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Texas Register

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Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—minutes of open meetings

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

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

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

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



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TAC Titles Affected—October

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Part IV. Texas Department of Licensing and Regulation

16 TAC §§66.1, 66.10, 66.20, 66.21, 66.40, 66.50, 66.60, 66.70, 66.71, 66.80, 66.90, 66.100, 66.101-66.104—5203, 5209

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Part II. Texas Education Agency

19 TAC §81.136—5209

19 TAC §89.221, 89.223, 89.229, 89.235, 89.244—5210

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Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Opinions

JM-1095(RQ-1647). Request from Elizabeth C. Jandi, Guadalupe County Attorney, Seguin, concerning validity of contract for library services.

Summary of Opinion. It was within the power of the City of Seguin and the County of Guadalupe in 1975 to revise and ratify a pre-existing 1964 agreement between them regarding library services. Even if the original 1964 agreement between them was originally invalid as ultra vires, ratification in 1975 was effective because the Interlocal Cooperation Act authorizing such agreements had become law. After such ratification, the agreement was not subject to unilateral rescission and cancellation by the county.

TRD-8909005

JM-1096(RQ-1782). Request from Louise Waddill, R.N., Ph.D., Executive Secretary, Board of Nurse Examiners, Austin, concerning whether a nursing student may administer medications under certain conditions and related questions.

Summary of Opinion. Nursing students and medication aide trainees are subject to the requirement of Chapter 242, Subchapter F, §242.151, that a person must hold a license authorizing the person to administer medication, or a permit issued by the Department of Health under Subchapter F, in order to administer medications to residents of convalescent and nursing homes and related institutions subject to the Health and Safety Code, Chapter 242.

TRD-8909004

Requests for Opinions

(RQ-1805). Request from Larry D. Evans, Executive Director, Texas Commission for the Deaf, Austin, concerning whether certain agencies are required to adopt by formal rule any memorandum of understanding under the Human Resources Code, §81.017.

(RQ-1806). Request from Mike Driscoll, Harris County Attorney, Houston, concerning the authority to appoint the purchasing agent of Harris County.

(RQ-1807). Request from Gibson D. (Gib) Lewis, Speaker, Texas House of Representatives, Austin, concerning whether the purchase of fuel by a company which provides transportation services for a school district is exempted from taxation.

(RQ-1808). Request from D. R. "Tom" Uher, Chairman, Redistricting Committee, Texas House of Representatives, Austin, concerning authority of the Matagorda County-Palacios Seawall Commission to expend funds to create a public beach.

(RQ-1809). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning whether a public security officer who is not a commissional peace officer is subject to licensing by the Commission on Law Enforcement Officer Standards and Education.

(RQ-1810). Request from Valgene Massey, Assistant City Attorney, Brownsville, concerning whether Texas Civil Statutes, Article 8307, §9a protects workers compensation claim reports from required public disclosure under Texas Civil Statutes, Article 6252-17a.

(RQ-1811). Request from Brad Wright, Texas House of Representatives, Austin, concerning authority of the Board of Chiropractic Examiners to condition eligibility for licensure on graduation from a college accredited by a particular private organization.

(RQ-1812). Request from Oscar William Loyd, II, Upshur Criminal District Attorney, Upshur County Justice Center, Gilmer, concerning certification of a petition and financing of a local option election under the Alcoholic Beverage Code.

(RQ-1813). Request from Hugh Parmer, Chairman, Intergovernmental Relations, Austin, concerning authority of the Industrial Accident Board to adopt rules reducing attorneys fees, and related questions.

(RQ-1814). Request from John Whitmire, Chairman, Intergovernmental Relations, Austin, concerning whether a municipal utility district may, under certain circumstances, contract for the purchase of real property to be used as a public park.

(RQ-1815). Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning effect of amendments to statutes which allow a driver to defer disposition of punishment pending successful completion of a defensive driving course.

(RQ-1816). Request from Tim Curry, Criminal District Attorney, Fort Worth, concerning status of trust funds held by a district clerk.

TRD-8908981

Emergency Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 66. "Toughman" Contests

- 16 TAC §§66.1, 66.10, 66.20, 66.21, 66.40, 66.50, 66.60, 66.70, 66.71, 66.80, 66.90, 66.100, 66.101-66.104

The Department of Licensing and Regulation adopts on an emergency basis §§66.1, 66.10, 66.20, 66.21, 66.40, 66.50, 66.60, 66.70, 66.71, 66.80, 66.90, and 66.100-66.104 concerning safety requirements and technical requirements as they relate to "Toughman" contests.

The chapter is being adopted in order to regulate a segment of the boxing industry that wishes to conduct boxing contests called "Toughman" contests within the State of Texas. These contests are new in the State of Texas and promoters are already beginning to hold them. Those administrative rules are being adopted on an emergency basis in order to regulate the promoters and protect the safety of contestants.

The new sections are adopted on an emergency basis under the Texas Boxing and Wrestling Act, Texas Civil Statutes, Article 8501-1, which provides the commissioner with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of the Act.

§66.1. Authority. These rules are promulgated under the authority of the Texas Boxing and Wrestling Act (Texas Civil Statutes, Article 501-1).

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

Act—The Texas Boxing and Wrestling Act, Texas Civil Statutes, Article 8501-1.

Commissioner—The commissioner of licensing and regulation or his designated representative.

Contest—A boxing contest referred to in the industry as a "Toughman" contest.

Contestant—A person, to be licensed by the commissioner, who competes for a

prize, purse, or compensation in a "Toughman" contest in Texas.

Department—The Texas Department of Licensing and Regulation.

Judge—A person to be licensed by the commissioner who is at ringside during a contest and who has the responsibility of scoring the performance of contest participants.

Promoter—A person to be licensed by the commissioner who arranges, advertises, or conducts a contest.

Referee—A person to be licensed by the commissioner who has the general supervision of a contest and is present inside the ring during that contest.

Second—A person to be licensed by the commissioner who is present at any boxing contest to provide assistance or advice to a contestant during the contest.

Timekeeper—A person to be licensed by the commissioner who is the official timer of the length of rounds and the intervals between same.

§66.20. Licensing Requirements—General.

(a) Before a person may perform at a contest as a contestant, promoter, referee, second, judge, or timekeeper, he must be licensed by the commissioner.

(b) All licensees, except promoters, shall keep their licenses in their possession. They shall present their license, upon request, to promoters and department representatives. The license shall be evidence of eligibility to act or perform in their respective capacities in connection with the "Toughman" contests. Any licensee who does not meet this requirement may be subject to fine by the department.

(c) Referees and judges must take an annual physical examination. Referees must hold an active CPR card.

(d) All contestant applicants must submit two recent passport-sized photographs to the department along with the application form and license fee.

(e) All license requirements must be met before an applicant may participate in a contest.

(f) The department will not issue a license to any contestant under the age of 18 or over the age of 35 without a hearing. Before issuing any license to a contestant over age 35, the department may require physical testing, including, but not limited to, EKG, EEG, CT scan, stress test, neuro-

logical examination, and ophthalmological examination.

(g) An applicant for a license as a contestant cannot have over 5; sanctioned amateur boxing wins in the last five years or any professional boxing experience.

§66.21. Licensing Requirements—Promoters.

(a) A licensed promoter may not act as, and cannot be licensed as, a second, contestant, referee, or judge. If he is so licensed, he must submit any other licenses for cancellation at the time he applies for a promoters license.

(b) Each promoter applicant must submit:

(1) a completed application form;

(2) five letters of recommendation;

(3) a financial statement prepared by a certified public accountant or a \$10,000 performance bond;

(4) a surety bond completed by a surety company on a department form;

(5) any license listed in subsection (a) of this section, for cancellation, if applicable; and

(6) the required fee.

(c) promoter's license is valid only within the incorporated limits of the city for which it is granted, but a promoter may apply for a license in each city in which he wants to operate. If the promotion occurs in a non-incorporated area, the size of the nearest incorporated city shall determine the license fee and bond amount. No promoter shall hold a contest in any city other than the city shown on his license.

(d) Any person applying for a promoter's license for the first time must appear in person in the department's Austin office. Renewal applicants or applicants applying for licenses in additional cities are not required to appear in person in Austin.

§66.40. Bond Requirements.

(a) Each promoter applicant must submit a surety bond, written by a bonding company authorized to do business in the State of Texas, which must remain in effect for four years after the effective cancellation date. The bond amount shall be deter-

mined by the population of the city for which it is granted, as shown in the following table.

Population

Minimum Bond

25,000 or less	\$ 300.00
25,001-100,000	2000.00
100,001-250,000	3000.00
250,00 and up	5000.00

(b) Promoters must show financial ability to pay taxes, purses, arena rental, personnel, advertising, and other expenses. Financial responsibility may be shown by submitting a financial statement, prepared by a certified public accountant, indicating sufficient current assets, or a \$10,000 performance bond guaranteeing payment of all obligations relating to the promotional activity.

§66.50. Reporting Requirements.

(a) If, in the opinion of the examining physician, a contestant's physical examination indicates him to be unfit for competition, the contestant may not participate in a contest. An immediate report of the examination must be made to the promoter and the department.

(b) Notice of any change in announced or advertising locations or times of a "Toughman" contest, or notice of cancellation of a contest, must be submitted to the department at least three working days before the scheduled contest.

(c) A promoter shall submit the tax report and the 3.0% gross receipts tax payment for a contest within 732 hours after holding the contest.

§66.60. Responsibilities of the Department.

(a) the commissioner shall approve qualified physicians throughout the state to

serve as ringside physicians. When performing ringside physician duties, the physician shall be acting as an authorized department representative.

(b) the department shall assign at least two referees and at least three judges to official at "Toughman" contests. If three judges are not available, a referee may act as a judge. The referee is the chief contest official and has a general supervision over the contest. A majority vote of the judging officials will determine the outcome of the contest. No promoter, second, or contestant shall officiate at any contest.

(c) The referee shall conduct a rules meeting before each contest. All contestants, seconds, timekeepers, and judges must attend the rules meeting.

(d) The department shall assign a timekeeper for each contest.

§66.70. Responsibilities of Licensees.

(a) Department approval of any contest must be obtained prior to advertising or beginning ticket sales, announcing, or advertising any show or show date.

(b) The department must receive written notice of all proposed contest dates at least 21 days prior to the proposed contest date.

(c) The promoter shall provide and compensate a department-approved ringside physician.

Population

10,000 or less	\$ 20.00
10,001- 25,000	50.00
25,001-100,000	100.00
100,001-250,000	200.00
250,001 and up	300.00

(b) Each license application shall be accompanied by the annual license fee as follows:

- (1) "Toughman"-contestant \$25
- (2) Judge-15.
- (3) Referee-25

(4) Second-10

(5) Timekeeper-10

§66.90. Sanctions.

(a) The department, after notice and hearing, may deny, revoke, or suspend any license, and order a fine in an amount not to

(d) The promoter shall compensate the department-assigned timekeepers, judges, and referees, including travel expenses and overnight lodging if required.

(e) A contestant must be a resident of the area in which the contest is being held.

§66.71. Responsibilities of Licensees--Promoters Safety Responsibilities.

(a) The promoter shall provide all ringside emergency equipment required by these rules.

(b) There must be a pre-fight plan and route to remove an injured contestant from the contest site. Upon request, the promoter shall inform the department of this plan. the plan shall include the name and location of a local hospital emergency room.

(c) Security shall be sufficient to maintain order.

(d) The promoter shall provide headgear, groin protectors, and mouthpieces as required by §66.101 of this title (relating to Technical Requirements-safety)

§66.80. Fees.

(a) The promoter's license fee shall be determined by the population of the city for which it is granted, as shown in the following table.

Fee

exceed \$1,000, if the commissioner finds that any applicant, licensee, or a licensee's employee or agent has:

(1) violated any rule or regulation or a provision of the Texas Boxing and Wrestling Act;

(2) failed to pay all legitimate contest related expenses;

(3) caused serious injury to a contestant through negligence or incompetence;

(4) assaulted an on-duty department employee;

(5) used threats of violence or physical force to hinder, prevent, or interfere with the assigned official or a department employee enforcing the Boxing and Wrestling Act or department rules and regulations; or

(6) knowingly made a misrepresentation or false statement on the department license application.

(b) If it appears that a person is in violation of, or is threatening to violate, the Act or a rule or order of the commissioner related to the Act, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding \$1,000 for each violation and not exceeding \$250,000 in the aggregate.

§66.100. Technical Requirements—Ring and Equipment.

(a) The ring shall be a minimum of 14 feet square and a maximum of 20 feet square.

(b) Sixteen-ounce gloves shall be used. Gloves shall be examined by the referee, and if they are found to be imperfect, they shall be changed before the contest starts. No breaking, roughing, or twisting of gloves shall be permitted. If gloves to be used have been used before, they must be whole, clean, and in sanitary condition. The promoter shall have an extra set of gloves on hand to be used in case gloves are broken or in any way impaired during the course of any bout.

(c) Headgear, groin protectors, and mouthpieces are required for all contestants and will be provided by the promoter.

(d) There shall be a ringside physician present at all times.

(e) The promoter shall ensure that there is a resuscitator, oxygen, and a stretcher at ringside. The promoter shall also provide certified ambulance with the emergency medical technician on sit for all contests where the nearest available public ambulance service is more than five minutes away.

(f) The entire ring platform shall be immediately cleared of all obstructions including buckets, stools, etc., when the gong sounds indicating the beginning of the round. No objects shall be placed on the ring floor until the round or the bout ends.

(g) The promoter shall provide a sufficient number of buckets for all contest-

ant, stools for the seconds, and water in each contestant's corner.

(h) the ring will be heavily padded to protect contestants.

(i) There shall be four ring ropes that are at least one inch in diameter. The ropes shall be evenly spaced, one foot apart center to center of the rope, with the lower rope 18 inches above the ring floor's canvas covering. The ropes shall be reinforced by a nonabrasive rope on each side in the center of the ropes. The ropes shall be attached to the ring posts with the turnbuckles and shall be tight and firm during all contests. The bottom rope shall be padded with least 1/2 inches of soft material.

§66.101. Technical Requirements—Safety.

(a) Contestants must participate in the correct weight class. The heavyweight class shall be for contestants weighing at least 175 pounds but no more than 400 pounds. There may not be more than a 25% difference between the weight of the two contestants paired in any given bout. The light heavyweight class shall include contestants weighing at least 160 pounds but not more than 174 pounds. A weigh-in will be conducted by the department prior to each contest.

(b) At the time of the weigh-in, each contestant must pass a department-approved medical examination by the department-approved ringside physician assigned to be present at the contest.

(c) All contestants applying for a new or renewal license must pass a comprehensive medical examination before they can be licensed. The examination shall have two parts, a medical history and a physical examination. This examination will be given only by department-approved physicians. The physician shall report the examination results on a department-approved form. The department will provide applicants with the list of department-approved physicians.

(d) If a physician's examination indicates a contestant is unfit for competition, he may not participate in a contest. The examination results must be reported immediately to the promoter and the department.

(e) All contestants' hands shall be properly wrapped and taped in the presence of a department representative. All hand wraps shall be supplied by the promoter. All bandages used in wrapping shall be restricted to soft gauze in normal lengths as used in amateur boxing and held in place by not more than 12 inches of surgeon's tape for each hand. One winding of surgeon's tape not over 1-1/2 inches wide, placed directly on the hand to protect that part of the hand near the wrist, shall be permitted. The tape may cross the back of the hand twice but is not to extend closer to the knuckles than one inch.

(f) Only one second will be allowed in the ring with the contestant between rounds.

(g) When the ringside physician enters a contestant's corner, the second in the ring will yield immediately to the physician's examination. The department may disqualify a contestant or second for unprofessional conduct in failing to cooperate with the ringside physician.

(h) The ringside physician shall immediately examine a contestant who suffers a knockout, concussion, or other serious head injury and report to the department on the severity of the injury.

(i) The referee may stop a fight during or between rounds because of an injury or a contestant's poor physical condition. If, in the opinion of the referee, a contestant is unable to continue due to his physical condition, he shall halt the bout and award the decision to his opponent.

(j) The department, referee, or ringside physician may terminate any contest where there is any reason to believe that continuing it might result in serious injury to either contestant. The ringside physician, notwithstanding anything to the contrary herein, may enter the ring during the progress of a bout, or between rounds, and terminate any bout to prevent serious injury to either contestant.

§66.102. Technical Requirements—Tickets.

(a) All advance sale tickets shall have the price, name of the promoter, and date of the contest printed plainly on each half.

(b) Roll tickets with the consecutive numbers may be sold only at the box office on the date of the show.

(c) Tickets of different prices must be printed on different colored ticket stock.

(d) Complimentary tickets shall be clearly marked so the stubs can be identified.

(e) When he receives tickets, including roll tickets from the printer, the promoter shall submit a sworn inventory to the department of all tickets received. This inventory shall account for all overprints, changes, complimentary tickets, or extras.

(f) Tickets shall not be sold for more than the actual capacity of the place where the contest is being held.

(g) Promoters shall not sell tickets for any price other than the price printed on them, change the ticket price at any time after tickets have been placed on sale, or sell any ticket at any time during the show at a lesser price than tickets for the same seats were sold or offered before the show.

(h) All tickets must be torn in half and one half returned to the ticket holder at the entrance. The other half shall be imme-

diately deposited in a sealed or locked container, where it shall remain until the opening of the container is witnessed by a department representative. No one shall be allowed to pass through the entrance without having his or her ticket torn or be allowed to occupy as at unless holding a ticket half or having been issued a Working pass.

(i) Department representatives will check the number and location of ticket containers. They will also check the containers for seals or locks. Tickets shall be accounted for after the show, and a department representative may review the accounting.

(j) Promoters must hold tickets of every description used for any boxing contest for at least 30 days after the contest. The tickets must be kept in separate packages for each contest so the department can perform an audit. The tickets may be destroyed after 30 days unless some other provision of state or federal law dictates otherwise.

(k) When computing gross receipts, the face value of all tickets, except deadwood, shall be included whether the tickets were sold for cash or services provided.

§66.103. Technical Requirements—Conduct of Contests.

(a) All contestants are selected and matched, within their weight class, by blind drawing immediately prior to the fight. This selection process is followed on both nights of the contest.

(b) All contests are two night events. No more than 16 bouts shall be scheduled for each night without written approval of the department.

(c) The department may require that any or all contestants undergo drug testing, to be done at the promoter's expense, before the contestant may compete.

(d) All contestants shall fight once the first night. The final night, the winner may fight as many as four times. There shall be at least 15 minutes between fights for any individual fighter, and there shall be at least two intermissions during the final evening.

(e) Each fight will be scheduled for three rounds. A round shall continue for a maximum of 90 seconds, and there shall be a one minute rest period between rounds.

(f) If a winner cannot fight the second night because of medical disqualification, or does not choose to fight the second night, the contestant he defeated has the first right of refusal to resume fighting in the contest. If that contestant chooses not to fight, the promoter can pick any other defeated contestant at his option to replace the winning contestant who will not continue in the contest.

(g) For all contests, contestants shall weigh in in the presence of a department representative prior to the contest.

(h) Before each contest, the referee shall call the contestants and their chief seconds together for final instructions. Referees must instruct contestants that wrestling, kickboxing, and rough tactics will not be tolerated and to protect themselves at all times.

(i) The referee may stop a fight during or between rounds because of an injury or a contestant's poor physical condition. If, in the opinion of the referee, a contestant is unable to continue due to his physical condition, he shall halt the bout and award the decision to his opponent.

(j) Standard Queensbury boxing rules shall be used, and the three knockdowns in one round rule shall apply. If a contestant is knocked down three times in any one round, the referee shall stop the bout and award the decision to the opponent.

(k) When a contestant is knocked down, he must take a mandatory minimum eight second count. The referee shall order the opponent to retire to the farthest neutral corner of the ring, pointing to the corner, and immediately begin the count over the contestant who is down. He shall audibly announce the passing of the seconds, accompanying the count with motions of his arm, with the downward motion indicating the end of each second.

(l) the timekeeper shall indicate to the referee the correct on-second intervals for the count.

(m) If the opponent fails to remain in the corner, the referee shall stop counting until he has returned to it. The referee will then pick up the count from the timekeeper where he left off.

(n) If the contestant taking the count is still down when the referee calls the count of 10, the referee shall wave both arms to indicate that he has been knocked out and shall raise the hand of the opponent as the winner.

(o) The referee's count is the official count.

(p) If the round ends during the count, the timekeeper shall sound the gong once to indicate the termination of the round and that the contestant who is down has been counted out.

(q) If a contestant is unable or refuses to continue when the gong sounds to begin the next round, a technical knockout decision shall be awarded to his opponent in the round stated by the gong.

(r) If a contestant who is down rises before the count of 10 is complete and goes down immediately without being struck, the referee and timekeeper shall resume the count where it left off. A contestant who

goes down without being struck, and stays down, shall be disqualified.

(s) A contestant who has been knocked out of the ring, or has fallen through the ropes and over the edge of the ring platform during a bout, can be assisted back into the ring. If the contestant stalls for time outside the ropes, the referee shall start the count without waiting for him to re-enter the ring, and if he is not on his feet in the ring within ten seconds, shall declare him knocked out. The other contestant shall retire to the farthest neutral corner and remain there until the count is completed or his opponent is on his feet in the ring.

§66.104. Technical Requirements—Scoring.

(a) The 10 point system shall be used. For a draw or even round, 10 points shall be given to each contestant. For a round which is not even, the winner must be awarded 10 points, and his opponent shall be awarded points in ratio of the difference between the contestants' performance in that round.

(b) Judges shall observe each round carefully, award points, and declare the winner of the round to be the contestant receiving the greatest number of points scored in the round. At the end of the bout, the contestant who has the greatest number of points will be declared the winner.

(c) The points awarded by each judge to each contestant during each round must be recorded on the official score cards.

(d) In the event of a knock-out, the contestant who has scored the knockout shall be declared the winner. In such event, the score cards shall be marked "K.O." and the round in which the knockout occurred indicated.

(e) At the end of each bout, the judges shall total the points for each contestant and indicate the winner by writing his name on the card in the appropriate space.

(f) The judges shall not discuss their individual decisions with the anyone, except a department representative, during a contest.

Issued in Austin, Texas, on September 23, 1989.

TRD-88908888

Joseph L. Huertas
Director, Program
Management Division
Department of Licensing
and Regulation

Effective date: September 25, 1989

Expiration date: January 23, 1990

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

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 16. ECONOMIC REGULATIONS

Part IV. Texas Department of Licensing and Regulation

Chapter 66. "Toughman" Contests

- 16 TAC 66.1, 66.10, 66.20, 66.21, 66.40, 66.50, 66.60, 66.70, 66.71, 66.80, 66.90, 66.100-66.104

(Editor's Note: The Texas Department of Licensing and Regulation 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 Licensing and Regulation proposes new §§66.1, 66.10, 66.20, 66.21, 66.40, 66.50, 66.60, 66.70, 66.71, 66.80, 66.90, and 66.100-66.104, concerning authority, definitions, licensing requirements, bond requirements, reporting requirements, responsibilities of the department, responsibilities of licensees, fees, and technical requirements for the ring, equipment, safety, tickets, conduct of contests, and scoring. These sections are being adopted under the authority of the Texas Boxing and Wrestling Act in order to regulate a segment of the boxing industry that wishes to conduct boxing contests called "Toughman" contests within the State of Texas.

Joseph L. Huertas, director of program management, has determined that there will be fiscal implications for state government and small business 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 and the cost of compliance with the sections for small businesses is as yet, unable to be determined. The cost of compliance for small businesses compared to the cost for the largest businesses affected by the sections should be identical.

Mr. Huertas also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be the protection of individuals who participate in "Toughman" contests. The anticipated economic cost to individuals who are required to comply with the sections as proposed is yet, undetermined.

Comments on the proposal may be submitted to Joseph L. Huertas, Director of Program Management, P.O. Box 12157, Austin, Texas, 78711.

The new sections are proposed under the Texas Boxing and Wrestling Act, Article 8501-1, §4(c), which provides the commissioner with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of the Texas Boxing and Wrestling Act.

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

Issued in Austin, Texas, on September 23, 1989.

TRD-8908889

Joseph L. Huertas
Director of Program
Management
Department of Licensing
and Regulation

Earliest possible date of adoption: November 3, 1989

For further information, please call: (521) 463-2906

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 81. Instructional Resources

Subchapter D. State Textbook Program

State Adoption, Acquisition, and Custody of Textbooks

- 19 TAC §81.136

The Texas Education Agency proposes an amendment to §81.136, concerning out-of-adoption textbooks provided to jails and other institutions. The amendments are proposed pursuant to House Bill 884 of the 71st Texas Legislature. The proposed amendments would allow local school districts to donate discontinued textbooks as requested by students, adult education programs, and non-profit organizations, and would set general guidelines for that process.

Lynn Moak, deputy commissioner for research and information, 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. Moak and Oscar A. Rodriguez, Planner I, have 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 the provision of instructional materials to organizations that work with students outside the standard public school educational environment. 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 Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §12.63, which authorizes the State Board of Education to make rules allowing for the disposition of discontinued textbooks.

§81.136. Out-of-Adoption Textbooks Provided to Jails and Other Institutions. The procedures by which out-of-adoption textbooks will be provided to city and county jails, institutions within the Texas Department of Corrections, and other state agency institutions are as follows.

(1) Each local school district [the commissioner of education] shall make **discontinued textbooks** [books which are to be returned] available to libraries maintained by city and county jails, institutions within the Texas Department of Corrections, and other state agency institutions.

[(2) The commissioner of education will notify jail and institution officials that books in certain subjects are available to them upon request.]

(2)[(3)] School officials may **donate** [shall release] expiring adoption textbooks [that jails and other institutions in their community have] requested by students, adult education programs, and non-profit organizations. Under no circumstances shall expiring adoption textbooks be sold. Individuals and officials making such requests shall be responsible for transporting the textbooks. [Jail or institution officials shall be responsible for transporting the books and must give the school a receipt in duplicate. One copy of the receipt shall be retained by the school and the other sent to the commissioner of education.]

[(4) The receipts signed by institution officials and sent to the commissioner of education by school officials will be tabulated, and the appropriate number of books will be removed from publishers' exchange billings.]

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 26, 1989.

TRD-8908993 W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

Chapter 89. Adaptations for Special Populations

Subchapter G. Special Education

Clarification of Provisions in Federal Regulations and State Law

The Texas Education Agency proposes amendments to §§89.221, 89.223, 89.229, 89.235, 89.244, and 89.258, and the repeal of §89.230, concerning special education programs. The amendments are proposed pursuant to legislation passed by the 71st Texas Legislature

Section 89.221 would be amended by adding a requirement that admission, review, and dismissal (ARD) committees determine their actions by mutual agreement and by suggesting an alternative method (i.e., a recess) for doing so. An amendment to §89.223 would delete the requirement that ARD committees determine actions by a majority vote. These proposed amendments are intended to promote the goal of reaching mutual agreement.

A proposed amendment to §89.229 would require districts to notify parents that they can request to discuss any service at an ARD committee meeting they think will help their child. Section 89.235 would be amended by adding new subsection (i) which describes the extended year services for students with handicaps. The proposed amendments to §89.244 would reflect recent statutory changes regarding the appointment by the governor, rather than the State Board of Education of members of the Continuing Advisory Committee for Special Education. Section 89.258 would be amended to replace current language with new provisions stating that early childhood intervention programs are voluntary and that those programs requesting Chapter 1 funds must follow applicable state laws and federal regulations. This amendment would confirm current operating procedure with regard to such programs which are receiving Chapter 1 funds through the agency.

The repeal of §89.230 is proposed because federal regulations cover all requirements of

surrogate parents.

Lynn Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The proposed changes to §89.235 would require that services to handicapped students be extended to the full year. An estimated 14,000 handicapped students would be served over the 60-day summer term for at least four hours per day. The total additional cost to the state would be \$13 million. The proposed changes to §89.221 would require that ARD committees determine their actions by mutual agreement. This specifically requires committees to reconvene if mutual agreement between the committee and parents is not reached. The cost to local school districts of this requirement includes the salary of three full-time equivalent administrators for two hours per meeting, an estimate of \$200. The number of additional ARD committee meetings due to this requirement is estimated at 5,000 per year for a total cost of \$1 million. There will be no fiscal impact on small businesses for the first five-year period the sections will be in effect.

Mr. Moak and Oscar A. Rodriguez, Planner I, have 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 compliance with state law and the improved delivery of special education services and programs. There is no anticipated economic cost for individuals who are required to comply with this sections.

Comments on the proposal may be submitted to Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act, must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

• 19 TAC §§89.221, 89.223, 89.229, 89.235, 89.244

The amendments are proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for the administration of the Foundation School Program, and §16.151, which includes special education as a part of that program.

§89.221. *The Admission, Review, and Dismissal (ARD) Committee.*

(a)-(h) (No change.)

(i) **Decisions of the committee, concerning required elements of the IEP, shall be made by mutual agreement of the required members whenever possible.**

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent(s) or adult student who disagree(s) shall be offered a single opportunity to have the committee recess for a period of time not to exceed 10 school days.

(2) During the recess both the school district and the parent or adult student shall develop and explore alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons to enable the ARD committee to reach mutual agreement.

(3) The date, time, and place for continuing the ARD committee meeting shall be determined prior to the recess by mutual agreement.

(4) If a 10-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for this student.

(5) Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

(6) When a district implements the IEP without the agreement of the parent(s) or adult student, the district shall inform the parent(s) or adult student of the opportunity for mediation or a due process hearing.

(j) [(i)] If they choose to do so, the school district the parent, or the student is allowed to [may] audio [tape] record the ARD committee meeting. All participants in the meeting shall be informed that such a recording is being made.

§89.223. *Content of the Individual Educational Plan (IEP).*

(a) The individual educational plan developed by the admission, review, and dismissal committee for each student shall include the following additional information:

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

(4) the IEP shall specify the following:

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

(D) criteria and schedule for evaluating the progress of the student which also allow [allows] for determining the student's eligibility for participation in extra-curricular activities; and

(E) (No change.)

(5) signatures of the committee members present and an indication of each member's agreement or disagreement with the decisions of the committee. [Decisions must be supported by at least a majority of the required membership of the ARD committee.]

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

§89.229. Notice Requirements and Complaint Procedures.

(a) (No change.)

