natural state, must have on file with the department one of the following forms of security in the amount of \$15,000, conditioned that payment will be made to the department for any damages to the state highway system and to any county for damages to a road or bridge of such county caused by the operation of any vehicle for which a permit is issued under this section and which has an axle weight or gross weight that exceeds the weights authorized in Texas Civil Statutes, Article 6701d-11, §5 and §5-1/2:

(A) an irrevocable letter of credit issued by a financial institution whose deposits are guaranteed by the Federal Deposit Insurance Corporation; or

(B) a blanket bond.

(2) The department may reject a bond which it determines will not provide the intended security.

(3) If payment is made by the issuer in respect of the bond or letter of credit and the applicant does not file with the department a replacement bond or letter of credit in the full amount of \$15,000, or a notification from the issuer of the existing bond or letter of credit that the existing bond or letter of credit has been restored to the full \$15,000, within 30 days after the date of such payment, all permits held by the applicant under this section shall automatically expire on the 31st day after such date.

(f) Application for permit.

(1) A person who desires to operate a vehicle pursuant to a permit as provided in this section, must first submit a written application to the department.

(2) The application shall be in the form prescribed by the department and shall contain at a minimum the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number;

(C) vehicle information; and

(D) description of commodities to be transported.

(3) The application shall be accompanied by the following documents or information:

(A) a copy of the current registration receipt of the power unit showing that the vehicle is currently registered for the maximum amount allowable for such vehicle;

(B) a list of counties in which the vehicle will be operated;

(C) a nonrefundable fee of \$75 in the form of a cashier's check or money order made payable to the state highway fund; and

(D) an original bond or letter of credit as required in subsection (e) of this section, unless previously filed by the applicant.

(g) Issuance of permit.

(1) A permit will be issued on the approval of the application and will be mailed to the applicant at the address contained in the application.

(2) The permit shall be carried in the vehicle at all times.

(3) Within 14 days of receipt of the permit, the applicant shall notify by certified or registered mail, return receipt requested, the county clerk of each county in which the vehicle will be operated, and such notification shall contain or be accompanied by the following minimum information:

(A) a copy of the application as required in subsection (f) of this section;

(B) a copy of the bond or letter of credit as required in subsection (e) of this section;

(C) a copy of the registration receipt for the vehicle; and

(D) a copy of the permit issued under this subsection.

(h) Transfer of permit. Upon written application on a form prescribed by the department, a permit issued in accordance with this section may be transferred to another eligible vehicle for the remaining permit period without additional charges on condition that:

(1) the vehicle for which a permit has been issued will be out of service for more than 30 days for mechanical failure; or

(2) such vehicle is sold or its lease has terminated.

(i) Exceptions. A vehicle carrying timber, wood chips, wood pulp, cotton, or other agricultural products in their natural state, may be allowed to exceed the maximum allowable axle weight by 12% without a permit; however, if such vehicle exceeds the maximum allowable gross weight by an amount of up to 5.0%, a permit issued in accordance with this section will be required.

(j) Other requirement. As provided in Texas Civil Statutes, Article 6675a-1B, the fee for a token trailer or an apportioned trailer operated in combination with a vehicle for which a permit has been issued under this section, shall be \$30.

(k) Lapse or termination of permit. A permit shall lapse or terminate:

(1) if a new permit application is not submitted to the department a minimum of 30 days prior to the original expiration date;

(2) on the sale of the vehicle for which the permit was issued;

(3) on the sale, take over, or dissolution of the firm, partnership, or corporation to which a permit was issued; or

(4) if the applicant does not replenish the letter of credit or bond as required in subsection (e) of this section.

Issued in Austin, Texas on August 31, 1989.

TRD-8908048

Diane L. Northam  
Administrative Procedures  
Technician  
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Highways and Public  
Transportation

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-8630

## Chapter 31. Public Transportation Division

### General

#### • 43 TAC §31.3

The State Department of Highways and Public Transportation adopts on an emergency basis an amendment to §31.3, concerning definitions. New definitions are being added for "authority" and "designated recipient".

Adoption on an emergency basis is necessary due to the recent passage of House Bill 1263, Acts 71st Legislature, 1989, effective September 1, 1989, which prescribes certain changes in the administration of public transportation grant contracts. Due to this legislation, the adoption of §31.11 and §31.13, concerning state programs, is simultaneously being submitted on an emergency basis. The new definitions in §31.3 are necessary to clarify the intent of those sections.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and more specifically to administer the state public transportation fund and state and federal public transportation programs.

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

**Authority**—A metropolitan or regional authority as created under Texas Civil Statutes, Article 1118x or Article 1118y, or a city transit department created under Texas Civil Statutes, Article 1118z.

**Designated recipient**—An authority, a municipality that is not included in an authority, a local governmental body, or a nonprofit entity providing rural public transportation services, that receives federal public transportation money through the department or the federal Urban Mass Transportation Administration, or its successor.

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TRD-8908071 Diane L. Northam  
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## State Programs

#### • 43 TAC §31.11, §31.13

The State Department of Highways and Public Transportation adopts on an emergency basis new §31.11 concerning formula program and new §31.13 concerning discretionary program. These new sections describe the purpose of each program, how funds are allocated to the programs, application requirements, and evaluation criteria.

Adoption on an emergency basis is necessary due to the recent passage of House Bill 1263, Acts 71st Legislature, 1989, effective September 1, 1989, which prescribes certain changes in the administration of public transportation grant contracts. Contracts with local public transportation operators must currently be negotiated to conform with the provisions of House Bill 1263. It is necessary that those contracts also have an effective date of September 1, 1989, to allow the contractors a full year to expend the available monies.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and more specifically to administer the state public transportation fund and state and federal public transportation programs.

#### §31.11. Formula Program.

(a) Purpose. Texas Civil Statutes, Article 6663c require the commission to allocate, at the beginning of each fiscal biennium, certain appropriated amounts from the public transportation fund on the basis of a prescribed formula. This section sets out the policies, procedures, and requirements for that formula allocation.

(b) Formula allocation. Except as provided in subsection (d) of this section, at the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to designated recipients.

(1) The commission will allocate those funds as follows.

(A) twenty percent of the funds available under this section will be allocated in urbanized areas, each with a population larger than 200,000, according to the most recent federal census. Any local governmental entity having the power to operate or maintain a public transportation system may receive formula program funds described in paragraph (2)(A), (C), and (D)

of this subsection. The commission will distribute in each applicable urbanized area an amount equal to the sum of:

(i) one-half of the total amount allocated to that category multiplied by the ratio that the population of the urbanized area bears to the total population of all urbanized areas in this state in that category; and

(ii) one-half of the total amount allocated to that category multiplied by the ratio that the number of inhabitants per square mile of the urbanized area bears to the combined number of inhabitants per square mile of all urbanized areas in this state in that category.

(B) forty percent of the funds available under this section will be allocated in urbanized areas, each with a population of not less than 50,000 or more than 200,000, according to the most recent federal census. Any local governmental entity having the power to operate or maintain a public transportation system may receive formula program funds described in paragraph (2)(A)-(D) of this subsection. The commission will distribute in each applicable urbanized area an amount equal to the sum of:

(i) one-half of the total amount allocated to that category multiplied by the ratio that the population of the urbanized area bears to the total population of all urbanized areas in this state in that category; and

(ii) one-half of the total amount allocated to that category multiplied by the ratio that the number of inhabitants per square mile of the urbanized area bears to the combined number of inhabitants per square mile of all urbanized areas in this state in that category.

(C) forty percent of the funds available under this section will be allocated in urban areas, each with a population of less than 50,000, according to the most recent federal census, or in rural areas. Any eligible recipient may receive formula program funds described in paragraphs (2)(A)-(D) of this subsection. Of the money allocated under this paragraph, the commission will distribute:

(i) 5.0% to designated recipients for federally assisted rural public transportation projects, selected by the commission; and

(ii) 95% to designated recipients operating public transportation services in nonurbanized areas. These monies will be distributed in accordance with the following formula:



$$D = T \times F/A$$

where:

"D" = the amount distributed to a designated recipient;

"T" = the total amount apportioned under this subparagraph for a fiscal year of the state;

"F" = the amount of federal public transportation money available to the state through the federal formula grant program for areas other than urbanized areas in accordance with §1614 of the federal Urban Mass Transportation Act (49 U.S.C. §1614), including money transferred for that purpose in accordance with §1607a of that Act (49 U.S.C. §1607a), that was approved during the state's preceding fiscal year for the designated recipient; and

"A" = the amount of federal public transportation money available to the state through the federal formula grant program for areas other than urbanized areas in accordance with §1614 of the federal Urban Mass Transportation Act (49 U.S.C. §1614), including money transferred for that purpose in accordance with §1607a of that Act (49 U.S.C. §1607a), that was approved during the state's preceding fiscal year for all designated recipients eligible to receive money under this subparagraph.

(2) Funds allocated under this section may be used to provide:

(A) 65% of the local share requirement for federally financed projects for capital improvements;

(B) 50% of the local share requirement for projects for operating expenses and administrative costs;

(C) 50% of the total cost of a public transportation capital improvement, if the designated recipient certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(D) 65% of the local share requirement for federally financed planning activities.

(c) Unexpended funds. At the close of the first fiscal year of each state fiscal biennium, the commission will reclaim and transfer, for use in the discretionary program described in §31.13 of this title (relating to Discretionary Program), all unexpended money allocated under the formula program. However, if a recipient of formula funds has, in the first fiscal year of the biennium, entered into a contract with a third party under the terms of which the unexpended formula allocation will be expended before the end of the fiscal biennium, that formula recipient shall retain the money for use under that third party contract before the end of the fiscal biennium.

(d) Nonallocation. Any funds appropriated for public transportation development which the commission determines will not be required for that purpose under

the formula program may be allocated by the commission:

(1) during the first or second year of the state fiscal biennium as provided in §31.13 of this title (relating to Discretionary Program); or

(2) as matching funds to obtain federal public transportation money for the improvement of public transportation in this state.

(e) Application. To receive funds allocated under this section, a designated recipient must first submit an application, in the form prescribed by the department, to the director which shall include the following certifications:

(1) that money is available to provide:

(A) 35% of the local share requirement of federally assisted capital im-

provements or planning projects and 50% of the local share requirement of federally financed projects for operating expenses and administrative costs to be financed under the formula program; or

(B) 50% of the total cost of other public transportation capital improvement projects;

(2) that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with the federal Urban Mass Transportation Act of 1964 (49 United States Code §1601 et seq.) and the Federal-Aid Highway Act of 1973 (49 United States Code §1602a) (Federal approval of a proposed public transportation project shall be accepted as a determination that all federal planning requirements have been met).

(f) Project evaluation. In evaluating a project under this section, the department shall consider the need for fast, safe, efficient, and economical public transportation and the approval of the federal UMTA, or its successor.

(g) Reporting requirements. A designated recipient that receives funds allocated under this section shall submit to the department, on the format prescribed by the department, quarterly reports which include the following information: operating cost per passenger; operating cost per revenue mile; fare recovery rate; average vehicle occupancy; on-time performance; the number of accidents per 100,000 vehicle miles; and the number of total miles between mechanical road calls. The reports shall be submitted based on calendar quarters and shall be provided to the department within 45 days of the end of the calendar quarter.

### §31.13. Discretionary Program.

(a) Purpose. Texas Civil Statutes, Article 6653c, allows the commission to allocate any funds not obligated in accordance with the terms of §31.11 of this title (relating to Formula Program) or any such funds that the commission determines are not required for the purposes of §31.11 of this title (relating to Formula Program) on a discretionary basis. This section sets out the policies, procedures, and requirements for that discretionary allocation.

(b) Discretionary allocation. The commission will allocate funds to a local governmental entity or a private nonprofit organization which has the power to operate or maintain a public transportation system. Funds may be used for:

(1) the same purposes as described in §31.11(b)(2) of this title (relating to Formula Program); and

(2) for 80% of the cost of capital expenditures associated with ridesharing activities.

(c) Application. To receive funds under this section, applicants must first submit an application, in the form prescribed by the department, to the director. The application must include:

(1) a description of the project, including estimates of the population that would benefit from the project and the anticipated date of project completion;

(2) a statement of the estimated cost of the project, including estimates of the federally financed portions of the project costs; and

(3) certifications that:

(A) local funds are available for local share requirements as prescribed by §31.11(b)(2) of this title (relating to

Formula Program) and subsection (b) (2) of this section and that the proposed project is consistent with comprehensive regional transportation plans (Federal approval of a proposed public transportation project shall be accepted as a determination that all federal planning requirements have been met);

(B) equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes;

(C) ridesharing activities will be operated on a nonprofit basis without state subsidies and with accountability in operating the van pool equipment; and

(D) any funding available through the United States Department of Transportation to participate in the capitalized portion of state and locally supported ridesharing activities, may be applied for and utilized to supplement the availability of local resources for the recapitalization of van pool equipment.

(d) Project evaluation. In evaluating a project under this section, the department shall consider the need for fast, safe, efficient, and economical public transportation and the approval of the federal UMTA, or its successor.

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Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

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For further information, please call: (512) 463-8630

# Proposed Sections

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

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

## TITLE 4. AGRICULTURE Part II. Animal Health Commission

### Chapter 35. Brucellosis

#### Subchapter A. Eradication of Brucellosis in Cattle

##### • 4 TAC §35.1

The Texas Animal Health Commission proposes an amendment to §35.1, concerning definitions. The amendment modifies the definition for "dealer" so that it tracks statutory language.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 give the public a better definition of a dealer as that term is defined in the brucellosis regulations. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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

##### Dealer-

(A) Any person [, or other legal entity] engaged in the business of buying or selling cattle in commerce [either] on his own account, [or] as [the] an employee or agent of the vendor, [or] the purchaser, or both [;], or[,] on a commission basis.

(B) Any person, or other legal entity, engaged in the business of buying or selling cattle in commerce on a commission basis.]

(B)[(C)] The term shall not include a person who buys or sells cattle as part of his own bona fide breeding, feeding, dairy, or stocker operations[,] but does include livestock markets and commission merchants.

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-8908020

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

Earliest possible date of adoption: October 9, 1989.

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

##### • 4 TAC §35.2

The Texas Animal Health Commission proposes an amendment to §35.2, concerning general requirements. The amendment eliminates the exemption for blood collection at slaughter plants and specifies collection and submission procedures; requires dealer recordkeeping on all cattle that are 18 months of age or older, parturient, or postparturient; eliminates the requirement for keeping records on weight of the animals; gives a herd owner the option to renew an application for a quarantined pasture for "S" branded heifers for the same premise under the same terms and provisions as were originally made without having to vacate the pasture.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 provide more accurate test results from slaughter blood collection that are traceable; allow producers to make use of available grazing in quarantined pastures; and provide more specificity in dealer recordkeeping. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

##### §35.2. General Requirements.

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

(f) Requirements of a slaughter test. Slaughter plants operating in Texas shall collect blood from all test-eligible cattle slaughtered except those cattle from quarantined feedlots and finished fed heifers up to 24 months of age. All blood samples collected at slaughter shall be submitted to a state-federal laboratory. Identification of the cattle in relation to the sample shall be maintained so that reactors or suspects may be traced to their herd of origin. The following collection procedures shall be followed.

(1) Blood samples shall be collected from each animal in tubes numbered in sequence for each day's kill and placed in innercell mailing cartons furnished by USDA.

(2) The samples shall be listed in numerical order on the USDA Test Record, Market Cattle Testing Program Form (VS 4-54). All man-made identification devices such as backtags, ear tags, and bangle tags for each animal shall be recorded on the VS 4-54 in the appropriate columns to the corresponding blood sample.

(3) Known brucellosis reactors shall be identified on the VS 4-54 by entering "FR" in the test interpretation column.

(4) The full name and address of each person or firm from which each animal was secured shall be recorded on the VS 4-54 and daily kill sheets. Test records shall show the slaughter plant name and address, the date of collection (kill date), and the signature of collector.

(5) The blood samples with the complete VS 4-54 and daily kill sheets shall be promptly submitted to the appropriate state-federal laboratory.

(6) If cattle are delivered by someone other than the slaughterer or the slaughterer's agent, the license plate number of the vehicle delivering the cat-

tie shall be recorded on the slaughter records and made available to commission personnel upon request.

[(f) Requirements of a slaughter test. All test-eligible cattle except cattle from quarantined feedlots, finished fed heifers up to 24 months of age, cattle from certified free herds, cattle tested within 30 days, and steers and spayed heifers destined for slaughter to be slaughtered in Texas plants operating under provisions of the state or federal meat inspection act, shall be tested prior to slaughter by approved personnel by collecting their blood and submitting the samples to a state federal laboratory. The identification of the cattle shall be maintained so as to allow tracing of reactors or suspects to their herd of origin, including, but not limited to, packer's lot number, seller's name and address, and number of animals. Slaughter plants will be exempt from the requirement of testing cattle prior to slaughter if they choose to sign an agreement with the Texas Animal Health Commission agreeing to the following provisions.

[(1) If cattle are delivered by someone other than the slaughterer or the slaughterer's agent, the license plate number of the vehicle delivering the cattle shall be recorded on slaughter records and made available to commission personnel upon request.

[(2) Arrange for blood collection from carcasses of all cows and bulls 18 months of age or older, (except feedlot fed heifers up to 24 months of age).

[(3) See that all man-made identification, such as backtags, eartags, and bangle tags are put with blood samples and promptly submitted to the appropriate state federal laboratory for brucellosis tests.

[(4) Submit daily kill sheets and the completed USDA Test Record, Market Cattle Testing Program Form (VS 4-54) to the laboratory showing identification of each animal to the person or firm from which the cattle were secured. (Full name and address.)]

(g)-(n) (No change.)

(o) Requirements of a quarantined pasture for "S" branded heifers. The commission, in conjunction with the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), may issue an approval to a landowner or operator to operate a quarantined pasture for a period not to exceed eight months, which approval is personal to the person named, and non-transferable to any other premises from the premises described in the approval. To be considered, an applicant must submit a completed application in writing to the Texas Animal Health Commission. Hereafter, the word "operator" is used to indicate the person who received the approval to operate a quarantined pasture.

(1) (No change.)

(2) The approval to operate a quarantined pasture shall automatically expire eight months from the date of approval. [The operator on or before the expiration date shall remove all cattle from the pasture.]

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

(5) Prior to [Upon] expiration of the [approval] quarantined pasture application for "S" branded heifers, the operator may reapply for renewal of the [(for a) quarantined pasture [approval] designation for the same premise. [any time after two months, after the expiration date.] An on-site inspection of the premise shall be made by commission or USDA, APHIS, VS, personnel prior to granting approval for renewal of the quarantined pasture pursuant to requirements of paragraphs (1) and (3) of this subsection.

(6) (No change.)

(p)-(r) (No change.)

(s) Requirements for [on] dealer recordkeeping. Any dealer [, auctioneer, or commission firm] must maintain records of [test age] cattle[,] that are parturient or postparturient or 18 months of age or older. Such records shall show the seller's name and address, county of origin, number of animals, and a description of each animal, including sex, age, color, breed, [weight,] brand [brands], and individual identification such as eartag, bangle tag, backtag, tattoo, or firebrand [some form of individual identification numbers]. Records at auctions and commission firms shall show the delivery vehicle license number.

(t)-(u) (No change.)

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

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

TRD-8908018

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

Earliest possible date of adoption: October 9, 1989

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

#### • 4 TAC §35.41

The Texas Animal Health Commission proposes an amendment to §35.41, concerning definitions.

The amendment adds a new definition for "dealer" which is defined as any person engaged in the business of buying or selling swine.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 give the public assurance that herds of origin can be identified when dealers handle those swine. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12968, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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

Dealer—

(A) Any person engaged in the business of buying or selling swine in commerce on his own account, as an employee or agent of the vendor, the purchaser, or both, or on a commission basis.

(B) The term shall not include a person who buys or sells swine as part of his own bona fide breeding, feeding, or stocker operations but does include livestock markets and commission merchants.

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-8908018

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

Earliest possible date of adoption: October 9, 1989

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

#### ◆ ◆ ◆ Subchapter B. Eradication of Brucellosis in Swine

#### • 4 TAC §35.55

The Texas Animal Health Commission proposes new §35.55, concerning requirements for dealer recordkeeping.

The new section will require swine dealers to maintain records. These records must show the seller's name, address, county of origin, number of animals, and a description of the animals. Records kept at auctions and commission firms must also show the license number of the delivery vehicle.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 give the public assurance that herds of origin can be identified when dealers handle those swine. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

**§35.55. Requirements for Dealer Recordkeeping.** Any dealer must maintain records of swine. Such records shall show the seller's name and address, county of origin, number of animals, and a description of each animal, including sex, age, color, breed, and individual identification such as eartag, bangle tag, earmotch, backtag, or slap tattoo. Records at auctions and commission firms shall show the delivery vehicle license number.

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

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Executive Director  
Texas Animal Health  
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For further information, please call: (512) 479-6697

## Chapter 39. Scabies

### • 4 TAC §39.4

The Texas Animal Health Commission proposes an amendment to §39.4, concerning interstate movement requirements for sheep. The amendment eliminates the requirements for dipping the sheep and having a scabies certificate for interstate movement of sheep.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 remove the entry permit requirements for sheep and provide that an accredited veterinarian can qualify the sheep for entry with his inspection. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

### §39.4. Interstate Movement Requirements For Sheep.

[(a) Sheep to be slaughtered at recognized slaughtering plants are exempt from dipping requirements; however, a prior permit must be secured].

[(b) In addition to a permit, sheep] Sheep consigned for purposes other than slaughter or to a livestock market from a free [area] or [a] nonquarantined area, must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian certifying to the health of the animals and [a certificate issued by a regularly or duly appointed and acting sheep scabies inspector of the Veterinary Services, Animal and Plant Health Inspection Services, United States Department of Agriculture, certifying] that the sheep [shipped] are free from scabies infestation and exposure thereto.

[(c) Noninfested and unexposed sheep from eradication and quarantined areas, either state or federal, may enter for other than slaughter purposes provided the sheep shipped are accompanied by written permission of the executive director of the commission for each consignment and a certificate of veterinary inspection issued by an accredited veterinarian certifying to the health of the animals and a certificate issued by a regularly employed and duly appointed and acting sheep scabies inspector of the Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, certifying that the sheep shipped are free from scabies infestation and exposure thereto; and that they have been officially dipped twice in toxaphene, lime and sulphur, Co-Ral, or GX 118 (Prolate). Dipping must be conducted from 10 to 14 days apart with the last dipping conducted within 10 days prior to entry into the state, or sheep may enter on one dipping within 10 days prior to entry to be quarantined and redipped in Texas in 10 to 14 days from initial dipping at designated dipping stations. (Choice of procedure and Texas dipping point must be designated at the time permit is requested). Sheep consigned for immediate slaughter must comply with subsections (a) and (b) of this section in addition to those regulations

stated in 9 Code of Federal Regulations, Part 74, Subchapter 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 25, 1989.

TRD-8908018      John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

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

## Chapter 43. Tuberculosis

### • 4 TAC §43.2

The Texas Animal Health Commission proposes an amendment to §43.2 concerning interstate movement requirements. The amendment requires a tuberculosis test for interstate movement of dairy and registered beef breeding cattle that are 18 months of age or older, parturient, or postparturient; and exempts cattle moving from a farm-of-origin to be sold to slaughter or quarantined feedlot, if they are held in quarantine pens at the market.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 assure that when required, the tuberculosis (TB) test will be conducted on cattle that are 18 months old or older, while allowing for certain movements to markets exempt from testing. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

### §43.2. Interstate Movement Requirements.

(a) All dairy and registered beef breeding cattle that are parturient or postparturient or 18 months [two years] of age or older, shall be tested negative for tuberculosis [to a tuberculin test] within six months prior to entry with results of the test recorded on the certificate of veterinary inspection [or be accompanied by an entry permit issued by the Texas Animal Health Commission to be quarantined and tuberculin tested within 5 days after arrival.

(b) Cattle originating from an accredited tuberculosis free area or herd, are exempt from testing requirements provided the herd number is stated on the certificate of veterinary inspection. Cattle moving directly from a farm-of-origin to a USDA-approved market in Texas are exempt from testing requirements provided the animals are held in quarantine pens at the market to be sold to slaughter or quarantined feedlot.

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-8908015

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

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

## Chapter 47. Requirements and Standards for Approved Personnel

### • 4 TAC §47.6

The Texas Animal Health Commission proposes an amendment to §47.6, concerning suspension or revocation of status of approved personnel.

The amendment makes a violation of a commission rule on the basis for revocation of approved status and clarifies bases for revocation of approved status.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 allow suspension of approved personnel status of persons who violate a rule of the commission. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

#### §47.6. Suspension of Revocation of Status of Approved Personnel.

(a) (No change.)

(b) Suspension or revocation of approved personnel status may be made upon

a determination that violations including, but not limited to, the following are found to have occurred:

(1) submitting fraudulent blood samples [for animals not shown on test chart];

(2) failing to report [positive field card] test results;

(3) providing card test kits or antigen for use by persons or entities not approved by the commission;

(4) (No change.)

(5) performing calfhood vaccination on [of] over age heifers;

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

(8) failing to submit vaccination charts fourteen days following vaccination;

[(8) failing to submit vaccination or test charts immediately following vaccination or testing;]

(9) failing to submit test charts seven days following testing;

(10)[(9)] fraudulently reporting that animals have been vaccinated or tested [identifying and reporting animals that have not been vaccinated as official vaccinates];

(11)[(10)] submitting blood samples with excessive hemolysis rates or insufficient serum to conduct [necessary] confirmation testing [following technical assistance and conferences];

(12)[(11)] having more than three discrepancies in confirmation test results [disclosed] over a six-month period [following technical assistance and conferences];

(13)[(12)] falsifying official test documents; [and]

(14)[(13)] submitting fraudulent claims for reimbursement for testing or vaccinating for brucellosis;

(15) conducting the card test at a livestock market prior to receiving complete ownership information or backtag identification; and

(16) violating a rule of the commission.

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

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

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

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## Chapter 49. Equine

### • 4 TAC §49.2

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

The Texas Animal Health Commission proposes an amendment to §49.2, concerning testing requirements for equine entering the state.

Presently all equidae entering the state are required to have a negative AGID or CELISA test for EIA 12 months prior to entering the state. In a few weeks many equidae will begin entering the state for racing purposes and the state must protect its equine population from disease; therefore, all equidae entering the state must have a more recent test before entry. This amendment will require all equidae to be tested within six months prior to entry in the state rather than 12.

Currently, Texas regulations also require equine entering the state for slaughter purposes to have an entry permit from this office. This amendment if adopted as proposed would allow untested horses to move to slaughter if they are "S" branded and accompanied by a VS 1-27 permit. Since Louisiana and Arkansas move untested horses from their markets in this manner, it would eliminate the need for those shipments to also receive a permit from this office.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 protect the public's equine population from disease and to remove an unnecessary burden on entry of slaughter horses without relaxing restrictions. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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

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

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

### • 4 TAC §51.1

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

The Texas Animal Health Commission proposes an amendment to §51.1, concerning definitions.

The amendment redefines a certificate of veterinary inspection by adding exotic livestock and exotic fowl to the list of livestock and poultry for which a certificate of veterinary inspection may be used and increases the length of time the certificate is valid. The certificate is valid for 45 days when it is issued for entering the state for exhibition purposes only at shows, fairs, and races.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 provide that the certificate of veterinary inspection will be good for 45 days when moving animals for exhibition purposes only and that exotic livestock and exotic fowl may be moved on the certificate. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The agency proposes for permanent adoption the amendment it also adopts on an emergency basis in this issue.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

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

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### • 4 TAC §51.2

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

The Texas Animal Health Commission proposes an amendment to §51.2, concerning general requirements.

The amendment deletes language in the requirements for a certificate of veterinary inspection to conform to the definition of the certificate as described in 4 TAC, §51.1.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 not be applicable. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The agency proposes for permanent adoption the amendment it also adopts on an emergency basis in this issue.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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.

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

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

## Chapter 59. General Practice and Procedures

### • 4 TAC §59.1

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

The Texas Animal Health Commission proposes the repeal of §59.1 concerning designation of commission vice chairman.

The section has been proposed for repeal in order to reorganize the numbering of Chapter 59, general practice and procedures.

Bill Hayden, director of administration, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Robert L. Daniel, director of program records has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be none. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 129676, Austin, Texas 78711, (512) 479-6697.

This repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to propose rules and sets forth the duties of the commission to control disease.

### §59.1. Designation of Commission Vice Chairman.

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

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

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The Texas Animal Health Commission proposes new §59.1, concerning definitions.

Definitions have been added to define the commission as the Texas Animal Health Commission and executive director as the chief executive officer of the agency who is appointed by the commissioners.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 provide the public with a definitions for the terms "Commission" and "executive director." There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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

**Commission**—The Texas Animal Health Commission.

**Executive director**—The chief executive officer of the commission appointed by the commissioners.

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

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Executive Director  
Texas Animal Health  
Commission

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

#### • 4 TAC §59.2

The Texas Animal Health Commission proposes new §59.2, concerning general practice and procedures.

The new section was added to set out the responsibilities for the commission and the executive director; and allows the executive director to delegate powers and authority.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 provide the public with information as to the responsibilities for the commission and the executive director. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

#### §59.2. General Responsibilities.

(a) The commission is responsible for proposing and adopting rules to carry out its duties.

(b) The executive director is responsible for the operation of the Texas Animal Health Commission, pursuant to applicable statutes and rules. The executive director may appoint a designee to act in the absence or unavailability of the executive director. The designee will have the same powers and authority as those of the executive director.

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

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Executive Director  
Texas Animal Health  
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#### • 4 TAC §59.3

The Texas Animal Health Commission proposes new §59.3, concerning designation of commission vice-chairman. TAC commissioners believe it would be to the advantage of the commission to name a vice-chairman to act in the event the commission chairman is absent or unavailable to conduct business.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 served by preventing delays of necessary commission action in the absence of the chairman. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

#### §59.3. Designation of Commission Vice Chairman.

(a) The commission will name a vice-chairman, following the designation of a chairman by the Governor of Texas.

(b) The vice-chairman will act for the chairman in the absence or unavailability of the chairman.

(c) The vice-chairman will have the same powers and authority as those of the designated chairman.

(d) An ad hoc chairman may be named to act by majority vote of the commission in the event an emergency situation arises in which the chairman and vice-chairman cannot be present for a commission meeting.

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

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

TRD-8908010      John W. Holcombe, DVM  
Executive Director  
Texas Animal Health  
Commission

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

## TITLE 22. EXAMINING BOARDS

### Part XIX. Polygraph Examiners Board

#### Chapter 391. Polygraph Examiner Internship

##### • 22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning internship training schedule. The amendment is proposed for the ultimate benefit of the public by insuring that only qualified polygraph schools will be approved by the board.

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

Mr. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the polygraph industry will be more closely regulated in areas that the board determines to be critical. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc) which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth



of statements through the use of instrumentation.

**§391.3. Internship Training Schedule.** The following internship schedule has been approved and adopted by the board as a minimum type and number of hours of any internship training program to be utilized in a course of supervised instruction of not less than 32 hours per week:

(1)-(12) (No change.)