(b) Notice of admission, review, and dismissal committee meeting. At the time the district notifies the parent of the ARD committee meeting, the notice must inform the parent that the ARD committee will discuss, at the parent's request, the provision of any educational or related service not proposed for discussion by the district in the notice.

(c)[(b)] Timeline for notice. Whenever, under federal rules (See 34 Code of Federal Regulations, §300.504), written notice to parents within a reasonable time is required, "reasonable time" is defined as at least five school days. Parents may agree to waive the five school day notice period to which they are entitled.

(d)[(c)] Complaint procedures. The commissioner of education shall establish a procedure by which the Texas Education Agency shall collect information, respond to inquiry, act on complaints, assist in grievance matters, and engage in mediation in response to requests from the public, local school district, and other agencies receiving funds under this subchapter. This process shall include:

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

§89.235. General Program Requirements.

(a)-(h) (No change.)

(i) Extended year services (EYS) are defined as individualized instructional programs beyond the regular school year for eligible handicapped students who are enrolled in a school district's special education program.

(1) The need for EYS must be determined on an individual student basis.

(2) The need for EYS must be documented from formal and/or informal evaluations. The documentation shall demonstrate that in one or more critical areas addressed in the current IEP objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable time period. Severe or substantial regression shall mean that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of EYS.

(3) The reasonable time period for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP, provided that such time period shall not exceed eight weeks. If the loss of acquired critical skills is particularly severe or sub-

stantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others. EYS may be justified without consideration of the time period for recoupment of such skills.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result in, any of the following unplanned occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(C) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(D) loss of access to on-the-job training or productive employment as a result of regression in skills. ;

(5) If the district does not propose EYS for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss EYS pursuant to §89.229 of this title (relating to Notice Requirements and Complaint Procedures).

(6) The provision of EYS is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied EYS because that student receives care and treatment services under the auspices of other agencies;

(7) Districts are not eligible for reimbursement for EYS provided to students for reasons other than those set forth in this section.

§89.244. Advisory Committees.

(a) (No change.)

(b) State-level advisory committee.

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

(3) Committee members shall be appointed by the governor for two-year [five-year] terms, which expire on February 1 of each odd-numbered year [five of

the terms expiring in each of the first two years and six expiring every third year].

(4) The purpose of the committee is defined in federal regulations at 34 Code of Federal Regulations, §300.652, and in state law at the Texas Education Code, §21. 5042 (C) and (D).

[(4) Because a state advisory panel is required by federal regulations, no date will be specified in these rules for the abolition of the Continuing Advisory Committee for Special Education. In accordance with State Board of Education rules on advisory committees, the committee will be periodically reviewed and its composition or function modified as needed.]

(5) It is the responsibility of each member of the committee to consult with local special education advisory committees in their respective geographic regions about unmet needs in special education ;

(6) The committee shall submit an annual report of activities and recommendations to the State Board of Education.

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

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

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

TRD-8908922

W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

Clarification of Provisions in Federal Regulations and State Law

• 19 TAC §89.230

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

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for the administration of the Foundation School Program, and §16.151, which includes special education as a part of that program.

§89.230. Surrogate Parents.

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 25, 1989.

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

Funding

• 19 TAC §89.258

The amendment is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for the administration of the Foundation School Program, and §16.151, which includes special education as a part of that program.

§89.258. Early Childhood Intervention Program for Developmentally Delayed Children.

(a) Children who may qualify for services under this section may be referred to the local school district if the district operates an approved program under 25 TAC, Chapter 621 concerning the Early Childhood Intervention Program. This program is voluntary. No school district is required by law or by rules of the State Board of Education to offer a program of early childhood intervention for developmentally delayed children. This program is also voluntary on the part of parents.

(b) Early childhood intervention programs may be eligible for funding under the Elementary and Secondary Education Act, Chapter 1, Handicapped. In order to qualify for such funding, early childhood intervention programs must comply with applicable federal regulations and state law.

[(a) Eligibility. Children under three years of age who are identified as developmentally delayed as defined in Texas Civil Statutes, Article 4413 (43a), §1(3), may be served by early childhood intervention programs established in accordance with Texas Civil Statutes, Article 4413 (43a), §1.21 and this subchapter.]

[(b) Identification, referral, and assessment.

[(1) Children who may qualify for services under this section may be referred to the local school district if the district operates an approved program under 25 TAC, Chapter 621 (relating to Early Childhood Intervention Program). This program is voluntary. No school district is required by law or by rules of the State Board of Education to offer a program of early childhood intervention for developmentally delayed children. This program is also voluntary on the part of parents.

[(2) The local district shall designate a case manager for each child referred.

[(3) Children referred to a local district which has an early childhood intervention program shall be given a comprehensive assessment in accordance with §89.213 of this title (relating to Comprehensive Individual Assessment). Any deviations from the standard assessment procedures which may be necessary because of the age of the child must be explained and documented as required by §89.213(d)(3) of this title (relating to Comprehensive Individual Assessment). The case manager shall meet with the parent of each child referred, explain the assessment process, and obtain information needed for the assessment. A child under the age of three who has been found through assessment procedures to be developmentally delayed, as defined in Texas Civil Statutes, Article 4413 (43a), §1(3), shall be served in accordance with the requirements in this subchapter.]

[(4) Appropriate procedural safeguards shall be observed in accordance with §89.222 and §89.229 of this title (relating to Parent Participation in ARD Committee Meetings; Notice Requirements and Complaint Procedures), 25 TAC, §§621.41-44, and the Texas Human Services Code, §73.003, concerning resolving complaints.]

[(c) Individual developmental plan. The individual developmental plan (IDP) for developmentally delayed children shall be developed in accordance with §89.214 of this title (relating to Individual Educational Plan Development). In addition, the plan shall include a list of all service needs of the child other than education and related services as prescribed (for example, medical services or day care) and a designation of the person responsible for locating and obtaining the service. The parent may be the person so designated.]

[(d) Curriculum. The curriculum for a developmentally delayed child shall be based on a specified set of developmentally sequenced skills. The activities and curriculum objectives shall be consistent with the goals and objectives specified in the child's individual developmental plan (IDP).

[(e) Instructional settings. The interdisciplinary team established in accordance with 25 TAC, §621.23 (relating to General Requirements) shall determine the most appropriate placement and amount of instructional time for each developmentally delayed child. Types of instructional settings are as follows:

[(1) Home-based instruction. Home-based instruction is the provision of services in the home of the client. Both parent training and infant instruction shall be provided. When direct care of the infant is given by someone other than the natural parent, the direct care provider shall also receive training.

[(2) Center-based instruction. Center-based instruction is the provision of services to children and their families in a facility such as a school, rehabilitation cen-

ter, clinic, or day care center. If circumstances are such that the infant must remain out of the home for longer than the instructional time specified in the IDP, the center shall assist the family in locating appropriate day care services or the center may provide a separate day care service, for which a fee may be charged as provided in subsection (h) of this section.]

[(3) Combination program. In a combination program, children and families receive services both in their home and in a service facility. The types of services and where they are to be provided shall be determined by the interdisciplinary team.

[(f) Staff-child ratios. The developmental level of handicapping condition, instructional setting, and nature of service to be provided as addressed in the individual developmental plan (IDP) shall be the criteria for determining the appropriate staff-child ratio.]

[(g) Staff composition and qualifications. Each program shall have staff whose professional training is appropriate to the assignment.

[(h) In accordance with the Texas Education Code, §11.092(g), fee may be charged for services provided under this section. Fees shall be based on the parent's ability to pay, including consideration of other benefits for which the child may be eligible.]

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 25, 1989.

TRD-8908919

W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

Chapter 101. Assessment

Assessment of Minimum Skills

The Texas Education Agency proposes amendments to §§101.1-101.5, and new §101.6, concerning the Student Assessment Program. The amendments and new section are proposed pursuant to legislation of the 71st Texas Legislature. The proposed amendments would delete all references to grade one testing and would remove the requirement that the exit level test be given each May. The agency is now charged with establishing the testing schedule. Beginning with the 1990-1991 school year, these amendments would change the student assessment to require the measurement of problem solving ability and complex thinking skills. Clarifications of eligible modifications for handicapped students and rules for testing limited English proficient students would also be made. The proposed new section would

provide for the development of procedures for obtaining nationally norm-referenced data in conjunction with the state criterion-referenced tests.

Lynn Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state government or small businesses as a result of enforcing or administering the section. These proposed amendments and new section will cause a fiscal impact to local school districts, however funds have been allocated for the entire amount. An estimated \$601,390 will be needed for development of new assessment instruments required for the 1990-1991 school year. A portion of the compensatory allotment for each district has been earmarked for this purpose.

Mr. Moak and Oscar A. Rodriguez, Planner I, also have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing these sections is compliance with state law and the improved assessment of students scholastic ability. There is no anticipated economic cost for individuals who are required to comply with the sections.

Comments on the proposal may be submitted to Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

• 19 TAC §§101.1-101.5

These amendments are proposed under the Texas Education Code §21.551 which provides the agency with the authority to adopt criterion-referenced tests, to assess specified basic skills at grades three, five, seven, nine, and the exit level.

§101.1. General Provisions.

(a) The State Board of Education shall adopt assessment objectives and [criterion-referenced] assessment instruments and shall direct the commissioner of education to administer student assessment [such] instruments in accordance with the Texas Education Code, Chapter 21, Subchapter 0.

(b) For the 1989-1990 school year [Until 1990-1991], the commissioner of education shall designate for grades three, five, seven, and nine a two week [two weeks] period in February when the assessment instruments, measuring mathematics and reading will be administered and one specified day within that time period when the assessment instrument for writing will be administered [for grades three, five, seven, nine, and two weeks in April when the assessment instrument for grade one will be administered] in all school districts in the state and two

days in October and two days in May when the exit level assessment instrument for mathematics and English language arts will be administered in all school districts in the state. The commissioner of education may determine other dates of administration as the need arises.

(c) Beginning with the 1990-1991 school year the commissioner of education shall designate three days in October when the assessment instruments in mathematics, reading, and writing will be administered for grades three, five, seven, and nine and the exit level in all school districts in the state, and adopt a schedule for other administration dates for the exit level assessment instrument. At the exit level the English language arts test will be comprised of a reading section and a writing section. Mastery will be determined for each section.

(d) Beginning with the 1990-1991 school year the commissioner of education shall designate a period in early fall for the administration of a readiness inventory to first grade students in all school districts in the state.

(e) Each year the commissioner of education shall designate two days in October and two days in May when the exit level assessment instrument for mathematics and English language arts will be administered in all school districts in the state. The commissioner of education may determine other dates of administration if the need arises.]

(f) [(f)] The State Board of Education shall establish the criteria for satisfactory performance on each [the] assessment instrument [instruments at grades one, three, five, seven, nine, and the exit level].

(g) Beginning with the 1990-1991 school year, the assessment instruments for all grades tested will include the measurement of problem solving and complex thinking skills.

(h) Beginning with the 1990-1991 school year, the exit level examination will include a written composition as part of the writing section of the test.

(i) By the 1994-1995 school year, the assessment of science and social studies shall be included according to a schedule adopted by the State Board of Education.

(j) [(g)] Each school district shall administer [assist in the administration of the] assessment instruments [criterion referenced tests] to its students in accordance with procedures established by the commissioner of education, and shall assist with field tests and other activities necessary to implement the requirements of the Texas Education Code, Chapter 21, Subchapter 0.

(k) [(h)] The superintendent or chief administrative officer in each school district shall be responsible for coordinating all lo-

cal test activities, including:

(1) scheduling testing [dates and] times on all affected campuses in accordance with [(except for the exit level assessment instrument which will be administered only on] the dates designated by the commissioner of education [] until the 1990-1991 school year];

(2) administering or training personnel to administer the assessment instruments [basic skills examinations] to the appropriate students;

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

[(j)](i) The superintendent or chief administrative officer of each school district shall certify in writing to the commissioner of education that:

(1) all reasonable efforts have been made to test [ensure that] all non-exempt students at the designated grades [have been tested];

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

§101.2. Exit Level Requirements.

(a) The superintendent or chief administrative officer in each school district shall be responsible for:

(1) informing each eighth grade student who is expected to be eligible to take the exit level assessment instrument and his or her parent or guardian as well as [of the objectives to be measured on the exit level assessment instrument and notifying] each eighth through twelfth grade student new to the district and his or her parent or guardian of the objectives to be measured on the exit level assessment instrument [test];

(2) (No change.)

(3) publicizing within the community served by the district the designated dates on which the exit level assessment instrument will be administered, the precise location and time when testing will take place, and what actionsa [, if any, a pupil or] former pupil interested in testing or re-testing should take to assure access to the testing area and availability of testing materials.

(b) A student [Students] must meet the criteria for mastery of academic [basic] skills as established by the State Board of Education, i.e., must pass all [both] sections of the exit level test, to receive a high school diploma.

(c) A handicapped student [Handicapped students] must pass the section(s) of the exit level test for which he or she is [they are] eligible as specified by the admission, review, and dismissal committee in his or her [their] individual educational plan to be eligible to receive a high school diploma.

(d) A student [Students who are enrolled in the 11th grade during the 1985-

1986 school year] will not receive a diploma unless he or she has [they have] passed all [both] sections of the exit level test by the end of his or her [their] twelfth grade year. The following conditions for receiving a diploma will apply:

(1) A student [Students] who was a [were] junior [juniors] on or after September 1, 1985, must pass the exit level test unless the individual [they] graduated prior to May 1987.

(2) Although increasingly difficult passing standards and examinations may be established for the exit level test, no student will be required to demonstrate performance at a standard higher than the passing standard that was in effect at the time that student first took the test. Nor will the student be required to take an examination measuring objectives different from those assessed at the time that student first took the test.

(3) The exit level test will be given in October and at other administrations as specified by the commissioner of education [May]. An individual [Individuals] who has [have] satisfied all other graduation requirements but has [have] not passed all [both] sections of the exit level test must retake the section or sections not passed at a subsequent regular administration and demonstrate mastery in order to be eligible to receive a high school diploma.

(c) Each [All] 11th and 12th grade student [students] who fails [fail] to demonstrate satisfactory performance on academic [mastery of basic] skills shall retake the assessment instrument each time the assessment instrument is administered until adequate mastery [of such skills] is demonstrated. A student [Students] who has [have] been denied a diploma [diplomas] under the provisions of subsections (b) and (c) of this section may retake the assessment instrument each time the assessment instrument is administered.

(f) A student [Students] enrolled in the 12th grade during the 1985-1986 school year [on or before September 1, 1985,] shall not be required to take the exit level examination.

[(g) Beginning with the 1990-1991 school year, the exit level examination will include a written composition as part of the language arts test.]

(g)[(h)] School districts shall notify in writing each student and the parent or guardian of each student who fails to pass the exit level [basic skills] examination, that the student will be required to retake the appropriate section(s) of the examination each time it is administered thereafter until satisfactory performance [mastery of such skills] is demonstrated by the student

§101.3. Exemptions.

(a) (No change.)

(b) A handicapped student whose handicap has been determined by the student's admission, review, and dismissal committee to prevent him or her from mastering some or all of the competencies which the [basic skills] assessment instruments [and/or the exit level assessment instrument] are designed to measure, may be exempted from some or all sections of the [student] assessment instrument [of basic skills test and/or the exit level tests,] as appropriate.

(c) A student who is dismissed from special education during his/her ninth, 10th or 11th grade year, but whose individual educational plan did not include all skills tested on the examination, [either the exit level mathematics or English language arts test,] may be exempted at the discretion of the admission, review, and dismissal committee from taking section(s) of the exit level test [test(s)], which measures those skills not included in the student's individual educational plan [at the discretion of the admission, review, and dismissal committee]. The admission, review, and dismissal committee must address the student's exemptions from the exit level test at the time of the meeting to dismiss the student [students] from special education services.

(d) Modifications of regular classroom procedures which would render the test invalid, such as use of slide rules and calculators or special reading assistance, shall not be provided. However, certain modifications of regular classroom procedures provided for handicapped students by the local district as specified in the student's individual educational plan shall be provided during the assessment process. Such modifications may include the following:

(1) (No change.)

(2) provision for handicapped students who [to] respond orally to test items or to type their responses where a handicapping condition interferes with their ability to record machine-readable responses or produce a written composition; and

(3) (No change.)

(e) Oral responses to test items shall be dictated to a test administrator, who must transcribe the responses verbatim.

(f)[(e)] The eligibility of each handicapped student to take one or more sections [all or a portion] of the [basic skills] assessment instrument [and/or the exit level assessment instrument] shall be addressed in the student's individual educational plan.

(g) A student who is not in special education but who is handicapped because of a physical, mental, or other impairment may be considered for the modifications listed in subsection (d) of this section, if such modifications are rou-

tinely provided as part of his or her ongoing classroom procedures or as part of his or her participation in the district's dyslexia program. This determination is made on an individual basis from the district's recommendation for modifications in the student's regular class program.

(h)[(f)] A student [Students] in [grade one and] grade three who has [have] been identified as limited English proficient by the language proficiency assessment committee and whose native language is Spanish, will be administered either the English version or the Spanish version of the assessment instrument. The language proficiency assessment committee will determine whether the student shall be tested in English [and/or in Spanish, using criteria to be developed by the commissioner of education.

(i)[(g)] A limited [Limited] English proficient student [students] at grade [grades one or] three whose native language is not Spanish, may receive an exemption from the assessment at that grade level and will participate in the assessment at subsequent grade levels.

(j)[(h)] A student [Students] at grades five, seven, or nine who has [have] been identified as limited English proficient by the language proficiency assessment committee, may receive an exemption from the assessment at that grade level if the language proficiency assessment committee has determined that the student has not demonstrated sufficient proficiency in the English language to participate in the assessment. That student [These students] will participate in the assessment at subsequent grade levels.

[(i) Limited English proficient students in grade three who were tested with the Spanish version or were not tested in grade one, will be tested with the English version in grade three with this exception: Spanish-speaking limited English proficient students in grade three who were not enrolled in a bilingual prekindergarten class or have not been enrolled in two consecutive years of bilingual education before grade three, will be tested with the English or Spanish version in grade three. Students in grade three who are required to take the English version may also be tested with the Spanish version.]

(k) Any student who has taken the assessment instrument at grades three, five, seven, or nine may not receive an exemption for limited English proficiency from the assessment at subsequent grade levels, unless the student is also handicapped and has been determined by an admission, review, and dismissal committee to be exempt.

(l)[(j)] Districts shall make every reasonable effort to ensure that all nonexempt students are tested.

(m)(k)] The superintendent or chief administrative officer in each school district shall report to the commissioner of education the number of exempt and nonexempt students who were not tested, and shall certify that the exemptions were granted in accordance with the Texas Education Code, §21.555 and this section. The commissioner of education shall closely monitor compliance with the rules, regarding exemptions, and shall conduct an investigation of any district not complying with the rules regarding exemptions.

§101.4. Security and Confidentiality.

(a) The superintendent or chief administrative officer of each school district shall certify in writing to the commissioner of education that assessment instruments and test items have been kept secure and that:

(1) no unauthorized person inspected or viewed any part of the [basic skills] assessment instrument;

(2) no person in any way scored, copied, or reproduced any part of the [basic skills] assessment instrument or student responses to it;

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

(5) no person has corrected or altered student responses in the assessment instrument or has provided assistance with responses to the assessment instrument ;

(b) School districts shall ensure that test administrators follow the procedures for test administration established by the commissioner of education and included with test materials. Departures from prescribed testing procedures by teachers, test administrators, or any other person shall be prohibited. A set of penalties including permanent reprimands on [to], suspensions of, and revocations of certificates of professionals involved, have been identified that will be imposed on violators of test administration procedures and test security regulations.

(c) (No change.)

§101.5. Reporting of results.

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

(d) The commissioner of education shall report annually the aggregated student performance data from these assessment instruments for each campus union which five or more students were tested.

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 25, 1989.

TRD-8908920

W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

◆ ◆ ◆ • 19 TAC §101.6

The new section is proposed under the Texas Education Code, §21.551, which provides the agency with the authority to adopt criterion referenced tests to assess specified basic skills at grades three, five, seven, nine, and the exit level.

§101.6. National Comparative Data. The commissioner of education shall develop procedures for obtaining nationally norm referenced results for the subject areas and grade levels assessed under the Texas Education Code, §21.551, by combining norm referenced items with the criterion referenced tests or by adopting one or more norm referenced tests to be used in conjunction with the criterion referenced test.

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 25, 1989.

TRD-8908921

W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

◆ ◆ ◆ Chapter 149. Education Personnel Development

Subchapter D. Teacher Career Ladder

• 19 TAC §149.71

The Texas Education Agency proposes an amendment to §149.71, concerning assignment to the teacher career ladder. The amendment is proposed pursuant to House Bill 2566 of the 71st Texas Legislature. The proposed amendment would provide guidelines for school districts in assigning teachers to advanced levels of the career ladder and would implement a transition strategy for maintenance of levels two and three of the ladder that would require using preceding year appraisals for maintenance on those levels and for level three entry, with current year appraisals being used for level two entry. The proposed amendment also would require the use of an application form for career ladder purposes and would delete obsolete language pertaining to implementation dates.

Lynn Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state government or small businesses as a result of enforcing or administering the section. There are no estimates of the number of teachers who will be placed

and maintained on the career ladder as a result of the adoption of this amendment. Similarly, the degree to which local school districts will alter their budgets in response to this section is unknown, although it is expected to have a minimal influence on districts. For these reasons, the fiscal impact to local government cannot be determined.

Mr. Moak and Oscar A. Rodriguez, Planner I, have 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 compliance with state law and the provision of a transition strategy for teachers and school districts. The economic effect on individuals who are required to comply with the section cannot be determined because the number of teachers who will be affected by the adoption of this section is unknown.

Comments on the proposal may be submitted to Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9682. All requests for a public hearing on proposed sections, submitted in accordance with the Administrative Procedure and Texas Register Act, must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §16.057, which provides for career ladder salary supplements; §§13.301, 13.322, which establish the teacher career ladder; and §16.005, which authorizes the State Board of Education to make rules for implementation of the Foundation School Program.

§149.71. Assignment to the Teacher Career Ladder.

(a) General provisions. Each teacher shall be assigned to a position on the career ladder unless excluded under other provisions of this section. Assignment shall be based on performance, experience, job-related education, and/or advanced academic training, job assignments, and other requirements as specified in subsection (e) of this section. [For the 1984-1985 school year, all teacher career ladder assignments and salary allotments shall be made in accordance with the guideline for the teacher career ladder authorized by the State Board of Education and issued by the Central Education Agency in July 1984. Effective with the 1985-1986 school year, each] Each teacher as defined in subsection (b) of this section shall be assigned to an appropriate level, maintained at an assigned level, and provided salary allotments for the teacher career ladder in accordance with the provisions of this section.

(b) Eligibility by job assignment. Eligibility for assignment to the teacher career ladder shall include a certified person who teaches or provides instructionally-related services to students at least four hours each day or not less than 60% of the school year [day].

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

(6) A person who is employed full time but who does not teach in the classroom at least four hours per day or 60% of the [regular] school year [day] as defined in paragraphs (1) and (4) of this subsection shall not be assigned to the teacher career ladder.

(7) [Effective with the 1985-1986 school year, a] A person shall not be assigned to the teacher career ladder if that person is serving as:

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

(I) a guidance associate who teaches less than four hours per day or less than 60% of the school year [day] in the classroom as defined in paragraph (1) of this subsection; or

(J) (No change.)

(c) The selection process.

(1) Local school districts shall use current school year performance evaluations and preceding year(s) performance evaluations for purposes of placing a teacher on an advanced level of the career ladder. For school year 1989-1990 school districts shall use only preceding years performance evaluations for purposes of placing a teacher on level three of the career ladder.

(2) Local school districts shall use current school year performance evaluations for purposes of maintaining a teacher on an advanced level of the career ladder. For school year 1989-1990 school districts shall use 1988-1989 performance evaluations for purposes of maintaining teachers on levels two or three of the career ladder.

(3) Current school year performance evaluations shall be used for purposes of placing or maintaining teachers on an advanced level of the career ladder in the following circumstances:

(A) a teacher was not appraised in the prior year because the teacher was on a local district approved temporary disability leave or a local district approved professional development leave;

(B) no performance evaluation was completed by the district for a teacher who taught in the immediately preceding school year; or

(C) a performance evaluation for the teacher from the immediately preceding school year was destroyed or is otherwise unavailable to the district;

(D) upon approval by the commissioner of education of a written

request from the district for a teacher under extenuating circumstances that are fully disclosed in the request.

[(i) A local district shall use a current school year performance evaluation as a criterion for placing a teacher on an advanced level of the career ladder or maintaining a teacher on an advanced level if one or more of the following conditions exist:

[(A) no performance evaluation was completed for the teacher by that district in the immediately preceding school year; or

[(B) a performance evaluation for the teacher from the immediately preceding school year was destroyed or otherwise removed from the district by former employees.

[(2) A local district may use current school year performance evaluations as a criterion for placing or maintaining teachers on career ladder levels only under the conditions specified in paragraphs (2) and (4) of this subsection or in accordance with the following:

[(A) when extenuating circumstances exist for which an exception is sought, a local district must submit to the commissioner of education a written request in which extenuating circumstances are fully disclosed; and

[(B) the commissioner of education may allow a local district to use current school year performance evaluations if the circumstances are deemed extenuating

[(3) Current school year performance evaluations shall be used for purposes of placing or maintaining teachers on advanced levels of the teacher career ladder in the following circumstances:

[(A) a teacher was not appraised in the prior year because the teacher was on a local district approved temporary disability leave; or

[(B) a teacher was not appraised in the prior year because the teacher was on a local district approved professional development leave.]

(4) (No change.)

(d) Higher education course work and advanced academic training

(1) The local school district shall determine in accordance with the provisions of this subsection whether courses taken for credit at accredited institutions of higher education or work obtained through programs of advanced academic training may be applied toward requirements for level placement and maintenance on the

teacher career ladder. [Effective September 1, 1985, higher] Higher education course work or advanced academic training must be related to the job assignment in one of the following ways:

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

(2) (No change.)

(3) Higher education course work and advanced academic training that is in accordance with this subsection and earned after the bachelor's degree and prior to September 1 of each year shall be creditable toward requirements for level placement [and maintenance] on the teacher career ladder for the subsequent year. Decisions made in accordance with 1984-1985 guidelines, concerning credits retained for purposes of career ladder advancement, shall not be invalidated by the implementation of this subsection.

(4) (No change.)

(5) Higher education course work used for level placement [or maintenance] on the teacher career ladder must satisfy the requirements stated in paragraphs (1) and (2) of this subsection and may carry lower division, upper division, or graduate level credit. No more than one-third of the course work may be in lower division courses unless the work is being taken in a subject or area that has been designated by the State Board of Education or a local school district, as an area or field of acute teacher shortage as specified in paragraph (1)(A) of this subsection.

(6) All higher education course work creditable toward level placement or maintenance on the teacher career ladder must be awarded by a college or university that is accredited by a recognized regional accrediting [agency] organization, or approved by a state department of education or a recognized governmental entity.

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

(e) Use of stricter performance criteria. If the funds available for the support of the teacher career ladder are insufficient to fund the supplements as provided in the Texas Education Code, §16.057, a local school district may require stricter performance criteria for placing teachers on career ladder levels and for maintaining teachers on previously assigned levels. Criteria not related to the quality of performance shall not be utilized to restrict eligibility for consideration for career ladder advancement.

(1) Local districts must specify requirements for stricter performance in written policy no later than September 30 of the school year for which the criteria are to apply. However, a district that has adopted stricter performance criteria may reduce the strictness of the criteria or revoke the adoption entirely if the district determines that funds are avail-

able to place more teachers at an advanced level on the career ladder than would be placed under the stricter criteria [the requirements for stricter performance]./ Local district requirements for stricter performance that are consistent with this section shall be considered approved.

(2) Criteria for stricter performance may be required in one or more of the following areas:

(A) a higher category of performance may be required for each of the years for placement on, or maintenance of, a career ladder level; for example, "exceeding expectations" may be required for maintaining level two rather than "meets expectations".

(B) (No change.)

(C) a higher level of performance may be required within a category; for example, performance that excels [needs improvement] in a majority of [only one] major areas [area] rather than some major areas could be designated as "exceeding expectations" ["below expectation."]

(f) Criteria for selection. [For the 1984-1985 school year, all] All teachers [classified in accordance with the Texas Education Code, §16.056, including nondegreed teachers,] shall be assigned to [level one or level two on] the teacher career ladder except for positions listed in subsection (b)(7) of this section. An individual being considered for career ladder level assignment or advancement shall satisfy the following requirements for the respective level.

(1) Level one placement shall require that a teacher[:]

[(A)] possess a [provisional or professional] teaching certificate as defined in §141.2 (a) of this title (relating to Classes of Certificates) [or a level one certificate] or its equivalent as determined by the State Board of Education. [: and]

[(B)] demonstrate at least "satisfactory" performance in every appraisal category for the year immediately preceding placement].

(2) Level two placement shall require that a teacher:

(A) possess an appropriate [a provisional or professional] teaching certificate as defined in §141.2(a) of this title (relating to Classes of Certificates) or [a level two certificate or] its equivalent as determined by the State Board of Education;

(B) receive performance evaluations which reflect at least performance "exceeding expectations" during the

current year [immediately preceding consideration for placement at level two] and "meets expectations" ["satisfactory"] performance during the other year or years, or performance evaluations as specified by the local district in accordance with subsection (e) of this section; and]

(C) possess one of the following combinations of education and experience:

(i) Option I.

(I) (No change.)

(II) three years of classroom teaching experience on level one; and

(III) (No change.)

(ii) Option II.

(I) (No change.)

(II) two years of classroom teaching experience on level one.

(3) Level three placement shall require that a teacher:

(A) possess an appropriate teaching certificate as defined in §141.2(a) of this title (relating to Classes of Certificates) a level three certificate] or its equivalent as approved by the State Board of Education;

(B) file a uniform application for consideration of advancement to level three by October 1 of the year in which entry is sought, for school 1989-1990 only, any application used by the district must be submitted by the teacher to the district no later than December 15, 1989;

(C) [(B)] possess a baccalaureate degree and one of the following combinations of education, experience, and evaluation:

(i) Option I:

(I)-(II) (No change.)

(III) performance evaluations of "clearly outstanding" during the current year and "clearly outstanding" during one of the preceding two years with "exceeding expectations" the other year or performance evaluation as specified by the local district in accordance with subsection (e) of this section; for school year 1989-1990 only, performance evaluations must be "exceeding expectations" for three of the

four years immediately preceding consideration and at least "meets expectations" the other year, [during three of the four years immediately preceding consideration for placement at level three indicating performance "exceeding expectations" and at least "satisfactory" performance during the other year] or performance evaluations as specified by the local district in accordance with subsection (e) of this section; or

(ii) Option II:

(I)-(II) (No change.)

(III) performance evaluations of "clearly outstanding" during the current year and the preceding two years, or performance evaluations as specified by the local district in accordance with subsection (e) of this section; for school year 1989-1990 only, performance evaluations during two of the three years immediately preceding consideration for placement at level three indicating "clearly outstanding" and at least "meets expectations" ["satisfactory"] performance during the other year, or performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(4) Level four placement shall require that a teacher:

(A) (No change.)

(B) demonstrate satisfactory performance on the master teacher examination; [and]

(C) possess a baccalaureate degree [and one of the following combinations of education, experience, and evaluation:

[(i) Option I:

[(I)] three years of classroom teaching experience at or above level three;

[(II)] complete six semester hours of higher education course work; or complete 90 hours of advanced academic training (a portion of which must emphasize classroom management training only if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training; and

[(III)] receive performance evaluations during two of the three years immediately preceding consideration

for placement at level four indicating "clearly outstanding" performance and at least "satisfactory" performance during the other year; or performance evaluations as specified by the local district in accordance with subsection (e) of this section; or

(ii) Option II:]

(D)(I) have three [two] years of classroom teaching at or above level three; ;

(E)(II) have three semester hours of higher education course work, or 45 hours of advanced academic training (a portion of which must emphasize classroom management training only if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training; and

(F) demonstrate "clearly outstanding" performance during the current year and the two preceding years,

[(III) receive performance evaluations during the three years immediately preceding consideration for placement at level four indicating "clearly outstanding" performance,] or performance evaluations as specified by the local district in accordance with subsection (e) of this section.;

(g) Maintenance or reassignment of career ladder levels [level]. ;

(1) Level one maintenance. To remain at level one, a teacher must perform at a level that "meets expectations" during the current year in every appraisal category. In the event that a level one teacher fails to perform at a level that "meets expectations," the teacher shall be retained at the current salary level and the district shall be required to prescribe specific remediation that the teacher must satisfactorily complete during the following school year. [A teacher shall remain at career ladder level one until full eligibility requirements for a level two, level three, or master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) have been met and the teacher has been assigned to career ladder level two.] A district may not renew the contract of a teacher who fails to achieve at least "meets expectations" ["satisfactory"] performance during either of the next [first] two years [of experience at level one] .

(2) Level two maintenance [A teacher shall remain at career ladder level one if the teacher's performance is "below expectations" during the current level two

until full eligibility requirements for a level three or master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) and level three entry requirements have been met.] A teacher shall be reassigned from career ladder level two to career ladder [preceding] year, or fails to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section. For school year 1989-1990 school districts shall use the 1988-1989 performance evaluations for purposes of maintaining teachers on level two of the career ladder. ;

(3) Level three maintenance: [A teacher shall remain at career ladder level three until full eligibility requirements for a master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) and level four entry requirements have been met.] For school year 1989-1990 school districts shall use the 1988-1989 performance evaluations for purposes of maintaining teachers on level three of the career ladder.

(A) A teacher shall be reassigned from career ladder level three to career ladder level two if the;

(i) teacher's performance at level three during the current year is [teacher demonstrates] less than "exceeding expectations" [performance at level three for two consecutive years], or fails to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section. For school year 1989-1990 school districts shall use the numerical average between the 1988-1989 and 1989-1990 performance evaluations for purposes of maintaining teachers on level three of the career ladder, subject to provisions of the Texas Education Code, §13.312;

(ii) teacher has not been teaching in a classroom for at least 60% of the school year: or

(iii) teacher has not performed at least one master teacher duty ever three years at level three, unless the district fails to provide the teacher an opportunity to perform a master teacher duty. Among the duties that may be included are; supervising student teachers; acting as team leader, induction year mentor, or department chairman; conducting advanced academic training; and assessing teachers at a career ladder level below that teacher's level to assist those teachers in developing their teaching skills independently of the career ladder appraisal process.

(B) A teacher shall be reassigned from career ladder level three to career ladder level one if the teacher demonstrates performance which is "below expectations" during the current [preceding]

year, or fails to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(4) Level four maintenance, to remain at level four, a teacher must have "clearly outstanding" performance during the current year, been teaching in a classroom for not less than 60% of the school year, and performed two master teacher duties every three years. The performance of master teacher duties is not required if the district fails to provide the opportunity to perform the duties. [A teacher shall remain at career ladder level four unless the requirements stated in this subsection are no longer satisfied.

[(A) A teacher shall be required:

(i) to demonstrate "clearly outstanding" performance during two of every three years and at least "satisfactory" Performance during the other year and complete three semester hours of higher education course work or 45 hours of advanced academic training or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training, to demonstrate "clearly outstanding" performance during each of the three years, or to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section;

(ii) to teach in a classroom for not less than four hours or 60% of the school day in accordance with the provisions of subsection (b)(4) of this section; and

(iii) to perform at least two master teacher duties every three years.]

(5) In the event that a school district determines that reassignment to a lower level resulted from performance appraisals that were influenced by extraordinary personal circumstances and the teacher receives a "clearly outstanding" performance appraisal in the year following reassignment, the school district may reinstate the teacher to the former level. In any other case, a teacher reassigned under this subsection may re-enter higher levels only by requalifying under the performance standards for entry into the higher levels.;

(h) Out-of-state teachers entering the career ladder.

[(1)] A teacher who possesses a valid classroom teaching certificate issued by another state department of education or foreign country, may enter the career ladder at any level assigned by the employing school district, at the commensurate salary step, under a probationary contract, with the following requirements.

(1)[(2)] At the end of the first year of teaching in Texas, the teacher must meet the current year performance requirements for that level [established in subsection (f) of this section with the exception of the requirement for the prior certificate held].

(2)[(A)] In the event that such performance requirements are not met [satisfactorily], the teacher shall be maintained at the career ladder level below assignment with no salary step increase.

(3)[(B)] Failure to [satisfactorily] meet current year performance [such] requirements during the second year of teaching shall result in termination of contract.

(3) Upon satisfactory achievement of certification requirements, the district may recommend certification at the appropriate level as established in Chapter 141 of this title (relating to Teacher Certification).

(4) The employing school district shall have the authority to accept or reject the performance appraisal or appraisals based on service completed in other districts.]

(i)-(j) (No change.)

(k) Property right of teacher.

(1) A teacher who has earned a level one, level two, level three, or master teacher certificate in accordance with Chapter 141 of this title (relating to Teacher Certification) has a right to retain that certificate until it has expired or is duly suspended, revoked, or otherwise removed in accordance with law.]

[(2)] Assignment to career ladder level one, level two, level three, or level four is neither a property right nor the equivalent of tenure.

(1) Career ladder salary supplement. The career ladder salary supplement shall be paid during the school year at a time not later than August 31 of the school year in which the teacher entered or was maintained and in a manner to be determined by the local school district in accordance with law and this section.]

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

(3) If the allotment to the district that is designated for support of the career ladder will not fully fund the supplements for the teachers meeting the minimum state requirements, the district may:

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

[(4) In the event that funds designated at the allotment for career ladder salary supplements are deemed insufficient for placement and/or maintenance of all teachers meeting the state-mandated minimum criteria for selection and/or maintenance on the teacher career ladder, the local

district may fund additional career ladder salary supplements from local or other funds permitted by law and State Board of Education rules effective with the 1985-1986 school year, provided that the following requirements have been met:

[(A) that funds available for any legal purpose in accordance with the Texas Education Code, §16.158, have been fully exhausted in the payment of teacher career ladder salary supplements; and

[(B) that the local school district demonstrates its intent to utilize career ladder supplements as a means of identifying and rewarding excellence in teacher performance as opposed to a salary supplement for all teachers meeting the minimum requirements by establishing in written policy one or more requirements for stricter performance as specified in subsection (e) of this section.]]

(4)[(5)] Monies received by the district from the state as the allotment for career ladder salary supplements may not be used to supplement the salary of an employee for directing curricular or extracurricular activities.

(5)[(6)] The district must pay each teacher selected for a specific career ladder level the same amount of supplement for a particular career ladder level during that particular school year.

(6)[(7)] Districts may reduce the amount of the career ladder supplement on a pro rata basis utilizing the number of days of employment, not the date when the award is made, when the teacher is employed for fewer than 183 days.

(7)[(8)] Teachers employed for no less than half-time as defined in subsection (b)(5) of this section shall be paid no less than one-half of the designated salary supplement awarded by the local school district for that particular level for the specific school year or a proportionate amount consistent with the portion of the school day served.

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 25, 1989.

TRD-8908923

W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

TITLE 28. INSURANCE Part II. Industrial Accident Board

Chapter 43. Insurance Coverage

• 28 TAC §43.10

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

The Industrial Accident Board proposes the repeal of §43.10, concerning termination of workers' compensation insurance coverage. The repeal is proposed for the purpose of reorganization. A new section with the same title and section number is simultaneously proposed, and is published elsewhere in this issue.

Richard Fulcher, acting executive director, 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.

Mr. Fulcher has determined that the proposed repeal will have no effect on local employment.

Mr. Fulcher also 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 the opportunity to replace it with procedures that more comprehensively address the numerous concerns of the parties. 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 Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The repeal is proposed under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

§43.10. Termination of Coverage.

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 26, 1989.

TRD-8908994

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 448-7960

The Industrial Accident Board proposes new §43.10, concerning termination of workers'

compensation insurance coverage. The proposed section defines terms, establishes procedures and times for notice, and sets effective dates for termination of coverage.

Richard Fulcher, acting executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for the state or local government, or small businesses as a result of enforcing or administering the section.

Mr. Fulcher has determined that the proposed section will have no effect on local employment.

Mr. Fulcher 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 improved understanding and compliance with the procedural requirements concerning termination of coverage. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers' compensation laws.

§43.10. Termination of Coverage. i

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

(1) Termination of coverage--Occurs when either party withdraws from a policy of workers' compensation insurance, either by canceling the policy in the middle of its term, or by declining to renew the policy on its anniversary date. i

(2) Rejection of the workers, compensation system--Occurs when a subscriber terminates coverage and fails or refuses to purchase a policy of workers' compensation insurance.

(b) Carrier's notice to the Industrial Accident Board. The carrier shall notify the board when coverage is terminated by filing Board Form IAB-9, "Cancellation or Non-Renewal Notice." The notice shall be:

(1) filed in person or by certified mail; and i

(2) filed on or before the effective date of termination.

(c) Carrier's notice to subscriber. The carrier shall notify the subscriber when the carrier terminates coverage. No notice is required when the subscriber terminates coverage. Notice to the subscriber shall be:

(1) in writing; i

(2) sent by certified mail; and

(3) mailed no later than the 30th day before the effective date of termination; or i

(4) mailed no later than the 10th day before the effective date of termination if termination is due to: i

(A) fraud in obtaining coverage; i

(B) failure to pay a premium when payment is due; i

(C) an increase in the hazard for which the subscriber seeks coverage that results from an action or omission of the subscriber and that would produce an increase in the rate; or i

(D) a determination by the commissioner of insurance that coverage would be illegal or hazardous to the interests of subscribers, creditors, or the general public.

(d) Effective date of termination of coverage. i

(1) Termination by the carrier shall be effective on the latest of the following dates: i

(A) on the 31st day after the carrier notifies the subscriber as provided in subsection (c) of this section, or, if the termination is due to one of the conditions set out in subsection (c)(4) of this section, on the 11th day after the carrier notifies the subscriber as provided in subsection (c) of this section; i

(B) the day the carrier files notice of termination with the board, as provided in subsection (b) of this section; or

(C) the actual termination date recited on the notice. i

(2) Termination by the subscriber shall be effective on the actual termination date recited on the notice. i

(3) Termination shall be deemed effective on the date a subsequent carrier files notice of inception of coverage for the subscriber.

(e) Duties of a subscriber who terminates coverage and rejects the workers' compensation system.

(1) A subscriber who terminates coverage and rejects the workers' compensation system shall, on or before the effective date of termination:

(A) post copies of notice of noncoverage, on a board-prescribed form, in three places around each work site affected; and

(B) file a copy of the notice of noncoverage with the board.

(2) Failure to comply renders the subscriber liable for statutory benefits to injured employees.

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 26, 1989.

TRD-8909000

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 448-7960

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Water Pollution Enforcement

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

The Texas Parks and Wildlife Department proposes the repeal of §§55.1-55.4, 55.11-55.14, 55.21-55.24, 55.51, 55.81-55.83, and 55.91-55.96, concerning law enforcement functions of the agency. This common preamble indicates the sections and the basis for their repeal as follows: §§55.1-55.4 and 55.11-55.14--These sections provide internal staff guidance concerning water pollution enforcement activities. As such, they are inappropriate as rules; §§55.21-55.24--These sections constitute guidance to agency peace officers concerning seizure and handling of evidence. The sections are unnecessary because the subject is addressed either by statute or internal staff directives; §55.1--This section constitutes guidance to agency peace officers concerning the juvenile arrest process. It is unnecessary because the subject is addressed by statute and internal staff directive; §§55.81-55.83 and 55.91-55.96--These sections concerning qualifications and selection of game wardens are inappropriate because qualifications are established by the Texas Commission on Law Enforcement Officer Standards and Education and selection procedures for all employees of the agency are set by the executive director.

James E. Dickinson, director of finance, 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. Dickinson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to eliminate inappropriate or unnecessary rules relating to law enforcement functions of the agency. 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 Chester Burdett, Director of Law Enforcement, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4845 or 1-800-792-1112, extension 4845.

The repeals are proposed under the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a), governing rulemaking.

• 31 TAC §§55.1-55.4

§55.1. Enforcement.

§55.2. Venue.

§55.3. Evidence.

§55.4. Procedures.

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 26, 1989.

TRD-8908975 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

Pollution/Fish Kill Investigation

• 31 TAC §§55.11-55.14

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a), governing rulemaking.

§55.11. Responsibilities.

§55.12. Investigation Procedures.

§55.13. Reports.

§55.14. Review Procedures.

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 26, 1989.

TRD-8908974 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

Seizure and Handling of Evidence

• 31 TAC §§55.21-55.24

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a), governing rulemaking.

§55.21. Seizures.

§55.22. Reports.

§55.23. Responsibility: Seized Evidence.

§55.24. Responsibility: Automobiles and Boats.

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 26, 1989.

TRD-8908973 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

Processing Juvenile Arrest Citations

• 31 TAC §55.51

(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 Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a), governing rulemaking

§55.51. Juvenile Arrests.

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 26, 1989.

TRD-8908972 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

Requirements and Procedures for Game Warden Cadets

• 31 TAC §§55.81-55.83

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a), governing rulemaking.

§55.81. Policy: Requirements.

§55.82. Policy: Procedures.

§55.83. Effective Date.

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 26, 1989.

TRD-8908971 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

Appointment of Game Warden

• 31 TAC §§55.91-55.96

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a), governing rulemaking.

§55.91. General.

§55.92. Application Processing.

§55.93. Eligibility.

§55.94. Competitive Selection.

§55.95. Game Warden Training.

§55.96. Station Assignment.

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 26, 1989.

TRD-8908970 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805



Predator Control from Aircraft

• 31 TAC §§55.141-55.153

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

The Texas Parks and Wildlife Department proposes the repeals of §§55.141-55.153, concerning regulating depredating animal control and wildlife management from aircraft. The 71st Legislature expanded the agency's regulatory authority over managing wildlife by aircraft. These repealed sections are incorporated in proposed new 31 TAC §§55.141-55.153.

Robin Reichers, staff economist, has determined that for the first five-year period the repeals are in effect there will be minimal fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Reichers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that it allows adoption of new rules to protect property from depredating animals and to better manage wildlife. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Chester Burdett, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4845.

The repeals are proposed as a result of recent legislation that amended the Texas Parks and Wildlife Code, Chapter 43, Subchapter G, and Texas Civil Statutes, Article 6252-13a.

§55.141. Applicability.

§55.142. Definitions.

§55.143. Application for Permit.

§55.144. Issuance of Permit.

§55.145. Period of Validity of Permit.

§55.146. Amendment of Permit.

§55.147. Renewal of Permit.

§55.148. Permit not Transferable.

§55.149. Revocation of Permit.

§55.150. Permit Fee.

§55.151. Reports.

§55.152. General Rules.

§55.153. Penalty.

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 26, 1989.

TRD-8909009 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805



The Texas Parks and Wildlife Department proposes new §§55.141-55.153, concerning regulating depredating animal control and wildlife management from aircraft. New legislation expands the agency's regulatory authority over managing wildlife by aircraft, which necessitates these proposed sections. These new sections will supplant existing 31 TAC §§55.141-55.153, which are proposed for repeal.

Robin Reichers, staff economist, has determined that for the first five-year period the proposed sections are in effect there will be minimal fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Reichers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to protect property from depredating animals and to better manage wildlife. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be minimal.

Comments on the proposed sections may be submitted to Chester Burdett, Director of Law Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1 (800) 792-1112, extension 4845.

The new sections are proposed under the Parks and Wildlife Code, Chapter 43, Subchapter G, which authorizes regulations concerning control of depredating animals and wildlife management by aircraft.

§55.141. Applicability. These rules apply to all the counties in Texas.

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

Aerial depredating animal permit—An authorization issued in the name of an individual or corporation for named person(s) to take, shoot at, or shoot from an aircraft a specific number of depredating animals during specified times, on certain lands described in the landowner's consent authorization.

Aerial wildlife management permit—An authorization issued in the name of an individual or corporation for named pilot(s) to count, photograph, relocate, or capture, by the use of aircraft, wildlife during specific times, and on certain lands described in the landowner's consent authorization.

Aircraft—A mechanical or other device used for flight.

Applicant—An individual or corporation who files an application for a permit to control depredating animals or manage wildlife by use of aircraft.

Department—The Texas Parks and Wildlife Department or a specifically authorized employee of the department.

Depredating animals—Feral hogs, bobcats, coyotes, and crossbreeds between coyotes and dogs.

Director—Executive director of Parks and Wildlife Department.

Gunner—An individual who takes, shoots, or shoots at depredating animals from an aircraft.

Harass—To disturb, worry, molest, harry, torment, rally, concentrate, drive, or herd.

Landowner's consent authorization—An authorization from the landowner or the landowner's authorized agent to hunt a specified number of depredating animals or to manage wildlife from an aircraft on certain property.

Manage by use of an aircraft—To count, photograph, relocate, or capture wildlife by the use of aircraft.

Observer—Any person other than the pilot or gunner who is on board an aircraft while operating under the authority of an aerial depredating animal permit or an aerial wildlife management permit.

On file—Approved and on file in the parks and wildlife law enforcement office in Austin.

Pilot—An individual named in a permit who pilots an aircraft to take, shoot, or shoot at depredating animals or to manage wildlife.

Wildlife—Any vertebrate species other than a domesticated animal.

§55.143. Application for Permit. An applicant for a permit shall complete and place on file with the department an application on a form prescribed by the director. The application shall contain the description, including make, model, color, and registration number of each aircraft to be used, the name and address and date of birth of the applicant (date of birth not applicable if corporation), and the name and address and date of birth of each pilot. The application shall include the species and number of depredating animals to be taken or the species of wildlife to be managed by the use of aircraft. The application shall be notarized.

§55.144. Landowner Authorization.

(a) Prior to controlling any depredating animal or managing wildlife, a permit holder must place on file with the department a landowner's authorization for each individual ownership from which depredating animals are to be hunted and on which wildlife is to be managed. The authorization from the landowner must include the Agricultural Stabilization and Conservation Service farm number or a specific location of the property.

(b) A landowner's authorization to control depredating animals shall specify the kind and number of depredating animals to be taken from the property by use of aircraft and the reason why these animals should be controlled. A landowner's authorization for the control of depredating animals may be valid for the term of the permit or permit renewal unless the permit is suspended or revoked. The authorization to control depredating animals is not valid until approved and placed on file.

(c) A landowner's authorization for management by the use of aircraft shall specify the type of management to be performed and the reason why such management is necessary. The authorization shall specify the time period required to complete the management activity, which may not exceed 14 days. A landowner's authorization for management is valid only when approved and on file with the department for the time period specified.

§55.145. Issuance of Permit. Upon the filing of a properly executed application, the director or his designee may issue a permit if:

(1) the applicant, or any pilot named in the application, has not within five years of the date of the application been convicted of any civil or criminal provision of any statute or regulation relating to the taking of wildlife resources;

(2) the applicant has not knowingly failed to disclose any material information required, or has not knowingly made

any false statement regarding any material fact in connection with the application;

(3) the applicant has demonstrated that the aerial depredating animal permit is necessary to protect or to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops;

(4) the aerial wildlife management permit requested, in the judgment of the issuing official, will aid in the management of wildlife and will not have a deleterious effect on indigenous species.

§55.146. Period of Validity of Permit. A permit is valid for a period of one year from the date of issuance, or until the specified number of animals is taken or specified management is performed, unless sooner terminated or revoked.

§55.147. Amendment of Permit.

(a) When a permittee desires to have his permit amended, he must file an amended application on the form provided by the department. An application for amendment is subject to the same issuance criteria as the original application for permit. In emergency situations, permit amendments and new landowner's consent authorizations may be expedited by presenting completed forms to the game warden in the county where the depredating animals are to be taken or the management is to be performed.

(b) A game warden in the county where the land is located may approve the landowner consent authorization and cause the application to be delivered to the Austin office. In such emergency situation, the application will be considered on file when approved by the game warden.

§55.148. Renewal of Permit. A permittee requesting a renewal of a permit must file a request on the forms provided by the department, together with the required fee, at least 30 days prior to the expiration of the original permit or his current landowner's consent authorizations may become invalid.

§55.149. Permit Not Transferable. A permit is not transferable or assignable.

§55.150. Permit Fee. The fee for an aerial depredating animal permit or aerial wildlife management permit is \$100. The fee must accompany the application for the permit which is refundable should the permit application be denied. The director may exempt governmental entities from the permit fee.

§55.151. Reports.

(a) The holder of a depredating permit shall file with the department within 30 days following the end of each calendar

quarter or on termination of the permit, whichever occurs first, a report, on a form prescribed by the director, showing:

(1) name and address of the permit holder;

(2) name and description of the depredating animals taken under the permit;

(3) the number and description of depredating animals authorized to be taken under the permit;

(4) a description of the property where depredating animals were taken under the permit;

(5) the dates of flights taken for the control of depredating animals; and

(6) that if there is no activity, a report to that effect is required.

(b) The holder of a management permit shall file with the department a report within 30 days following the expiration of the landowner's consent authorization a report, on a form prescribed by the director, showing:

(1) name and address of the permit holder;

(2) number and description of the wildlife to be managed;

(3) type management involved;

(4) a description of the property where the wildlife is to be managed;

(5) the dates of flights taken for the management of wildlife; and

(6) that if there is no activity, a report to that effect is required.

§55.152. General Rules

(a) Authorized persons may hunt, shoot, or shoot at depredating animals or manage wildlife named in the permit and landowner's consent authorizations only on land named in the landowner's consent authorization.

(b) A pilot of an aircraft used for the taking of depredating animals or for managing wildlife must maintain a log, on a form prescribed by the director, in the aircraft showing the dates depredating animals were hunted, the number taken, the wildlife captured or managed, and the property hunted on. The log must be current and available for inspection by game wardens at reasonable times.

(c) A person commits an offense if:

(1) the person hunts, shoots, shoots at, kills, or attempts to kill from an aircraft any wild animal other than animals defined as depredating animals in these rules;

(2) the person intentionally disturbs, hazes, or buzzes any wild bird or

wild animal from an aircraft other than authorized in a permit;

(3) the person acts as a gunner, observer, or pilot and has been convicted of any civil or criminal provision of any statute or regulation relating to the taking of wildlife resources within five years immediately preceding the date the hunt is to take place;

(4) the person operates an aircraft when depredated animals are hunted or wildlife management is performed and is not named as an authorized pilot in a permit;

(5) the person kills more depredated animals on properties specified in the landowner's consent authorization than are specified in the landowner's consent authorization;

(6) the person is a pilot or passenger in an aircraft and possesses a firearm while managing wildlife;

(7) the person uses a permit for the purpose of sport hunting;

(d) For the purpose of this section, a permit is not required to count wildlife when no harassment, as defined in these rules, is involved;

(e) Notwithstanding the provisions of this subchapter, indigenous species may be taken only under any other applicable permit required by statute or by proclamation.

§55.153. Penalty. A violation of these rules is a violation of the Texas Parks and Wildlife Code, Chapter 43, Subchapter G, and is punishable as provided by the Texas Parks and Wildlife Code, §43.111.

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 26, 1989.

TRD-8908969 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: 1-800-792-1112, ext. 4505, or (512) 389-4845

Restricted Wild Animals

• 31 TAC §§55.201-55.212

The Texas Parks and Wildlife Department proposes new §§55.201-55.212, concerning permits to hold certain wild animals and establishing standards for the housing and transportation of certain wild animals. New legislation House Bill 1687, 71st Legislature, added certain wild animals to the agency's regulatory authority which necessitates these proposed sections.

Robin Riechers, staff economist, has deter-

mined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. The minimum expected additional expenses for state government will be approximately \$80,000 per year for the first five years as a result of enforcing or administering the section. Additional personnel and additional operating costs will account for \$31,120. Inspection and additional enforcement of the new regulations will increase other operating and administrative expenditures by approximately \$50,000. The revenues associated with the licensing of scientific permits annually indicate a revenue gain of \$427,500. The estimated loss in revenue to the state is \$53,620.

Mr. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide, on a continuing basis, requirements for the possession and keeping of certain wild animals which will result in increased safety to the general public. There will be economic cost to individuals who are required to comply with the sections as proposed, and to those who rely on the associated expenditures for wild animals which might be reduced as a result of these sections. However, insofar as these sections are based on sound management and enforcement tenets, it is anticipated the value of the sections will be positive to the state.

Comments on the proposals may be submitted to Chester Burdett, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4845.

These new sections are proposed under the Texas Parks and Wildlife Code, Chapter 12, Subchapter G, and Texas Civil Statutes, Article 6252-13a.

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

Breeding—Includes the possession of a wild animal for purpose of propagation.

Department—The Texas Parks and Wildlife Department as established by the Parks and Wildlife Code, §11.011, or a specifically authorized employee of the department.

Exhibition—Includes any display of a wild animal to members of the general public for whatever reason.

Personal use—Includes the possession of a wild animal for any purpose other than for breeding or exhibit.

Restricted wild animal—Includes all individual species and subspecies of the following animals: lions, tigers, ocelots, cougars, leopards, cheetahs, jaguars, hyenas, bears, lesser pandas, binturongs, wolves, apes, elephants, and rhinoceroses.

Restricted wild animal permit—A permit issued by the department by authority of the Texas Parks and Wildlife Code, §§12.601-12.607.

§55.202. Permit Requirement. It shall be unlawful for any person to possess a restricted wild animal in this state, for the purpose of breeding, exhibition, or for personal use unless the person has first obtained a restricted wild animal permit from the department.

§55.203. Permit Exemption. A restricted wild animal permit is not required for the possession of a restricted wild animal if the person holds a valid state or federal permit expressly authorizing the breeding or exhibiting of the restricted wild animal currently in possession.

§55.204. Permit Application.

(a) Any person required to obtain a restricted wild animal permit shall apply for the permit on an application form provided by the department;

(b) The application shall contain the following information before it will be considered by the department:

(1) name, address, and telephone number(s) of the applicant;

(2) a complete identification of each wild animal in possession including species, sex, and age if known, and any distinguishing marks or coloration which would aid in the identification of the animal;

(3) a description of the facilities provided for each animal including the size of each cage, construction materials used, species of animal to be confined in each cage, general location of the cage(s) on the property in relation to any public roadway or any residence(s) within 300 feet, and the location of any boundary fence on applicant's property and its height and construction;

(4) location of each wild animal, if different from the address of the applicant, and a statement as to why each animal is being held at the location specified in the application;

(5) a statement of ownership including written documentation to evidence ownership of each animal;

(6) a statement of the security measures taken by the applicant to prevent the escape of the wild animal and to insure the safety of the general public;

(7) a statement that the applicant has read these rules and that all facilities used by the applicant to hold the restricted wild animals in possession comply with the facilities standards specified by these rules and that the facilities may be inspected by the department at any reasonable time, to determine compliance with these rules;

(8) a statement indicating that the wild animals will be held for breeding, exhibition, personal use, or a combination of these purposes;

(9) the name and address of a state licensed veterinarian who has provided care or who is willing to provide care for the animals in the applicant's possession;]

(10) a copy of any license or permit issued by a city or county, when required, to authorize the possession of the wild animal or allowing an exemption to the applicant for the possession of the wild animal or a statement by the applicant that no local rules exist that regulate the possession of restricted wild animals;]

(11) photographs showing the front, back, and side view of the animal cages which must be attached to the application.;

(c) The department may return any application that is found to be incomplete and require additional information, when necessary, to insure compliance with these rules before an application may be considered.;

(d) The applicant will forward the fee specified by the Texas Parks and Wildlife Code, §12.604, with the application.;

(e) No restricted wild animal permit may be issued until all requirements of the Texas Parks and Wildlife Code, Chapter 12, Subchapter G and these rules are met.

§55.205. General Facilities Standards--All Animals. It shall be unlawful for any person possessing any wild animal(s) under authority of a restricted wild animal permit to fail to maintain facilities in which the wild animal(s) are held in accord with the following minimum standards.;

(1) Holding facilities shall provide adequate and appropriate heating, cooling, ventilation, lighting, and shelter from inclement weather conditions.;

(2) Holding facilities shall be designed to provide for the elimination of excess water and the easy disposal of animal, food, and bedding waste.;

(3) Sufficient quantities of potable drinking water shall be provided daily in clean containers. All water containers shall be appropriate for the animal(s) held.;

(4) All animals held shall be provided with sufficient quantities of wholesome palatable food. Food containers shall be kept clean and sanitary and shall be adequate to contain the food supplied.;

(5) Facilities shall be cleaned daily or more often as necessary to minimize disease, hazards, and odors. All waste materials will be disposed of in accord with local ordinances, when applicable, or if not, in a sanitary manner to control noxious odors or insect pests.