(13) Approved polygraph schools include the following:

(A) Backster School of Lie Detection;

(B) United States Army Polygraph School;

(C) GORMAC;

(D) Keeler Polygraph Institute;

(D)(E) National Training Center of Polygraph Science;

(E)(F) John E. Reid School;

(G) Zonn Institute of Polygraph, Inc.;

(F)(H) Virginia School of Polygraph;

(G)(I) University of Houston, Downtown College, Polygraph Program;

(H)(J) Maryland Institute of Criminal Justice;

(I)(K) American Institute of Technology and Applied Psychology;

(L) Rocky Mountain Security Institute;

(J)(M) Argenbright International Institute of Polygraph;

(N) Carroll Institute of Polygraph;

(K)(O) Sturm School of Polygraph;

(L)(P) Los Angeles Institute of Polygraph;

(M)(Q) Arizona School of Polygraph Science;

(N)(R) any other polygraph school or institution the board may approve from time to time.

(14)-(16) (No change.)

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

Issued in Austin, Texas on August 29, 1989.

TRD-8907989

Bryan M. Perot  
Executive Officer  
Polygraph Examiners  
Board

Earliest possible date of adoption: October 9, 1989

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

• 22 TAC §391.4

The Polygraph Examiners Board proposes an amendment to §391.4, concerning state examinations for polygraph examiners license. The amendment is proposed for the ultimate benefit of the public by insuring that a prompt review with failing interns is conducted.

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

Mr. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the polygraph industry will be more closely regulated in areas that the board determines to be critical. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provides the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

**§391.4. State Examinations for Polygraph Examiner License.** State examinations for a polygraph examiner license shall conform with the following:

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

(8) When an intern fails the original licensing examination, or any portion thereof, the intern [he] shall not be permitted to engage in any phase of the actual polygraphic testing until such time as the intern [he] and the [his] sponsor have reviewed the failing examination with a member of the board or a member of the

board's staff at the discretion of the board chairman. The [at a] time, date, and place of the review will [location to] be designated by the board or its staff. The sponsor shall furnish [and furnish] the board with a written affidavit stating what corrective action will be taken.

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

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TRD-8907988

Bryan M. Perot  
Executive Officer  
Polygraph Examiners  
Board

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

TITLE 28. INSURANCE  
Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Catastrophe Property Insurance Association

• 28 TAC §5.4001

The State Board of Insurance proposes an amendment to §5.4001, concerning the plan of operation of the Texas Catastrophe Property Insurance Association. The amendment, which has been adopted by the board of directors of the Texas Catastrophe Property Insurance Association, is necessary to provide flexibility in scheduling the annual meeting of members and to provide alternatives to registered mail for mailing applications, for purposes of establishing the effective date for new or increased coverage. The amendment to subsection (b)(1) (C) provides that the annual meeting of members shall be held on the third Tuesday in March of each year at 9 a.m., instead of 10 a.m., or at such other hour as may be designated by the board of directors. The amendment to subsection (d)(2)(E)(ii) provides that new or increased coverage will be effective on the date the application is mailed if sent by registered or certified mail or United States Postal Service Express Mail.

Lyndon Anderson, acting deputy commissioner, Property Insurance Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Anderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is an insurance in efficiency of operations to yield greater insurance coverage for risk to property. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lyndon Anderson, Acting Deputy Commissioner, Property Insurance Division (Code 011-1), State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 21.49, §5(d), which requires the State Board of Insurance to approve or disapprove any amendments to the plan of operation of the Texas Catastrophe Property Insurance Association.

#### §5.4001. Plan of Operation.

(a) (No change.)

(b) Operation of the Texas Catastrophe Property Insurance Association.

(1) Members.

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

(C) Meetings. The annual meeting of the members shall be held on the third Tuesday in March of each year at the hour of 9 [10] a.m., or at such other hour as may be designated by the board of directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be on a legal holiday in the State of Texas, the meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the members, the board of directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be. The board of directors shall designate the place for the annual meeting of the members, but if no place is so designated, then the meeting shall be held at the office of the association. The board of directors, the chairman of the board of directors, or 25% of the members of the association may call a special meeting of the members and designate any place as the place of such meeting. If no such designation is made, the place of such meeting shall be the aforesaid office of the association.

(D)-(F) (No change.)

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

(c) (No change.)

(d) Catastrophe insurance.

(1) (No change.)

(2) Application, acceptance, and rejection.

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

(E) Receipt of the application.

(i) (No change.)

(ii) New or increased coverage will be effective on the date received by the Texas Catastrophe Property Insurance Association or effective on the date the application is mailed if sent by registered, or certified mail, or United States Postal Service Express Mail unless the application for new or increased coverage stipulates a later date. Renewal policies will be effective to provide continuous coverage if the request for a renewal is received on or before the expiration of the existing policy. Exception: no new or increased coverage shall be accepted when a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degree West longitude and 20 degrees North latitude. This exception does not apply to any renewal policy affording windstorm coverage if the expiring policy written by the Texas Catastrophe Property Insurance Association and if the application for renewal was received by the Texas Catastrophe Property Insurance Association on or before the expiration of the existing Texas Catastrophe Property Insurance Association policy or if mailed by registered or certified mail prior to the expiration of the existing Texas Catastrophe Property Insurance Association policy.

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

(e)-(f) (No change.)

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

Issued in Austin, Texas on August 31, 1989.

TRD-8908095

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Earliest possible date of adoption: October 9, 1989

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

### Texas Standard Policy for Windstorm and Hail

• 28 TAC §5.4101

The State Board of Insurance proposes an amendment to §5.4101, concerning the Texas catastrophe property insurance policy for windstorm and hail. This amendment is necessary to change the policy adopted by reference in §5.4101, so that changing causes the policy to conform with the provisions of the Insurance Code, Article 21.49, §6A, relating to the inspection program, and requires information that is consistent with information required in a federal flood insurance application form. The amendment would add on the front page of the policy form a statement concerning the requirement of a building certificate from the State Board of Insurance for structures, additions, or repairs commenced on or after January 1, 1988. The amendment would also add a space for reporting the insurance agent's license number and federal tax identification number or Social

Security number. The board has filed with the Office of the Secretary of State, Texas Registrar Division, a copy of the amended policy form proposed for adoption by reference. Persons desiring copies of the amended policy form can obtain copies from the Property Insurance Division 011-1 of the State Board of Insurance at 1110 San Jacinto Boulevard in Austin.

Lyndon Anderson, acting deputy insurance commissioner, Property Insurance Division, has determined that for the first five-year period the proposed section will be in effect, there will be no fiscal implications for state or local government or for small businesses as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Lyndon Anderson, Acting Deputy Insurance Commissioner, Property Insurance Division 011-1, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 21.49, which requires the Texas Catastrophe Property Insurance Association to file with the State Board of Insurance the policy and endorsement forms proposed to be used and authorizes the board to issue any orders it considers necessary to carry out the purposes of Article 21.49.

§5.4101. Texas Catastrophe Property Insurance Policy for Windstorm and Hail [Policy-Windstorm and Hail]. The State Board of Insurance adopts by reference the Texas catastrophe property insurance policy for windstorm [policy-windstorm] and hail as amended effective December 1, 1989 [October 1, 1985]. This document is published by and available from the Texas Catastrophe Property Insurance Association, P.O. Box 2930, Austin, Texas 78769. It may also be obtained by contacting the Property Division 011-1, State Board of Insurance, 1110 San Jacinto Boulevard [Street], Austin, Texas 78701-1998 [78786].

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 31, 1989.

TRD-8908094

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Earliest possible date of adoption: October 9, 1989

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

# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

### Chapter 1. Presumptive Medicaid Eligibility for Pregnant Women

#### Eligibility Requirements

##### • 40 TAC §§1.1, 1.3, 1.5, 1.7, 1.9

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

The Texas Department of Human Services (DHS) proposes new §§1.1, 1.3, 1.5, 1.7 and 1.9, concerning presumptive Medicaid eligibility for pregnant women, and early access to care before birth (prenatal care). The Omnibus Budget Reconciliation Act of 1986 (OBRA), Public Law 99-509, gives states the option of providing a period of presumptive eligibility for pregnant women. The new chapter is in response to Texas Senate Bill 1678, which mandates that DHS promulgate rules to take effect on September 1, 1989, in order to implement that option.

The new chapter will improve maternal and child health outcomes by offering pregnant women temporary Medicaid coverage for ambulatory prenatal care while formal eligibility for Medicaid is being determined. In addition, the new chapter will establish an application process and identify the type of commitments a qualified provider must make to assure that the intent of presumptive eligibility is met. In this publication of the *Texas Register*, the department is simultaneously adopting these new sections on an emergency basis. Presumptive eligibility provides temporary Medicaid coverage for ambulatory prenatal care to pregnant women whose income does not exceed the state's Medicaid eligibility limit. Eligibility is determined by a qualified provider designated by DHS.

The Presumptive Medicaid Eligibility Ad Hoc Committee was appointed to establish the requirements for qualified provider enrollment. This committee consisted of 12 members, who represented major hospital districts, state teaching schools, community health centers, the Texas Department of Health, the Texas Medical Association, and DHS. The committee met on June 30, 1989, to recommend rules that comply with the federal law on presumptive eligibility. These rules, proposed as Chapter 1 of this title, clarify the eligibility requirements for the client population. Furthermore, they define requirements for prenatal care providers who are capable of determining eligibility, offering early access to prenatal care, and meeting the federal requirements for qualified providers.

The Social Security Act, 42 United States Code, §1920(b)(2) specifies four of the eligibility criteria for qualified providers. One of these criteria stipulates that a provider must receive funds from, or participate in a pro-

gram established under, one of several programs. One of these programs is a state perinatal program, which provides services in the period shortly before and after birth.

In discussing the interpretation of what constitutes a state perinatal program, the committee members agreed that the Maternal and Infant Health Improvement Act (MIHIA), Texas Civil Statutes, Article 4447y, which authorizes the MIHIA program, is currently the only perinatal program in Texas. However, the proposed chapter is not intended to restrict the future interpretation of a state perinatal program only to the MIHIA program. If MIHIA is not continued by the legislature, DHS will reexamine the interpretation of MIHIA as being the only perinatal program in Texas and seek to identify other state-funded programs that would qualify a provider as a state perinatal program.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that more pregnant women will be offered early access to prenatal care, thereby improving maternal and child health outcomes. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-449, 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 new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 September 1, 1989.

TRD-8908093

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1989.

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

## Chapter 14. County Indigent Health Care Program

### Subchapter A. Program Administration

*(Editor's Note: The Texas Department of Human Services proposes for permanent adoption the new sections if adopts on an*

*emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Department of Human Services (DHS) proposes amendments to §§14.1, 14.202, 14.203, and 14.204, concerning county program administration; exclusions and limitations; payments for mandatory services; and services and payment liability, limitations, and options. With the publication of this issue of the *Texas Register*, DHS is simultaneously adopting the amendments on an emergency basis to be effective September 1, 1989.

The amendments are proposed to comply with mandated legislative changes effective September 1, 1989. Section 14.1 is amended to require counties to provide annual public notice of their eligibility standards, to permit counties to change eligibility standards, and to eliminate certain city-owned and county-owned public hospitals from the definition of public hospitals. The counties in which these hospitals are located must assume responsibility for providing all CIHCP services to eligible residents of the hospital's service area. Section 14.1 is also amended to permit a county contracting with a state-maintained or operated hospital to credit the cost of services provided to persons meeting less restrictive eligibility standards than those mandated by DHS. These costs are credited toward the county's 10% GRTL liability and eligibility for state assistance funds. In addition, counties selling leased public hospitals may credit the value of services provided under sale contracts toward their eligibility for state assistance funds.

Sections 14.202, 14.203, and 14.204 are amended to permit reimbursement for physician services provided by licensed dentists and podiatrists if these services are covered when provided by a licensed physician (M.D. or D.O.). Laboratory and x-ray services required to provide these physician services are also covered. The dentist or podiatrist must be able to provide these physician, laboratory, and x-ray services within the scope of his license.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$772,459 for fiscal year 1990; \$829,422 for fiscal year 1991; \$831,723 for fiscal year 1992; \$838,677 for fiscal year 1993; and \$943,561 for fiscal year 1994. The effect on local government for the first five-year period the sections will be in effect is an estimated increase in revenue of \$772,459 for fiscal year 1990; \$829,422 for fiscal year 1991; \$831,723 for fiscal year 1992; \$838,677 for fiscal year 1993; and \$943,561 for fiscal year 1994. There will be no fiscal implications for small businesses.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be additional state funds available to counties required to provide health care services to eligible indigent residents. There is no anticipated economic cost to individuals who are required to

comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rosenberg, Administrator, Policy Development Services Division-372, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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 September 1, 1989.

TRD-8908060 Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: November 1, 1989.

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

◆ ◆ ◆  
**Subchapter C. Providing Services**

◆ ◆ ◆  
• 40 TAC §§14.202-14.204

*(Editor's Note: The Texas Department of Human Services 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 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.

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

TRD-8908091 Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: November 1, 1989.

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

◆ ◆ ◆  
**Chapter 79. Legal Services**  
**Subchapter Q. Contract Appeals**

◆ ◆ ◆  
• 40 TAC §79.1614

*(Editor's Note: The Texas Department of Human Services 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 Texas Department of Human Services (DHS) proposes an amendment to §79.1614, concerning contract appeals, in its Legal Services chapter. The amendment will give parties to the hearing process knowledge of time by which a motion for rehearing must be received by the administrative law judge. The amendment also requires that administrative

law judges send decisions by certified mail, thus ensuring the department's knowledge of their receipt. The department is simultaneously adopting this amendment on an emergency basis in this issue of the *Texas Register*.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments 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 that people involved in the hearing process will have knowledge of the time by which a motion for rehearing must be received by the administrative law judge. 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 Rosenberg, Administrator, Policy Development Services Division-525, 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 amendment is proposed 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

TRD-8908067 Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: November 1, 1989.

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

◆ ◆ ◆  
**TITLE 43.**  
**TRANSPORTATION**  
**Part I. State Department of Highways and Public Transportation**

◆ ◆ ◆  
**Chapter 1. Administration**  
**Contested Case Procedure**

◆ ◆ ◆  
• 43 TAC §1.21

*(Editor's Note: The State Department of Highways and Public Transportation 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 State Department of Highways and Public Transportation proposes an amendment to §1.21, concerning definitions. The term "engineer-director" is expanded to include the

deputy engineer-director. At various times, for good and valid reasons, the engineer-director may not be readily available, thus requiring the deputy engineer-director to act in his stead.

Robert E. Shaddock, 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. Shaddock, 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 allow the department to fulfill essential functions and duties in a timely and effective manner. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert E. Shaddock, General Counsel, State Department of Highways and Public Transportation, Room 214, 11th and Brazos, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation/Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

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 31, 1989.

TRD-8908049 Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

Earliest possible date of adoption: October 9, 1989

For further information, please call: (512) 463-8630

◆ ◆ ◆  
**Chapter 25. Maintenance**  
**Operations Division**  
**Oversize And/Or Overweight Permits**

◆ ◆ ◆  
• 43 TAC §25.60

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

The State department of Highways and Public Transportation proposes new §25.60, concerning permits. The new section applies to permits issued pursuant to Texas Civil Statutes, Article 6701a, for the operation of oversize and/or overweight vehicles transporting cargo that cannot be reasonably dismantled due to the gross size or weight exceeding the limits allowed by law. The purpose of this new section is to assist in differentiating be-

## Chapter 31. Public Transportation Division

### General

#### • 43 TAC §31.3

*(Editor's Note: The State Department of Highways and Public Transportation 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 State Department of Highways and Public Transportation proposes an amendment to §31.3, concerning definitions. The amendment adds the terms "authority" and "designated recipient" to the section. The action is necessary due to the contemporaneous adoption of §31.11 and §31.13, concerning state programs.

Richard G. Christie, director, public transportation, 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. Christie 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 consistent application statewide of the provisions of the enabling legislation. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Richard G. Christie, Director, Public Transportation, Attention: Margot Massey, State Department of Highways and Public Transportation, 11th and Brazos Streets, Austin, Texas 78701-2483.

The amendment is proposed under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the State Department of Highways and Public Transportation, and more specifically to administer the state public transportation fund and state and federal public transportation programs.