§55.206. Cage Specifications.;

(a) It shall be unlawful for any person to possess any restricted wild animal(s)

unless the animal(s) are confined in cages which meet the minimum size and construction specifications contained in these rules for one or more animals.;

(b) Materials and dimensions.;

(1) Lions and tigers.;

(A) for one animal, a cage 15 feet by 10 feet, that is eight feet high, with a three foot by 10 foot shelf elevated three feet, and two claw logs;]

(B) for each additional animal, increase cage length five feet;]

(i) outdoor facilities--Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent.;

(2) Jaguars, leopards, pumas (cougars).;

(A) for one animal, a cage 10 feet by eight feet, that is eight feet high, with a two foot by eight foot shelf elevated three feet, and two claw logs;]

(B) for each additional animal, increase cage length five feet;]

(C) for leopards and pumas:

(i) outdoor facilities--Construction materials shall consist of not less than 11-1/2-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than 11-1/2-gauge or equivalent;

(D) for jaguars:

(i) outdoor facilities--Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent.;

(3) Ocelots.;

(A) for one animal, a cage eight feet by four feet, that is six feet high, with a shelf 14 inches by four feet elevated three feet, and two claw logs;]

(B) for each additional animal, increase the cage length by two feet.;

(i) outdoor facilities--Cage construction materials shall con-

sist of not less than 11-1/2-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than 11-1/2-gauge or equivalent.;

(4) Cheetahs.;

(A) for one cheetah, a cage 40 feet by 20 feet, that is eight feet high, with a shelf 30 inches by six feet, elevated three feet;]

(B) for each additional animal, increase cage length 10 feet and shelf length two feet;]

(i) outdoor facilities--Cage construction materials shall consist of not less than 11-1/2-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than 11-1/2-gauge or equivalent.;

(5) Hyenas, wolves.;

(A) for one animal, a cage 15 feet by eight feet, that is six feet high, with a four by four foot den;

(B) for each additional animal, increase cage length 10 feet and den length three feet;]

(C) for hyenas:

(i) outdoor facilities--Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent.;

(D) for wolves:

(i) outdoor facilities--Cage construction materials shall consist of not less than 11-1/2-gauge chain link or equivalent;

(ii) indoor facilities--Potential escape routes shall be equipped with wire or grating of not less than 11-1/2-gauge or equivalent.;

(6) Binturongs.;

(A) for one animal, a cage of 15 feet by eight feet that is six feet high, with a four by four foot den;]

(B) for each additional animal, increase the cage length 10 feet and den length three feet;]

(i) outdoor facilities—Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities—Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent.

(7) Small and medium bears;

(A) for one animal, up to six feet from rump to snout, a cage 20 feet by 10 feet, that is 10 feet high, with a four foot by six foot pool that is three feet deep. Pool water quality must be maintained in good condition;

(B) for each additional animal, increase cage length 10 feet;

(i) outdoor facilities—Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities—Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent.

(8) Lesser pandas;

(A) for one animal, a cage of 15 feet by eight feet that is six feet high, with a four by four foot den;

(B) for each additional animal, increase the cage length 10 feet and den length three feet;

(i) outdoor facilities—Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities—Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent.

(9) Large bears;

(A) for one animal, six feet or more from rump to snout, a cage 25 feet by 12 feet, that is 12 feet high. For polar bears, each cage shall be equipped with a six foot by 10 foot pool four foot deep. For other bears, each cage shall be equipped with a four foot by six foot pool, that is three feet deep. Pool water quality must be maintained in good condition;

(B) for each additional animal, increase the cage length 12 feet;

(i) outdoor facilities—Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(ii) indoor facilities—Potential escape routes shall be equipped with

wire or grating of not less than nine-gauge or equivalent.

(10) Apes;

(A) gibbons:

(i) for up to four animals, a cage 12 feet by six feet, that is eight feet high, with three parallel swinging bars at four foot intervals in the top third of the cage. For each additional animal, increase the floor space by 25%;

(ii) outdoor facilities—Cage construction materials shall consist of not less than nine-gauge chain link or equivalent;

(iii) indoor facilities—Potential escape routes shall be equipped with wire or grating of not less than nine-gauge or equivalent;

(B) chimpanzees and orangutans:

(i) for a juvenile under 50 pounds, a cage eight feet by six feet, that is six feet high.

(ii) for an adult over 50 pounds, a cage 10 feet by six feet, that is eight feet high. For each additional animal, double the floor area provided;

(iii) outdoor facilities—Cage construction materials shall consist of steel bars, two-inch galvanized pipe, masonry block, or their strength equivalent;

(iv) indoor facilities—Potential escape routes shall be equipped with steel bars, two-inch galvanized pipe or equivalent in rooms where the animal(s) are maintained;

(C) gorillas:

(i) for one animal, a cage 14 feet by 12 feet, that is eight feet high. For each additional animal, double the floor area provided;

(ii) outdoor facilities—Cage construction materials shall consist of steel bars, two-inch galvanized pipe, masonry block, or their strength equivalent;

(iii) indoor facilities—Potential escape routes shall be equipped with steel bars, two-inch galvanized pipe, or equivalent in rooms where the wildlife is maintained.

(11) Rhinoceros or elephants;

(A) for one animal, a cage enclosing 600 square feet of land area, with a pool of 300 square feet, five feet in depth and having a ramp area;

(B) for each additional animal, increase both the land and pool area by 25 square feet. Pool water quality must be

maintained in good condition;

(C) indoor and outdoor facilities—Construction materials shall consist of steel bars, masonry block, or equivalent.

(c) All cages constructed of chain link shall be well braced and securely anchored at ground level and shall utilize metal corners, clamps, ties, and braces of equivalent strength to other materials prescribed for cage construction for that species.

(d) Frames for cages, including corners, braces, and top and bottom rails, shall be securely bolted or welded to provide maximum strength.

(e) Cages of wild animals shall be sufficiently strong to prevent escape and shall be equipped with safety barriers which adequately prevent any physical contact with the caged animal by visitors.

(f) Cages shall be equipped with locks and locking mechanism to prevent opening by unauthorized persons.

(g) All cages shall be covered at the top to prevent escape, except for facilities provided for rhinoceros and elephants.

(h) Any condition which results in the escape of a wild animal from its cage or enclosure or which results in injury to any person, shall be considered housing the wild animal in an unsafe manner and shall be considered a violation of this section.

(i) The department may inspect the facilities of the applicant before the issuance of the permit and at any reasonable time following the issuance of the permit to insure compliance with these rules and the permit issued by authority of these rules.

§55.207. Transportation of Wild Animals. It shall be unlawful for any person to transport or possess restricted wild animals unless transported or possessed in cages which meet minimum construction and strength requirements for primary holding facilities as required in these rules.

(1) Vehicles shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements to all animals transported.

(2) The animal traveling area shall be free of engine exhaust.

(3) Fecal and food wastes shall be removed from the animal quarters daily.

(4) Animal cages shall have openings for emergency removal of wildlife.

(5) Temperatures within animal enclosures shall not exceed ambient air temperatures.

(6) Wild animals transported in the same cage shall be in compatible groups.

(7) The animal's cage shall be large enough to ensure that each specimen has sufficient space to turn, stand erect, and lie naturally in the space provided.]

(8) Wild animals shall not be placed in enclosures over other specimens unless each enclosure is fitted with a floor which prevents excreta from entering lower enclosures.]

(9) Wild animals shall be watered twice daily and fed daily.

§55.208. Permit Fees. The fee for a restricted wild animal permit is \$100 for each wild animal in possession, except that the maximum fee for a permit is \$500.

§55.209. General Provisions.]

(a) Before a permit holder acquires additional restricted wild animal(s), another permit must be obtained or the current permit amended to authorize the possession of the additional restricted wild animal(s).]

(b) It shall be unlawful for any person to sell or possess any species of wild animal if the animal is listed by the department as an endangered or threatened species by authority of the Texas Parks and Wildlife Code, Chapter 67 or Chapter 68, except under a permit issued pursuant to the appropriate chapter.]

(c) A permit issued by the department will not prevent a local governmental authority from regulating the possession of species of wild animals within their jurisdiction.

§55.210. Change of Address or Relocation of Facilities.]

(a) It shall be unlawful for the holder of a restricted wild animal permit to fail to notify the department within 10 days of any change of address whether the change of address will require the relocation of the wild animals in possession or not.]

(b) If the change of address requires the relocation of the wild animals, the permit holder shall construct the facilities required by these rules at the new address, prior to the relocation of the animals from the old location. If the permit holder is not able to comply with this requirement, the animals may be transferred for a period of not to exceed 30 days to another restricted wild animal permit holder who has vacant facilities that comply with these rules, provided the animals can be safely transported in compliance with these rules to the temporary facilities by the permit holder or his designated agent. The department shall be notified in writing of any proposed temporary transfer authorized by this section and of the provisions made for the safe transport of the animals.]

(c) The department may inspect the facilities of the permit holder at the new address or location to determine compliance

with these rules relating to facilities. No animals may be relocated to the new address or facilities location until the inspection requirement has been satisfied.]

(d) If the permit holder has not constructed facilities at the new address or location within 30 days in compliance with these rules, the department may revoke the permit and dispose of the animals.

§55.211. Permit Revocation.]

(a) The department may revoke a restricted wild animal permit if the department determines that a permit holder is not in compliance with the Texas Parks and Wildlife Code, §12.605, or with these rules.]

(b) The revocation of a restricted wild animal permit will be accomplished in accord with the provisions of the Administrative Procedure Act and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and department rules (concerning administrative procedures) or a court order.]

(c) Following the revocation of a permit, the department shall remove the wild animal(s) and shall dispose of the animal(s) in a manner determined by the department to be in the best interest of the wild animal.

§55.212. Penalty. The penalty for the violation of these rules is set out in the Texas Parks and Wildlife Code, §12.607.

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 27, 1989.

TRD-8909006

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 3, 1989

For further information, please call: 1-800-792-1112, ext. 4641, or (512) 389-4641

Chapter 57. Fisheries

Potentially Harmful Fish or Fish Eggs Importation

• 31 TAC §§57.111-57.116

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

The Texas Parks and Wildlife Department proposes, the repeals of §§57.111-57.116, concerning potentially harmful fish or fish eggs importation into the waters of this state. These proposed repeals are in response to the amendment of the Parks and Wildlife

Code, §66.007, with the passage of Senate Bill 1507, the Fish Farming Act of 1989, by the 71st Legislature that will allow regulation by permit or rule the importation, possession, sale, or placing into the water of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants.

New proposed §§57.111-57.116 will supplant the repealed sections.

Robin Riechers, staff economist, has determined that for the first five-year period the proposed repeals are in effect there will be minimal fiscal implications for state or local government or businesses as a result of enforcing or administering the repeals (fish farmers, pet, and aquarium dealers) as repeal of these sections will not significantly affect current activities.

Mr. Riechers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to eliminate inappropriate or unnecessary rules relating to law enforcement functions of the agency. The anticipated economic cost to individuals who are required to comply with the repeals as proposed is minimal.

Comments on the proposal may be submitted to Neil E. Carter, Chief of Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, ext. 4641, or (512) 389-4641.

The repeals are proposed under the Texas Parks and Wildlife Code, §66.007, which provides the Texas Parks and Wildlife Commission with authority to make rules to carry out the provisions of this section.

§57.111. General.

§57.112. Definitions.

§57.113. Restrictions.

§57.114. Permits.

§57.115. Reports.

§57.116. Penalties.

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 26, 1989, 1989.

TRD-8908967

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4641

• 31 TAC §§57.111-57.119

The Texas Parks and Wildlife Department proposes new §§57.111-57.119, concerning

importation, possession, propagation, sale, or placement into waters of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants. The new sections are in response to Senate Bill 1507, 71st Legislature, which amends the Texas Parks and Wildlife Code and the Agriculture Code with respect to exotic harmful fish, shellfish, and aquatic plants, and are a restatement of former 31 TAC §57.111-57.116, concerning tilapia.

The department shall propose adding any species of exotic fish, shellfish, or aquatic plant whose documented first occurrence in Texas public waters occurs after the effective date of these sections to the list of harmful or potentially harmful exotic species at the next scheduled meeting of the commission or as soon thereafter as possible.

Robin Riechers, staff economist, has determined that for the first five-year period the proposed sections are in effect there will be

minimal fiscal implications for state or local government or businesses as a result of enforcing or administering the sections (fish farmers, pet and aquarium dealers, plant nurseries, etc.) as the proposed sections will not significantly affect current activities.

Mr. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the protection of the state's aquatic wildlife resources from introduction of exotic harmful fish, shellfish, and aquatic plants. The anticipated economic cost to individuals who are required to comply with the sections as proposed is minimal.

Comments on this proposal may be submitted to Neil E. Carter, Chief of Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4641 or (512) 389-4641.

The new sections are proposed under the Parks and Wildlife Code, §66.007, and the Agriculture Code, §134.020, which authorizes the department to regulate exotic harmful or potentially harmful fish, shellfish, and aquatic plants.

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

Culture—The business of producing, propagating, transporting, possessing, and selling fish raised in a private pond.

Department—The Texas Parks and Wildlife Department.

Director—The executive director of the Texas Parks and Wildlife Department.

Harmful or potentially harmful exotic fish—

- | | |
|---|---|
| (1) Lampreys
Family: Petromyzontidae | All Species
except
<u>Ichthyomyzon</u>
<u>castaneus</u> and
<u>I. gagei</u> |
| (2) Freshwater Stingrays
Family: Potamotrygonidae | All Species |
| (3) Arapaima
Family: Osteoglossidae | <u>A r a p a i m a</u>
<u>gigas</u> |
| (4) South American Pike
Characoids
Family: Characidae | All Species
of genera
<u>Acestrorhyncus</u> |
| (5) African Tiger Fishes
Subfamily: Hydrocyninae | All Species |
| (6) Piranhas and Priambebus
Subfamily: Serrasalminae | All Species |
| (7) Raphiodontid Characoids
Subfamily: Raphiodontinae | All Species
of genera
<u>Hydrolycus</u> and
<u>R h a p h i o d o n</u>
(=Cynodon) |
| (8) Dourados
Subfamily: Bryconinae | All species
of genus
<u>Salminus</u> spp. |

- | | |
|--|--|
| <p>(9) South American Tiger
Fishes
Family: Erythrinidae</p> | <p>All Species</p> |
| <p>(10) South American Pike
Characoids
Family: Ctenolucidae</p> | <p>All Species
of genera
<u>Ctenolucidae</u>
and
<u>Luciocharax</u> =
and genera
synonymous with
(<u>Boulengerella</u>=
<u>Hydrocinus</u>)</p> |
| <p>(11) African Pike Characoids
Families: Hepsetidae
Ichthyboridae</p> | <p>All Species</p> |
| <p>(12) Banded Knifefishes
Family: Gymnotidae</p> | <p>All Species</p> |

- | | | |
|------|---|---|
| (13) | Electric eels
Family: Electrophoridae | <u>Electrophorus</u>
<u>electricus</u> |
| (14) | Carp
Family: Cyprinidae | All Species
except: <u>Cyprinus</u>
<u>carpio</u> , <u>Carassius</u>
<u>spp.</u> , <u>Cyprinus</u>
<u>x Carassius</u>
hybrids,
<u>Rhodeus sp.</u> ,
<u>Tanichthys</u>
<u>alboneubes</u> ,
<u>Hemigrammocypri-</u>
<u>lini</u> , <u>Barbus</u>
<u>semifasciolatus/</u>
<u>"Schuberti"</u> , and
the grass carp
hybrid
(<u>Ctenopharyngodon</u>
<u>idella x</u>
<u>Aristichthys/</u>
<u>Hypophthalmichthys</u>
<u>nobilis</u>) |
| (15) | Walking Catfishes
Family: Clariidae | All Species |
| (16) | Electric Catfishes
Family: Malapteruridae | All Species |
| (17) | South American Parasitic
Candiru Catfishes
Family: Trichomycteridae | All Species |
| (18) | Pike Killifish
Family: Peociliidae | <u>Belonesox</u>
<u>belizanus</u> |
| (19) | Marine stonefishes
Family: Synanceiidae | All Species |
| (20) | South American Pike
Cichlids
Family: Cichlidae | All Species
of genera
<u>Crenicichla</u> and
<u>Batrachops</u> |
| (21) | Tilapia
Family: Cichlidae | All Species of
genus <u>Tilapia</u>
(synonymous
with <u>Saratherodon</u>
and <u>Oreochromis</u>) |
| (22) | Asian Pikeheads
Family: Luciocephalidae | All Species |

(23) Snakeheads
Family: Channidae

All Species

Harmful or Potentially Harmful Exotic Shellfish-

- | | | |
|-----|------------------------------------|---|
| (1) | Crayfishes
Family: Parastacidae | <u>Cherax tenuimanus</u>
<u>Cherax destructor</u>
<u>Cherax</u>
<u>quadricarinatus</u> |
| (2) | Crayfishes
Family: Astacidae | <u>Astacopsis gouldi</u> |
| (3) | Mittencrabs
Family: Grapsidae | All Species
of genus
<u>Eriocheir</u> |

Harmful or Potentially Harmful Exotic Plants -

- | | | |
|------|--|--|
| (1) | Giant Duckweed
Family: Lemnaceae | (<u>Spirodela</u>
<u>oligorhiza</u>) |
| (2) | Salvinia
Family: Salviniaceae | (<u>Salvinia</u>
<u>rotundifolia</u>) |
| (3) | Water Fern
Family: Salviniaceae | (<u>Azolla</u>
<u>caroliniana</u>) |
| (4) | Waterhyacinth
Family: Pontederiaceae | (<u>Eichhornia</u>
<u>crassipes</u>) |
| (5) | Waterlettuce
Family: Araceae | (<u>Pistia</u>
<u>stratiotes</u>) |
| (6) | Hydrilla
Family: Hydrocharitaceae | (<u>Hydrilla</u>
<u>verticillata</u>) |
| (7) | Egeria
Family: Hydrocharitaceae | (<u>Egeria densa</u>) |
| (8) | Lagarosiphon
Family: Hydrocharitaceae | (<u>Lagarosiphon</u>
<u>major</u>) |
| (9) | Eurasian Watermilfoil
Family Haloragaceae | (<u>Myriophyllum</u>
<u>spicatum</u>) |
| (10) | Alligatorweed
Family: Amaranthaceae | (<u>Alternanthera</u>
<u>philoxeroides</u>) |
| (11) | Rooted Waterhyacinth
Family: Pontederiaceae | (<u>Eichhornia</u>
<u>azurea</u>) |
| (12) | Paperbark
Family: Myrtaceae | (<u>Melaleuca</u>
<u>quinquenervia</u>) |
| (13) | Torpedograss
Family: Gramineae | (<u>Panicum</u>
<u>repens</u>) |

Private pond—A pond, reservoir, vat, or other structure capable of holding cultured species of fish, shellfish, or aquatic plants in confinement wholly within or on the enclosed land of an owner, lessor, or lessee.

Public waters—Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

§57.112. General Provision. Except as provided by these rules, it is an offense for any person to release into public waters, import, sell, purchase, propagate, or possess any species, hybrid among species, subspecies, eggs, seeds, or any reproductive part of any species defined as harmful or potentially harmful exotic fish, shellfish, or aquatic plant.

§57.113. Exceptions.

(a) A person may possess harmful or potentially harmful exotic fishes if that person has documented evidence that the person possessed the fish prior to July 2, 1974.

(b) A person who holds a scientific or zoological permit issued by the department may possess the exotic harmful or potentially harmful fish, shellfish, and aquatic plants authorized in the permit.

(c) Exotic harmful or potentially harmful fish may be possessed by any person without a permit if the intestines are removed.

(d) A person licensed as a fish farmer who also holds a Texas tilapia permit issued by the department may possess and culture blue tilapia (*Tilapia aurea*), Mozambique tilapia (*Tilapia mossambica*), and hybrids between these two species as provided in these rules.

(e) Except as provided in subsection (f) of this section, live blue and Mozambique tilapia and the hybrids of these two species may be sold only by a Texas tilapia permit holder.

(f) A licensed retail or wholesale fish dealer is not required to have a Texas tilapia permit to purchase, sell, or possess live blue tilapia, Mozambique tilapia, or hybrids between the two species unless the retail or wholesale fish dealer cultures one or more of these species.

(g) Tilapia may not be delivered to the final consumer unless dead with the intestines removed or packaged on ice, except Mozambique tilapia may be sold live as forage for stocking in private ponds.

§57.114. Transportation of Live Tilapia.

(a) Transport of live tilapia is permitted by a licensed fish farmer who has in his immediate possession a valid Texas tilapia permit, by a commercial shipper acting for the permittee, or when transported between a warehouse and retail outlet within a company possessing a retail fish dealers license, and persons holding a valid zoological or scientific permit authorizing the transportation.

(b) Any person transporting live tilapia must have a Texas tilapia transport invoice, except that tilapia covered under zoological or scientific permits may be transported under rules governing zoological or scientific permits.

(c) All motor vehicles, trailers, or semitrailers transporting live tilapia for commercial purposes shall exhibit the inscription "Tilapia" on the right, left, and rear sides of the vehicle. The inscription shall read from left to right and shall be plainly visible at all times while transporting live tilapia. The inscription "Tilapia" shall be attached to or painted on the vehicle, trailer, or semitrailer in letters of good proportion in contrasting color to the background and be at least eight inches in height.

§57.115. Texas Tilapia Transport Invoice.

(a) A Texas tilapia transport invoice shall contain all the following information correctly stated and legibly written: invoice number; date of shipment; name, address, and phone number of the shipper; name, address, and phone number of the receiver; Texas fish farmers license number and Texas tilapia permit number, if applicable; number and total weight of tilapia by species; and a check mark indicating interstate import, interstate export, or intrastate type of shipment. A completed invoice must accompany each shipment of tilapia, and must be sequentially numbered during the permit period; no invoice number shall be used twice or more during any one permit period by the permittee.

(b) The Texas tilapia transport invoice must be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following shipping date.

(c) The permittee is responsible for supplying copies of the Texas tilapia transport invoice to out-of-state dealers from which the permittee has ordered tilapia so that shipment will be properly marked and numbered upon delivery to the permittee in Texas.

(d) Owners, or their agents, of private waters stocked with Mozambique tilapia by a Texas tilapia permit holder must retain a copy of the Texas tilapia transport Invoice for a period of one year after the stocking date or as long as the tilapia are in the water, whichever is longer.

§57.116. Texas Tilapia.

(a) The director may issue a Texas tilapia permit to a licensed fish farmer for commercial production if the following requirements are met.

(1) Culture facilities must be designed to prevent discharge of water containing adult or juvenile tilapia or their eggs from the permittee's property.

(2) Facilities containing blue tilapia or hybrids between blue and Mozambique tilapia which are within the 100-year flood plain, referred to as Zone A on the National Flood Insurance Program Flood Insurance Rate Map, are enclosed within an earthen or concrete dike or levee raised to an elevation of at least one foot above 100-year flood elevation. This dike shall be constructed in such a manner to exclude all flood waters. Dike construction must be approved by the department before issuance of a permit.

(b) To be considered for a Texas tilapia permit, the applicant must:

(1) complete an initial Texas tilapia permit application;

(2) submit this application to the department;

(3) possess a valid Texas fish farmer's license;

(4) demonstrate to the department's satisfaction that an existing culture facility meets specifications described in §57.117 of this title (relating to Texas Tilapia Permit; Expiration Renewal, and Inspection), or present plans for facilities in planning or construction that will meet these specifications.

§57.117. Texas Tilapia Permit; Expiration, Renewal, and Inspection.

(a) Permits required by these rules expire on August 31 of each year. Permits are renewable upon submission of a certificate to the department by the owner of the facility stating that no material or substantial changes to the facility have been made during the prior permit period. Permits shall bear the same number each year.

(b) Permits are not transferable from site to site or from person to person. If substantial or material changes have been made to a facility during the permit period, the permittee must comply with the requirements stated in subsection (b) of this section for an initial permit.

(c) Permits must be made available to authorized department personnel upon request.

(d) An applicant for a permit must agree to allow inspection of higher facilities by authorized employees of the department during normal business hours.

(e) An applicant for a permit must agree to provide a limited number of fish to

authorized department employees upon request for identification and analyses.]

(f) If a permittee terminates tilapia production, the permittee shall lawfully remove or destroy all remaining tilapia.]

(g) Texas tilapia permits are not required for holders of zoological or scientific permits who do not commercially propagate tilapia or for commercial shippers.]

(h) An applicant for a permit must agree to provide documentation necessary to identify tilapia.

§57.118. Reports.

(a) Holders of harmful or potentially harmful exotic fish permits issued prior to January 1, 1974, may retain those live fish in their possession on that date and thereafter. The permit holder must submit an annual report on a form provided by the department. The department will then issue a new permit, renewable annually, only for those live fish legally possessed under the current permit.]

(b) The Texas tilapia permit holder must submit an annual report on a form provided by the department.

§57.119. Penalties. The penalties for violation of this subchapter are prescribed by the Parks and Wildlife Code, §66.012.

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 26, 1989, 1989.

TRD-8908968

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 3, 1989

For further information, please call: 1-800-792-1112, ext. 4641, or (512) 389-4641

Issuance of Oyster Leases

• 31 TAC §57.245

The Texas Parks and Wildlife Department proposes new §57.245, concerning requirements for certified shellfish dealers who are required to pay a \$1.00 per barrel fee for oysters lauded to also provide other harvesting-related information to the department. This section defines the specific items that must be provided by the dealer, the method for recording those items, the requirements for allowing examination of those items, and the length of time those items must be retained.

Robin Reichers, staff economist, has determined that for the first five-year period the proposed section is in effect there will be minimal fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Reichers 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 indirect benefit accrued through the additional knowledge of the fishery, which should lead to increased efficiency in management. The anticipated economic cost to individuals who are required to comply with the section as proposed will be minimal, as the collection of most of this information is already required due to an existing authorized program.

Comments on the proposed rules may be submitted to Hal Osburn, Director of Fisheries Harvest Programs, Coastal Fisheries Branch, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4863 or 1-800-792-1112, extension 4863.

The new section is proposed under the Texas Parks and Wildlife Code, Chapter 76, Subchapters A and E, which provides the Texas Parks and Wildlife Commission with authority to regulate the taking, possession, purchase, and sale of oysters and the conduct of oyster research programs.

§57.245. Oyster Transaction Receipt.

(a) A certified shellfish dealer who is required to pay a \$1.00 per barrel fee to the department is also required to maintain an oyster transaction receipt for each first sale or exchange transaction involving oysters.

(b) The oyster transaction receipt must be available for examination during reasonable business hours of the dealer by authorized employees of the department for statistical purposes or as a part of an ongoing investigation of a criminal violation.

(c) All oyster transaction receipts must be maintained at the place of business for at least one year from the date of the transaction.

(d) An oyster transaction receipt must be legible and complete and must include, where applicable:

(1) the name or registration number and commercial oyster boat license number of the oyster harvesting boat;

(2) the name of the captain of the boat;

(3) the number of crew on the boat;

(4) the commercial oyster fishermen license number of the harvester;

(5) the name of the receiving certified shellfish dealer;

(6) the number of barrels of oysters received;

(7) the price paid per barrel;

(8) the location where the oysters were harvested;

(9) the description and number of gear used to harvest the oysters; and

(10) the date of the transaction.

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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Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
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Importation, Sale, Transport, or Release of Noxious Aquatic Plants

• 31 TAC §§57.251-57.256

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

The Texas Parks and Wildlife Department proposes the repeal of §§57. 251-57.256, concerning importation, sale, transport, or release of noxious aquatic plants. The 71st Legislature changed the reference to noxious aquatic plants in the Parks and Wildlife Code, §12.015, to fish, shellfish, and aquatic plants and placed the authority to regulate aquatic plants in the Parks and Wildlife Code, §66.007. These repealed sections are incorporated in proposed new 31 TAC §§57.111-57.119.

Robin Reichers, staff economist, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Reichers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that rules no longer authorized by statute will be removed from the Texas Administrative Code. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed

Comments on the proposal may be submitted to Neil E. Carter, Chief, Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4641 or (512) 389-4641.

The repeals are proposed as a result of recent legislation that amended the Texas Parks and Wildlife Code, §12.015, which no longer directs the department to identify, publish a list of, or issue permits for importation, sale, or transport or release of noxious aquatic plants.

§57.251. Definitions.

§57.252. Identification of Plants.

§57.253. Permits.

§57.254. Private Ownership.

§57.255. Penalties.

§57.256. Documentation.

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 26, 1989.

TRD-8908966 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

**Introduction of Fish, Shellfish,
and Aquatic Plants**

• 31 TAC §§57.251-57.258

The Texas Parks and Wildlife Department proposes new §§57.251-57.258, concerning the introduction of fish, shellfish, and aquatic plants into public waters of the state. The new undesignated head provides rules for obtaining permits for such introductions.

Robin Riechers, staff economist, has determined that for the first five-year period that the sections are in effect there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the sections.

Robin Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a decrease in the likelihood that fish, shellfish, or aquatic plant communities in public waters will be damaged or destroyed by unauthorized introductions. The anticipated economic cost to individuals who are required to comply with these sections such as fish farms, nurseries, etc. who supply fish, shellfish, or aquatic plants for introductions into public water will be minimal.

Comments on the proposal may be submitted to Neil E. Carter, Chief of Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, ext. 4641 or, (512) 389-4641.

The new sections are proposed under the Texas Parks and Wildlife Code, §66.015 which authorizes the department to establish rules and regulations governing the issuance of permits to introduce fish, shellfish, and aquatic plants into public water.

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

Aquatic plant—All plants whose seeds germinate in either the water phase or

the substrate of a body of water and which must spend part of their life cycle in water (Reid, G.K., and R.O. Wood 1976, *Ecology of Inland Waters and Estuaries*).

Department—The Texas Parks and Wildlife Department or any authorized employee thereof.

Native fish—All fish documented by the department to live, spawn, or reproduce in Texas public waters and whose first documented occurrence in Texas public waters was not the result of direct or indirect importation by man.

Non-game fish (rough fish and bait fish)—All fish included in §65.6 of this title (relating to Definitions).

Public water—Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination (the Texas Parks and Wildlife Code, §66.015(a)).

Shellfish—Aquatic species of crustaceans and mollusks, including oysters, clams, shrimp, prawns, and crabs of all varieties (the Texas Parks and Wildlife Code, §51.001(2)).

§57.252. Prohibited Acts. Except as provided in these rules it shall be an offense if:

(1) Any person places fish, shellfish, or aquatic plants into public water without a valid permit issued by the department authorizing that activity; i

(2) a person holding a permit under this section fails to notify the person designated on the permit at least three days prior to the placing of any fish, shellfish, or aquatic plant into public water; j

(3) any fish, shellfish, or aquatic plant any person possesses or has placed in nonpublic water escapes into public water and that person does not hold a valid permit issued by the department authorizing that activity.

§57.253. Permit Exemptions.

(a) A permit is not required to introduce native non-game fish into public water.

(b) An employee of the department acting at the direction of the executive director is exempt from the permit requirements specified by these rules.

§57.254. Permit Application.

(a) An applicant for a permit to place fish, shellfish, or aquatic plants, directly or indirectly, into the public waters of this state shall submit a notarized application to the department on a form supplied by the department. j

(b) To be considered, the application must be received by the department at

least 30 days before the proposed introduction.

§57.255. Verification of Compliance.

(a) A person holding a permit issued under this section shall notify the person designated on the permit at least three days prior to the actual placing of fish, shellfish, or aquatic plants into public waters. j

(b) A person holding a permit shall place authorized fish, shellfish, or aquatic plants in public waters only in the presence of a designated employee of the department in order to assure that terms of the permit are met and to verify and record the introduction. j

§57.256. Period of Validity. A permit issued under this section is valid for 60 days from the date of issuance or until the permitted introduction has been completed, whichever comes first.

§57.257. Statewide Permit. Any person is permitted to place native shrimp and crabs into public waters without notifying the department.

§57.258. Penalties. A person who violates this section commits an offense punishable by the penalty prescribed by the Texas Parks and Wildlife Code, §66.012.

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 26, 1989.

TRD-8908965 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 389-4805

Saltwater Gamefish

• 31 §57.331

The Texas Parks and Wildlife Department proposes the repeal of §57.331, concerning saltwater game fish. The repeal will clarify and simplify rules as game fish are currently listed in two different Parks and Wildlife proclamations. The definitions section of the Statewide Hunting and Fishing Proclamation (31 TAC §55.6) defines saltwater as well as freshwater game fish.

Robin Reichers, staff economist, has determined that for the first five-year period the repeal is in effect there will be minimal fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Reichers also 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 clarification and simplification of commission rules. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposed section may be submitted to C. E. Bryan, Fisheries Resource Program Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4863 or (512) 389-4641.

The repeal is proposed under the Texas Parks and Wildlife Code, Chapter 66, §66.210, which requires the Parks and Wildlife Commission to classify and reclassify, when necessary, saltwater fish as game fish and nongame fish.

§57.331. Game Fish.

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 26, 1989.

TRD-8908963

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

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For further information, please call: 1-800-792-1112, ext. 4863 or (512) 389-4863.

Chapter 65. Wildlife

Subchapter H. Type I Wildlife Management Areas, Hunting and Fishing

• 31 TAC §§65.190, 65.193, 65.197, 65.205

The Texas Parks and Wildlife Department proposes amendments to §§65.190, 65.193, 65.197, and 65.205, concerning the Type I Wildlife Management Area Hunting and Fishing Proclamation. The amended sections will make provisions for holding a bighorn sheep hunt for a member of the public.

Robin Riechers, staff economist, has determined that the first five-year period the proposed sections are in effect there will be minimal fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Riechers, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide for a member of the public to participate in hunting bighorn sheep. It is anticipated that there will be minimal economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted to Herb Kothmann, Public Hunt Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, ext. 4770 or, (512) 389-4770.

The amendments are proposed under the Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, number, means, methods, and conditions for taking wildlife resources on wildlife management areas and the Parks and Wildlife Code, §§61.204-61.206, concerning bighorn sheep.

§65.190. Application. The provisions of this subchapter apply to all of the wildlife resources in the following areas, except as restricted herein:

(1)-(24) (No change.)

(25) Lands within a desert bighorn sheep cooperative unit for the hunting of desert bighorn sheep only.

§65.193. General Regulations.

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

(h) Hunter Orange.

(1) A person must visibly wear a minimum of 400 square inches of daylight fluorescent orange material with 144 square inches appearing on both the chest and back when hunting any wildlife on a wildlife management area, except that persons hunting only the following species are exempt from this requirement:

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

(F) desert bighorn sheep.

(2) (No change.)

(i)-(t) (No change.)

§65.197. Hunting Permits.

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

(c) A special permit is required for the hunting of:

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

(4) desert bighorn sheep during the season prescribed for desert bighorn sheep on the Elephant Mountain and Sierra Diablo Wildlife Management Areas [Area] and lands within a desert bighorn sheep cooperative unit.

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

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

§65.205. Desert Bighorn Sheep.

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

(g) Tag fees.

(1) The tag fee is \$300 for each permittee selected by means of a random drawing, payable in advance of the hunt and is nonrefundable.

(2) The tag fee is \$300 for each permittee selected by membership of a desert bighorn sheep cooperative unit, pay-

able in advance of the hunt and is nonrefundable.

(3) The tag fee for each permittee selected by means of auction conducted by the Foundation for North American Wild Sheep is in the amount established by the Parks and Wildlife Commission, payable in advance of the hunt and is nonrefundable.

(h) Permit issuance.

(1) Bighorn sheep hunting permits are authorized for issuance to persons selected by random drawing. Only residents of Texas who [have purchased a Type II Wildlife Management-Public Hunting Lands permit] are 17 years of age or older at the time of the hunt and possess a valid resident of Texas hunting license are eligible to participate in the random drawing.

(2)-(3) (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 September 26, 1989.

TRD-8908962

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 3, 1989

For further information, please call: 1-800-792-1112, ext. 4505, or (512) 389-4505

TITLE 34. PUBLIC FINANCE

Part VII. State Property Tax Board

Chapter 155. Tax Record Requirements

• 34 TAC §155.4

The State Property Tax Board proposes an amendment to §155.4, concerning the form and contents of appraisal records for appraisal district offices. House Bill 432, 71st Legislature, 1989, allows an inventory owner to request appraisal of his inventory at its value on September 1 of the year preceding the tax year. The amendment requires qualification for September 1 inventory appraisal to be listed in the appraisal records.

Sanos L. Stiefer, 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. Stiefer 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 uniform recording of qualification for inventory appraisal as of September 1 of the year preceding a tax

year. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The amendment is proposed under the Tax Code, §25.02, which provides the State Property Tax Board with the authority to prescribe the form of appraisal records.

§155.4. Appraisal Records of All Property.

(a) (No change.)

(b) The appraisal records of all property shall be two lists—one list for real property and one list for personal property and shall contain the following items of information as applicable:

(1)-(10) (No change.)

(11) the tax year to which the appraisal applies; [and]

(12) (No change.)

(13) whether the property qualifies for appraisal at its value as of September 1 of the year preceding the tax year; and

(14) the name and address of an agent for notices, if any.

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

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

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

TRD-8908951 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (521) 329-7802

• 34 TAC §155.6

The State Property Tax Board proposes an amendment to §155.6, concerning exemption applications for residence homesteads. The proposed amendment adopts by reference an amended residence homestead application form which reflects the change of name of the Texas Department of Labor and Standards to the Texas Department of Licensing and Regulation, effective September 1, 1989.

Sands L. Stiefer, 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. Stiefer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the residence

homestead application form will reflect the new name of the Texas Department of Licensing and Regulation. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas, 78746-6565.

The amendment is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe all forms necessary for the administration of the property tax system.

§155.6. Exemption Applications for Residence Homesteads.

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

(k) An application for residential homestead exemption form, as amended November 1, 1989, is adopted by reference. Copies of the form may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565 [9501 North IH 35, Austin, Texas 78735].

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 25, 1989.

TRD-8908945 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

• 34 TAC §155.38

The State Property Tax Board proposes an amendment §155.38, concerning current, delinquent, and special valuation rollback tax bills or statements. The proposed amendment will delete language permitting the collecting office to send tax bills to a mortgage company without prior authorization from the property owner.

Sands L. Stiefer, 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. Stiefer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the option for property owners to receive tax bills on mortgaged property or to appoint an agent to receive the bills. Collecting offices will have the clear authority to send tax bills to the agent or to the owner. 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 Ron Patterson, Executive Director, State

Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas, 78746-6565.

The amendment is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe the form and contents of all forms necessary for the administration of the tax system.

§155.38. Current, Delinquent, and Special Valuation Rollback Tax Bills or Statements.

(a) (No change.)

(b) Current tax bills or statements shall be prepared as follows.

(1) Current tax bills shall be issued to each person in whose name the property is listed, or to his authorized agent by October 1, or as soon thereafter as practicable. [In the case of mortgaged property where taxes are paid from an escrow account controlled by the mortgagee (mortgage holder), the notice requirements shall be satisfied by sending the tax bill to the mortgagee. Written authorization by the property owner is not required in order to deliver the tax bill to the mortgage company when the mortgage company acknowledges that it has authority for payment of taxes on the property.]

(2) (No change.)

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

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

Issued in Austin, Texas on September 25, 1989.

TRD-8908952 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

• 34 TAC §155.48

The State Property Tax Board proposes new §155.48, concerning notice of public hearing on a county's appraisal district budget. The proposal adopts by reference a new model form that chief appraisers must use to publish notice. The proposal also sets out the minimum type size for the notice.

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

Mr. Stiefer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be chief appraisers will have access to a standard form that complies with House Bill 432, §10, 71st Legislature, 1989. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe

the contents of all forms necessary for the administration of the property tax system.

§155.48. Publication of Budget.

(a) In publishing the notice summarizing the appraisal district budget under the Tax Code, §6.062 the chief appraiser shall employ Model Form 6.062. The type size

may not be smaller than nine points and the headline may not be smaller than 18 points.

(b) The State Property Tax Board adopts by reference Model Form 6.062. Copies may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

NOTICE OF PUBLIC HEARING ON
(_____ *name of county* _____) COUNTY APPRAISAL DISTRICT BUDGET

The (_____ *name of county* _____) County Appraisal District will hold a public hearing on a proposed budget for the 19 _____ fiscal year.

The public hearing will be held on (_____ *date and time* _____) at (_____ *meeting place* _____).

A summary of the appraisal district budget follows:

The total amount of the proposed budget is \$ _____ .
(List major budget categories and amounts.)

The total amount of increase over the current year's budget is
\$ _____ .

The number of employees compensated under the proposed budget will
be _____ .

The number of employees compensated under the current budget
is _____ .

The appraisal district is supported solely by payments from the local taxing units served by the appraisal district.

If approved by the appraisal district board of directors at the public hearing, this proposed budget will take effect automatically unless disapproved by the governing bodies of the county, school districts, cities, and towns served by the appraisal district.

A copy of the proposed budget is available for public inspection in the office of each of those governing bodies. The proposed budget may also be viewed at the appraised district office.

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 26, 1989.

TRD-8908939 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

• 34 TAC §155.49

The State Property Tax Board proposes new §155.49, concerning adoption by reference of a model form for notice of change of use determinations and requiring appraisal districts to use the form to notify property owners of each determination.

Sands L. Stiefer, general counsel, has determined that there will not be fiscal implications as a result of enforcing or administering the section.

Mr. Stiefer has also determined that for the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be appraisal districts will have a clear method for notifying property owners of change of use

determinations in compliance with the Tax Code, §§23.46, 23.55, and 23.76. Taxpayers will have written notice of the determinations and the procedures for protesting the decision. There will be no economic costs to individuals who are required to comply with the section.

Comments on the proposal may be submitted to Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

§155.49. Change of Use Determination.

(a) Each appraisal district shall use State Property Tax Board Model Forms 23.46 and 23.55, in giving notice to the property owner of each change of use determination made by the chief appraiser.

(b) An appraisal district may substitute for special purposes a different form than that required by subsection (a) of this section if the substitute form is approved by the executive director.

(c) Model Forms 23.46 and 23.55, are adopted by reference. Copies of the form may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

Date of Notice _____

NOTICE OF CHANGE OF USE DETERMINATION

Property Owner's
Name & Address

Property Subject to Change
of Use Determination

The chief appraiser has determined that the 1-d-1 qualified property described above is not used for agriculture or the production of timber, so the property no longer qualifies for 1-d-1 appraisal.

You may protest this change of use determination to the Appraisal Review Board (ARB) by filing a written notice of protest not later than 30 days after this notice is dated. If you have questions about this determination or the procedure for filing a protest, you may wish to consult your appraisal district's staff, the State Property Tax Board's *Manual for the Appraisal of Agricultural Land*, or the *Guidelines for the Valuation of Timberland*.

If you do not protest or if the ARB determines that the use of the property has changed, the property is subject to an additional tax (rollback tax) equal to the tax savings you realized for the three years before the year of this determination, plus interest. The assessor for each taxing unit taxing the property will assess the additional tax. If you have any questions about the amount or calculation of this additional tax, you may wish to consult the State Property Tax Board's *Manual for the Appraisal of Agricultural Land* or your tax assessor's staff.

Date of Notice _____

NOTICE OF CHANGE OF USE DETERMINATION

Property Owner's
Name & Address

Property Subject to Change
of Use Determination

The chief appraiser has determined that the 1-d qualified property described above is not used for agriculture so the property no longer qualifies for 1-d appraisal.

You may protest this change of use determination to the Appraisal Review Board (ARB) by filing a written notice of protest not later than 30 days after this notice is dated. If you have questions about this determination or the procedure for filing a protest, you may wish to consult your appraisal district's staff or the State Property Tax Board's *Manual for the Appraisal of Agricultural Land*.

If you do not protest or if the ARB determines that the use of the property has changed, the property is subject to an additional tax (rollback tax) equal to the tax savings you realized for the three years before the year of this determination, plus interest. The assessor for each taxing unit taxing the property will assess the additional tax. If you have any questions about the amount or calculation of this additional tax, you may wish to consult the State Property Tax Board's *Manual for the Appraisal of Agricultural Land* or your tax assessor's staff.

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 25, 1989.

TRD-8908940 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
• 34 TAC §155.51

The State Property Tax Board proposes an amendment to §155.51, concerning miscellaneous exemption application forms. The amendment adopts by reference a new application form for property tax abatement exemptions. The amended form notes whether or not personal property is exempted under the tax abatement agreement. The provisions of House Bill 2043 and Senate Bill 1312, 71st Legislature, 1989, authorize the abatement of taxes on personal property other than inventory or supplies. The amendment also conforms subsection (a) of the section to earlier amendments adopting additional forms.

Sands L. Stiefer, 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. Stiefer 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 appraisal districts will receive additional important information, concerning property tax abatements, and property owners will have greater assurance that abatements will be properly reflected in the tax appraisal records. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westlake High Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The amendment is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe the contents of forms used in the property tax system.

§155.51. *Miscellaneous Exemptions.*

(a) Each appraisal office shall prepare applications for the exemptions provided by the Property Tax Code, §§11.17, 11.22, 11.23(b)-(k), 11.24, 11.27, [and] 11.28, 11.29 and 11.271, and make copies of each form available to the public.

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

(h) The following model forms are adopted by reference:

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

(7) application for property tax abatement exemption (Form 11.28), as amended November, 1989 [March 1989];

(8)-(9) (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 September 25, 1989.

TRD-8908949 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
• 34 TAC §155.54

The State Property Tax Board proposes new §155.54, concerning the adoption of a model

form for property owners to use in requesting tax offices to hold a tax bill until the unpaid amount of the bill is \$15 or more and requiring collecting offices to make copies of the form available to the public.

Sands L. Stiefer, 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. Stiefer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be property owners will have a clear, readily available method for making a request to hold the tax bill. Collecting offices will have a clear and complete request from property owners. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

§155.54. *Request to Postpone Tax Bill.*

(a) Each collecting office shall prepare and make available to the public copies of State Property Tax Board Model Form 31.01.

(b) A collecting office may substitute for special purposes a different form than that required by subsection (a) of this section if the substitute form is approved by the executive director.

(c) State Property Tax Board Model Form 31.01 is adopted by reference. Copies of the form may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

Collecting Office _____

REQUEST TO POSTPONE TAX BILL

To have your tax bills held without accruing penalties or interest until the amount of unpaid taxes reaches \$15 or more, you must file this request with each collecting office that collects taxes on the property.

IDENTIFICATION OF PROPERTY OWNER:

Name: _____

Address: _____

Telephone: _____

Name and address of agent designated to receive tax bills (if different from above): _____

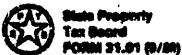
IDENTIFICATION OF PROPERTY:

List the account number of the property subject to this request:

If the account number of the property is unavailable, describe the property by address or location (attach a separate page if space is not sufficient)

Signature _____

Date _____



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 25, 1989.

TRD-8908944

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

• 34 TAC §155.55

The State Property Tax Board proposes new §155.55, concerning public notice of protest and appeal procedures. The notice must describe how to initiate a protest, the deadline for filing a protest and the manner in which an order of the appraisal review board may be appealed. The proposal adopts by reference a new model form that chief appraisers must use to publish notice. The proposal also sets out the minimum type size for the notice.

Sandra L. Stiefer, general counsel, has determined that there will not be fiscal implications as a result of enforcing or administering the section.

Mr. Stiefer also has determined that for the first five years the section as proposed is in

effect, the public benefit anticipated as a result of enforcing this section as proposed will be chief appraisers will have access to a standard form which complies with House Bill 432, §40, 71st Legislature, 1989, which added the Tax Code, §41.70. There will be no economic costs to individuals who are required to comply with the section.

Comments on the proposal may be submitted to Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas, 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe all forms necessary for the administration of the property tax system.

§155.55. Public Notice of Protest and Appeal Procedures.

(a) In publishing the notice of protest procedures required by the Tax Code, §41.70, the chief appraiser shall employ Model Form 41.70. The type size may not be smaller than nine points and the headline may not be smaller than 18 points.

(b) The State Property Tax Board adopts by reference Model Form 41.70. Copies may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

PROPERTY TAX APPRAISAL PROTEST AND APPEAL PROCEDURES

A property owner may protest the appraised value of his property by filing a written notice of protest with the Appraisal Review Board (ARB) for the district which took the action he wishes to protest.

A notice is sufficient if it identifies:

- 1) the protesting property owner (including a person claiming an ownership interest);
- 2) the property that is the subject of the protest; and
- 3) indicates dissatisfaction with some determination of the appraisal office.

DEADLINES FOR FILING A NOTICE OF PROTEST:

- The usual deadline is midnight (if mailed and postmarked) on May 31.
If the notice was mailed to you on May 2 or later, or if your protest concerns change in use of land appraised as agricultural, open space, or timber land, the deadline is midnight of the 30th day after the appraisal notice was mailed to you.
- If the protest concerns a change the ARB made to appraisal records and the ARB sent notice of the change, the deadline is midnight of the 10th day after the notice was mailed to you.
- If you received no notice and should have by law, the deadline is midnight of the day before taxes become delinquent for the year (usually February 1 of the following year).
- If you have good cause for missing a deadline, the deadline is midnight of the day before the ARB approves the appraisal records. The ARB decides if you had good cause.

DEADLINES FOR FILING AN APPEAL OF AN APPRAISAL REVIEW BOARD ORDER:

- If a property owner, you do not have to file written notice of appeal unless the appraised value is more than \$1 million.
- If the appraised value is more than \$1 million, written notice of appeal must be filed with the chief appraiser within (15) days after the owner receives the notice from the ARB.
- The notice must be filed with the chief appraiser of the appraisal district for which the ARB is established.
- A petition for review must be filed with the district court within 45 days after receipt of the ARB's final order.

For further information contact: (Appraisal district name, address, and telephone number), or obtain a copy of *Taxpayers' Rights, Remedies, Responsibilities* from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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 25, 1989.

TRD-8908942

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
• 34 TAC §155.57

The State Property Tax Board proposes new §155.57, concerning notice of public hearing on a proposal to tax nonbusiness personal

property. The new section prescribes a form for the notice required by the Tax Code, §11.14, and adopts the form by reference.

Sandra L. Stiefer, general counsel, has determined that there will not be fiscal implications as a result of enforcing or administering the section.

Mr. Stiefer also has determined that for the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be taxing units will have a clear method for publishing notice of the public hearing required by the Tax Code, §11.14. There will be no economic costs to individuals who are required to comply with the section.

Comments on the proposal may be submitted to Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §8.07, which provides the State Property Tax Board with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

§155.57. Notice of Hearing on Proposal to Tax Non-business Personal Property.

(a) A taxing unit may employ the form and wording of State Property Tax Board Model Form 11.14 in publishing the notice of public hearing on a proposal to tax non-business personal property required by the Tax Code, §11.14.

(b) The type size employed in the notice may not be less than 10 points.

(c) State Property Tax Board Model Form 11.14 is adopted by reference. Copies may be obtained from the State Property Tax Board, 4301 Westbank Drive, Austin, Texas 78746-6565.

NOTICE OF PUBLIC HEARING TO TAX PERSONAL PROPERTY

The (name of political subdivision's governing body) will hold a public hearing on a proposal to tax the following non-business personal property: (name classes of property to be subject to taxation) .

To tax the above property, the (political subdivision's governing body) must approve the proposal by ordinary resolution or order *and* must find that the taxation of property as proposed will be in the public interest of all residents of (name of political subdivision) .

The public hearing will be held on (date and time)
at (meeting place) .

All interest persons may speak at the meeting and present evidence for or against this proposal.

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 25, 1989.

TRD-8908943

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
**Chapter 161. Valuation
Procedures**

• **34 TAC §161.22**

The Property Tax Board proposes an amendment to §161.22, concerning rendition of

property qualified for allocation of value. The proposed amendment will adopt by reference an amended State Property Tax Board Model Form 21.03. The amended form will reflect legislative changes to the allocation formula for aircraft.

Sandra L. Stiefer, 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. Stiefer 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 appraisal districts receiving renditions of aircraft qualified for allocation will have all the information necessary to allocate the value of the rendered aircraft. 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 Ron Patterson, Executive Director, State

Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The amendment is proposed under the Tax Code, §22.24, which provides the State Property Tax Board with the authority to adopt model rendition forms for persons required to render property.

§161.22. Application for Allocation of Value.

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

(c) Model Rendition Form 21.03, as amended November 1, 1989, is adopted by reference.

A "situs state" is one in which the aircraft was continually used in the past 12 months, or was present on the state's lien date, or in which the owner was domiciled in the past 12 months, or which has levied a property tax on the aircraft for this year. Texas situs is the owner-carrier's principal office in Texas or the Texas airport from which the carrier makes the highest number of Texas revenue departures.

[illegible]

Continue on additional sheets as needed

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 25, 1989.

TRD-8908941

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
• 34 TAC §161.24

The State Property Tax Board proposes an amendment to §161.24, concerning allocation of value for aircraft property. The Tax Code, §21.06, added by the 71st Legislature and effective August 28, 1989, creates a statutory formula for allocation of commercial aircraft value different from the formula set forth in the current §161.24. The amendment will conform the rule to the new statute.

Sands L. Stefer, 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 sections.

Mr. Stefer 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 conformity of the rule to the statute, therefore, appraisal districts will not be required to use conflicting allocation formulas. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The amendment is proposed under the Tax Code, §21.03, which provides the State Property Tax Board with the authority to adopt rules establishing formulas for calculating the proportion of market value to be allocated to this state for property located in this state, and used continually out of this state or nation.

§161.24. Allocation of Value.

(a) (No change.)

(b) For aircraft property, the chief appraiser shall use the following [an] allocation formula: the fair market value of the aircraft multiplied by a fraction, the numerator of which is the product of 1.5 and the number of revenue departures by the aircraft from Texas during the preceding tax year and the denominator of which is the greater of:

(1) the number of hours in a year (8,760); or

(2) the numerator. [based on time. The ratio of days or hours the aircraft

spends on the ground and in the air in Texas to days or hours spent on the ground and in the air in all situs jurisdictions is the allocation ratio. Time spent in the air or on the ground within the boundaries of states or nations that do not have jurisdiction to tax the property is not included in the denominator of the allocation ratio.]

(c)-(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 September 25, 1989.

TRD-8908948

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
Chapter 165. Practice and Procedure

Rules of Practice and Procedure

• 34 TAC §165.73

The State Property Tax Board proposes an amendment to §165.73, concerning the method of filing a protest of the agency's property value study. The amendment reduces the number of copies that must be filed with a protest.

Sands L. Stefer, 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. Stefer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the requirements of school and appraisal districts to file fewer copies of the documents and evidence, required to support a protest of the agency's property value study. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas, 78746-6565.

The amendment is proposed under the Education Code, §11.86, which provides the State Property Tax Board with the authority to prescribe by rule procedures for appeals of the agency's property value study.

§165.73. Method of Filing a Protest.

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

(d) A submission must specify all grounds for objection and contain sufficient

information to determine the validity of the protest. Three [Five] copies of all documents and other evidence that support the petitioner's protest must be included with the submission. Except as permitted by subsection (h) of this section, no additional evidence may be submitted after the deadline for submitting the petition.

(e)-(i) (No change.)

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

Issued in Austin, Texas on September 25, 1989.

TRD-8908948

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
Appraisal Review Board

• 34 TAC §165.141

The State Property Tax Board proposes an amendment to §165.141, concerning appraisal review board record requirements. Currently, §165.141 sets out the items to be kept as part of the record of the board. Beginning September 1, 1989, pursuant to House Bill 432, §39, 71st Legislature, 1989, the chief appraiser and a property owner or owner's agent must sign an affidavit stating that they have not had any ex parte communications with the appraisal review board, concerning property that is the subject of a protest, prior to the protest. The amendment makes these affidavits a part of the appraisal review board record.

Sands L. Stefer, 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. Stefer 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 uniform appraisal review board record requirements. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas, 78746-6565.

The amendment is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe a uniform record system to be used by all offices appraising property for tax purposes.

§165.141. Appraisal Board Record Requirement.

(a) (No change.)

(b) The following requirements shall be met by appraisal review boards in the conduct of hearings and proceedings, and the record kept by the board shall contain the following items:

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

(5) an affidavit signed by the chief appraiser and an affidavit signed by the property owner or owner's agent, stating "that no information has been communicated to any appraisal review board member, regarding the property subject to the protest, prior to the protest hearing";

(6)[(5)] a summary of the testimony relevant to the issues before the board;

(7)[(6)] any documentary or physical evidence submitted for consideration by the board or the reference number of the evidence, if applicable;

(8)[(7)] the names and resident address of every witness and the fact that the witness testified under oath;

(9)[(8)] a notation of any formal motions made and the ruling thereon;

(10)[(9)] the final order of the board or a reference to the written order number; and

(11)[(10)] the date of any final order and the date the notice is placed in the mail.

(c)-(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 September 25, 1989.

TRD-8908947

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

• 34 TAC §165.142

The State Property Tax Board proposes an amendment to §165.142, concerning the notice of protest filed with an appraisal review board by a property owner. Currently, §165.142 sets out the contents of a form that may be used in filing a protest with an appraisal review board. The amendment adopts a new form that will allow a person, claiming an ownership interest in property, to file a protest, reflecting the amendment made to the Tax Code, §41.44 by House Bill 432, 71st Legislature, 1989. The new form allows a property owner to protest a chief appraiser's determination of change of use for agricultural property, reflecting amendments to the Tax Code, Chapters 23 and 41, by the 71st Legislature. The new form also notes the deadline for appealing a determination that a change in use of agriculture or timberland has taken place.

Sands L. Stiefer, 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. Stiefer 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 taxpayers and appraisal review boards, the use of a model form to which reflects the amendments to the Tax Code, made by the 71st Legislature applicable to protests filed on or after September 1, 1989. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive,

Building B, Suite 100, Austin, Texas, 78746-6565.

The amendment is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe all forms necessary for the administration of the property tax system.

§165.142. Notice of Protest.

(a) (No change.)

(b) A notice of protest is sufficient if it:

(1) identifies the protesting property owner, including a person claiming an ownership interest in the property;

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

(c) (No change.)

(d) The Model Notice of Protest Form 41.11, as amended November 1, 1989, [October 30, 1987] is adopted by the State Property Tax Board by reference. Copies of this form are available from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565 [for inspection at the Office of General Counsel, State Property Tax Board, P.O. Box 15900, Austin, Texas 78761].

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 25, 1989.

TRD-8908950

Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 3, 1989

For further information, please call: (512) 329-7802

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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.38

The Railroad Commission of Texas adopts the repeal of §3.38, without changes to the proposed text as published in the March 28, 1989, issue of the *Texas Register* (14 TexReg 1575). The repeal shall take effect on November 1, 1989.

The repealed section is being replaced by a new section.

An individual commented against the proposed repeal without realizing a new section was proposed for adoption; consequently, the comment is misplaced.

The Railroad Commission adopts this repeal pursuant to the Texas Natural Resources Code, §§81.052, 85.201, 85.202, 86.042, and 141.012 authorizing the commission to make and enforce rules for the conservation, and prevention of waste and the protection of correlative rights regarding oil, gas, and geothermal resources in the State of Texas, including rules providing for the issuance of permits and for all things necessary for governing and regulating persons and their operations under the jurisdiction of the commission.

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 25, 1989.

TRD-890955

Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: November 1, 1989

Proposal publication date: March 28, 1989

For further information, please call: (512) 463-7152.

The Railroad Commission of Texas adopts §3.38, with changes to the proposed text as published in the March 28, 1989, issue of the *Texas Register* (14 TexReg 1575). The new sec-

tion shall take effect on November 1, 1989.

The Railroad Commission adopts the amendment to clarify the section; to provide that all exception permits will remain in effect for two years after the date of issuance; and to provide for the administrative approval of applications under specified circumstances. The prior section required an operator who had not exercised its rights under such a permit to file a written request for an extension one year after the date of issuance, up to a maximum of three extensions, and required a hearing on all applications. The new section will function the same as the old section in other respects.

A comment regarding proposed §3.38(b)(2)(A) was by Scott, Douglass and Lutton, suggesting the 20 acre and the 40 acre requirements proposed for 467-933 and 660-1320 spacings, respectively, be changed to 40 acres and 80 acres, respectively, in order to enable more regular locations on a standard drilling unit. The commission does not agree with the suggested change. The requirements proposed in subsection (b)(2)(A) are not changed from the existing rule, 16 Texas Administrative Code, §3.38(b)(1). The commission chooses not to change the existing requirements. The suggested change would reduce the density for the noted spacing requirements, allowing fewer regular density wells and possibly leading to unfair development with future development limited to one-half the number of wells currently allowed on the same amount of acreage in the affected field.