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 31, 1989.

TRD-8908070

Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

Earliest possible date of adoption: October 9, 1989

For further information, please call: (512) 463-8630

### State Programs

#### • 43 TAC §31.11, §31.13

*(Editor's Note: The State Department of Highways and Public Transportation proposes for*

tween the requirements and procedures applicable to permits issued under existing 43 TAC §§25.61-25.77 of this undesignated head concerning oversize and/or overweight permits and those issued under 43 TAC §25.81 concerning special tolerance permits, which is simultaneously being adopted on an emergency basis to be effective September 1, 1989.

Bob G. Hodge, chief engineer, Maintenance and Operations Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hodge also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more consistent and uniform application of procedures and requirements in issuing oversize and/or overweight permits. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Bob G. Hodge, Chief Engineer, Maintenance and Operations Division, State Department of Highways and Public Transportation, 11th and Brazos Streets, Austin, Texas 78701-2483.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6701a, which authorize the department to issue oversize and/or overweight permits, and Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

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 31, 1989.

TRD-8908045

Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

Earliest possible date of adoption: October 9, 1989

For further information, please call: (512) 463-8630

### Special Tolerance Permits

#### • 43 TAC §25.81

*(Editor's Note: The State Department of Highways and Public Transportation 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 State Department of Highways and Public Transportation proposes new §25.81, concerning permit for over axle and over gross weight tolerances. House Bill 2060, 71st Legislature, 1989, amends Texas Civil Statutes, Article 6701d-11, by authorizing the department to issue an overweight tolerance permit

to vehicles that exceed the maximum allowable axle weight by 10% and allowable gross weight by 5.0% on all state highways excluding the interstate system, and on county roads and bridges. The section provides for a \$15,000 bond or letter of credit requirement in order to indemnify the state and the counties of Texas for damages to highways caused by vehicles operating under this permit.

Bob G. Hodge, chief engineer, Maintenance and Operations Division, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state and local government and small businesses as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be an estimated increase in revenue of \$2.1 million for 1990; \$2.3 million for 1991; \$2.5 million for 1992; \$2.7 million for 1993; and \$2.9 million for 1994. The effect on local government for the first five-year period the section is in effect will be an estimated increase in revenue of \$5 million for 1990; \$5.2 million for 1991; \$5.4 million for 1992; \$5.5 million for 1993; and \$5.6 million for 1994. The cost of compliance with the section for small businesses will be a minimal cost consisting of or associated with a fee and required letter of credit or bond to small business truckers should they decide to apply for the permit. The cost of compliance for small businesses will be the same as the cost of compliance for larger businesses.

Mr. Hodge 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 appropriate requirements for permitting vehicles operating within certain tolerances above allowable axle and gross weight limits. The anticipated economic cost to individuals who are required to comply with the section as proposed will be \$225 a year for 1990-1994.

Comments on the proposal may be submitted to Bob G. Hodge, Chief Engineer, Maintenance and Operations Division, State Department of Highways and Public Transportation, 11th and Brazos Streets, Austin, Texas 78701-2483.

The new section is proposed under Texas Civil Statutes, Article 6701d-11, which authorize the department to issue overweight permits, and Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

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 31, 1989.

TRD-8908047

Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

Earliest possible date of adoption: October 9, 1989

For further information, please call: (512) 463-8630

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 State Department of Highways and Public Transportation proposes new §31.11, concerning formula program and new §31.13, concerning discretionary program. These new sections describe the purpose of each program, how funds are allocated to the programs, application requirements, and evaluation criteria. This action is necessary due to the recent passage of House Bill 1263, Acts 71st Legislature, 1989, effective September 1, 1989, which prescribes certain changes in the administration of public transportation grant contracts.

Richard G. Christie, director, public transportation, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local

government as a result of enforcing or administering the sections.

Mr. Christie 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 consistent application statewide of the provisions of the enabling legislation. 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 Richard G. Christie, Director, Public Transportation, Attention: Margot Massey, State Department of Highways and Public Transportation, 11th and Brazos Streets, Austin, Texas 78701-2483.

The new sections are proposed under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules and regulations

for the conduct of the work of the State Department of Highways and Public Transportation, and more specifically to administer the state public transportation fund and state and federal public transportation programs.

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 31, 1989.

TRD-8906068

Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

Earliest possible date of adoption: October 9, 1989

For further information, please call: (512) 463-8630

# Withdrawn Sections

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part X. Texas Adult Probation Commission

#### Chapter 323. Fund Distribution

##### • 37 TAC §323.4

The Texas Adult Probation Commission has withdrawn from consideration for permanent adoption a proposed §323.4 which appeared in the March 24, 1989, issue of the *Texas Register* (14 TexReg 1506). The effective date of this withdrawal is immediately.

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

TRD-8908139      Virginia Grote  
                         Administrative Secretary  
                         Texas Adult Probation  
                         Commission

Effective date: September 1, 1989

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





# Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 22. EXAMINING BOARDS

### Part I. Texas Board of Architectural Examiners

#### Chapter 1. Architects

##### • 22 TAC §1.25

The Texas Board of Architectural Examiners adopts an amendment to §1.25 without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2738).

The amendment is necessary for the board to provide applicants an application deadline for the new December administration of the graphic site and building design divisions of the architect registration examination.

The amended section will establish an application deadline for the December administration of the graphic design examinations.

No comments were received regarding adoption of the amendment.

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

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 30, 1989.

TRD-8908054

Robert H. Norris  
Executive Director  
Texas Board of  
Architectural Examiners

Effective date: September 21, 1989

Proposal publication date: June 9, 1989

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

### Part XXI. Texas State Board of Examiners of Psychologists

#### Chapter 461. General Rulings

##### • 22 TAC §461.15

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.15, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3617).

The board expressed a need to broaden the scope of this section to cover all board activi-

ties mandated by the Act and at the same time condense repetitive phrases.

The board will be able to consider issues of concern in a more timely manner in that persons not complying to board directives will proceed through the hearing procedure to reach a conclusion.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512 C, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8908001

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

#### Chapter 463. Applications

##### • 22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.5, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3617).

The board determined that all of the application requirements should be included in one section so that persons seeking information about the application processes would be better informed and not have to search through several rules which are currently scattered throughout. The amendment consolidates several board requirements into one section.

The amendment will provide better information in that several requirements for applying to the board will be consolidated into one section in a more organized manner.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512 C, which provide the Texas State Board of Examiners of Psycholo-

gists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8908000

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

##### • 22 TAC §463.6

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.6, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3618).

The section is being deleted because the language was not clearly understood by applicants who were attempting to use the information to plan their supervisory experience for licensure.

The repealed section will not be used by the board.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4512 C, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8907999

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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



• 22 TAC §463.7

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.7, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3619).

The section is being deleted because negative reference letters requirement has been condensed into another rule of the board.

The repealed section will not be used.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4512 C, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8907968 Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

• 22 TAC §463.13

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.13, with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3619).

The amendment defines the time requirement for retaking the exams of the board and the hiatus required between failures.

The amendment allows the applicants to fail the examinations three times before waiting one calendar year to retake the exam(s). This will allow them to retake exams closer to the time when education and training was received.

No comments were received regarding the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512 C, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

**§463.13. Failing Written/Oral Examination.** Applicants who fail the written examination for certification as a psychologist or psychological associate or the oral examination for licensure as a psychologist are permitted to take it again by paying another

exam fee. If the second examination is failed, the applicant may take it again at the next setting. If the third examination is failed, the applicant must wait a full calendar year before the examination may be taken again. This yearly interval applies to all succeeding applications for the examination. The board may adjust this requirement a few days to provide flexibility in the board's scheduling of examinations. In the event of subsequent examinations taken in other jurisdictions, the one year waiting period applies. Split decisions on the oral examination are considered as failures.

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 28, 1989.

TRD-8907967 Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

• 22 TAC §463.19

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.19, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3620).

The section is being deleted because its contents have been condensed into another rule of the board to put all application requirements into one rule for easier use by the applicants of the board.

The repealed section will not be used.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4512 C, provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8867966 Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

• 22 TAC §463.23

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.23, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3620).

The effective date is being delayed in that it is no longer needed for planning purposes by potential applicants.

The date is deleted because it is unnecessary information concerning the effective date of the rule since it has been in existence for nearly three years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512 C, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8907965 Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

• 22 TAC §463.24

The Texas State Board of Examiners of Psychologists adopts new §463.24, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3620).

The new section is necessary in order to address the need for applicants to be employed in settings that provide appropriate supervision until a person is certified and licensed.

The new section insures that persons trained in psychology are employed in appropriately supervised settings until they are licensed to practice independently.

No comments were received regarding adoption of the new section.

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

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 28, 1989.

TRD-8907994

Patti Bizzell  
Executive Director  
Texas State Board of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

◆ ◆ ◆  
• 22 TAC §463.25

The Texas state Board of Examiners of Psychologists adopts new §463.25, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3620).

The new section is needed to establish criteria for oral examiners for experience requirements, credentials clearance, and conflicts of interest.

The new section insures that examiners are experienced, have no complaints pending against them, and have no conflict of interest concerning any of the applicants.

No comments were received regarding adoption of the new section.

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

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 28, 1989.

TRD-8907993

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

◆ ◆ ◆  
• 22 TAC §463.26

The Texas State Board of Examiners of Psychologists adopts new §463.26, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3621).

The new section is needed in order to disclose oral exam information and the fact that it is unethical to share content information contained on any oral examination with any other person.

The new section insures that examiners and examinees do not divulge information that may bias the examination procedure.

No comments were received regarding adoption of the next section.

The new section is adopted under Texas Civil Statutes, Article 4512C, which provide the

Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8907992

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

◆ ◆ ◆  
• 22 TAC §463.27

The Texas State Board of Examiners of Psychologists adopts new §463.27, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3621).

The new section addresses the issue of conflict of interest concerning matriculation of family members or oneself in graduate programs in psychology.

The new section is needed to avoid a possible conflict of interest for board members who may themselves be furthering their education in psychology or who have family members who are matriculating in psychology programs and may ultimately be applicants before the board.

No comments were received regarding adoption of the new section.

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

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 28, 1989.

TRD-8907991

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

◆ ◆ ◆  
Chapter 465. Rules of Practice

• 22 TAC §465.22

The Texas State Board of Examiners of Psy-

chologists adopts an amendment to §465.22, without changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3621).

The board determined that it was not only important to address the content of what should be maintained in psychologists' records but also how long these records should be maintained.

The amendment was necessary in order to inform the public and psychologists concerning how long patient/client records are to be maintained psychologists.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512C, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 28, 1989.

TRD-8907990

Patti Bizzell  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: September 20, 1989

Proposal publication date: July 28, 1989

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

◆ ◆ ◆  
TITLE 34. PUBLIC  
FINANCE

Part I. Comptroller of  
Public Accounts

Subchapter Q. Franchise Tax

• 34 TAC §3.391

The Comptroller of Public Accounts adopts an amendment to §3.391, without changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 3341).

The amendment reflects recent changes in the franchise tax enacted by the legislature.

Subsection (b)(5) provides guidelines for corporations eligible to use the federal income tax method of reporting and elect to change and report under generally accepted accounting principles in a subsequent reporting period.

Subsection (b)(7) requires the inclusion of the investor's share of the pre-acquisition earnings of a subsidiary or investee in investment cost.

Subsection (d)(2) refers to corporations eligible to use the federal income tax method under the Tax Code, §171.113. Another change was made in this subsection for clarification purposes.

No comments were received regarding adoption of the amendment.

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

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

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

TRD-8908082      Bob Bullock  
Comptroller  
Comptroller of Public  
Accounts

Effective date: September 21, 1989

Proposal publication date: July 11, 1989

For further information, please call: (521) 463-4004

### • 34 TAC §3.393

The Comptroller of Public Accounts adopts an amendment to §3.393, without changes to the proposed text as published in the June 30, 1989, issue of the *Texas Register* (14 TexReg 3190).

Subsection (e) has been added to reflect the repeal of Tax Code, §171.108, effective May 1, 1989, of any tax period.

The amendment is proposed to implement changes made to the Franchise Tax Act by legislation which became effective March 2, 1989.

No comments were received regarding adoption of the amendment.

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

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

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

TRD-8908081      Bob Bullock  
Comptroller of Public  
Accounts

Effective date: September 21, 1989

Proposal publication date: June 30, 1989

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

## Chapter 5. Funds Management (Fiscal Affairs)

### Claims Processing—Purchase Vouchers

#### • 34 TAC §5.55

The Comptroller of Public Accounts adopts

the repeal of §5.55, without changes to the proposed text as published in the April 25, 1989, issue of the *Texas Register* (14 TexReg 2013).

The section is being repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, §403.011, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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 31, 1989.

TRD-8908079      Bob Bullock  
Comptroller  
Comptroller of Public  
Accounts

Effective date: September 21, 1989

Proposal publication date: April 25, 1989

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

The Comptroller of Public Accounts adopts a new §5.55, without changes to the proposed text as published in the April 25, 1989, issue of the *Texas Register* (14 TexReg 2013).

The existing §5.55, concerning prompt payment act rules, is simultaneously being repealed in order that a substantially revised section dealing with the same subject matter may be adopted. The new section is necessary in order to make the section more closely parallel the Prompt Payment Act.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §403.011, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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 31, 1989.

TRD-8908080      Bob Bullock  
Comptroller  
Comptroller of Public  
Accounts

Effective date: September 21, 1989

Proposal publication date: April 25, 1989

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part X. Texas Adult Probation Commission

## Chapter 323. Fund Distribution

### • 37 TAC §323.3

The Texas Adult Probation Commission adopts the repeal of §323.3 without changes to the proposed text as published in the March 24, 1989, issue of the *Texas Register* (14 TexReg 1506).

The repeal will allow for a new written section to allow a greater accuracy in calculating the unexpended monies that will be returned to the state treasury.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Code of Criminal Procedure, Article 42.121, §3.01 which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rules.

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 30, 1989.

TRD-8907970      Edmond J. Peterson  
Director of Fiscal Services  
Texas Adult Probation  
Commission

Effective date: September 20, 1989

Proposal publication date: March 24, 1989

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 49. Child Protective Services

##### Subchapter C. Eligibility for Child Protective Services

The Texas Department of Human Services (DHS) adopts amendments to §§49.337, 49.339, 49.341, 49.342, and 49.344, and new §49.346, without changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3528).

The amendments and new section are justified to reduce economic barriers to special needs adoptions and possibly to increase the number of such adoptions.

The amendments and new section will function by permitting DHS to reimburse adoptive parents for nonrecurring adoption expenses up to a maximum of \$1,500 when the parents adopt a child with special needs. The sections implement the Tax Reform Act of 1986, Public Law 99-514, and subsequent federal regulations that require states to reimburse certain nonrecurring adoption expenses in adoptions of children with special needs. To qualify for reimbursement, the adoption must be completed on or after January 1, 1987.

No comments were received regarding adop-

son of the amendments and new section.

• 40 TAC §§49.337, 49.339, 49.341, 49.342, 49.344

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, and Chapter 47, which authorizes the department to administer a program to promote the adoption of hard-to-place children.

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 31, 1989.

TRD-9908061

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Effective date: October 1, 1989

Proposal publication date: July 21, 1989

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

◆ ◆ ◆  
• 40 TAC §49.346

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 47, which authorizes the department to administer a program to promote the adoption of hard-to-place children.

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 31, 1989.

TRD-9908062

Ron Lindsey  
Commissioner  
Texas Department of  
Human Services

Effective date: October 1, 1989

Proposal publication date: July 21, 1989

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

◆ ◆ ◆  
**TITLE 43.**

**TRANSPORTATION**

**Part I. State Department  
of Highways and Public  
Transportation**

**Chapter 31. Public  
Transportation Division**

**Federal Programs**

◆ ◆ ◆  
• 43 TAC §31.36

The State Department of Highways and Public Transportation adopts new §31.36, with changes to the proposed text as published in the May 12, 1989, issue of the *Texas Register* (14 TexReg 2355).