A comment was made by Scott, Douglass & Lutton that proposed 16 Texas Administrative Code, §3.38(b)(2)(C) may adversely affect certain oil and gas leases. In order to avoid the potential adverse effects from adding the subparagraph and to ensure the rule as adopted continues to operate as it has in the past, the commission does not adopt subparagraph (C) of proposed subsection (b)(2).

A comment was made by Scott, Douglass and Lutton regarding proposed 16 Texas Administrative Code, §3.38(d)(1) that the subsection is a departure from existing practice with respect to its application to pooled units and suggests an alternative procedure. The commission disagrees that the proposed rule, as it is applicable to pooled units, is a departure from existing policy. With respect to the voluntary subdivision rule, analysis of an application to drill on a pooled unit consisting of substandard acreage normally has been made by considering the subdivision status of the drillsite tract. The instructions on F reflect that policy, which was promulgated in 1975 in Oil and Gas Docket Number 20-65,316. Subsection (d)(1) expresses and continues the existing policy.

A comment was made by Scott, Douglass and Lutton regarding proposed 16 Texas Administrative Code §3.38(d)(3) that separate development of standard size and shape tracts should not be within the scope of the rule and that the procedure for applications within the scope of the rule should be clarified. The commission adopts proposed §3.38(d)(3) with changes to clarify the procedure to be followed under the rule. The commission does not agree with the comment regarding the scope of the rule. The proposed subsection (d)(3) is more narrow in application than the existing rule, 16 Texas Administrative Code, §3.38(a) (5). The commission intends to apply the new subsection (d)(3) if a division of a pooled unit results in any tract composed of substandard acreage, a continuation of existing practice, as part of its administration of §3.37(g) of this title relating to the voluntary subdivision rule.

A comment was made regarding proposed §3.38(g)(4) that the filing requirement of the rule appears to be in conflict with proposed subsection (c)(1). The commission does not agree that the rules are in conflict. The existing procedure requires such a filing, as reflected by instructions on Form W-1. The proposed subsection (g)(4) continues the procedure for the purpose of determining whether acreage was pooled to drill more than one surplus acreage well on a tract.

Comments were received from Texas Independent Producers and Royalty Owners Association (TIPRO) regarding four matters. TIPRO suggested that the definition of "proration unit" be changed to expand the scope of the term. TIPRO also suggested that the term, as expanded, be included in the definitions of "substandard acreage" and "surplus acreage". Those two comments are not adopted to avoid possible confusion from the added concepts. TIPRO also suggested a change to the language of §3.38(g)(1) that would make the certification requirement on a drilling permit better parallel the language on the drilling permit form. The comment is accepted. TIPRO also suggested a nonsubstantive change in the language of §3.38(h)(2) regarding the notice mailing requirement. The comment is accepted.

Comments were received from Mitchell Energy Corporation and Texas Mid-Continent Oil & Gas Association that supported adoption of the rule as published. Two individual comments were made suggesting nonsubstantive improvements in the language of proposed subsection (d)(2). The suggestions were accepted. An individual comment was made regarding the proposed repeal of the existing rule. The commentor was not aware that a new section was proposed and, upon learning of the error, recognized that the comment was misplaced.

Additionally, the commission makes some

nonsubstantive changes to clarify and simplify the proposed language to accurately reflect the commission's intent regarding the rule. The term "lease or tract" is changed to "lease, pooled unit or unitized tract", which is consistent with current policy as reflected by the use of the latter term on the drilling permit form. The term "minimum density provisions" is changed to "density provision" to simplify the language. The phrase "according to the density rules in effect" is added to §3.38(d)(1)(B) to clarify the rule. The definition of "substandard acreage" is simplified. The term "surplus acreage" is clarified with the addition of language distinguishing it from "tolerance acreage". In addition, the term "tolerance acreage" is defined to set forth its meaning. Finally, language was added to §3.38(c) to clarify that the subsection involves what is commonly known as the tolerance well.

The Railroad Commission adopts this new section pursuant to the Texas Natural Resources Code, §§81.052, 85.201, 85.202, 86.042, and 141.012 authorizing the commission to make and enforce rules for the conservation, and prevention of waste and the protection of correlative rights regarding oil, gas, and geothermal resources in the State of Texas, including rules providing for the issuance of permits and for all things necessary for governing and regulating persons and

their operations under the jurisdiction of the commission.

§3.38. Well Densities.

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

(1) Director—Director of the Oil and Gas Division or his staff delegate designated in writing by the director or the commission.

(2) Drilling unit—The acreage assigned to a well and outlined on the plat submitted with an application to drill.

(3) Proration unit—The acreage assigned to a well for the purpose of assigning allowables and allocating allowable production to the well.

(4) Substandard acreage—Less acreage than the smallest amount established for standard or optional drilling units.

(5) Surplus acreage—Substandard acreage within a lease, pooled unit, or unitized tract that remains unassigned after the assignment of acreage to each applied

for, permitted or completed well in a field, in an amount equaling or exceeding the amount established for standard or optional drilling units. Surplus acreage is distinguished from the term "tolerance acreage," in that tolerance acreage is defined in context with proration regulation, while surplus acreage is defined by this rule only in context with well density regulation. |

(6) Tolerance acreage—Acreage within a lease, pooled unit or unitized tract that may be assigned to a well for proration purposes pursuant to special field rules in addition to the amount established for a prescribed or optional proration unit.

(b) Density requirements.

(1) General prohibition. No well shall be drilled on substandard acreage except as hereinafter provided.

(2) Standard units.

(A) The standard drilling unit for all oil, gas, and geothermal resource fields wherein only spacing rules, either special, county regular, or statewide, are applicable is hereby prescribed to be the following:

Spacing Rule

Acreage Requirement

- (1) 150-300
- (2) 200-400
- (3) 330-660
- (4) 330-933
- (5) 467-933
- (6) 467-1200
- (7) 660-1320

- 2
- 4
- 10
- 20
- 20
- 40
- 40

proration units;

or

(B) The spacing rules listed in paragraph (2)(A) of this subsection are not exclusive. If any spacing rule not listed in paragraph (2)(A) is brought to the attention of the commission, it will be given an appropriate acreage assignment.

(c) Development to final density. An application to drill a well for oil, gas, or geothermal resource on a drilling unit composed of surplus acreage, commonly referred to as the "tolerance well," may be granted as regular when the operator seeking such permit certifies to the commission in a prescribed form the necessary data to show that such permit is needed to develop a lease, pooled unit, or unitized tract to final density, and only in the following circumstances: |

(1) when the amount of surplus acreage equals or exceeds the maximum amount provided for tolerance acreage by special or county regular rules for the field, provided that this paragraph does not apply for a lease, pooled unit, or unitized tract that is completely developed with optional units and the special or county regular rules for the field do not have a tolerance provision expressly made applicable to optional

(2) if the special or county regular rules for the field do not have a tolerance provision expressly applicable to optional proration units, when the amount of surplus acreage equals or exceeds one-half of the smallest amount established for an optional drilling unit; or

(3) if the applicable rules for the field do not have a tolerance provision for the standard drilling or proration unit, when the amount of surplus acreage equals or exceeds one-half the amount prescribed for the standard unit. |

(d) Applications involving the voluntary subdivision rule. |

(1) Density exception not required. An exception to the minimum density provision is not required for the first well in a field on a lease, pooled unit or unitized tract composed of substandard acreage, when the lease, or the drillsite tract of a pooled unit or unitized tract:

(A) took its present size and shape prior to the date of attachment of the voluntary subdivision rule (§3.37(g) of this title (relating to Statewide Spacing Rule));

(B) took its present size and shape after the date of attachment of the voluntary subdivision rule (§3.37(g) of this title (relating to the Statewide Spacing Rule)) and was not composed of substandard acreage in the field according to the density rules in effect at the time it took its present size and shape.

(2) Density exception required. An exception to the density provision is required, and may be granted only to prevent waste, for a well on a lease, pooled unit or unitized tract that is composed of substandard acreage and that: |

(A) took its present size and shape after the date of attachment of the voluntary subdivision rule (§3.37 of this title (relating to Statewide Spacing Rule)) and,

(B) was composed of substandard acreage in the field according to the density rules in effect at the time it took its present size and shape. |

(3) Division after joinder or

unitization. If two or more separate tracts are joined or unitized for oil, gas, or geothermal development and accepted by the commission, the joined or unitized tracts may not thereafter be divided into the separate tracts with the rules of the commission applicable to each separate tract, if the division results in any tract composed of substandard acreage at the time of division, unless and until the commission approves such division after application, notice to all current lessees and unleased mineral interest owners of each tract within the joined or unitized tract, and an opportunity for hearing. If written waivers are filed or if a protest is not filed within the time set forth in the notice of application, the application will be granted administratively. |

(e) Applications involving unitized areas with entity for density orders. An exception to the adrdum density provision is not required for a well in the unitized area for which the commission has granted an entity for density order, if the sum of all applied for, permitted, or completed producing wells in the field within the unitized area, multiplied by the applicable density provision, does not exceed the total number of acres in the unitized area. The operator must indicate the docket number of the entity for density order on the application form.

(f) Exceptions to density provisions authorized. The commission, in order to prevent waste or, except as provided in subsection (d)(2) of this section, to prevent the confiscation of property, may grant exceptions to the density provisions set forth in this section. Such an exception may be granted only after notice and an opportunity for hearing.

(g) General filing requirements. |

(1) Application. An application for permit to drill shall include the fees required by §3.76 of this title (relating to Fees Required to be Filed) and shall be certified by some person acquainted with the facts, stating that all information in the application is true and complete to the best of that person's knowledge and that the accompanying plat is accurately drawn to scale and correctly reflects all pertinent and required data.

(2) Plat. The required plat must depict the lease, pooled unit or unitized tract, showing thereon the acreage assigned to the drilling unit for the proposed well and the acreage assigned to all current applied for, permitted or completed wells on the lease, pooled unit or unitized tract. A permit to drill a well for oil, gas, or geothermal resources will not be granted until such plat has been attached to and made a part of such form.

(A) On large leases, pooled units or unitized tracts. If the established density is not exceeded as shown on the face of the form, a plat will suffice that

depicts the acreage assigned to the well for which the permit is sought and to the immediately adjacent wells on the lease, pooled unit or unitized tract. |

(B) On plats of leases, pooled units or unitized tracts from which production is secured from more than one field, the plat shall depict the acreage assigned to the wells in each field that is the subject of the current application.

(3) Substandard acreage. An application for a permit to drill on a lease, pooled unit or unitized tract composed of substandard acreage must include a certification in a prescribed form indicating the date the lease, or the drillsite tract of a pooled unit or unitized tract, took its present size and shape.

(4) Surplus acreage. An application for a permit to drill on surplus acreage pursuant to subsection (c) of this section must include a certification in a prescribed form indicating the date the lease, pooled unit, or unitized tract took its present size and shape.

(h) Procedure for obtaining exceptions to the density provisions. |

(1) Filing requirements. If a permit to drill requires an exception to the applicable density provision, the operator must file, in addition to the items required by subsection (g) of this section: |

(A) a list of the names and addresses of all affected persons. For the purpose of giving notice of application, the commission presumes that affected persons include the operators and unleased mineral interest owners of all adjacent offset tracts, and the operators and unleased mineral interest owners of all tracts nearer to the proposed well than the prescribed minimum lease-line spacing distance. The director may determine that such a person is not affected only upon written request and a showing by the applicant that: |

(i) competent, convincing geological or engineering data indicate that drainage of hydrocarbons from the particular tracts subject to the request will not occur due to production from the proposed well; and |

(ii) notice to the particular operators and unleased mineral interest owners would be unduly burdensome or expensive. |

(B) engineering and/or geological data, including a written explanation of each exhibit, showing that the drilling of a well on substandard acreage is necessary to prevent waste or to prevent the confiscation of property. |

(C) additional data requested by the director. |

(2) Notice of application. Upon receipt of a complete application, the commission will give notice of the application by mail to all affected persons for whom signed waivers have not been submitted.

(3) Approval without hearing. If the director determines, based on the data submitted, that a permit requiring an exception to the applicable density provision is justified according to subsection (f) of this section, then the application will be presented to the commission for consideration and action, provided that: |

(A) signed waivers from all affected persons were submitted with the application; |

(B) notice of application was given in accordance with paragraph (2) of this subsection and no protest was filed within 21 days of the notice; or

(C) no person appeared to protest the application at a hearing scheduled pursuant to paragraph (4)(A) of this subsection. |

(4) hearing on the application. |

(A) If a written protest is filed within 21 days after the notice of application is given in accordance with paragraph (2) of this subsection, the application will be set for hearing.

(B) If the application is not protested and the director determines that a permit requiring an exception to the applicable density provision is not justified according to subsection (f) of this section, the operator may request a hearing to consider the application.

(i) Duration. A permit issued as an exception to the applicable density provision shall expire two years from the effective date of the permit, unless drilling operations are commenced in good faith within the two year period.

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 25, 1989.

TRD-8908955

Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: November 1, 1989

Proposal publication date: March 28, 1989

For further information, please call: (512) 463-7182.

TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 83. Sanitary Rulings

• 22 TAC §83.3

The Texas Cosmetology Commission adopts an amendment to §83.3, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2752).

The amendment will clarify the intent of the section.

The amendment will save the public from confusion concerning a solid wall between a beauty salon and a residence.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908937

Ron Reese
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

Chapter 89. General Provisions

• 22 TAC §89.8

The Texas Cosmetology Commission adopts an amendment to §89.8, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2752).

The amendment is adopted in order to clarify the intent of the section. The effect of the amendment will be to save confusion due to misinterpretation of the language in the section.

The amendment will specify that students may only be enrolled in one cosmetology course at a time, clarifying the intent of the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908936

Ron Reese
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

• 22 TAC §89.13

The Texas Cosmetology Commission adopts an amendment to §89.13, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2752).

The amendment will clarify and specify the intent of the section.

The effect of the amendment will be to specify which other sections are included.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908935

Ron Reese
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

• 22 TAC §89.17

The Texas Cosmetology Commission adopts an amendment to §89.17, without changes to the proposed text as published in June 9, 1989, issue of the *Texas Register* (14 TexReg 2753).

The amendment will clarify the intent of the section.

The effect of the amendment will be to specify that an applicant for an instructor license must have work experience in the State of Texas if applying for an instructor license off of work experience as opposed to receiving 750 hours of instructor training in a cosmetology school.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908934

Ron Reese
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

• 22 TAC §89.20

The Texas Cosmetology Commission adopts an amendment to §89.20, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2753).

The adopted amendment will clarify the intent of the section.

The adopted amendment will cut down on unnecessary language in this section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908933

Ron Reese
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

• 22 TAC §89.38

The Texas Cosmetology Commission adopts an amendment to §89.38, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2753).

The amendment will clarify the intent of the section.

The amendment specifies what kind of door is permissible to have in a beauty salon in conjunction with a residence and clarifies the intent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908932

Ron Resech
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §89.39

The Texas Cosmetology Commission adopts an amendment to §89.39, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2754).

The amendment is to clarify the intent of the section.

The amendment will allow applicants for a beauty salon license to only need a minimum of 180 square feet for the first operator which will be less than the previous square footage requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908931

Ron Resech
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §89.70

The Texas Cosmetology Commission adopts an amendment to §89.70, without changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2754).

The amendment will clarify the intent of the section.

The amendment will give the Cosmetology Commission staff an idea of the financial state that a new school is in which will help to protect the student.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908930

Ron Resech
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 9, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §89.72

The Texas Cosmetology Commission adopts an amendment to §89.72, without changes to the proposed text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2940).

The amendment will clarify the intent of the section.

The amendment will save confusion due to misinterpretation of the language of the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

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 25, 1989.

TRD-8908929

Ron Resech
Executive Director
Texas Cosmetology
Commission

Effective date: October 17, 1989

Proposal publication date: June 13, 1989

For further information, please call: (512) 463-5542

TITLE 28. INSURANCE

Part II. Industrial Accident Board

Chapter 43. Insurance Coverage

• 28 TAC §43.20

The Industrial Accident Board adopts an amendment to §43.20, without changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3506).

The new section, as adopted, is necessary to ensure that employers who carry workers' compensation insurance are informed about their statutory rights and duties, under the present law and as amended in the future.

The new section, as adopted, requires all workers' compensation insurance carriers to annually provide their insureds with written information regarding their rights and duties under the workers' compensation laws.

Public comment was received at a public hearing held by the board on August 11, 1989. It was suggested that the board prescribe the form and content of the information required, instead of leaving it to the discretion of individual carriers, or, as an alternative, appoint a committee of employers and carriers to develop the publication. It was proposed that the required information be distributed not only by the carrier, but also by the board, on receipt of notice of coverage. It was suggested that the carriers be required to send the information to all the employer's locations, not just the home office.

Public comment was received from the Texas Association of Business; Liberty Mutual Fire Insurance Company; and Ron Ogdon, Flahive, Ogden, and Latson.

The board determined that no changes to the section were required, since all comments involved procedural details, which could be addressed during implementation.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

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 25, 1989.

TRD-8908990

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: October 17, 1989

Proposal publication date: July 21, 1989

For further information, please call: (512) 448-7960

Chapter 45. Employer's Report of Injury or Disease

• 28 TAC §45.10

The Industrial Accident Board adopts an amendment to §45.10, with changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3506).

The amended section, as adopted, will clarify the conditions and procedures for filing the Industrial Accident Board Form E-1, Employer's First Report of Injury or Illness, and enhance employer compliance with the filing requirements. The amended section, as adopted, incorporates requirements previously contained in §45.15 (the simultaneous repeal of which is published elsewhere in this issue), and sets out the statutory penalty for noncompliance. The single change to the proposed text occurs in subsection (b), where the word position has been substituted for veracity.

Written public comment was received expressing concern that the section could be interpreted to require employers to file injury reports on all injuries, including those involving no lost time.

Public comment was received from the Manager of Insurance; Central and South West Services, Inc.; Dallas.

The board's response is that such an interpretation is not intended. The amended section provides that the E-1 be filed no later than eight days after the employer has notice or knowledge of an injury to an employee resulting in absence from work for more than one day. This clearly requires that the injury caused more than one day of lost time, and the employer had notice or knowledge of the lost-time injury.

The amendment is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

§45.10. Employer's Report of Injury and Disease.

(a) Since the efficient operation of workers' compensation depends so greatly upon the insurance carrier and Industrial Accident Board receiving prompt notice of possible claims, the employer shall report injuries and occupational diseases by completing board form E-1, Employer's First Report of Injury, and sending the original to the Industrial Accident Board and a copy to the employer's insurance carrier no later than eight days after:

(1) the employer has notice or knowledge of an injury to an employee resulting in absence from work for more than one day; or

(2) the employer receives notice from an employee of the manifestation of an occupational disease.

(b) The E-1 must be completed and filed regardless of the employer's position on the occurrence of the injury or occupational disease; it shall not be deemed an

admission of liability for the claim. If the employer denies the injury or occupational disease, this position may be stated on the report.

(c) Noncompliance with this requirement may result in imposition of a civil penalty not to exceed \$500.

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 26, 1989.

TRD-8908998

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: October 17, 1989

Proposal publication date: July 21, 1989

For further information, please call: (512) 448-7960

• 28 TAC §45.13

The Industrial Accident Board adopts new §45.13, without changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3506).

The new section, as adopted, will accelerate the delivery of workers' compensation benefits to injured workers by facilitating determination of their average weekly wage and compensation rate. The new section requires an employer, upon request, to provide the board and the employer's workers' compensation insurance carrier with a statement of an injured employee's wages; additionally, the new section sets out the statutory penalty for noncompliance.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

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 26, 1989.

TRD-8908998

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: October 17, 1989

Proposal publication date: July 21, 1989

For further information, please call: (512) 448-7960

• 28 TAC §45.15

The Industrial Accident Board adopts the repeal of §45.15, without changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3506).

The repeal is necessary to clarify the procedures to be followed by employers when filing

reports of injury or illness. The repeal allows the board to reorganize all filing requirements in §45.10, amendments to which are adopted simultaneously, and published elsewhere in this issue.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

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 26, 1989.

TRD-8908997

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: October 17, 1989

Proposal publication date: July 21, 1989

For further information, please call: (512) 448-7960

Chapter 65. Unethical or Fraudulent Claims Practices

• 28 TAC §65.10

The Industrial Accident Board adopts an amendment to §65.10, without changes to the proposed text as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3506).

The amended section, as adopted, will increase the efficiency of the board's handling of claims for workers' compensation and, in many cases, accelerate the delivery of benefits to injured workers by penalizing the carrier's failure to file with the board certain forms received from insureds. The amended section, as adopted, adds to the list of prohibited acts the carrier's failure to file with the board Forms E-1, E-2, and IAB-150.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

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 26, 1989.

TRD-8908995

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: October 17, 1989

Proposal publication date: July 21, 1989

For further information, please call: (512) 448-7960

**TITLE 37. PUBLIC
SAFETY AND
CORRECTIONS**
**Part VII. Texas
Commission on Law
Enforcement Officer
Standards and Education**
**Chapter 211. Administrative
Division**

Substantive Rules

• 37 TAC §211.67

The Texas Commission on Law Enforcement Officer Standards and Education adopts new §211.67, with changes to the proposed text as published in the April 7, 1989, issue of the *Texas Register* (14 TexReg 1737).

The new section is necessary to provide a separate rule for advisory boards of academies by providing a set of operating procedures for the advisory boards of academies in order to meet the specialized needs of the academies.

The agency received a written comment to the new section from Chief of Police for the City of Irving requesting that the reference to the open meetings law requirement in subsection (e) be deleted and the reference to chief administrator subsection (f)(1), read for an agency academy, by the Chief Administrator (Police Chief and/or Sheriff). No other comments were received outside the commission meetings.

The agency deleted the reference to the open meetings laws allowing each academy to rely upon the legal opinion of their legal counsel for this determination. The agency did not adopt the wording recommended by the Chief of Police, but instead indicated that chief administrator was a term defined in the definition section of the rules.

The new section is proposed under the Texas Government Code, §415.010 and §415.031, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules regarding advisory boards.

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

§211.67. Academy Advisory Boards.

(a) Each licensed academy approved by the commission must establish and maintain an advisory board as required by law. To be established, this board must have at least three members who are appointed by the sponsoring organization. To be maintained, the active, appointed membership of the board must not fall below a quorum of more than 30 days.

(b) The board may have members who are law enforcement personnel. However one-third of the members must be public members having the same qualifications found in the Government Code, §415.005,

as any commissioner who is required by law to be a member of the general public. The chief administrator or head of the sponsoring organization and the designated training coordinator may only be ex-officio, non-voting members.

(c) The board must elect a chairman and may elect other officers and set its own rules of procedure. A quorum must be presented in order to conduct business.

(d) A board must meet at least quarterly each calendar year. More frequent meetings may be called by its chairman, the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon approval.

(f) Board members will be appointed by the following authority, depending on the type of academy or training:

(1) for an agency academy, by the chief administrator as defined in §211.1 of this title (relating to Definitions);

(2) for a college academy, by the dean or other person who appoints the training coordinator; or

(3) for a regional academy, by the head of the council of governments or other supporting entity holding the academy license from names submitted by chief administrators from that area.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) effectively discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered; and

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention.

(j) A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No persons may be admitted to a training course without meeting the admission standards. The academy is encouraged but not required to set admission and retention

standards that meet or exceed the current minimum licensing standards set by the commission.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) This rule applies only to licensed academy advisory boards and §211.75 of this title (relating to Advisory Boards), applies to the advisory boards of agreement trainers.

(m) The effective date of this section is February 1, 1990.

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 22, 1989.

TRD-9208837

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: February 1, 1990

Proposal publication date: April 7, 1989

For further information, please call: (512) 834-9222

Substantive Rules

• 37 TAC §211.68 and §211.85

The Texas Commission on Law Enforcement Officer Standards and Education adopts amendments to §211.68 and §211.85, without changes to the proposed text as published in the April 7, 1989, issue of the *Texas Register* (14 TexReg 1738).

The amendments are necessary to add the specialized license for instructors as drug recognition experts and to add the drug recognition expert proficiency certificate and establish the requirements for this proficiency certificate.

No comments were received regarding adoption of the amendments.

The amendments are proposed under the Texas Government Code, §§415.010, 415.031, 415.032, and 415.062, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, to license persons as qualified instructors, and to issue proficiency certificates. The amendments are also proposed under Texas Civil Statutes, Article 6252-13a, §4(a)(1), which provides the Texas Commission on Law Enforcement Officer Standards and Education with authority to propose and adopt rules of practice and procedure as necessary.

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.

Effective date: February 1, 1990

Proposal publication date: April 7, 1989

For further information, please call: (512) 834-9222.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter I. Income

The Texas Department of Human Services (DHS) adopts amendments to §§3. 902 and 3.1003 concerning AFDC income and deductions in its Income Assistance Services chapter.

The justification for the amendments is to comply with federal requirements.

The amendments are necessary to comply with the Family Support Act of 1988. The Act allows a maximum dependent care deduction based on the child's age instead of the number of hours the employed person works and increases the standard work-related deduction. The Act also requires states to exempt all earned income tax credits.

• 40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs. The amendment is adopted effective October 1, 1989, to comply with federal requirements.

§3.902. Types.

(a) Aid to families with dependent children. DHS counts the following as income: |

(1)-(8) (No change.)

(9) educational benefits. DHS counts educational benefits according to 45 Code of Federal Regulations §233.20(a)(3)(iv) and §233.20(a)(4)(ii)(d); |

(10) government-sponsored programs; |

(11) interest, dividends, royalties;

(12) job training payments that duplicate assistance provided under the AFDC needs standard;

(13) noneducational grants as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv)(B);

(14) nonrecurring Lump Sum Payments. DHS counts lump sum payments as income as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(ii)(F) except when shortening the period of ineligibility. For this procedure DHS shortens the ineligibility period only if:

(A) the lump sum becomes unavailable because it is lost, stolen, or becomes inaccessible to the certified group; or

(B) the family faces a life-threatening situation. Life threatening is defined as dire financial need. The family has dire financial need if the amount remaining from the lump sum payment, plus other countable net income and resources, are less than the budgetary needs figure for the family's size. The family must prove that the lump sum payment was or will be spent on the items included in the department's standard of need (excluding recreation), medical expenses, or both;

(15) military pay and allowances. DHS counts military pay and allowances for quarters, housing, food, base, and flight pay;

(16) minor parent income. DHS counts the earned or unearned income of a minor parent;

(17) disqualified legal parent. DHS counts the income of a disqualified legal parent;

(18) pensions;

(19) retirement, survivors, and disability insurance (RSDI);

(20) reimbursements. DHS counts reimbursements as income unless the reimbursement is irregular and unpredictable or the reimbursement is for a special item not included in DHS's standard of need;

(21) retirement benefits;

(22) royalties;

(23) self-employment income. DHS counts self-employment income according to requirements in 45 Code of Federal Regulations §233.20(a)(6)(v)(B);

(24) stepparents. DHS counts stepparents' income according to requirements in 45 Code of Federal Regulations §233.20(a)(3)(xiv).

(25) trust funds. DHS counts as income trust withdrawals or dividends which could be received by the applicant;

(26) unemployment compensation;

(27) veteran's benefits. DHS counts veterans' benefits as income but exempts benefits that meet a special need not included in DHS's standard of need;

(28) wages, salaries, and commissions received in cash or in kind;

(29) worker's compensation. DHS exempts any amount of the benefits that is for payment of medical expenses incurred before Medicaid eligibility began in the client uses the benefit to pay these expenses.

(b) Aid to families with dependent children. Exclusions from income for AFDC are: |

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

(3) earned income tax credits;

(4) educational assistance. DHS exempts general education assistance payments as stipulated in 45 Code of Federal Regulations §§233.20(a)(3)(iv) and 233.20(a)(4)(ii)(d);

(5) energy assistance. DHS exempts home energy assistance as stipulated in 45 Code of Federal Regulations §233.53(a)-(c);

(6) food stamp value;

(7) foster care payments;

(8) in-kind income. DHS exempts the value of unearned in-kind assistance;

(9) job training allowances. DHS exempts payments from other agencies that do not duplicate assistance provided under the AFDC needs standard as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(vii)(a)-(b). DHS also exempts unearned income payments from the Job Training Partnership Act of 1982 for AFDC children;

(10) native and Indian claims. DHS exempts tax-exempt portions of payments made under the Alaska Native Claims Settlement Act and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Law 92-254 or Public Law 93-135;

(11) noneducational loans;

(12) nutrition program assistance. DHS exempts the value of supplemental food assistance under the Child Nutrition Act of 1966 and special food services programs for children under the National School Lunch Act. DHS exempts benefits received under the Older Americans Act of 1965, Title VII, Nutrition Program for the Elderly;

(13) relocation assistance benefits. DHS exempts benefits received under the Uniform Relocation Assistance and Real Property Acquisition Act, Title II;

(14) SSI as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(x);

(15) third-party funds. DHS exempts money received and used for care and maintenance of a third-party beneficiary who is not a household member;

(16) vendor payments. DHS does not count payments made directly to the applicant's creditor or person providing the service if the person or organization making the payments is outside the household.

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

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

Issued in Austin, Texas, on September 26, 1989.

TRD-8908983

Ron Lindsey
Commissioner
Texas Department of
Human Services

Effective date: October 1, 1989.

Proposal publication date: N/A

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

Subchapter J. Budgeting

• 40 TAC §3.1003

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs. The amendment is adopted effective October 1, 1989, to comply with federal requirements.

§3.1003. Deductions.

(a) Aid to families with dependent children. DHS allows the following deductions from income:

(1) \$90 work-related expenses deduction;

(2) dependent care deduction of actual costs not to exceed:

(A) \$200 for each dependent under age 2; or

(B) \$175 for each dependent age 2 or older;

(3) earned income disregard, according to 45 Code of Federal Regulations §233.20(a)(11)(i)(D) and §233.20(a)(11)(ii)(B). This deduction is computed after the work-related expense and before the dependent care deduction;

(4) eligibility for earned income disregard, according to 45 Code of Federal Regulations §233.20(a)(11)(iii).

(b) (No change.)

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

Issued in Austin, Texas, on September 26, 1989.

TRD-8908984

Ron Lindsey

Commissioner
Texas Department of
Human Services

Effective date: October 1, 1989.

Proposal publication date: N/A

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

Subchapter Y. Issuing Benefits

The Texas Department of Human Services (DHS) adopts amendments to §3.2502 and §3.2604, concerning replacing food stamp benefits and repeated reports of nondelivery of food stamps, in its Income Assistance Services chapter.

The amendments are justified to comply with food stamp regulations titled "Food Stamp Program: Food Stamp Issuance and Issuance Liability: Final Rule."

The amendments will function by requiring clients to report within 10 days if they need a benefit replacement. If the household has received two countable replacements within the past six months, DHS must delay replacing another benefit until it is certain that the original benefit can no longer be redeemed or has been returned. If the original benefit has already been redeemed, the worker must delay replacement until he can determine that the household did not redeem the benefit.

• 40 TAC §3.2502

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public assistance programs. The amendment is adopted effective October 1, 1989, in compliance with federal requirements.

§3.2502. Replacing Benefits.

(a) (No change.)

(b) DHS will replace food stamp benefits according to requirements stipulated in 7 Code of Federal Regulations §274.6.

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 26, 1989.

TRD-8908985

Ron Lindsey
Commissioner
Texas Department of
Human Services

Effective date: October 1, 1989.

Proposal publication date: N/A

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

Subchapter Z. Direct Mail Issuance

• 40 TAC §3.2604

The amendment is adopted under the Human

Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public assistance programs.

§3.2604. Repeated Reports of Nondelivery.

(a) If twice in a six-month period a household reports mail issuances were not delivered and the mail issuances were not returned to state office, DHS:

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

(3) uses alternatives authorized under 7 Code of Federal Regulations §274.1 and §274.6.

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 26, 1989.

TRD-8908986

Ron Lindsey
Commissioner
Texas Department of
Human Services

Effective date: October 1, 1989.

Proposal publication date: N/A

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

Chapter 15. Medicaid Eligibility

Subchapter F. Budgets and Payment Plans

• 40 TAC §15.503, §15.504

The Texas Department of Human Services adopts by federal mandate new §15.503, §15.504, concerning spousal income and resources, in its Medicaid Eligibility chapter.

The sections are justified to comply with federally mandated regulations in Public Law 100-360. Section 15.503 will function by protecting the income and resources of the community spouse to prevent impoverishment when his spouse is institutionalized. Section 15.504 will function by diverting income from the institutionalized spouse to support dependent relatives living with his spouse.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The sections are adopted effective September 30, 1989, to comply with federal requirements.

§15.503. Protection of Spousal Income and Resources. Public Law 100-360 provides for the protection of income and resources for the community spouse to prevent impoverishment when the other spouse is institutionalized. When determining the amount the institutionalized spouse (client) must pay toward his care, the Department of Human Services protects up to \$1500

monthly income for the community spouse; a minimum of \$12,000 in resources is also protected. This applies only to individuals who begin continuous periods of institutionalization on or after September 30, 1989.

§15.504. Diversion of Income to a Dependent Relative.

(a) **Definition.** Dependent relatives—Either spouse's minor or dependent children, dependent parents, and dependent siblings (including half brothers, half sisters, and siblings gained through adoption)

who were living in an institutionalized client's home before the client's institutionalization, and who are unable to support themselves outside the client's home because of medical, social, or other reasons.

(b) **Diversion.** When determining the amount the institutionalized spouse (client) must pay toward his care, the Department of Human Services diverts an amount, if available, from the client's income to the dependent relative. This amount is obtained by calculating the difference between \$815 and the dependent's total income, and dividing by three.

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 26, 1989.

TRD-8908367

Ron Lindsey
Commissioner
Texas Department of
Human Services

Effective date: September 30, 1989.

Proposal publication date: N/A

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

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department of Agriculture

Friday, October 13, 1989, 2 p.m. The Texas Department of Agriculture will meet in the District Office, 4502 Englewood Drive, Lubbock. According to the agenda, the administrative hearing will review: alleged violations of Texas pesticide laws by Don Lybrandt, doing business as Johnson Flying Service, holder of pesticide applicator license.

Contact: Cordelia Martinez, P.O. Box 12847, Austin, Texas 78711, (512) 475-1609.

Filed: September 26, 1989, 10:24 a.m.

TRD-8908961

Texas Department of Commerce

Thursday, September 28, 1989, 8:30 a.m. The State Job Training Coordinating Council of the Texas Department of Commerce met for an emergency meeting at the Radisson Hotel, 700 San Jacinto, Austin. According to the agenda, the focus of the meeting will be finalization of the Job Training Partnership Act (JTPA) goals; objectives, and development of coordination criteria. The emergency status was necessary for preparation of the quarterly meeting of the SJTCC scheduled for November 30, 1989, when the council will meet to provide direction for the development of federally mandated JTPA goals, objectives, and coordination criteria.

Contact: Leslie Ross, 8317 Cross Park Drive, Austin, Texas, (512) 834-6143.

Filed: September 26, 1989, 4:15 p.m.

TRD-8908991

Advisory Commission on State Emergency Communications

Wednesday and Thursday, October 4

and 5, 1989, 9:30 a.m. The Regional Plan Committee of the Advisory Commission on State Emergency Communication will meet in Room 104, John H. Reagan Building, Austin. According to the agenda, the committee will recognize guests; review/consider approval of 9-1-1 regional plans submitted by the following: Houston-Galveston area council; Ark-Tex Council of Governments; Capital Area Planning Council; West Central Texas Council of Governments; Brazos Valley Development Council (tentative); Texoma Regional Planning Commission; East Texas Council of Governments; Lower Rio Grande Valley Development Council; Alamo Area Council of Governments; Coastal Bend Council of Governments; consider new business; and hear public comment.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

TRD-8909007

Commission on Fire Protection Personnel Standards and Education

Thursday, October 5, 1989, 10 a.m. The Higher Education Committee of the Commission on Fire Protection Personnel Standards and Education will meet in the Friendship Mercury Room, South Plaza Hotel, 3401 South IH 35, Austin. According to the agenda, the committee will meet to review textbooks for fire science courses and review procedure of granting college credit for the recruit fire fighter training.

Contact: Ray L. Goad, 510 South Congress, Suite 406, Austin, Texas 78704, (512) 474-8066.

Filed: September 27, 1989, 3:36 p.m.

TRD-8909036

Thursday, October 5, 1989, 1:30 p.m. The Fire Suppression Committee of the Commission on Fire Protection Personnel Standards and Education will meet in the Friendship Mercury Room, South Plaza Ho-

tel, 3401 South IH 35, Austin. According to the agenda, the committee will consider Houston fire department's request to use basic law enforcement officers for advanced levels of fire fighter certification; discuss clarification of House Bill 457, 71st Legislature that requires fire suppression personnel to receive training prior to their full-time assignment to fire suppression.

Contact: Ray L. Goad, 510 South Congress, Suite 406, Austin, Texas 78704, (512) 474-8066.

Filed: September 27, 1989, 3:36 p.m.

TRD-8909035

Thursday, October 5, 1989, 3 p.m. The Assessment Development Committee of the Commission on Fire Protection Personnel Standards and Education will meet in the Friendship Mercury Room, South Plaza Hotel, 3401 South IH 35, Austin. According to the agenda, the committee will review recommendations from various parties regarding training for intermediate and advanced certification, and to clarify status of individuals certified at the intermediate level prior to September 1, 1989.

Contact: Ray L. Goad, 510 South Congress, Suite 406, Austin, Texas 78704, (512) 474-8066.

Filed: September 27, 1989, 3:36 p.m.

TRD-8909033

Friday, October 6, 1989, 9 a.m. The Commission Board of the Commission on Fire Protection Personnel Standards and Education will meet in the Friendship Mercury Room, South Plaza Hotel, 3401 South IH 35, Austin. According to the agenda summary, the commission conducts a regular quarterly meeting to elect new officers; hear reports from the fire suppression higher education; and assessment development committees; hear status reports related to fire marshals; state certification test; review final report on Board Order CFP-89-1, Galveston Fire Department; and hear executive director's report.

Contact: Ray L. Goad, 510 South Congress, Suite 406, Austin, Texas 78704, (512) 474-8066.

Filed: September 27, 1989, 3:36 p.m.

TRD-8909032

Texas Health and Human Services Coordinating Council

Wednesday, October 4, 1989, 1 p.m. The Statewide Needs Appraisal Project Work Group of the Texas Health and Human Services Coordinating Council will meet at the Texas Rehabilitation Commission, 4900 North Lamar, Austin. According to the agenda, they will discuss the draft SNAP questionnaire; revisions to draft SNAP document; old business; new business.

Contact: Carol Price, 311-A East 14th Street, Austin, Texas, (512) 463-2195.

Filed: September 26, 1989, 4:03 p.m.

TRD-8908988

Department of Information Resources

Friday, October 6, 1989, Noon. The Executive Session of the Department of Information Resources will meet for an emergency session after Open Board Meeting in Room 106, John H. Reagan Building, 105 West 15th street, Austin. According to the agenda, the board will discuss personnel matters. The emergency status was necessary to discuss personnel matters.

Contact: Lynn B. Polson, 3307 Northland Drive, Suite 300, Austin, Texas, (512) 371-1120.

Filed: September 28, 1989, 8:41 a.m.

TRD-8909055

Texas Commission on Jail Standards

Wednesday, September 27, 1989, 9 a.m. The Texas Commission on Jail Standards met for an emergency meeting in Room 100, Employees Retirement Building, 18th and Brazos, Austin. According to the revised agenda summary, the commission considered new business: Harris County, application for variance-Dallas and Tarrant Counties. The emergency status was necessary because of unexpected development requiring the immediate attention of the commission.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: September 26, 1989, 3:43 p.m.

TRD-8908982

Texas State Board of Medical Examiners

Friday, September 29, 1989, 11 a.m. The District Review Committee #2 of the Texas State Board of Medical Examiners met for an emergency meeting at 4100 Beverly, Dallas. According to the agenda summary, the committee will review files utilizing point system; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Attorney General 1974, No. H-484. The emergency status was necessary because information came to the attention of the committee and merits prompt attention.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 27, 1989, 4:53 p.m.

TRD-8909052

Wednesday, October 4, 1989, 8:30 a.m. The Executive Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, rescheduled from September 29, 1989, 8 a.m., the committee will discuss personnel matters in executive session under authority of Article 6252-17, §2(g), as related to Article 4495b, 2.07, 3.05(d), 5.06(e)(1) and Opinions of Attorney General 1974, No. H-484. The emergency status was necessary because additional information came to the attention of the committee.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 27, 1989, 4:53 p.m.

TRD-8909053

Board of Pardons and Paroles

Wednesday, October 4, 1989, 9 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will meet in workshop session to discuss the following items: pre-parole transfer and halfway house facility contracts; graduated sanctions; substance abuse committee report.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-7249.

Filed: September 26, 1989, 10:26 a.m.

TRD-8908928

The Polygraph Examiners Board

Friday, October 6, 1989, 9 a.m. The Polygraph Examiners Board will meet in the Conference Room, Heritage Inn, 9121

North IH 35, Austin. According to the agenda, the certification of August board meeting minutes; consider amendment to regulation 3913(13)-final vote; consider amendment to regulation 3914(8)-final vote; consider amendment to regulation 39740 -first vote; consideration of amendment 39742- first vote; establish 1990 renewal fee and finalize 1990 renewal process; establish meeting dates for 1990 calendar year; consider applications for licensure; appearance of Don Glenn Woods, Jr.; administrative hearing on Complaint No. C-05-FY89; agency update; consider any other polygraph related business that may come before the board.

Contact: Deborah Speicher, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: September 26, 1989, 2:48 p.m.

TRD-8908976

State Preservation Board

Monday, October 2, 1989, 2 p.m. The State Preservation Board met for an emergency meeting in Room 314, Library and Archives Building, Austin. According to the revised agenda, the board will approve minutes; old or unfinished business (none); new business: listing of change requests, resolution of thanks, capitol collections annual report, legislative council remodel/design review; GLO restoration project, capitol restoration project. The emergency status was necessary to change location to Room 314, Library and Archives Building.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: September 26, 1989, 11:44 a.m.

TRD-8908954

Public Utility Commission of Texas

Wednesday, October 4, 1989, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, there will be an open meeting to consider the following dockets: 8717, 8941, Project Nos. 8913, 9008 and 8739. The commission will consider publication of a proposed rule for implementing the statewide relay service for hearing and speech impaired (project no. 8290).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 26, 1989, 3:14 p.m.

TRD-8908978

Wednesday, October 4, 1989, 1 p.m. The Administrative Meeting of the Public Util-

ity Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the meeting will be to discuss: reports, discussion and action on budget and fiscal matters including a report on the status of the lease on the PUC offices and a workshop to review the agency's FY 1990 operating budget; discuss consideration of a proposed rule applicable to 900 service; approval of TECA expenses relating to administration of the universal service fund; report on relay service advisory committee; adjourn for executive session to consider: litigation and personnel matters, reconvene for discussions 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 26, 1989, 3:13 p.m.

TRD-8908980

Tuesday, October 10, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 5411-inquiry into the legality of certain rates charged by Pedemales Electric Cooperative, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 26, 1989, 3:14 p.m.

TRD-8908977

Wednesday, December 13, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 9030-petition of general counsel for a fuel reconciliation for Southwestem Public Service Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 26, 1989, 3:15 p.m.

TRD-8908979

Texas Real Estate Commission

Friday, October 6, 1989, 9:30 a.m. The Texas Real Estate Commission will meet in the Boardroom, College Station Hilton Hotel, 801 University Drive, College Station. According to the agenda summary, the commission will consider minutes of the September 11, 1989 meeting; staff reports for month of August, 1989, consider proposed rules to implement Opinion No. JM-1093 relating to §§15(c) and 15(C) of Article 6573a; education matters; proposed new 22 TAC 535.71-535.73, relating to mandatory continuing education for real estate

licensee; consider request from Texas Real Estate Broker/Lawyer Committee to amend 22 TAC §537.11, concerning use of contract forms; consider proposed amendments to 22 TAC §§539.91, 539.137, and 543.4(a) and (b), relating to forms required to be filed by residential service companies and timeshare registrants; executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6252-17, §2(e) and §2(g); consider claims against the real estate recovery fund; motions for rehearing and/or probation; entry of orders in contested cases; consider complaint information concerning Lindy Kent Ridinger.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: September 26, 1989, 4:07 p.m.

TRD-8908989

Texas Rehabilitation Commission (1990 Report Task Force Committee)

Thursday, October 19, 1989, 9 a.m. The Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet in Rooms 4501-4501, 4th Floor, TRC-Brown-Heathly Building, 4900 North Lamar Boulevard, Austin. According to the agenda, the council will approve August 17-18, 1989, summary report; review 1990 report workplan; review and approve draft of 1990 report; review any additional 1990 report issues brought forward by council members; review draft federal recommendations; review plans for submission of the 1990 report to state and federal officials and discuss dissemination plans.

Contact: Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4080.

Filed: September 27, 1989, 10:39 a.m.

TRD-8909024

Structural Pest Control Board

Monday, October 2, 1989, 9 a.m. The Structural Pest Control Board met for an emergency meeting in Suite 201, 9101 Burnet Road, Austin. According to the revised agenda summary, the board approved minutes; executive session; report from the executive director search committee; executive director's report; Daryl B. Williams appeared at 11 a.m. at his request; discuss administrative fines; annual production report; review of Sunset activities; set exam dates for 1990; set date of next meeting. The emergency status was necessary because Mr. Williams requested to take the next exams, which are held in November

and another board meeting isn't until December.

Contact: David A. Ivie, 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: September 27, 1989, 4:08 p.m.

TRD-8909065

Texas Tech University

Friday, October 6, 1989, 8 a.m. The Committee of the Whole of the Board of Regents of Texas Tech University will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of August 3, 1989, meeting; executive session, Texan Civil Statutes, Article 6252-17; consult/discuss with president and general counsel pending litigation, settlement offers, settlement negotiations and matters confidential pursuant to Code of Professional Responsibility of State Bar of Texas; prospective gifts and contractual negotiations contemplated or in progress; re-evaluation and duties of officers and employees; review with various employees for purpose of receiving information and asking questions of employees; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:51 p.m.

TRD-8909040

Friday, October 6, 1989, 8 a.m. The Research Affairs Committee of Board of Regents of Texas Tech University will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of August 3, 1989, meeting; consider appointment of individuals to board of directors of research foundation; year end report for FY 1989; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:50 p.m.

TRD-8909042

Friday, October 6, 1989, 8 a.m. The development and Public Affairs Committee of Board of Regents of Texas Tech University will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of the August 3, 1989 meeting; consider acceptance of gift-in-kind with value in excess of \$10,000; reappoint members of board of directors of foundation; report on year end gifts and grants; development goals for 1989-1990; purpose and responsibilities of the development and public affairs committee; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:50 p.m.

TRD-8909044

Friday, October 6, 1989, 8 a.m. The Campus and Building Committee of Board of Regents of Texas Tech University will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of the August 3, 1989, meeting; consider award construction contracts for interconnect between central heating and cooling plant I and Lubbock Power and Light Cogeneration facility, connect boiler equipment in heating and cooling plant to emergency generator; university center food services; receive bids for Jones Stadium athletic office expansion, Ph; reroofing of heating and cooling plant II, renovation of freezer in central foods facility; appoint project architect for renovation of serving lines and handicapped access for wall/gates, halls; study carpenter/wells halls to assess current condition of buildings for future renovation; appoint project engineer to repair cooling towers in central heating and cooling plant; proceed with planning to reroof university center; sign agreement for construction of gas pipeline across campus; ratify acceptance date; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:50 p.m.

TRD-8909045

Friday, October 6, 1989, 8 a.m. The Finance Committee of Board of Regents of Texas Tech University will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of August 3, 1989 meeting; consider June and July budget adjustments; revision of Texas Public Education Grants policy; adopt replacement bond resolution for board of regents combination fee revenue refunding bonds, Series 1978; ratify delegation of officers and/or employees to authorize expenditures; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:49 p.m.

TRD-8909047

Friday, October 6, 1989, 8 a.m. The Academic, Student and Administrative Affairs Committee of Board of Regents of Texas Tech University will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of the August 3, 1989, meeting; consider finding of facts regarding appointment of employee to another position; ratify leaves of absence and commission of peace officers; report on admission requirements and enrollment; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:49 p.m.

TRD-8909049

Saturday, October 7, 1989, 8:30 a.m. The Board of Regents of Texas Tech University will meet in the Board Suite, Administration Building, Campus, Lubbock. According to the agenda summary, the board will hear reports and take action on minutes, president's report, academic, student and administrative affairs; finance; campus and building development and public affairs; research affairs, and committee of the whole.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:48 p.m.

TRD-8909051

◆ ◆ ◆ Texas Tech University Health Sciences Center

Friday, October 6, 1989, 8 a.m. The Research Affairs Committee of Board of Regents of Texas Tech University Health Sciences Center will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve the minutes of August 3, 1989, meeting; consider appointment of individuals to board of directors of research foundation; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:51 p.m.

TRD-8909041

Friday, October 6, 1989, 8 a.m. The Committee of the Whole of the Board of Regents of Texas Tech University Health Sciences Center will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of August 3, 1989, meeting; consider employ relief obstetric physicians and payment of 10% self-insurance premium; authorize president to settle claims as specified in self-insurance plan; executive session, Texas Civil Statutes, Article 6252-17; consult/discuss with president and general counsel pending litigation, settlement offers, settlement negotiations and matters confidential pursuant to Code of Professional Responsibility of State Board of Texas; prospective gifts and contractual negotiations contemplated or in progress; re-evaluation and duties of officers and employees; review with various employees for purpose of receiving information and asking questions of employees; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:51 p.m.

TRD-8909039

Friday, October 6, 1989, 8 a.m. The Development and Public Affairs Committee of Board of Regents of Texas Tech University Health Sciences Center will meet in Room 2B152, Health Sciences Center Building,

Campus, Lubbock. According to the agenda, the committee will approve minutes of August 3, 1989, meeting; consider acceptance gift-in-kind with value in excess of \$10,000; report on year end gifts and grants; development goals for 1989-1990; purpose and responsibilities of the development and public affairs committee; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:50 p.m.

TRD-8909043

Friday, October 6, 1989, 8 a.m. The Finance Committee of Board of Regents of Texas Tech University Health Sciences Center will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve August 3, 1989, meeting; consider July-September budget adjustments; statement of general policy to govern granting of Texas Public Education grants and emergency enrollment loans in FY 1990 and 1991; MPIP report FY 1989; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:49 p.m.

TRD-8909046

Friday, October 6, 1989, 8 a.m. The Academic, Student, Clinical and Administrative Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda, the committee will approve minutes of August 3, 1989, meeting; consider affiliation agreements with: St. Mary of the Plains Hospital, New Mexico School for Visually Handicapped, Gerald Champion Hospital, Greenery Rehabilitation Center, Lubbock State School, Olin E. Teague Veteran's Center, Hazelden, Inc.; agreement with City of El Paso for emergency medical services; addendum to affiliation agreements with El Paso County Hospital for resident services; addendum to master coordinating agreements with Lubbock General Hospital, Amarillo Hospital district; ratify faculty development leave, extension of leave of absence, commission of peace officers; granting of academic tenure with appointment; report on recruitment of out-of-state students; reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:49 p.m.

TRD-8909048

Saturday, October 7, 1989, 9:25 a.m. The Board of Regents of Texas Tech University Health Sciences Center will meet in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the agenda summary, the board will hear/act on: minutes, academic, student, clinical and administrative affairs, finance, development and

public affairs, research affairs, committee of the whole.

Contact: Freda Pierce, P.O. Box 4039, Lubbock Texas 79409, (806) 742-2161.

Filed: September 27, 1989, 3:48 p.m.

TRD-8909050

University of Texas Health Center at Tyler

Thursday, October 5, 1989, Noon The Animal Research Committee of the University of Texas Health Center at Tyler will meet in the Chaplains conference Room, U.T. Health Center at Tyler, Highway 155 and U.S. Highway 271, Tyler. According to the agenda, the committee will approve minutes of September meeting; chairman's report on activities since last meeting; discuss animal research and public concerns, Animal Welfare Act-new amendments; protocols: #77-the use of rats in a study of endocrine control of parturition; addenda: #61-A-use of anesthetized guinea pigs in study of lung injury.

Contact: Barry Peterson, P.O. Box 2003, Tyler, Texas 75710.

Filed: September 27, 1989, 2:57 p.m.

TRD-8909029

Texas Water Commission

Tuesday, October 10, 1989, 2 p.m. The Texas Water Commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: September 26, 1989, 11:30 a.m.

TRD-8908957

Thursday, October 12, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions,

including, but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: September 26, 1989, 11:30 a.m.

TRD-8908958

Friday, November 3, 1989, 10 a.m. The Office of Hearing Examiners of the Texas Water Commission will meet in Room 543, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the public hearing on Application No. 5241-by R. Marvin Shipman Trust Estate for a water use permit to appropriate public waters.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 26, 1989, 1:30 p.m.

TRD-8908960

Wednesday, November 15, 1989, 10 a.m. The Texas Water Commission will meet in the Chamber Meeting room, City of Seadrift City Hall, 501 South Main Street, Seadrift. According to the agenda summary, the application for hazardous waste storage, processing, and disposal facility permit amendment on HW-50190 by Union Carbide Corporation-Seadrift Plant, Calhoun County; purpose of the hearing is to receive evidence on the conditions, if any, under which a permit amendment may be issued; the facility is in the drainage area of segment 1701 of the Lavaca-Guadalupe Coastal Basin.

Contact: Jim Haley, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: September 27, 1989, 2:56 p.m.

TRD-8909031

Tuesday, December 12, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the hearing of Application No. 5256-John D. Vieman, Jane V. Siebenman, wife of Theodore A., Siebenman, Judith V. Sites, wife of Ronald O. Sties and Janet Sappington, wife of Donald Sappington, for a water use permit to construct and maintain an off-channel reservoir, maintain three existing off-channel reservoirs; diversion of water from Austin Bayou, and establish a diversion point on Austin Bayou; the water will be used to maintain water levels in the reservoirs, fish farming, recreation, and irrigation purposes in Brazoria County, approximately 9 miles northeast of Angleton, Texas.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8260.

Filed: September 26, 1989, 1:30 p.m.

TRD-8908959

Regional Meetings

Meetings Filed September 26, 1989

The Central Plains Mental Health and Mental Retardation Center, Board of Trustees will meet at 208 South Columbia, Plainview, October 5, 1989, at 6:30 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees will meet in the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, October 5, 1989, at 4 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901.

The Kendall County Appraisal District, Board of Directors met at 207 San Antonio Street, Boerne, September 27, 1989 at 6:45 p.m. Information may be obtained from Sue R. Widenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Lower Colorado River Authority, Energy Operations Committee will meet in the Board Room, 3700 Lake Austin boulevard, Austin, October 3, 1989 at 10 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3700 Lake Austin, Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Board of Directors will meet in the High School Auditorium, 650 East Travis street, La Grange, October 7, 1989, at 10 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

TRD-8908926

Meetings Filed September 27, 1989

The Austin Transportation Study, Policy Advisory Committee met in the Reception Room, Austin History Center, 810 Guadalupe, Austin, September 29, 1989, at 3 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs Road, Suite 700, Austin, Texas, (512) 472-7483.

The Burnet County Appraisal District, Appraisal Review Board will meet at 215 South Pierce, Burnet, October 5, 1989, at 9 a.m. Information may be obtained from Barbara Ratliff, Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Dawson County Central Appraisal District, Board of Directors will meet at 920 North Dallas Avenue, Lamesa, October 4, 1989, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Lower Colorado River Authority, Energy Operations Committee met in the Board Room, 3700 Lake Austin Boulevard, Austin, October 2, 1989, at 10 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 472-3250.

The Scurry County Appraisal District, Board of Directors will meet in the Shack Restaurant, 1005 25th Street, Snyder, October 3, 1989, at 8 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549.

The Tyler County Appraisal District, Board of Directors will meet at 806 West Bluff, Woodville, October 3, 1989, 4 p.m.

Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8909002

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Meetings Filed September 28, 1989

The Liberty County Central Appraisal District, Board of Directors will meet at 1820 Sam Houston, Liberty, October 4, 1989, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Swisher County Appraisal District, Board of Directors will meet at El Matador, 519 North Highway 87, Tulia, October 3,

1989, at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 993-4118.

The Tarrant Appraisal District, Appraisal Review Board will meet at 2309 Gravel Road, Fort Worth, October 4, 1989, at 8:30 a.m. Information may be obtained from Vernon Evans, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884.

The Tarrant Appraisal District, Appraisal Review Board will meet at 2309 Gravel Road, Fort Worth, October 3, 1989, at 8:30 a.m. Information may be obtained from Vernon Evans, 2309 Gravel Road, Fort Worth, Texas 76116, (817) 284-8884.

TRD-8909054
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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Extension of Deadline for Written Comments

In the August 25, 1989, issue of the *Texas Register* (14 TexReg 4329), the Texas Air Control Board (TACB) published a notice of public hearings on proposed rule amendments to be held September 21, 1989. The purpose of the hearings was to receive testimony on proposed revisions to the TACB General Rules and Regulation I, concerning control of air pollution from particulate matter. The deadline of September 22, 1989, for written comments has been extended to October 6, 1989. All comments at the hearings, as well as written comments received by 4 p.m. on October 6, 1989, in the TACB central office in Austin, will be considered by the board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the central office of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723, and at all regional offices of the agency. For further information, call Betty Rogers at (512) 451-5711.

Issued in Austin, Texas, on September 26, 1989.

TRD-9209902 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: September 26, 1989

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

Ark-Tex Council of Government Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Ark-Tex Council of Governments (ATCOG) is in the process of selecting a certified public accountant firm to perform a fiscal year single audit of federal, state, and local grants and contracts administered by the ATCOG for the period of October 1, 1988-September 30, 1989, with consideration of a multi-year proposal.

The certified public accountant firm selected will be expected to meet the audit requirements set forth in Office of Management and Budget (OMB) *Compliance Supplement for Single Audits of State and Local Governments* concerning uniform administrative requirements; Governmental Auditing Standards (1988 Edition) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* promulgated by the United States Comptroller General as they relate to financial and compliance audits; generally accepted audit standards established by the American Institute of Certified Public Accountants (AICPA) including the audit and accounting guide, *Audits of State and Local Governmental Units*; and all other applicable audit requirements.

Those firms interested in receiving a request for proposal package should contact Margaret Haak-Muse, Comptroller, P.O. Box 5307, Texarkana, Texas 75505 (214) 832-8636. The deadline for requesting the above package is October 11, 1989.

The contract will be awarded based on the applicant's abilities, experience, and qualifications as defined in detail in the request for proposal. Selection will be made by the ATCOG Board of Directors.

Issued in Austin, Texas, on September 26, 1989.

TRD-8909001 James D. Goerke
Executive Director
Ark-Tex Council of Governments

Filed: September 26, 1989

For further information, please call: (214) 832-8636.

Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On September 22, 1989, the banking commissioner received an application to acquire control of D'Hanis State Bank, D'Hanis, by Jack Winkler, Hondo.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on September 22, 1989.

TRD-8908802 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 25, 1989

For further information, please call: (512) 479-1200

Notice of Hearing

The hearing officer of the State Banking Department will conduct a hearing on an application to withdraw excess earnings from trust deposits filed by Zoeller Funeral Home Trust, New Braunfels. The hearing will be held on October 18, 1989, at 9 a.m. at Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Any interested person wishing to appear must file a written notice of intent to appear including a brief statement of position with the Texas Department of Banking at least 10 days prior to the hearing. A copy of this notice, and all other pleadings must be sent to each party to the hearing. All parties appearing at the hearing are requested to pro-

vide the department with two copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

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 September 25, 1989.

TRD-8905894

Ann Graham
General Counsel
Texas Department of Banking

Filed: September 25, 1989

For further information, please call: (512) 479-1200

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**Advisory Commission on State
Emergency Communications
Request for Consultant Services**

Request for Consultant Services. In accordance with Texas Civil Statutes, Article 6252-11c, the Advisory Commission on State Emergency Communications (ACSEC) invites proposals for consultant services for the following project.