The adoption of this new section will define the department's role in the administration of

the Federal Section 18 Public Transportation Program and establish a formula for the fair and equitable distribution of grant funds. Subsection (c)(2)(A)(iv) has been revised to indicate that farebox revenues are not the only type of revenues considered in that formula factor and that the computation of this factor will be based on 12 months' data. This change was made in response to commenters' requests for clarification.

Subsection (c)(2)(B) was modified to address potential questions regarding what funds are used in the comparison for the adjustments described in that subsection. The department initiated that change. Recognizing the significance of the annual allocation base and cap described in subsection (c)(2)(B), the commission directed that the text be changed to read that the commission, rather than department staff, will make the determination each year. To further clarify the department's intent on this point, language was added to establish a 95% base for the adjustments and to establish the highest possible annual cap, both to be contingent on stable federal program funding levels. Subsection (c)(2)(C) was revised to indicate that net operating expenses, rather than gross operating expenses, are to be considered in determining administrative funding limits. Clarification on this point was requested by a commenter.

The function of this new section will be the satisfaction of federal requirements that Section 18 grant funds be distributed in a fair and equitable manner.

The comments are treated in the order in which relevant subjects appear in this section. All comments dealt with subsection (c) which describes the formula allocation of Section 18 funds. Several respondents indicated their unqualified support for this subsection. A number of commenters recommended that this subsection be withdrawn entirely pending further study during the next 6-12 months. The commenters expressed their hope that the study period would allow greater involvement by all potentially affected parties and result in a formula allocation system that would be considered more fair and equitable by those parties than the allocation process proposed by the department.

Several commenters expressed concern that subsection (c)(1) does not specify an amount or percentage of the available funds to be reserved for new starts, with one respondent suggesting that new starts be discouraged. Another noted that no method of prioritizing new starts was described to address situations in which the demand for new systems exceeds the available funds. Other commenters recognized the need to provide funding equity to all areas of the state but indicated that new starts should be funded from unprogrammed Section 18 monies or sources other than Section 18 (such as Section 9 monies described in this section that otherwise would lapse). It was suggested that the department program a minimum of \$2 million per biennium for new starts from sources other than the current Section 18 allocation. A larger pool of money would then be available for distribution to the nonurbanized transit systems currently in operation. One commenter recommended that the commission, rather than department staff, determine the amount to be set-aside under

subsection (c)(1) and that the commission also establish the maximum funding levels for projects authorized under that section. Another commenter advised that they were not able to determine the long-term formula impacts for new starts.

A number of comments were received concerning the allocation formula described in subsection (c)(2)(A). Several noted that no provisions were made for expansion of or increased service by existing systems and suggested that a mechanism similar to that described in subsection (c)(1) for new starts, would be appropriate. Others recommended that a separate capital account should be established (to be funded at a minimum of \$2 million per year, possibly using Section 3 funds described in §31.16).

Other general concerns were that the five factors proposed were biased toward small systems, that the factors favored large systems, that the factors were not appropriate to the commenter's system, and/or that the commenters did not fully understand why those particular factors were included. Another recommended that more weight be given to the performance-based factors rather than equal weight of all factors. Several respondents suggested that the adjustment process described in subsection (c)(2)(B) indicates basic flaws exist in the formula described in subparagraph (A). One commenter recommended, and several other endorsed, using the following four factors in lieu of those outlined in subsection (c)(2)(A)(ii)-(v): tenure (years in service), fleet size, annual passenger trips, and annual vehicle miles.

A number of commenters supported inclusion of the nonurbanized population factor in subsection (c)(2)(A)(i) although several qualified that support with suggested changes. It was felt that population should be defined by census tract to avoid overstatement in the case of transit systems serving only a portion of a county. Others suggested that the general population factor should be augmented by counts of transit-dependent subgroups (such as elderly, handicapped, and low-income persons) or refined by the inclusion of a fleet size factor to help measure the penetration of the transit service to the general target population.

With respect to the square mileage factor described in subsection (c)(2)(A)(ii), several commenters suggested (and others endorsed) the deletion of this factor. Concerns included possible overstatement of the service area and the lack of correlation between the service area size and the service needed.

One respondent supported the vehicle miles per cost factor described in subsection (c)(2)(A)(iii) while others questioned the integrity of the database used to derive this factor. Several commenters challenged the premise of using only two months' reports to calculate the farebox recovery ratio described in subsection (c)(2)(A)(iv). It was noted that seasonal variations for items such as insurance premiums may skew the results. The suggestion was made to extract this information instead from the most recent four quarterly reports. Other respondents suggested that uniform definitions of revenue are not applied throughout the state, further weakening the validity of this factor. It was noted that this factor serves to penalize systems that collect little or no revenue while rewarding

systems that generate substantial revenues.

Comments concerning the passenger trips per population factor described in subsection (c)(2)(A)(v) were split. Some favored inclusion of the factor as a measure of service effectiveness while others argued that it does not provide an accurate measure of service levels.

In addition to the general concerns already described concerning the adjustment process set out in subsection (c)(2)(B), some commenters noted specific fears that overall funding reductions might lead to an unadjusted formula allocation and/or dictate dramatic adjustments. One suggestion was to establish a permanent base level of 95% funding for formula systems, with the remaining 5.0% to be allocated on the basis of formula factors. The proposal to substitute another set of factors (population, tenure, fleet size, passenger trips, and vehicle miles) noted that the resulting formula allocation would not require adjustments. This proposal was subsequently amended to include only vehicle miles per cost and farebox revenues per expenses as performance incentive factors governing the distribution of the 5.0% funds. Further, the 95% funding levels would be determined by each system's relative share of the previous fiscal year's available funds. Another recommendation to clarify the department's intent on this point was to establish a 95% base and the highest possible cap, both to be contingent on stable federal program funding levels. One commenter applauded the adjustment process as providing greater funding stability over time for the Section 18 systems.

It was suggested that subsection (c)(2)(C) was unclear as to whether the gross or net operating costs were to be used in calculating the 30% administrative limit. Other commenters took issue with this cap, describing it as arbitrary and penalizing systems that generate significant revenues and/or incur greater administrative costs due to subcontractual relationships. Another recommendation was to specifically exclude vehicle insurance costs from the administrative base used in this calculation.

The following groups and associations made comments in favor of subsection (c) which discusses the Section 18 allocation formula: Rolling Plains Management Corporation; and Nonurbanized/Elderly and Handicapped Advisory Committee.

The following groups and associations made comments against subsection (c): Town of South Padre Island; The Goodman Corporation; Texas Transit Association; Capital Area Rural Transportation System; Parker County Transportation Service; Canga Enterprises, Inc.; Two Members of the Texas House of Representatives; Texas Association of Community Action Agencies; Lower Rio Grande Valley Development Council; Lufkin Transit System; Brazos Transit System; Montgomery County Transit System; and Caprock Community Action Association, Inc.

The department's response to the comments against the proposed section are presented in the order in which they appear in this section. With respect to comments received concerning subsection (c), the department is compelled to point out that the May 12, 1989, issue of the *Texas Register* (14 TexReg

2357) publication was merely the most recent step in what has been an exhaustive study of the Section 18 formula allocation process by both the department and representatives of the transit industry. The original formula proposal was issued by the department in August 1987. In preparation for publication of proposed rules in the *Texas Register*, the department solicited comments from all nonurbanized transit operators and industry associations during June 1988. The comments received through that informal process were incorporated in the proposed published in the May 12, 1989, issue of the *Texas Register* (14 TexReg 2357). A public hearing was conducted by the department on June 7, 1989, to receive comments on this issue.

The department believes that interested parties have been given ample opportunity to participate and comment on the proposed new section and that deferral of final adoption to allow further study is not warranted. The response to specific comments will illustrate additional reasons for the department's decision to proceed with final adoption.

With respect to the comments concerning subsection (c)(1), the department must respond that references to specific dollar amounts for new starts are not appropriate, as future federal funding levels cannot be predicted with any degree of certainty. This new section is intended to merely provide a guarantee that some of the available Section 18 funds will be set aside for new starts. As the number of new systems funded in any given year has varied substantially over the past five years, the department believes it best to use current planning estimates as the basis for this set-aside to avoid establishing a fixed amount or percentage that may prove to be either too high or too low in future years. It would not be equitable to prioritize new starts as any applicant for Section 18 funds that complies with all program requirements should be eligible for assistance. Once the new starts money is depleted in any given fiscal year, other new projects will be deferred until the start of the next fiscal year. All Section 18 funds are programmed at the time federal approval is received; therefore, no unprogrammed balance exists to use for new starts. The availability of Section 9 funds for transfer to the Section 18 program is contingent upon a number of factors and cannot be predicted with any certainty. When Section 9 monies are transferred, they lose their original identity and become part of the Section 18 allocation and would likewise become subject to the provisions of this section. Therefore, the department believes any reference to Section 9 monies in this section is inappropriate. Although the department appreciates the concern of existing Section 18 systems that potential new starts may reduce the grant funds available to individual systems, the department cannot deny access to the Section 18 program by eligible applicants in areas that are currently not served by a transit system. With respect to the recommendation for commission action on the amounts to be disbursed under this section, such oversight is an implicit part of the overall formula process. Department staff will submit a proposed annual Section 18 program of projects, which identifies these amounts, to the commission for their review and approval. The department believes that new starts should be, and are afforded, the same level of funding continuity

available to current operators under the provisions of this section.

With respect to the comments received concerning the basic formula outlined in subsection (c)(2), it is important to recall the original premise for the section. As stated in the preamble of the May 12, 1989, issue of the *Texas Register* (14 TexReg 2357), the growth of nonurbanized public transportation in Texas now warrants a formal method of allocating the available monies. While annual federal Section 18 allocations have remained fairly stable over the past 10 years at \$3.5-4.0 million, demand for those monies in Texas now exceeds \$10 million per year. This suggests strongly that financial resources other than Section 18 must be developed to fund any proposed service expansions although the formula will allow systems to expand into areas currently not served. Similarly, a separate capital account is not feasible. The Section 3 program described in §31.16 is discretionary and there is great demand for those funds nationwide. It is not prudent to rely solely on Section 3 for nonurbanized capital needs even though it is a potential source of funding. Instead, the department believes that local nonurbanized transit managers must decide how much, if any, of their annual Section 18 allocation should be earmarked for capital needs. Therefore, no special capital or expansion set-asides are established under this section.

The department noted the differing perceptions of bias in the formula factors outlined in subsection (c)(2)(A)(i)-(v). Some commenters felt that large systems would gain an unfair advantage while others believed that small systems were favored. The very real problem faced by the department and any other entity dealing with nonurbanized public transportation is the lack of uniformity in the industry. No two systems are alike and, in fact, they should not be as each addresses local or regional transportation needs which are not uniform. Any proposal for the distribution of funds to such a heterogeneous constituency will be met with criticism from some quarter. One example that illustrates this point relates to the fleet size factor proposed by a number of commenters. That factor was included in the original August 1987 formula proposal and elicited negative comments from industry representatives who pointed out the obvious bias in favor of large systems. Similar comments were made concerning the use of annual passenger trips or vehicle miles as formula factors. In developing this proposed new section, the department attempted to achieve some balance between demographic factors (population and square mileage) which indicate potential demand for services and geographical constraints, and performance-based factors (vehicle miles per cost, revenue per expenses, and passenger trips per population) which indicate how efficient and effective the system is in providing transportation services. To provide some incentive for improved performance, 60% of the formula total is derived from the performance-based factors but the underlying demographic base is also recognized. The department believes this provides fair and equitable treatment for all Section 18 operators. The adjustment process described in subsection (c)(2)(B) is intended to provide an element of funding stability as well, although all parties recognize that future federal appropriation

levels cannot be predicted. The adjustment process provides a mechanism to increase funding through better performance at the same time it limits funding cuts in any single year. The department does not intend to use an unadjusted formula unless federal funding levels dictate otherwise. The adjustment process should be perceived as a safety net for current systems rather than a basic flaw in this section. However, recognizing the significance of this step in the total formula process, the commission will make the final determination of the annual allocation base and cap.

The department does not agree with the alternative set of factors proposed. Years in service, fleet size, annual passenger trips, and annual vehicle miles give no indication of how efficiently or effectively a system is providing transportation services. When certain of these factors were considered as part of the August 1987 preliminary proposal, the obvious bias in favor of large systems was pointed out by a number of commenters. A large transit system may or may not be efficient or effective; these factors will only measure size, not performance. Similarly, longevity may be a badge of honor when one considers the uncertainties of transit funding and the logistical problems inherent in nonurbanized operations. However, an older system is not necessarily a more efficient and effective one and tenure, therefore, should not replace traditional industry performance measures as a standard for funding.

The department believes that subsection (c)(2)(A)(i) is adequate as written and that reducing population data to the level of census tracts would be extremely burdensome. Although county-level data does overstate the populations of certain formula systems, the department's review of the potential overstatement indicates that the impact is negligible. Although transit dependent groups are important consumers of public transportation services in both urbanized and nonurbanized settings, special emphasis for those groups would be inconsistent with the statutory Section 18 goal of general public transportation. Further, those groups are included in the population counts for each system and are already recognized in that fashion. The department does not agree that fleet size measures the level of service provided to the eligible population but believes that the trips per population factor described in subsection (c)(2)(A)(v) does, in fact, indicate the overall level of service.

The department would answer the overstatement concerns relative to the square mileage factor in subsection (c)(2)(A)(ii) in the same fashion noted previously relative to population. A review of available data indicates that such distortions are minor and have no impact on the final formula calculations. Although square mileage does not directly correlate to performance, this factor does address the operating constraints experienced by systems who serve small populations dispersed throughout a large geographical area. Neither population nor service area alone give an accurate portrayal of those constraints. Therefore, both factors are required to give the Section 18 allocation formula an unbiased demographic base.

While the department does not dismiss the commenters' concerns regarding the integrity

of the database used in support of subsection (c)(2)(A)(iii)-(iv), all Section 18 contractors have been given the same written instructions for completing the required reports. It is obviously not possible for department personnel to observe each system's operations on a daily basis but the department has no reason to believe that any system is consistently providing incorrect data with the intent of increasing their Section 18 funding allocation. The department agrees with the recommendation to compute the revenue recovery factor based on 12 months' data. The comment regarding insurance premiums is addressed in the department's reporting instructions which clearly indicate such expenses should be annualized. Similarly, all Section 18 contractors have received the same instructions as to what constitutes revenue. However, the references to farebox were misleading in the context of this section and the final text has been revised to eliminate possible confusion on this point. The department believes that transit patrons should indeed provide financial support to help meet the cost of those services; therefore, an incentive for revenue recovery seems appropriate in the context of the Section 18 allocation formula.

The department believes that passenger trips per population as described in subsection (c)(2)(A)(v) are an important measure of system effectiveness and that this factor should be retained in the Section 18 allocation formula. When one compares the number of one-way passenger trips provided to the total population eligible for service, it becomes apparent how well or how poorly that population is being served. This factor also avoids the more obvious bias in favor of large systems found in the fleet size, annual passenger trips, and annual vehicle miles factors proposed by a number of commenters. However, the department does recognize that, in certain instances, this factor may implicitly discourage the provision of transportation services that involve greater than average costs, longer than average vehicle trips, etc. If a better measure of system effectiveness is discovered, this factor will be replaced.