Description of Project. The consultant will examine the long distance telecommunications records of a large long distance carrier in order to determine their liability in regard to the 9-1-1 Surcharge authorized by Texas Civil Statutes, Article 1432(f). The examination of the records of the long distance carrier is authorized by Texas Civil Statutes, Article 1432(f), §6(e). The project will involve reviewing Texas customer records for long distance intra-state calls that are subject to the 9-1-1 Surcharge. The period of July 1, 1988-August 31, 1989, will be examined.

The resulting report from this project should show the amount of 9-1-1 surcharge due from the long distance carrier on a monthly basis for the period specified.

Contact Person. To have a detailed information package forwarded to them, interested parties can contact Mr. Brian Millington, CPA; Advisory Commission on State Emergency Communications; 1101 Capital of Texas Highway South, #B100; Austin, Texas, 78746, (512) 327-1911.

Closing Date. Offers must be received by the commission by 5 p.m., October 25, 1989.

Evaluation Criteria. Criteria for evaluation of responses will include experience in auditing telecommunications carriers; familiarity with the telecommunications industry; reasonableness of proposed costs of performing audit; availability of qualified personnel to carry out the project; management of project from an office located in Texas; and ability to complete project in a timely manner. The controller and executive director of the commission will review the proposals and make a recommendation to the full commission for acceptance.

Issued in Austin, Texas, on September 26, 1989.

TRD-8909006

Mary A. Boyd
Executive Director
Advisory Commission on State Emergency
Communications

Filed: September 27, 1989

For further information, please call: (512) 327-1911.

**Texas Employment Commission
Correction of Error**

The Texas Employment Commission substituted a new adopted §301.33 which was published with errors in the August 25, 1989, issue of the *Texas Register* (14 TexReg 4316). Text was omitted from (1)(A). The sentence should read: "(A) Employee leasing company—An entity offering services to the general public that for a fee places the employees or personnel of a client onto that entity's payroll and leases them back to that client on a continuing basis as agreed to by the client and that entity, and which keeps the records required by §301.6 of this title (relating to Records of Employing Units) and maintains a list of that entity's clients and of the workers who have been assigned to work at each client facility."

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**Office of the Governor
Consultant Proposal Request—Office of
the Governor**

This request for consultant services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Office of the Governor is requesting proposals from qualified consultants, firms, agencies, and individuals to review, analyze, document, and recommend changes, if needed, in the existing grant and contract application and administration procedures, as well as associated paperwork forms, in the Texas Governor's Criminal Justice Division (CJD) and Energy Management Center (EMC). The purposes are to assess system performance and compliance with relevant state and federal laws and regulations, and to improve the system, if necessary.

Services to be Performed. The scope of services must include, at a minimum, the following elements:

1. Provide written, step-by-step descriptions of contract and grant application and approval processes, as well as flow charts of those processes.
2. Provide written descriptions and flow charts of contract and grant processing, monitoring, and financial and performance audit procedures.
3. Describe the number, qualifications, and compensation levels of staff members engaged in each major component of the grant and contract processes; assess whether they are adequate; recommend changes, if needed.
4. Evaluate standards and criteria used in selecting projects for funding to ensure that they best meet program objectives; recommend changes, if needed.
5. Evaluate grant and contract internal approval procedures to determine whether processing time is adequate to ensure appropriate control and ultimate project effectiveness; recommend changes, if needed.
6. Assess whether the existing system provides potential and actual applicants with adequate access to needed information; recommend changes, if needed.
7. Ascertain whether the existing system provides adequate assurances and legal safeguards for the Governor's Office; recommend changes, if needed.
8. Evaluate contract and grant monitoring procedures and forms to ensure that the programmatic and financial information needed to meet state and federal requirements and program goals is being obtained in a timely manner;

recommend changes, if needed.

9. Evaluate fiscal and management auditing of grants and contracts to ensure compliance with applicable state and federal laws, regulations, and court decisions; recommend changes, if needed.

10. Verify, on a random-sample basis, contractor information and actual end uses of funds.

11. Provide review and analysis of computer hardware requirements for CJD, including Crime Stoppers and the Crime Victims Clearinghouse; recommend changes, if needed.

12. Provide review and analysis of management information system requirements for CJD, including definition of data/base elements and report requirements; recommend changes, if needed.

13. Provide review of all current office administration processes to improve procedures and identify appropriate approval levels for each of the major processes; recommend changes, if needed.

14. Provide review of current office layout to identify cost-effective alternative location of personnel to facilitate supervision and communication; recommend changes, if needed.

15. Provide analysis of individual job functions to determine appropriate responsibilities and proper use of staff; recommend changes, if needed.

16. Provide review of organizational structure of CJD and EMC to determine proper structure for carrying out responsibilities; recommend changes, if needed.

17. Provide review of legislative mandates and federal requirements to ensure statutory and regulatory compliance; recommend changes, if needed.

18. Provide the following interim reports.

a. Written reports on findings and work in progress, submitted periodically as agreed to by the contracting parties.

b. Written reports and flow charts depicting suggested changes needed to make grant/contract processes and procedures more efficient or effective.

19. Provide the following final reports.

a. A comprehensive written and oral report of findings and recommendations, with flow charts and supporting materials.

b. An inventory and synopsis of all state and federal statutes and regulations relating to each grant process.

c. A review of state and federal legislative mandates and requirements to ensure statutory and regulatory compliance.

d. An inventory of all grant and contract-related forms in use, with recommendations for additions, modifications, or deletions, if needed.

e. Recommended policies and procedures on forms management (paperwork).

f. Detailed procedures manuals and flow charts covering all aspects of the grant and contract application, administration, monitoring, and evaluation processes as adopted by each of the using divisions, based upon this study.

g. Documentation in the form of a manual of grant application processes and guidelines in a simplified

format suitable for use by grant applicants.

h. Inventory of computer hardware and software and a recommended configuration for CJD.

All work to be performed, including finished procedures manuals, must be completed within 120 days of contract execution.

Contact Person. To obtain more detailed information concerning this project, contact Michael Ragan, Director of Accounting, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 463-1777.

Closing Date. Eight copies of sealed proposals in response to this Consultant Proposal Request should be sent to: Ms. Irene Marion, Accounting Office, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

The Governor's Administration Office is located in room 412 of the Sam Houston Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by registered mail or by courier and must be received no later than 3 p.m. on October 17, 1989. Proposals received after this time will not be considered.

Criteria for Selecting Consultant. Proposals to deliver the services requested should be written clearly and concisely and should address all of the following selection criteria in the order given:

1. broad experience in management consultant work with government organizations;
2. thorough knowledge of state government and state statutes;
3. familiarity with state and federal grant and contracting processes;
4. demonstrated ability to perform each of the services requested;
5. qualifications of all personnel to be assigned to the project and the ability of such personnel to perform the work within the time frame of the project;
6. feasibility of the proposed workplan and timetable; and
7. reasonableness of the proposed budget in relation to the services to be performed.

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposer's ability to satisfy the criteria listed above. The Governor's Office reserves the right to negotiate both budget and scope of work with the finalist(s). The Governor's Office reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals.

Final selection of a contractor will be based on the recommendations of a review committee. If two or more proposals are ranked so closely that a decision cannot be made, the review committee may request finalists to provide additional information or to meet with staff of the Governor's Office in Austin prior to final selection of a contractor. No respondent, however, will be reimbursed for any costs incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas, on September 27, 1989.

TRD-8909028

Mary Jane Marford
Director of Administration
Office of the Governor

Filed: September 27, 1989

For further information, please call: (512) 463-1776.

Texas Department of Health Intent to Revoke a Certificate of Registration

The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of Certificate of Registration Number R13134, issued to Russell J. Elliott, D.P.M., because the agency determined that the registrant is no longer located at 9527 C. Westheimer, Houston, Texas 77063. The registrant has not notified the agency of a change of address and no forwarding address is available.

All attempts by the agency to contact the registrant by telephone, by certified mail, and by inspection have been unsuccessful. Therefore, the Texas Department of Health, Bureau of Radiation Control, recommends that the certificate of registration be revoked immediately.

In accordance with *Texas Regulations for Control of Radiation* 13.8, this notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of publication of

this notice to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificate of registration will be revoked at the end of the 30-day period of notice.

Issued in Austin, Texas on September 22, 1989.

TRD-8906053

Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: September 26, 1989

For further information, please call: (512) 836-7000

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Dallas	Presbyterian Hospital of Dallas	L04288	Dallas	0	08/30/89
McAllen	Upper Valley Radiology Clinic	L04335	McAllen	0	08/28/89
Throughout Texas	R.G.M. Construction Company, Inc.	L04324	Austin	0	09/07/89

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Amarillo	Master Nuclear Pharmacy	L03398	Amarillo	7	09/08/89
Arlington	HCA South Arlington Medical Center	L02228	Arlington	23	09/07/89
Beaumont	Outpatient Diagnostic Center, Ltd.	L03888	Beaumont	5	09/13/89
Fort Worth	Michael L. Stoltz, M.D.	L03767	Fort Worth	5	09/11/89
Friendswood	Iso-Tex Diagnostics, Inc.	L02999	Friendswood	16	08/25/89
Houston	Halliburton Logging Services	L03489	Houston	10	08/28/89
Houston	Koppers Industries, Inc.	L02226	Houston	7	08/28/89
Houston	Twelve Oaks Hospital	L02432	Houston	12	08/29/89
Houston	Rice University	L00311	Houston	29	08/24/89
Houston	Houston Imaging Center	L02025	Houston	18	08/23/89
Houston	The Institute for Rehabilitation and Research	L04000	Houston	3	09/05/89
Houston	West Houston Medical Center	L02224	Houston	17	09/05/89
Houston	Mallinckrodt, Inc.	L03008	Houston	19	09/08/89
Houston	Diagnostic Clinic of Houston	L03452	Houston	9	09/08/89
Houston	Diagnostic Center Hospital	L00131	Houston	32	09/08/89
Houston	Ben Taub General Hospital	L01303	Houston	16	09/07/89
Houston	Northwest Cardiovascular Imaging & Diagnostic Center	L04253	Houston	1	09/07/89
Longview	Longview Regional Hospital	L02882	Longview	8	09/07/89

Nacogdoches	Terry A. Boulware, M.D., P.A.
Nederland	Mid Jefferson Hospital
Pasadena	HIMONT, U.S.A., Inc.
Pasadena	Pasadena Bayshore Medical Center
Pasadena	ARCO Chemical Company
San Angelo	Angelo Community Hospital
San Angelo	St. John's Hospital and Health Center

L04326	Nacogdoches	1	08/31/89
L01756	Nederland	17	08/29/89
L01854	Pasadena	19	08/24/89
L00153	Pasadena	36	09/11/89
L03474	Pasadena	5	09/07/89
L02487	San Angelo	21	09/11/89
L02343	San Angelo	15	09/01/89

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

San Angelo	Shannon West Texas Memorial Hospital
San Antonio	Santa Rosa Health Care Corporation
San Antonio	Humana Hospital San Antonio
San Antonio	Lutheran General Hospital
San Antonio	Southwest Texas Methodist Hospital
Sherman	Texas Instruments, Inc.
Temple	Scott and White Memorial Hospital
Throughout Texas	Downing Brothers, Inc.
Throughout Texas	Suntrac Services, Inc.
Throughout Texas	City of Corpus Christi
Throughout Texas	Texasgulf Minerals & Metals, Inc.
Throughout Texas	Exploration Logging of U.S.A., Inc.
Throughout Texas	Tuboscope, Inc.
Throughout Texas	R/A Services, Inc.
Throughout Texas	International Digital Modeling Corp.
Throughout Texas	Texas Department of Health
Throughout Texas	Professional Service Industries, Inc.
Throughout Texas	Capitol Aggregates, Inc.
Throughout Texas	Patterson Truck Line, Inc.
Throughout Texas	Gulf Nuclear Inc.
Throughout Texas	NDE, Inc.
Tyler	Medical Center Hospital
Vernon	Wilbarger General Hospital
Wichita Falls	Howmet Turbine Components Corporation

L02174	San Angelo	22	09/01/89
L02237	San Antonio	24	08/31/89
L02266	San Antonio	23	09/05/89
L02007	San Antonio	11	09/07/89
L00594	San Antonio	78	09/07/89
L02682	Sherman	13	08/28/89
L00490	Temple	18	09/11/89
L03822	Waco	4	08/24/89
L03062	Webster	7	08/24/89
L02284	Corpus Christi	8	08/24/89
L03781	Midland	4	08/28/89
L03258	Houston	11	08/28/89
L00287	Houston	79	08/28/89
L03010	Odessa	26	08/29/89
L04113	Pflugerville	5	08/29/89
L01155	Austin	39	08/31/89
L00931	Lombard, Illinois	71	09/07/89
L04208	Austin	1	09/07/89
L03148	Channelview	13	09/06/89
L02995	Webster	25	09/05/89
L02355	Fort Worth	13	09/12/89
L00977	Tyler	48	08/31/89
L03047	Vernon	9	09/13/89
L02687	Wichita Falls	5	08/24/89

RENEWALS OF EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Austin	Seton Medical Center	L02896	Austin	19	08/24/89
Duncanville	Duncanville Diagnostic Center	L03717	Duncanville	5	09/08/89
Gonzales	Gonzales Warm Springs Rehabilitation Hospital	L03485	Gonzales	2	09/08/89
La Porte	Dow Chemical Company U.S.A.	L00510	La Porte	44	09/06/89
Midlothian	Gifford-Hill Cement Company of Texas	L00894	Midlothian	12	09/06/89
Plano	Texas Cardiovascular Imaging Center, Inc.	L03704	Plano	8	09/08/89
Three Rivers	Diamond Shamrock Refining and Marketing	L03699	Three Rivers	2	09/07/89
Throughout Texas	Step Rate Testers, Inc.	L03700	Odessa	3	08/28/89
Throughout Texas	Smith Energy Services	L03667	Golden, Colorado	4	09/11/89
Fler	Ferro Corporation	L03712	Tyler	2	08/28/89

TERMINATIONS OF LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Houston	PPG Industries, Inc.	L02439	Houston	8	08/25/89
San Antonio	Malcolm Pirnie, Inc.	L03985	San Antonio	1	08/25/89
San Antonio	Diagnostic Medicine, Incorporated	L04063	San Antonio	2	08/29/89
Throughout Texas	Riffe Petroleum Company	L03464	St. Louis, MO	1	08/24/89

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

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

TRD-890825 Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: September 25, 1989

For further information, please call (512) 835-7000.

Public Hearing

The department will conduct a public hearing on the following municipal solid waste disposal site.

Texas Waste Systems has filed Application Number 1986 with the Texas Department of Health for a permit to operate a proposed Type I municipal solid waste disposal site to be located approximately 2,000 feet east of IH 410, on the west side of W.W. White Road, southwest of the intersection of W.W. White Road and Hildebrandt Road, and approximately 750 feet east of Rosillo Creek, south-east of San Antonio, in Bexar County.

The site consists of approximately 164.25 acres of land, and is to daily receive approximately 850 tons of solid wastes under the regulatory jurisdiction of the department

when disposed of or otherwise processed in accordance with the department's municipal solid waste management regulations.

Pursuant to the provisions of the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, Chapter 361, (formerly Texas Civil Statutes, Article 4477-7), as may be amended by Chapters 400, 536, 583, 639-641, 678, 703-705, 1143-1144, and 1175 of the Acts of the 71st Legislative Session, the department's said regulations, and the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a,) a public hearing on the aforesaid application will be held at Holiday Inn Northeast, 3855 North Pan Am Expressway (located on I-35 at the Binz-Engleman Exit), San Antonio, in the Fiesta Room, at 10 a.m. on Monday, October 30, 1989. The purpose of the hearing is to receive evidence for and against the issuance of a permit for the aforesaid application. Specific matters to be dealt with at the hearing will be to establish jurisdiction; to designate Parties; to take evidence, if requested, on whether or not a person qualifies as a person affected (party); to set a discovery schedule, if requested; and to recess to a time and date to be determined for the purpose of continuing the public hearing on the merits.

The hearing will be conducted and the final decision will be rendered in accordance with the applicable rules contained in the department's said regulations, including all changes in effect as of May 10, 1988. All parties having an interest in this matter shall have the right to appear at the hearing, present evidence, and be represented by counsel. Pursuant to Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures, the cost of a written hearing transcript may be assessed against one or more of the designated parties.

A copy of the complete application may be reviewed at the Texas Department of Health, 1100 West 49th Street, Austin, or at the department's Public Health Region 6 office located at the Old Memorial Hospital, Garner Field Road, Uvalde, Texas 78801, (512) 278-7173.

Issued in Austin, Texas, on September 26, 1989.

TRD-890827 Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health.

Filed: September 26, 1989.

For further information, please call: (512) 458-7271

Texas Commission on Jail Standards Correction of Error

The Texas Commission on Jail Standards submitted a proposed amendment published with an error in the August 29, 1989, issue of the *Texas Register* (14 TexReg 4409).

Concerning 37 TAC §275.4, the sentence immediately following the new language should read as follows. "This officer shall provide visual inmate supervision not less than hourly. Sufficient corrections officers as accepted by the commission shall be provided to perform functions required by minimum jail standards such as booking, classification, discipline and grievance, education and rehabilitation, inmate movement, library privileges, (i.e. visitation, correspondence, telephone, commissary, and religious services) and recreation and exercise. A waiver may be granted by the commission as to minimal supervisory

personnel-to-inmate ratios required elsewhere in these rules."

Texas National Research Laboratory Commission

Request for Qualifications

The Texas National Research Laboratory Commission solicits statements of qualifications from firms interested in serving as a primary contractor for land use and infrastructure planning services in support of the Superconducting Super Collider Project.

A complete request for qualifications document may be obtained by writing Kenneth S. Welch, Associate Director for Administration, Texas National Research Laboratory Commission, Planning RFQ, 1801 North Hampton, Suite 252, DeSoto, Texas 75115; or requests may be faxed to (214) 709-5491.

Qualification statements must be received at the above address by 5 p.m., October 12, 1989.

Issued in DeSoto, Texas on September 26, 1989.

TRD-8908990

Kenneth S. Welch
Associate Director for Administration
Texas National Research Laboratory
Commission

Filed: September 26, 1989

For further information, please call: (214) 709-8481.

Texas Department of Public Safety Correction of Error

The Texas Department of Public Safety submitted proposed amendments to the controlled substances regulations which were published with errors in the September 1, 1989, *Texas Register* TexReg 4458-4466. Corrections should be made as follows.

Concerning §13.1 (a)(13)(10) of the first sentence, remove the hyphen in the word "substance".

On 14 TexReg 4459, §13.1 (a)(18)(15) of the first sentence, remove ">", it should read "(18)(15)".

On 14 TexReg 4459, §13.1 (a)(21)(18)(A) of the first sentence, add a space in between the words "is not."

On 14 TexReg 4459, §13.1 (a)(25)(21) of the first sentence, remove the hyphen in the word: "substance".

On 14 TexReg 4459, §13.1(a)(27)(23) of the first sentence, add a space in between the words: "the department".

On 14 TexReg 4460, §13.1 (a)(37)(33) of the first sentence, add a bracket before the word physician to read "[physician, dentist, podiatrist, or veterinarian]".

On 14 TexReg 4460, §13.1 (a)(47)(43) of the first sentence, replace the number 11 with the roman numeral II so that it should read "Schedule II".

On 14 TexReg 4460, §13.1 (b) of the second sentence, remove the hyphen and extra space in the word "regulations".

On 14 TexReg 4463, §13.17 (c) of the last sentence, add a bracket after Chapter 59 and before the comma, this should read "Chapter 59 [, the Texas Controlled Substances Act, §5.04]".

On 14 TexReg 4463, §13.17 (d) of the first sentence, add a

bracket before the word subsection, this should read "[subsection (A), §3.09 of this Act]".

On 14 TexReg 4463, §13.27 (c) of the first sentence, remove the L before Texas Controlled Substances and add a bracket, this should read "[Texas Controlled Substances]".

Concerning §13.29(g), text was omitted. The subsection should read as follows (g) On the effective date of a rule by the administrator of the Drug Enforcement Administration pursuant to §§1308.48-1308.50 Code of Federal Regulations, or by Acts of the state legislature, adding a substance to any schedule of controlled substances, which substance was, immediately prior to that date, not listed on any such schedule, every registrant required to keep records who possesses that substance shall take an inventory of all stocks of the substance on hand. Thereafter, such substance shall be included in each inventory made by the registrant.

On 14 TexReg 4464, §13.29 (i) of the first sentence, add a space in between the words "shall be", and correct the spelling of shall, and add an end parenthesis before the period, it should read "(relating to Records)".

On 14 TexReg 4464, §13.32 (b)(3) of the first sentence, remove "the number 11 and replace with the roman numeral II, it should read "Schedule II".

On 14 TexReg 4465, §13.33 (g) of the first sentence, the c in the word act should not be capitalized, it should read "Act" and add a period after the bracket, "[the Texas Controlled Substances Act, §3.09(c)]".

On 14 TexReg 4465, §13.43(a) of the second sentence, remove the hyphen in the word "pharmacist".

On 14 TexReg 4466, §13.46 of the first sentence, remove the hyphen in the word "Practitioners". In the second sentence, delete the number 11 and add roman number II, it should read "Schedule II".

On 14 TexReg 4466, §13.46 (2) of the last sentence, remove the space in the word "mandatory".

Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 12, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(c), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to amend certificate of convenience and necessity within Madison and Leon Counties, Docket Number 9041 before the Public Utility Commission of Texas.

The Application: In Docket Number 9041, Southwestern Bell Telephone Company requests approval of its application to amend the exchange area boundary between Southwestern Bell Telephone Company's Madison Exchange and Centel of Texas Inc.'s Leona Exchange in Madison and Leon Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility

Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for the deaf.

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

TRD-8908924

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 28, 1989

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

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**University of Texas-Austin, Industrial
Education Department
Management Development Training**

Many Texas agencies have requirements for continuing education for their employees. At The University of Texas, the Industrial Education Department (IED) supports these requirements, provides training to fulfill these require-

ments and awards continuing education units (CEUs) for the training. The Industrial Education Department offers courses in two training environments: Open Seminars-Training sessions conducted at the Joe C. Thompson Conference Center in Austin that are open to the public. Call (512) 471-4633 for a 1989-90 schedule or to receive routine announcements of these training sessions; Closed Seminars-Training sessions conducted at a location chosen by the sponsoring organization. These presentations can be tailored to meet specific needs of the sponsoring organization. For additional information call (512) 471-4633.

Organizations recognizing selected courses provided by the Industrial Education Department as meeting their continuing education requirements are: Texas Education Agency; Texas Board of Public Accountancy; Texas Department of Human Resources; Texas Department of Health (Water and Wastewater); Texas Adult Probation Commission; Texas Department of Health (Division of Water Hygiene); and Texas Commission of Law Enforcement of Standards and Education.

Courses currently offered by the Industrial Education Department of The University of Texas at Austin are:

Courses and Assessment Activities for Supervisory Managers

<u>Course Titles</u>	<u>Hrs.</u>	<u>CEUs</u>
Supervisory Management - Basic (English or Spanish)	12	1.2
Supervisory Management - Advanced (English or Spanish)	12	1.2
Employee Motivation	12	1.2
Effective Managerial Communications	12	1.2
Employee Training and Development	12	1.2
Understanding and Working with People	12	1.2
The Supervisor and Personnel Administration	12	1.2
Employee Relations	12	1.2
Work Study and Methods Improvement	12	1.2
Safety and the Supervisor (English or Spanish)	12	1.2
Effective Oral Presentations	12	1.2
Equal Employment Opportunity and Affirmative Action	12	1.2
Management by Objectives	12	1.2

The Effective Management of Time	12	1.2
Interviewing and Counseling	16	1.6
The Right to Privacy	12	1.2
Stress, Pressure, and Job Burnout	8	.8
Problem Solving	12	1.2
Effective Delegation	12	1.2
Applications of Statistical Process Control	7	.7
Fundamentals of Financial Management	16	1.6
Drugs and Alcohol: Their Impact in the Workplace	8	.8
The New Supervisory Manager	32	3.2
Developing an Effective Administrative Team	12	1.2
Productivity Through Participative Management	12	1.2
Safety In-Plant Training	12	1.2
Emergency First Aid and Response in the Workplace	12*	1.2
Sony Management Simulation	16	1.6
Management Practices Assessment	12	1.2
Team Effectiveness and Communications Assessment	14	1.4
Teamwork	12	1.2

Management for Quality and

Introduction to Statistical Process Control

14

1.4

Notes: 1. Many of these courses may be revised with only minor modifications to fit other employees.

2. Hours Variable *

If you are interested in having IED serve your continuing education needs or need more information, write to IED, The University of Texas at Austin, EDA S-13, Box 7700, Austin, Texas, 78713-7700. Additional courses will be listed in subsequent issues of the **Texas Register**.

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

TRD-8908851

Arthur H. Dilly
Executive Secretary of the Board
The University of Texas System

Filed: September 25, 1989

For further information, please call: (512) 499-4402

The University of Texas M.D. Anderson Cancer Center Consulting Contract-MSA Implementation (General Ledger and Inventory)

Pursuant to Texas Civil Statutes, Article 6252-11C, The University of Texas M.D. Anderson Cancer Center (MDACC) invites proposals from qualified consultants to provide assistance to MDACC in the implementation of Management Science America, Inc. (MSA) (a systems, particularly General Ledger and Inventory Systems, and portions of the Purchasing and Accounts Payable Systems (majority of implementation completed).

This is a continuation of service previously performed, and MDACC intends to award the contract for consulting services to the private consultant (Peat Marwick Main and Company (PMM)) who has previously provided such services, unless a better offer is submitted. MDACC encourages proposals from consultants other than PMM, as we believe that this stage of our implementation (completion of Purchasing and Accounts Payable, and initiation of General Ledger and Inventory) provides an ideal opportunity to consider other offers. It is important to note, however, that a change of consultants would require the

new consultant to become thoroughly familiar with MDACC organization, key personnel, progress to date on implementation, unresolved issues, and other information pertinent to this project, before proceeding. MDACC anticipates that such research and familiarization would be at no expense to MDACC, and would be completed in a reasonable time frame acceptable to MDACC.

The consultant's familiarization of MSA software as implemented in higher education and healthcare institutions, and understanding of the key issues involved in the implementation of MSA Systems (Purchasing and Accounts Payable) at MDACC and planned implementation of The General Ledger and Inventory systems, are considered by MDACC as essential to effect a positive transition, thus not adversely impacting implementation schedules. Therefore, consultants submitting proposals should identify areas of concern or problems anticipated in its undertaking this engagement and the method/plan for their resolution. Specifically, proposals should include consultant's proposed plan to familiarize itself with MDACC's administrators, project teams and implementation activities both completed and planned; a written narrative detailing consultant's understanding of the scope of work and related project tasks; knowledge and experience in MSA implementation in a health care setting; and familiarization with the Uniform Statewide Accounting System for the State of Texas and interfaces required to systems operating in other state agencies.

Proposals should also include: details of any specific resource requirements to be provided by MDACC during the course of this project, i.e., stated in terms of human and physical resources; resumes of personnel who will be assigned to this engagement including their MSA System project experience; customer references for prior engagements of a similar scope work to include, customer name,

contact person and telephone number, work performed and contract period; and fee schedule for both personnel and anticipated expenses.

Consultant will be required to provide assistance to MDACC in completion of the following project related tasks: report definition, analysis, design and testing; design and development of procedural documentation; development of a functional user training program; development and implementation of a user acceptance plan; reporting of project progress to MDACC senior management on a periodic basis; revision and update of project work plan, as required; system notification definition, analysis, design and testing; testing and review of system interfaces; providing both technical and project management assistance as required; analyzing and documenting MDACC's functional use of the MSA General Ledger and Inventory systems; and other tasks as deemed necessary for implementation.

Selection will be based on several factors which include, but are not limited to, the following: consultant's demonstrated experience and competence in MSA Systems implementation; working knowledge of MSA financial systems in a State of Texas agency; qualifications and experience of personnel to be assigned to the project; understanding of MDACC needs; and reasonableness of cost.

MDACC may at its option, invite selected consultants to participate in oral presentations at MDACC, at their expense, to clarify and expand items in their proposal and provide MDACC the opportunity to meet with the consultant's proposed project personnel.

Consultant assistance is scheduled for commencement no later than December 1, 1989 (contingent upon a Finding of Fact, or waiver, by the Governor's Office), and will continue until the General Ledger and Inventory Systems are operational. General Ledger System operation is firmly scheduled for September 1, 1991, with project tasks to be completed by March 1, 1991.

The University of Texas M.D. Anderson Cancer Center reserves the right to accept or reject any or all proposals submitted under this consultant proposal request, and to negotiate modifications to improve the quality or cost effectiveness of any proposal.

MDACC is an institution of higher education, a government entity and a hospital, and as such should be offered any and all applicable discounts associated with such facilities or activities. These discounts, as applicable, should be identified and noted in proposals submitted.

Respondents must disclose in their proposal any relationship, whether by relative, business associate, funding agreement or any other such kinship that exists, or is anticipated to exist, between respondent and any MDACC employee.

Respondents must disclose in this proposal if any key personnel, owner, major officer, or other employee contributing to this proposal, has been employed by the UTMDACC, or other University of Texas Component, within the past 12 months prior to December 1, 1989.

Respondents must indicate in their proposal if their firm is considered a small and/or minority business as defined by the State of Texas.

Proposals must be submitted in triplicate (original and two copies) and received by MDACC no later than the close of business, 5 p.m. on October 26, 1989.

Proposals should be submitted as follows: Mailing Address: The University of Texas M.D. Anderson Cancer Center, Attention: Jeffery Bonnardel, 1515 Holcombe Boulevard, HMB 231, Houston, Texas 77030; Delivery Address: The University of Texas M.D., Anderson Cancer Center; Attention: Jeffery Bonnardel, 1100 Holcombe, 7th Floor Receptionist, Houston, Texas 77030.

For further information, please contact Jeffery Bonnardel, Manager, Contract Specialties, at (713) 792-3090, or Mrs. Britt Wong, Project Manager, at (713) 792-3043. MDACC specifically requests that all inquiries on this proposal be directed only to these individuals.

Issued in Austin, Texas on September 22, 1989.

TRD-8908938

Paul C. Poulides, C.P.M.
Director, Materials Management Services
The University of Texas M.D. Anderson
Cancer Center

Filed: September 26, 1989

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