The adjustment process outlined in subsection (c)(2)(B) is not considered a flaw by the department but instead an indication of good faith towards the nonurbanized transit industry. This subsection provides a conditional offer of funding stability for individual systems, subject to the availability of federal funds for the Section 18 program. As long as the current funding level is maintained, Section 18 contractors can expect a strong degree of financial continuity. As more systems are added to the state program, each system's individual share of the available funds may be expected to decrease. However, federal appropriations can obviously not be addressed in this forum. The suggestion that current formula systems receive an explicit guarantee of 95% funding is similarly inappropriate as that would not provide the fair and equitable distribution mandated by federal guidelines. With respect to the revised 95%-5.0% proposal, the department notes that this would relegate system performance to a very minor role, serving as the final step in the determination of annual funding. As stated previously, such grandfathering is not consistent with federal guidelines. In contrast, the department believes it is important to begin with factors weighted to reward good perfor-

mance and then make adjustments based on the available funding. Again, in the department's opinion, the adjustment process contained in subsection (c)(2)(B) should be viewed as a safety net rather than a flaw. However, in response to the concerns expressed about the adjustment process, the commission has reserved the final determination of the annual allocation base and cap to the commission. Department staff will be required to seek explicit authorization from the commission each fiscal year for the allocation base and cap levels. As a further indication of intent on this point, the department accepts the recommendation to establish a 95% base and the highest possible annual cap, both to be contingent on stable federal program funding levels.

The department has modified subsection (c)(2)(C) to clearly indicate that net operating expenses (rather than gross operating expenses) are to be used in calculating the 30% administrative limit. Federal program guidelines allow the department the discretion to fund administrative costs at either an 80% or 50% federal level. Although the department recognizes the need for the larger federal share on administrative costs, such expenditures may reduce the direct provision of transportation services. For example, if a Section 18 operator was allocated \$100,000 in federal funds and chose to apply all of those monies towards administrative expenses, no grant funds would be available to defray fuel costs or pay the drivers' salaries. Although the department does not believe any transit system would go to such an extreme in budgeting, some standard is necessary to insure that the interests of transit users are protected. Further, the department does not believe that any Section 18 system would consciously decide to reduce their revenue recovery ratio in an effort to gain a larger formula allocation. Administrative expenses that exceed the 30% level are eligible for the reduced federal share of 50% funding; this provision also applies to insurance expenses. No evidence received to date by the department supports the contention that certain subcontractual arrangements automatically result in higher administrative expenses.

The new section is adopted under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and more specifically to administer the state public transportation fund and state and federal public transportation programs.

#### *§31.36. Section 18 Grant Program.*

(a) Purpose. The Urban Mass Transportation Act of 1964, Section 18 as amended (49 United States Code §1614), authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects in nonurbanized areas. The department has been designated by the governor to administer the Section 18 program.

(b) Eligible recipients. State agencies, local public bodies, private nonprofit organizations, Indian tribes and groups, and



operators of public transportation services are eligible to receive Section 18 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible recipients.

(c) Formula allocation. As part of its administration of the Section 18 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (UMTA Circular 9040.1B, Chapter 1, §4). Effective September 1, 1989, the department will allocate Section 18 funds to local contractors in the following manner.

(1) A portion of the annual Section 18 federal apportionment will be reserved for the establishment of nonurbanized public transportation systems in areas currently not served by a Section 18 system. The amount to be reserved will be determined by the department no later than June 1 of each year and shall be based on current planning estimates by the department. The department will establish a maximum amount to be allocated to each project authorized under this paragraph. The balance available under this paragraph will be reviewed by the department at periodic intervals during the fiscal year and amounts released to contractors described in paragraph (2) of this subsection as deemed appropriate. Projects to be funded under this paragraph may be approved by the department at any time during the fiscal year. Once a new system has been in operation for at least six months, it will become subject, for the next full fiscal year, to the funding allocation process described in paragraph (2) of this subsection.

(2) The balance of the annual Section 18 federal apportionment will be allocated to existing Section 18 contractors on a formula basis as described in subparagraphs (A)-(C) of this paragraph. Upon the contractor's completion of and compliance with all application requirements, rules and regulations applicable to the Section 18 program, the department and the contractor will negotiate a contract. All such contracts shall have an effective date of September 1 and shall be for a 12-month period unless otherwise authorized by the department. Formula allocations for the next fiscal year will be announced by the department no later than June 1. The formula contains two demographic factors and three performance factors, with the allocations computed as follows.

(A) Unadjusted totals will be calculated for each contractor, taking the sum of the factors described in clauses (i)-(v) of this subparagraph for the contractor and dividing the total by five. The resulting aggregate factor will then be multiplied by the total Section 18 funds determined by the department to be available for projects to be funded under this paragraph. The product of the latter calculation is the unadjusted for-

mula total for each contractor.

(i) Nonurbanized population. Using the latest census figures available from the state data center, the nonurbanized population for each contractor's authorized service area will be calculated. Each contractor's subtotal will then be divided by the total for all contractors to determine the nonurbanized population factor for each contractor.

(ii) Square mileage. Using the department's database, the square mileage (by county) for each contractor's authorized service area will be calculated. Each contractor's subtotal will then be divided by the total for all contractors to determine the square mileage factor for each contractor.

(iii) Vehicle miles per cost. Using the most recent four quarterly reports submitted by each contractor, the contractor's average vehicle miles travelled per administrative and operating cost will be calculated. Each contractor's average will then be divided by the total for all contractors to determine the vehicle miles per cost factor for each contractor. For contractors that have been in operation for less than 12 months but at least six months, extrapolated totals will be calculated using the available reports.

(iv) Revenues per expenses (revenue recovery ratio). Using the most recent four quarterly reports submitted by each contractor, the contractor's average revenue collected per administrative and operating cost will be calculated. Each contractor's average will then be divided by the total for all contractors to determine the revenues per expenses factor for each contractor. For contractors that have been in operation for less than 12 months but at least six months, extrapolated totals will be calculated using the available reports.

(v) Passenger trips per nonurbanized population. Using the most recent four quarterly reports submitted by each contractor and the population data described in clause (i) of this subparagraph, the contractor's average one-way passenger trips per service area population will be calculated. Each contractor's average will then be divided by the total for all contractors to determine the passenger trips per nonurbanized population factor for each contractor. For systems that have been in operation for less than 12 months but at least six months, extrapolated totals will be calculated using the available reports.

(B) Based on the relative size of the federal apportionment and the relative number of Section 18 formula contractors in comparison to the preceding fiscal year, the department will adjust the formula totals derived in subparagraph (A) of this paragraph. The adjustments will be based on a comparison of the preliminary formula totals to the Section 18 grant funds

available to each contractor during the preceding 12 months. As contractors enter their second and following years of formula funding, this will be a comparison to the previous year's allocation. The commission will determine an appropriate allocation base and cap, and all preliminary formula amounts derived in subparagraph (A) of this paragraph will be adjusted to fall within that range. (For example, if contractor X's unadjusted total represented 87% of the previous year's expenditures and the annual funding base was established at 90%, contractor X's allocation would be increased to 90%. Similarly, if contractor Y's unadjusted total represented 125% of the previous year's expenditures and the annual funding cap was established at 110%, contractor Y's allocation would be reduced to 110%.) If the federal apportionment remains substantially unchanged from fiscal year 1990, the base will be no less than 95% and the cap will be as high as feasible given the available funding. Any reserve funds described in paragraph (1) of this subsection that are released for allocation under this paragraph, will be awarded on a percentage basis to the existing contractors at the lowest funding levels relative to the base. Similarly, any funds allocated under this paragraph that are not obligated by December 1 of the fiscal year of allocation, will be awarded on a percentage basis to the other existing contractors at the lowest funding levels relative to the base.

(C) For the purposes of the calculations in subparagraph (B) of this paragraph, the department will assume that 10% of each contractor's formula allocation will be dedicated for capital items. However, each contractor will indicate in its annual application budget the actual amount to be allotted to the capital category. Under no circumstances shall administrative expenses exceed 30% of the total (federal Section 18 dollars plus match) sum of administrative and net operating funding.

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 31, 1989.

TRD-8908067

Diane L. Northam  
Administrative Procedures  
Technician  
State Department of  
Highways and Public  
Transportation

Effective date: September 21, 1989

Proposal publication date: May 12, 1989

For further information, please call: (512) 463-8630

## State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L.

*(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.)*

*These actions become effective 15 days after the date of publication or on a later specified date.*

*The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)*

The State Board of Insurance has adopted a filing submitted by the State Department of Highways and Public Transportation.

In accordance with the provisions of the Insurance Code, Article 5.97, a text of the pro-

posed filing has been filed in the Office of the Chief Clerk of the State Board of Insurance. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The over axle and over gross weight tolerance permit bond has been created to comply with the changes to Texas Civil Statutes, Article 6701d-11, §5B(g), reference House Bill 2060 as passed by the 71st Legislature and signed into law by the governor. This permit bond allows an applicant, after filing a permit bond with a penal sum in the amount of \$15,000, to operate at various tolerances over the legal axle and gross vehicle weight. The permit bond is to cover all damages to highways caused by the applicant.

The State Board of Insurance has adopted a premium rate of \$10 per M per Annum with Class Code 448.

It is the opinion of the State Board of Insurance and the board finds that a clear and compelling necessity requires this action by the State Board of Insurance to be effective

on an emergency basis on September 1, 1989, and for 120 days thereafter, in order to provide a bond form and rate. This action will allow applicants to continue to operate commercial vehicles that exceed the legal axle and gross weight restrictions, in compliance with all laws of this state, including recently enacted legislation.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 30, 1989.

TRD-8908076

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: September 1, 1989

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

The State Board of Insurance has adopted a filing submitted by the Texas Real Estate Commission of a revised form for the residential service company bond.

In accordance with the provisions of the Insurance Code, Article 5.97, a text of the proposed filing has been filed in the Office of the Chief Clerk of the State Board of Insurance. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The residential service company bond has been revised to comply with House Bill 2774 passed by the 71st Legislature and signed into law by the governor. The new law requires a change to the currently approved bond form due to the change in the penal sum, which will be based on whether the licensee is a new applicant (\$25,000) or the amount of claims paid, i.e., service calls and amount of business. The penal sum may range from \$10,000 to \$100,000. Further, the new law requires a change in the cancellation provisions to extend the time required of giving notice from 30 days to 90 days.

There are no rate consequences associated with the changing of the form.

Under the Insurance Code, Article 5.97, §(j), the board finds that the interest of the public welfare in the proper functioning of administrative regulation of residential service companies in compliance with the Residential Service Company Act has created a clear and compelling necessity that requires this bond form become effective on an emergency basis on September 1, 1989, and thereafter for 120 days.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 30, 1989.

TRD-8908075

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: September 1, 1989

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

The State Board of Insurance has adopted a filing submitted by the License Division of the State Board of Insurance for a managing general agents' bond.

In accordance with the provisions of the Insurance Code, Article 5.97, a text of the proposed filing was filed in the Office of the Chief Clerk of the State Board of Insurance. The proposed filing was available for public inspection for 15 days and a public hearing was not requested by any party.

The managing general agents' bond is a new bond form required by the passage of House Bill 1594 by the 71st Legislature and signed into law by the Governor. This bond is needed to comply with the Insurance Code, Article 21.07-3, §4C(a) (2). The article requires any managing general agents licensed after September 1, 1989 and November 1, 1989 (all others), to have the ability to pay an

amount up to \$100,000 for which the managing general agent may become legally obligated to pay due to a negligent act, error, or omission in the conduct of its business. A managing general agent can comply with this requirement by posting a surety bond with the State Board of Insurance.

The State Board of Insurance adopted a rate of \$10 per M per Annum for this bond. This rate is the same as the rate for the corporate insurance agents bond which is similar in coverage and has the same Class Code 456.

Under the Insurance Code, Article 5.97, §(j), the board finds that the interest of the public welfare in the proper functioning of administrative regulation of managing general agents, in compliance with the Managing General Agents' Licensing Act, has created a clear and compelling necessity that requires this bond form and rate to become effective on an emergency basis on September 1, 1989, and thereafter for 120 days.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 30, 1989.

TRD-8908074

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: September 1, 1989

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



# 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 Air Control Board

Friday, September 15, 1989, 9 a.m. The Mobile Source Emissions Committee will meet at Lamar University Auditorium, John E. Gray Institute, 855 Florida Avenue, Beaumont. According to the agenda, the committee will review and consider to adopt revisions to regulation IV and the specifications for vehicle exhaust gas analyzers; status report on delayed implementation of the vehicle idle inspection/maintenance (I/M) program in Dallas and Tarrant counties, and the parameter I/M program in adjacent counties.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: September 5, 1989, 9:47 a.m.

TRD-8908157

Friday, September 15, 1989, 9:30 a.m. The Regulation Development Committee will meet at Lamar University Auditorium, John E. Gray Institute, 855 Florida Avenue, Beaumont. According to the agenda, the committee will review and consider to adopt revisions to regulation IV and the specifications for vehicle exhaust gas analyzers.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: September 5, 1989, 9:47 a.m.

TRD-8908156

Friday, September 15, 1989, 9:45 a.m. The Monitoring and Research Committee will meet at Lamar University Auditorium, John E. Gray Institute, 855 Florida Avenue, Beaumont. According to the agenda, the committee will consider request to seek public comment on proposed research priorities for FY-90.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: September 5, 1989, 9:48 a.m.

TRD-8908155

Friday, September 15, 1989, 10:30 a.m.

The Texas Air Control Board will meet at Lamar University Auditorium, John E. Gray Institute, 855 Florida Avenue, Beaumont. According to the agenda, the board will consider approval of minutes of the August 11, 1989 meeting; public testimony; reports; enforcement report; agreed enforcement orders; consideration and action on proposed rule; staff report; hearing examiner's report; new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: September 5, 1989, 9:48 a.m.

TRD-8908154

## State Bar of Texas

Thursday, September 7, 1989, 10 a.m. The State Bar of Texas Executive Committee submitted an emergency revised agenda for a meeting held in Room 206-207, Texas Law Center, Austin. According to the agenda, the committee will also consider resolution of remaining claims in litigation involving the SBOT and John M. O'Quinn. The emergency status was necessary because information unknown at time of posting.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: August 31, 1989, 3:28 p.m.

TRD-8908060

## Texas Council on Vocational Education

Thursday, September 14, 1989, 10 a.m. The Texas Council on Vocational Education will meet in Cavalier Room, Menter Hotel, 204 Alamo Plaza, San Antonio. According to the agenda, the council will consider approval of minutes of April 7, 1989, meeting; discuss actions of the State Board of Education taken at its September 8-9 meeting; discuss actions of the Texas Higher Education Coordinating Board taken

at its July 14 meeting; receive an update on actions of the Texas literacy Council; receive a status report on the reauthorization of the Federal Vocational Education Legislation; discuss testimony/recommendations on the update of the master plan for vocational education; receive a progress report on the 1989-90 Texas Vocational Education Awards Program; discuss 1989-90 evaluation topics assigned the council by the state board; receive a status report on council appointments; discuss upcoming conferences; discuss the council's 1989-90 budget/expenditure report; and conduct other business.

Contact: Val Blaschke, 815 Brazos, Suite 500, Austin, Texas 78701.

Filed: September 1, 1989, 10:28 a.m.

TRD-8908116

## Daughters of the Republic of Texas, Inc.

Saturday-Sunday, September 16-17, 1989, 7 p.m. and 10:30 a.m. respectively The Board of Management will meet in Galvez Hotel, Galveston. According to the agenda summary, the board will consider request approval of the payment of \$24,220 for overbudget legal bills incurred due to House Bill 2259 and implementation of the Open Meetings - Open Records Act Expense Category, due to the \$2,408.21 expense of bi-annual appreciation party given in Alamo Gardens on May 18, 1989; request approval for increase of expense due to 19% in Workers Compensation premium; increase due to 18% in Group Insurance Premium; request ratification of emergency measure approving the installation of two five ton air conditioning units in the shring at a cost not to exceed \$11,000; request ratification for emergency expenditure of \$9,000 to repair north wall of Alamo Chapel.

Contact: June Franklin Naylor, (915) 332-0169.

Filed: August 31, 1989, 4:24 p.m.

TRD-8908085

## Texas Education Agency

**Saturday, September 9, 1989, 8:30 a.m.** The State Board of Education will meet in Room 1-104, William B. Travis Building, 1701 North Congress, Austin. According to the agenda summary, the board will consider SBOE resolutions; 1989-90 program/operating budgets; National Association of State Boards of Education; vocational education; SBOE advisory committee nomination/appointment process; permanent school fund investments; master plan for vocational education; 1990 state textbook subject area committee; proprietary schools and veterans education; state textbook program; foundation school fund; bilingual education; tax collections; proprietary school fees; special education; gifted education; student absences; science; graduation requirements; curriculum; assessment; well-balanced elementary curriculum; provisional vocational certificates; master teacher examination; special service positions and special permits; exchange teachers; preparation of school personnel; teacher career ladder; petition for rule change on career ladder; form for level three of career ladder; ladder; Fort Sam Houston ISD trustee; proposal to develop master teacher examination.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: August 31, 1989, 4:32 p.m.

TRD-8908084

## Advisory Commission on State Emergency Communications

**Wednesday, September 6, 1989, 10 a.m.** The Public Information Committee held an emergency meeting at 500 Throckmorton, Room 2706, Fort Worth. According to the agenda, the committee met to finalize 9-1-1 Day Program; consider any new business; hear public comments. The emergency status was necessary because needed to meet and finalize 9-1-1 day program prior to event on Monday, September 11, 1989.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: August 31, 1989, 4:26 p.m.

TRD-8908072

**Thursday, September 7, 1989, 9 a.m.** The Regional Plan Committee submitted an emergency revised agenda for a meeting held in Room 106, John H. Reagan Building, Austin. According to the agenda, the committee will review and consider approval of South East Texas Regional Planning Commission's 9-1-1 Regional Plan; review executive summaries for South Plains Association of Governments; North

Central Texas Council of Governments; Heart of Texas Council of Governments; South East Texas Council of Governments; Panhandle Regional Planning Commission; and Houston-Galveston Area Council's 9-1-1 Interim Plan for Fort Bend County; and consider approval of recommendation to full commission; consider new business; hear public comment. The emergency status was necessary because needed to withdraw 9-1-1 regional plan that was scheduled to be reviewed. It will review executive summaries of committee-approved regional plans for submission to Commission on September 12, 1989 for approval.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: August 31, 1989, 4:26 p.m.

TRD-8908073

**Tuesday, September 12, 1989, 9 a.m.** The ACSEC Commission will meet in Room 104, John H. Reagan Building, Austin. According to the agenda summary, the commission will consider committee reports from the public information committee; administration committee; finance committee; and regional plan committee; hear public comment; consider approval of July minutes; consider new business.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 1, 1989, 4:10 p.m.

TRD-8908141

**Tuesday, September 12, 1989, 9 a.m.** The Executive Committee will meet in Room G-A, John H. Reagan Building, Austin. According to the agenda, the committee will review committee report items to be presented to commission; public comment; new business.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 1, 1989, 4:11 p.m.

TRD-8908142

## Texas Employment Commission

**Friday, September 8, 1989, 9 a.m.** The Texax Employment Commission Advisory Council will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the council will introduce new members; hear the advisory council report for TEC 1989 annual report; and set date and agenda items for next council meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 31, 1989, 4:02 p.m.

TRD-8908066

**Tuesday, September 12, 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 consider prior meeting notes; consider and possible final adoption of amendment to the timeliness rule; internal procedures of commission appeals; consideration and act on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket 37; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: September 1, 1989, 4:19 p.m.

TRD-8908146

## Texas Funeral Service Commission

**Monday-Thursday, September 11-14, 1989, 1 p.m. and 9 a.m. respectively** The Texas Funeral Service Commission will meet at Austin Airport Hilton, 6100 Middle Fiskville Road, Austin. According to the agenda summary, the commission will discuss formal hearings on actions of licensees and applicants; embalmer practical grades to be certified; requests for exemptions for rules; committee and executive directors reports; complaints to be reviewed; discussion on proposed rules; rulemaking and hearing procedures; and reinspection fees on new establishments; written funeral director and embalmer exams; grades to be certified and other items not considered; formal hearings on actions of licensees; formal hearings on actions of licensees; any items not considered earlier.

Contact: Larry A. Farrow, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753, (512) 834-9992.

Filed: September 1, 1989, 3:35 p.m.

TRD-8908138

## Texas Grain Sorghum Producers Board

**Thursday-Friday, September 14-15, 1989, 1 p.m. and 8 a.m. respectively** The Texas Grain Sorghum Producers Board will meet in Bee Caves Room, Austin Airport Hilton, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the board will discuss financial report; 1989 director election; swearing in new directors; staffing information; 1989-1990 budget approval; research proposals; election of officers.

Contact: K. B. Parish, P.O. Box 530, Abernathy, Texas 79311-0530, (806) 298-2543.

Filed: September 1, 1989, 2:37 p.m.

TRD-8908122

## Texas Health and Human Services Coordinating Council

**Monday, September 11, 1989, 9:30 a.m.**  
The Immigration Work Group will meet in 7th Floor Conference Room, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the council will consider report on APWA immigration Task Force Activities; updates on federal legislative/regulatory issues related to SLIAG; amendment to federal offset estimate for FFY 1989; Wilson outreach bill; update on appointment of Advisory Committee on Immigration; review of FFY 1990 SLIAG application; public comment on application.

Contact: Marguerite Rivera Houze, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: September 1, 1989, 3:14 p.m.

TRD-8908131

## Industrial Accident Board

**Tuesday, September 5, 1989, 9:30 a.m.**  
The Industrial Accident Board met on First Floor, Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the board will discuss approval of board minutes; discuss and consider 10 procedural and regulatory revisions; handling of Second Injury Fund cases by Attorney General; executive session-personnel-executive director; personnel-executive director; review of board files-closed session, Texas Civil Statutes, Article 8307, 4b; board activities.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7960.

Filed: September 1, 1989, 10:53 a.m.

TRD-8908103

## State Board of Insurance

**Tuesday, September 12, 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 consider Docket 10481, to consider whether disciplinary action should be taken against David Elmer Mitchell, Emory, who holds a group I, legal reserve life 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: September 1, 1989, 2:33 p.m.

TRD-8908118

**Wednesday, September 13, 1989, 9 a.m.**

The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10486, to consider whether disciplinary action should be taken against Donald Wayne Gregory, Garland, who holds a group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908119

**Wednesday, September 13, 1989, 10 a.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10506, to consider the application of Financial Resource Corporation, Waco, to acquire control of Central Banc Life Insurance Company, Waco, pursuant to Texas Insurance Code, Article 21.49-1, §5.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908120

**Wednesday, September 13, 1989, 1:30 p.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10493, to consider whether disciplinary action should be taken against Kenneth L. Aderholt, Pasadena, who holds a group I, legal reserve life insurance agent's license.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908121

**Wednesday, September 13, 1989, 1:30 p.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10490, to consider whether disciplinary action should be taken against Lonnie Dean Hohliier doing business as National Agency Development, San Antonio, who holds a group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: O. A. Cassity, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908124

**Friday, September 15, 1989, 9 a.m.** The

State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10477, to consider whether disciplinary action should be taken against Sidney Bochat, Moulton, who holds a solicitor's license issued by the State Board of Insurance.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908125

**Friday, September 15, 1989, 9 a.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10500, to consider the application for amendment to the Articles of Incorporation of First Republic Bank Life Insurance Company, Dallas, changing the name to NCNB Life Insurance Company, and restating the purpose of the company.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908126

**Friday, September 15, 1989, 10:30 a.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10501 to consider the application for amendment to the Articles of Incorporation of First Republic Life Insurance Company, Dallas, changing the company to NCNB Texas Life Insurance Company.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-890817

**Friday, September 15, 1989, 1:30 a.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10510, to consider the reinsurance agreement whereby Jones Funeral Insurance Company, Commerce, will be reinsured by Landmark Life Insurance Company, Brownwood.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908123

**Monday, September 18, 1989, 9 a.m.**  
The State Board of Insurance Commissioner's Hearing Section will meet in Room 342,

1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10492, to consider whether disciplinary action should be taken against John Michael Bull, Waco, who holds a group I, legal reserve life insurance agent's license and a group II, insurance agent's license issued by the State Board of Insurance.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908128

Monday, September 18, 1989, 9 a.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10471, to consider whether disciplinary action should be taken against Joe M. Gonzalez, San Antonio, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license in the State of Texas issued by the State Board of Insurance.

Contact: O. A. Cassity, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908129

Monday, September 18, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider Docket 10503, to consider whether disciplinary action should be taken against Vikki Scharlene Robinson, Corpus Christi, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 1, 1989, 2:33 p.m.

TRD-8908130

Wednesday, September 27, 1989, 9:30 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the hearing section will consider revision of the Commercial Automobile rates and rating plans.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 31, 1989, 4:35 p.m.

TRD-8908083

## Texas National Research Laboratory Commission

Friday, September 8, 1989, 10 a.m. The National Research Laboratory Commission will meet in Conference Room A, Mezzanine Level, Dallas Love Field Airport Administration Offices, Dallas. According to the agenda, the commission will consider approval of May 25, 1989, meeting minutes; chairman's report-Thomas W. Luce III; special report-Dr. Roy Schwitters, SSC Laboratory Director; executive director's report-Edward C. Binger; fiscal officer's report-Kenneth S. Welch; counselor's report-J. Fred Bucy; general counsel's report-Thomas D. Williams; committee reports-budget and finance-Peter O'Donnell; Land Acquisition, C. Perry.

Contact: Karen L. Chrestay, 1801 North Hampton Road #252, DeSoto, (214) 709-6481.

Filed: September 1, 1989, 3:06 p.m.

TRD-8908132

## Board of Vocational Nurse Examiners

September 18-20, 1989, 8 a.m. The Board of Vocational Nurse Examiners will meet in the Frontier Room, Ramada Inn Airport, 5660 North IH 35, Austin. According to the agenda summary, the board will approve minutes; hear the executive director's report, education-program, matters, actions, Texas academic skills program, confirmation of SCR 42 representative, revised NCLEX-PN test plan, memorandum of agreement with TEA re: proprietary schools; unfinished and new business; administrative hearings; agreed orders/voluntary surrenders; election of officers; executive session for personnel changes.

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

Filed: August 31, 1989, 2:16 p.m.

TRD-8908056

## Board of Pardons and Paroles

Monday-Friday, September 11-15, 1989, 1:30 p.m. daily, except 11 a.m. on Friday. The board will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction, and initiate and carry through with appropriate action.

Contact: K. Armstrong, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 1, 1989, 10:31 a.m.

TRD-8908102

Tuesday, September 12, 1989, 1:30 p.m. The board will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will meet to 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 Lamas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 1, 1989, 10:31 a.m.

TRD-8908101

## Texas State Board of Examiners of Psychologists

Wednesday-Saturday, September 6-9, 1989, 8:30 a.m. The Texas State Board of Examiners of Psychologists met for an emergency meeting in Suite 212, 9101 Burnet Road, Austin. According to the agenda, the board considered complaints; proposed rules; budget; legislative matters; applications; minutes; opinion letters; interviews; hearings; exam issues; reports; and planning issues; the board held executive session to discuss personnel and legal matters, and met with the executive committee of the Texas Psychological Association. The emergency status was necessary because legal matters have been scheduled for court which require board action, the board was able to contact witnesses needed for a hearing before the board considered a complaint that has been under investigation for over one year.

Contact: Patti Bizzell, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

Filed: August 31, 1989, 1:15 p.m.

TRD-8908043

## Public Utility Commission of Texas

Tuesday, September 12, 1989, 9 a.m. The Administrative Committee will meet in Suite 450N, 7800 Shoal Creek, Austin. According to the agenda summary, the commission will discuss reports; discuss and act on budget and fiscal matters including a report on the status of lease of PUC offices and a workshop to review the agency's FY 90 operating budget; adjournment for executive session to consider personnel and litigation matters; reconvene for discussions on matters considered in executive session; set time and place for next meeting.

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

Filed: September 1, 1989, 3:44 p.m.

TRD-8908134

Friday, September 15, 1989, 9 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek, Austin. According to the agenda, the division will discuss Docket 9010-petition of Houston Lighting and Power Company to continue deferred accounting treatment for STP Unit one beyond November 23, 1989.

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

Filed: August 31, 1989, 3:47 p.m.

TRD-8908062

Monday, October 23, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek, Austin. According to the agenda, the division will discuss Docket 8660-application of Alenco Communications, Inc. to amend certificate of convenience and necessity within Webb County; Docket 8684-application of Southwestern Bell Telephone Company to amend certificate of convenience and necessity within Webb County; Docket 8719-application of Valley Telephone Cooperative Inc. to amend certificate of convenience and necessity within Webb County. This meeting is rescheduled from Thursday, October 5, 1989, at 9 a.m.

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

Filed: August 31, 1989, 3:47 p.m.

TRD-8908063

Thursday, November 2, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek, Austin. According to the agenda, the division will discuss Docket 8640-complaint of Compaq Computer Corporation against Southwestern Bell Telephone Company.

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

Filed: August 31, 1989, 3:47 p.m.

TRD-8908065

## Texas Racing Commission

Monday, September 11, 1989, 8 a.m. The Texas Racing Commission will meet in Third Floor Auditorium, First State Bank Building, 400 West 15th Street, Austin. According to the agenda summary, the commission will discuss approval of minutes; presentations by women for pari-mutuel and the jockey's guild; action on rules and regulations for horse and greyhound racing;

consider and vote on the jockey's club ownership registry; charges for drug testing; option to renew the contract between the Texas Racing Commission and Deloitte, Haskins & Sells; rate of compensation for test barn technicians; amount of bond to be posted by horsemen's bookkeeper; resolution delegating authority to approve race-track contracts; delegating certain responsibilities requiring commission approval to Texas Racing Commission staff; presentations regarding status by Manor Downs, G. Rollie White Downs, Trinity Meadows, and Del Rio Downs; consider and act on request to open application period for Class I horse racetracks in Tarrant and Dallas counties; rehearing on Randall park; additional racedays and matters La Bahia Downs; executive session consider and act on pari-mutuel greyhound licenses for Galveston and Nueces Counties.

Contact: Paula Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

Filed: September 1, 1989, 4:04 p.m.

TRD-8908140

## Railroad Commission of Texas

Monday, September 11, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedure, and personnel matters. Discussion of the development of a natural gas clearing house that would match companies that need gas to fuel new plants with producers that have gas to sell-possible action.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: September 1, 1989, 11:19 a.m.

TRD-08908107

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: September 1, 1989, 11:20 a.m.

TRD-08908111

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various

positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Cril Payne, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7274.

Filed: September 1, 1989, 11:20 a.m.

TRD-08908110

The commission will consider and act on the Flight Division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: September 1, 1989, 11:20 a.m.

TRD-08908109

The commission will consider and act on the Office of Information Services/Office of Research and Statistical Analysis Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78753, (512) 463-6710.

Filed: September 1, 1989, 11:20 a.m.

TRD-08908108

The commission will consider and act on the Investigation Division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: September 1, 1989, 11:21 a.m.

TRD-08908112

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 its entirety or for particular action at a future time of date. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The Commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: September 1, 1989, 11:21 a.m.

TRD-08908115

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: September 1, 1989, 11:21 a.m.

TRD-08908113

The commission will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel.

The commission will consider refund for gross receipts tax overpayment of amalgamated pipeline company.

Contact: Raymond Bennett, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: September 1, 1989, 11:19 a.m.

TRD-08908105

The commission will hold a statewide hearing on oil and gas.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: September 1, 1989, 11:19 a.m.

TRD-08908114

The commission will consider Docket Number 9-92,798, Sunrise Investments Inc. agreed to order in consideration of whether to enter a Commission order assessing administrative penalties and/or requiring compliance with Commission regulations on the Hinton, A.B. (04217) Lease, Well Numbers 1, 2, 3, 4, 5, 6, and 7, Montague County, Regular Field, Montague County.

Contact: Mike Berklund, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6764.

Filed: September 1, 1989, 11:19 a.m.

TRD-08908104

## Texas Real Estate Commission

Monday, September 11, 1989, 9:30 a.m. The Texas Real Estate Commission will meet in Conference Room, TREC Headquarters Office, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will consider petition for adoption on an emergency basis of proposed 22 TAC §535.166-535.168, relating to disclosure required by Sections 15(c) and 15C of Article 6573a; education matters; consideration of report of the Mandatory Continuing Education Advisory Committee;

executive session to discuss pending litigation and appointment of public officers pursuant to Section 2(e) and 2(g), Article 6252-17, Texas Civil Statutes; consideration of appointments to the Texas Real Estate Appraiser Certification Committee; consider claims against the Real Estate Recovery Fund; consider authorization of James E. Fletcher to conduct hearings and render final decisions in contested cases; authorization of Robert E. Owen as alternate hearings officer; consider motions for rehearing and/or probation; entry of orders in contested cases; rehearing in Hearing Number 89-91-89051 in the matter of Thomas Ronald Ramsey.

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

Filed: August 30, 1989, 4:15 p.m.

TRD-8908008

## Texas Rehabilitation Commission

Friday, September 15, 1989, 9:30 a.m. The Board of the Texas Rehabilitation Commission will meet in Public Hearing Room, First Floor, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin. According to the agenda, the commission will consider approval of minutes of June 29-30, 1989 meeting; commissioner's comments; presentation of employee of the year awards; board discussion of future directions.

Contact: Charles W. Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4050.

Filed: September 1, 1989, 9:55 a.m.

TRD-8908100

## Teacher Retirement System of Texas

Friday, September 8, 1989, 9 a.m. The Teacher Retirement System of Texas Board of Trustees will meet in the Board Room, 1001 Trinity, Austin. According to the revised agenda, the board will consider the report of port-folio performance; resolution concerning protection of TRS funds held in connection with investment-related transactions.

Contact: Mary Godzik, 1001 Trinity, Austin, Texas (512) 397-6400.

Filed: August 31, 1989, 11:12 a.m.

TRD-8908042

## Texas Savings Loan Department

Tuesday, September 12, 1989, 9 a.m. The Texas Savings and Loan Department will

meet at 2601 North Lamar Boulevard, Suite 201, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Windsor Savings Association, Austin, to establish a loan office at 6575 West Loop South, Bellaire, from which record the Commissioner will determine whether to grant or deny the application. This is an amended application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 1, 1989, 4:26 p.m.

TRD-8908149

## State Securities Board

Wednesday, September 6, 1989, 10 a.m. The State Securities Board Securities Commissioner held an emergency meeting at 1800 San Jacinto, Austin. According to the agenda summary, the commission will discuss whether the application of Thomas Horton Campbell to be registered as a securities salesman with L. F. Thompson and Company should be granted or denied. The emergency status was necessary because hearing date set by respondents.

Contact: John Morgan, 1800 San Jacinto, Austin, Texas (512) 474-2233.

Filed: August 31, 1989, 3:42 p.m.

TRD-8908061

## University of Texas Health Center at Tyler

Thursday, September 7, 1989, 12 Noon The Animal Research Committee met in Chaplain's Conference Room, University of Texas Health Center, State Highway 155 and Highway 271, Tyler. According to the agenda, the committee discussed approval of minutes of July meeting; chairman's report; review protocol #75-antibody production in lung injury research; protocol #76-study of the cell biology of protein secretion.

Contact: Dr. Barry Peterson, P.O. Box 2003, Tyler, Texas 75710.

Filed: September 1, 1989, 2 p.m.

TRD-8908117

## Texas Water Commission

Tuesday, September 12, 1989, 10 a.m. The Texas Water Commission submitted a revised agenda for a meeting to be held in Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas, as more



fully stated on the attached agenda. In addition, the Texas Water 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 Texas Water 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: September 1, 1989, 4:10 p.m.

TRD-8908143

Tuesday, October 3, 1989, 10 a.m. The Texas Water Commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will consider hearing on temporary order for City of Lubbock to dispose of treated wastewater by irrigation on an additional 1,500 acres; temporary order requested while commission is considering an amendment to City of Lubbock's wastewater treatment facility permit number 10353-02.

Contact: Irene L. Montelongo, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: September 1, 1989, 4:10 p.m.

TRD-8908144

## Regional Meetings

### Meetings Filed August 31, 1989

The Ark-Tex Council of Governments, Ark-Tex Private Industry Council met at Region VIII, Mt. Pleasant, September 7, 1989, at 6 p.m. Information may be obtained from Erner Pondexter, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Austin-Travis County MHMR Center, Finance and Control Committee held an emergency meeting at 1430 Collier Street, Austin, September 1, 1989, at 8 a.m. The emergency status was necessary because needed to discuss preliminary budget planning for TDMHMR FY 90 budget. Information may be obtained from Sharon Taylor, (512) 447-4141.

The Garza County Appraisal District, Board of Directors will meet at Appraisal Office, Courthouse, Post, September 14, 1989, at 9 a.m. Information may be ob-

tained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Lampasas County Appraisal District, Board of Directors will meet at 109 East Fifth, Lampasas, September 13, 1989, at 9:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

TRD-8908038

### Meetings Filed September 1, 1989

The Austin-Travis County Mental Health and Mental Retardation, Executive Committee Meeting met in an emergency meeting in Executive Director's Conference Room, 1430 Collier Street, Austin, September 5, 1989, at 8 a.m. The emergency status was necessary because needed action requiring committee approval needs to be taken prior to next regularly scheduled meeting-only time members could meet. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 447-4141.

The Dallas Area Rapid Transit, Administrative Law Judge Ad Hoc Committee met in Conference Room 7A, 601 Pacific Avenue, Dallas, September 5, 1989, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit, Planning and Development Committee met in Board Room, 601 Pacific Avenue, Dallas, September 5, 1989, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Board of Directors will meet at the Dallas Arboretum, 8617 Garland Road, Dallas, September 9, 1989, at 7:30 p.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockinbird Lane #500, Dallas, Texas 75247, (214) 631-0520.

The East Texas Council of Governments, Executive Committee met at ETCOG Offices, Kilgore, September 7, 1989, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas (214) 984-8641.

TRD-8908078

### Meetings Filed September 5, 1989

The Brazos Valley Development Council, Board of Directors will meet in Brazos

Center-Studio I, 3232 Briarcrest Drive, Bryan, September 13, 1989, at 6 p.m. Information may be obtained from Glana J. Cook, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277.

The Brown County Appraisal District, Board of Directors will meet at 403 Fisk Avenue, Brownwood, September 11, 1989, at 7 p.m. Information may be obtained from Bob Young, 403 Fisk Avenue, Brownwood, Texas, (915) 643-5676.

The Deep East Texas Private Industry Council, Inc., will meet at Days Inn, Lufkin, September 13, 1989, at 2 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-2247.

The Gonzales County Appraisal District, will meet at 928 St. Paul Street, Gonzales, September 14, 1989, at 5 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Gonzales County Appraisal District, will meet at 928 St. Paul Street, Gonzales, September 14, 1989, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Martin County Appraisal District, Board of Directors will meet 708 West St. Anna, Stanton, September 12, 1989, at 7 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823.

The Palo Pinto Appraisal District, Appraisal Review Board will meet at Palo Pinto County Courthouse, September 13, 1989, 1:30 p.m. Information may be obtained from Jack F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Upshur County Appraisal District, Board of Directors will meet at Upshur County Appraisal District Office, Warren and Trinity Street, Gilmer, September 11, 1989 at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

The Wheeler County Appraisal District, Board of Directors will meet at District's Office, County Courthouse Square, Wheeler, September 18, 1989, at 2 p.m. Information may be obtained from Larry M. Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900.

TRD-8908152



# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department of Banking Notice of Hearing

The hearing officer of the State Banking Department will conduct a hearing on Mount Olivet Cemetery Association's Motion for the Issuance of Subpoena Duces Tecum for Mark S. France in Docket Number PW88-0009 regarding the Application of Doeppenschmidt Funeral Home for Withdrawal of Excess Earnings. The hearing will be held on September 6, 1989, at 9 a.m. at Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on August 29, 1989.

TRD-8907977      Ann Graham  
                            General Counsel  
                            Texas Department of Banking

Filed: August 30, 1989

For further information, please call: (512) 479-1200

## Texas Department of Commerce Weekly Report on the 1989 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1989 is \$839,250,000.

State legislation, Texas Civil Statutes, Article 5190.9a (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 administering the allocation system.

The information that follows is a weekly report of the allocation activity for the period, August 21, 1989-August 25, 1989.

Weekly report on the 1989 allocation of the state ceiling on certain private activity bonds as pursuant to Texas Civil Statutes, Article 5190.9a.

Total amount of state ceiling remaining unreserved for the \$279,750,000 subceiling for qualified mortgage bonds under the Act as of August 25, 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 25, 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 25, 1989: \$2,500.

Total amount of the \$839,250,000 state ceiling remaining unreserved as of August 25, 1989: \$213,066,166.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from August 21, 1989-August 25, 1989: none.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from August 21, 1989-August 25, 1989: none.

Issued in Austin, Texas, on August 29, 1989.

TRD-8908041      William D. Taylor  
                            Interim Executive Director  
                            Texas Department of Commerce

Filed: August 31, 1989

For further information, please call: (512) 472-8069

## Office of Consumer Credit Commissioner Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Type of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer<sup>(3)</sup>/Agri- cultural/Commercial<sup>(4)</sup> thru \$250,000</u>	<u>Commercial<sup>(4)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	09/04/89-09/10/89	18.00%	18.00%
Monthly Rate <sup>(1)</sup> Art. 1.04(c)	09/01/89-09/30/89	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	10/01/89-12/31/89	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	10/01/89-12/31/89	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) <sup>(3)</sup>	10/01/89-12/31/89	15.52%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) <sup>(2)</sup>	10/01/89-12/31/89	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	10/01/89-12/31/89	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	10/01/89-12/31/89	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 28, 1989.

TRD-8907987 Al Endsley  
Consumer Credit Commissioner

Filed: August 30, 1989

For further information, please call: (512) 479-1280

Issued in Austin, Texas, on August 31, 1989.

TRD-8908044 Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife Department

Filed: August 31, 1989

For further information, please call: (512) 389-4805

### Gulf States Marine Fisheries Commission

#### GSMFC 40th Annual Fall Meeting

The Gulf States Marine Fisheries Commission will hold its 40th annual fall meeting October 16-October 20, 1989. Mississippi is the host state and arrangements have been made to convene at the Royal d'Iberville, 3420 West Beach Boulevard, (U.S. Highway 90), (601) 388-6610, Biloxi, Mississippi.

All persons interested in the Gulf States Marine Fisheries Commission are invited to attend. For additional information, please call Virginia K. Herring, (601) 875-5912.

### Texas Department of Human Services Notice of Correction

The Texas Department of Human Services files this notice of correction to correct 40 TAC §29.606(q) that appeared in the August 18, 1989, issue of the *Texas Register* (14 TexReg 4114).

Section 29.606(q) should read: (q) Hospitals with 100 or fewer licensed beds. The policies in this subsection apply only to hospital fiscal years beginning on or after September 1, 1989, and are applicable only to hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year. At final cost settlement of the

hospital's fiscal year, the department or its designee determines what the amount of reimbursement during the fiscal year would have been if the department or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination is made without imposing a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital under the prospective payment system, the department or its designee reimburses the difference to the hospital.

Issued in Austin, Texas, August 31, 1989.

TRD-8908053 Ron Lindsey  
Commissioner  
Texas Department of Human Services

Filed: August 31, 1989.

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

## Texas State Library and Archives Commission

### Local Government Records Committee

Notice is hereby given, pursuant to the Texas Government Code, Chapter 441, Subchapter J (as added by House Bill 1285, 71st Legislature, for the purpose of accepting nominations for appointment to the Local Government Records Committee.

Nominations will be accepted through October 6, 1989, for the following officers: a county judge or commissioner; a county clerk; a district clerk; a county auditor; a county attorney; a district attorney; a county sheriff; a county tax assessor-collector; a county treasurer; a justice of the peace or municipal court judge; a mayor or other member of the governing body of a municipality; a city manager; three municipal clerks or secretaries, one from a municipality with a population of less than 5,000, one from a municipality with a population of 5,000 to 49,999, and one from a municipality with a population of 50,000 or more; a municipal attorney; a municipal finance officer; a municipal personnel officer; three police chiefs, one from a municipality with a population of less than 5,000, one from a municipality with a population of 5,000 to 49,999, and one from a municipality with a population of 50,000 or more; a fire chief; a municipal tax collector; a director or superintendent of a municipal public works program, a municipal utility, or a municipal building inspection department; an executive director of a hospital district or a health district or authority; two executive directors of water districts; two chief appraisers of appraisal districts; three public school representatives, one of whom must represent school districts with an average daily attendance of less than 1,000; one of whom must represent school districts with an average daily attendance of 1,000 to 9,999; and one of whom must represent school districts with an average daily attendance of 10,000 or more; and two local government records management officers other than elected county officers.

A nomination for appointment may be made by an organization representing officers of the type to be appointed that has as members at least 50 of those officers. In choosing between two or more nominees, the director and librarian will give preference to a nomination or nominations received from organizations whose membership consists primarily of the type of officer to be nominated.

All initial appointments to the committee, newly created by state law, will be for terms ending February 1, 1991. To remain eligible to serve on the committee, a person must continue to hold the office or position the person was appointed to represent.

Nominations should be sent to William D. Gooch, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

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

TRD-8908040 William D. Gooch  
Director and Librarian  
Texas State Library

Filed: August 31, 1989

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

## Texas Public Finance Authority Request for Proposals

The Texas Public Finance Authority (TPFA) is requesting proposals for insurance coverage with no coinsurance penalty, in the amount of 100% of the replacement value of each insurable project on which bond issues are outstanding; and Business Interruption (Loss of Rents) Insurance equal to two year's debt service on the outstanding bonds for the projects related to the 1985A issue and one year's debt service on the outstanding bonds for the projects related to the 1987 revenue issue. The deadline for proposal submission is noon, October 24, 1989.

Selection will be based on lowest cost for the one year period provided that all criteria and specifications are met or exceeded. Anticipated cost will exceed \$10,000.

Copies of the proposal request may be obtained by calling or writing Catherine L. Nall, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

Issued in Austin, Texas, on August 30, 1989.

TRD-8908039 Catherine L. Nall  
Administrative Technician  
Texas Public Finance Authority

Filed: August 31, 1989

For further information, please call: (512) 463-5544

## State Purchasing and General Services Commission

### Notice of Request for Information

Pursuant to the authority of Texas Civil Statutes, Article 601b, the State Purchasing and General Services Commission is considering the engagement of a Real Estate Consultant to assist the commission in its acquisition of leased space in Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, and San Antonio. In order to evaluate the cost-effectiveness and efficiency of this proposed course of action, the commission has issued a request for information in order to solicit information from interested and knowledgeable parties.

A copy of the request for information, which requires that all responses be received by 5 p.m. on October 13, 1989, may be obtained from: David T. Carr, State Lease Officer, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, (512) 463-3331.

Issued in Austin, Texas on August 31, 1989.

TRD-8908077

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

Filed: August 31, 1989

For further information, please call: (512) 463-3448

◆ ◆ ◆  
**Texas Water Commission**  
**Enforcement Orders**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Keene, on August 24, 1989, assessing \$7,838 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 30, 1989.

TRD-8908057      Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: August 31, 1989

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

◆ ◆ ◆  
Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the follow-

ing information is submitted.

An enforcement order was issued to Fenton Company of Louisiana, on August 22, 1989, assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 30, 1989.

TRD-8908069      Gloria Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: August 31, 1989

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

◆ ◆ ◆  
Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Sunrise East Apartments, on August 24, 1989, assessing \$4,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 30, 1989.

TRD-8908058      Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: August 31, 1989

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