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Texas Register

Volume 13, Number 11, February 9, 1988 Pages 661-748

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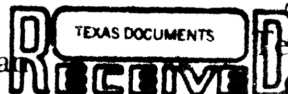
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- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
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Texas Administrative Code

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

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

TAC stands for the *Texas Administrative Code;*

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

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Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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 rules. New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Investments

★7 TAC §91.802

(Editor's note: The Credit Union Department proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is published in the Emergency Rules section of this issue.)

The Credit Union Commission adopts on an emergency basis an amendment to §91 802, concerning investments by credit unions. The Credit Union Commission finds that there is an imminent peril to the public welfare by the unregulated investment by credit unions in investment trusts and securities issued by government-sponsored enterprises This finding is based on the following legal counsel has determined that investment trusts are legal for state chartered credit unions; investment trusts are currently not regulated by the Credit Union Commission; National Credit Union Administration representatives have testified that investment trust type investments have caused problems in federal credit unions which have adversely affected their retained earnings and reserves; legal counsel has determined that current statutes and rules governing credit unions may not adequately define what constitutes securities, obligations, participations, or other instruments of or issued by the federal government or any of its agencies; several credit unions and the Credit Union Department have heretofore considered certain government-sponsored enterprises to be agencies of the federal government, several credit unions are known to presently have investments in securities of government sponsored enterprises. Investments in securities of government sponsored enterprises are expressly authorized for federal credit unions, and this section is necessary to expressly authorize and regulate such investments for the protection of credit unions and the public This section is authorized by §§1.05, 8 01, and 11 07 of the Texas Credit Union Act

Comments on this emergency amendment may be submitted to Harry L Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699

This amendment adopted on an emergency basis under Texas Civil Statutes, Article 2461-1 01, et seq , §8 01(9), which authorize the Credit Union Commission to adopt rules authorizing investments in response to changes in economic conditions or competitive practices, and the need for safety and soundness of credit union investments, and §11 07, which provides the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act

§91 802 Other Investments

(a)-(b) (No change)

(c) Authorized activities.

(1)-(8) (No change)

(9) Investment trusts. A credit union may invest funds not used in loans to members in an invesment trust established for investing directly or collectively in any authorized investment (a mutual fund that is organized as an investment trust may qualify under this provision). A credit union shall record each investment in an investment trust at the lower of its cost or market value, determined at the end of each month, and net of all purchase and loan fees.

(10) Government-sponsored enterprises. A credit union may invest in government-sponsored enterprise obligations such as Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Student Loan Marketing Association.

(11) Commercial paper. A credit union may invest in commercial paper having a rating of A1 or P1 by Standard and Poor's or Moody's rating service.

(12) Corporate bonds. A credit union may invest in corporate bonds that have an A rating by Standard and Poor's or Moody's rating service and remaining maturities of five years or less.

(d) Reporting investment activities to the board of directors. The president shall provide the board of directors a monthly comprehensive report of investment activities, including:

(1) investments purchased and sold during the month;

(2) unrealized market gains or losses compared to book value at month's end;

(3) calculated yield to maturity (current yield on mutual funds) on each outstanding investment as of month's end:

(4) net asset value (NAV) or market value of each marketable investment;

(5) total book value of investments outstanding at month's end;

(6) the total amount of investments having maturities exceeding three years and the ratio of such investments to total reserves and undivided earnings;

(7) unrecorded and unreported obligations to buy or sell investments; and

(8) amounts of investments, other than designated depositories, in other institutions which are not fully insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, national credit union share insurance fund, Texas Share Guaranty Credit Union, or federal or state governments or their agencies.

Issued in Austin Texas on February 1, 1988

TRD-8801107 John R Hale
Commissioner
Credit Union Department

Effective date: February 3, 1988
Expiration date. June 2, 1988
For further information, please call (512) 837-9236

TITLE 10. COMMUNITY DEVELOPMENT

Part VI. Texas Department of Commerce

Chapter 180. Industrial Projects

General Rules and Industrial Revenue Bond Program

★10 TAC §180.1, §180.2

The Texas Department of Commerce is renewing the effectiveness of the emergency adoption of amended §180 1 and §180.2, for a 60-day period effective February 2, 1988. The text of the amended §180.1 and §180.2, was originally published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4042).

Issued in Austin, Texas, on February 2, 1988

TRD-8801091 Bruce W Anderson
General Counsel
Texas Department of Commerce

Effective date: February 2, 1988
Expiration date: March 3, 1988
For further information, please call (512) 472-5059

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter B. Operating Certificates, Permits, and Licenses

★16 TAC §5.42

The Railroad Commission of Texas adopts on an emergency basis new §5.42, concerning emergency general commodity authority The new section is adopted on an emergency basis due to the public emergency created by the cessation of Texas interstate operations by Red Arrow Freight Lines, Inc. (Red Arrow), under its Common Carrier Certificate Number 2600. The new section grants emergency general commodities authority to five existing certificated common carriers

On January 27, 1988, representatives of Red Arrow notified the commission that the company would cease all intrastate Texas operations on February 4, 1988. Red Arrow is the sole certificated carrier of general commodities in truckload and less-than-truckload quantities presently authorized to serve 78 specific Texas points Red Arrow serves numerous hospitals, health care facilities, educational facilities and governmental installations. Some of the shipments are time-sensitive and involve materials that are critical to the continued operation of all such facilities Red Arrow also transports commodities manufactured by firms that are located in the previously-referenced small towns All of the shippers and receivers of the commodities that Red Arrow transports are dependent on for-hire transportation for the movement of their goods. If Red Arrow ceases its operations, these small towns will be left without the ability to move their commodities This situation constitutes an imminent threat to the public health, safety, and welfare.

Five certificated general commodities carriers have indicated to the commission a willingness to serve all or some of the points abandoned by Red Arrow: Big State Freight Lines, Inc (Big State), Merchants Fast Motor Lines, Inc. (Merchants), Alamo Express, Inc. (Alamo), Herder Truck Lines, Inc. (Herder), and Central Freight Lines, Inc. (Central). All of these certificated carriers have substantial transportation facilities, including numerous terminals located throughout the area to be abandoned by Red Arrow, numerous pieces of equipment, and the experience to efficiently transport truckload and less-than-truckload shipments. All of the previously named carriers are capable of providing the same quality of service previously provided by Red Arrow.

Big State is willing to immediately serve in conjunction with service under its existing certificate the following points. Graham, Buffalo, Centerville, Fairfield (Big Brown), Richland, and Teague It will serve these points without regard to other carriers so authorized

Merchants is willing to serve the following points in conjunction with service under its existing certificate Bryson, Fargo, Graham, New Castle, Roaring Springs, South Bend, and Eliasville Merchants existing authority is located near these points Merchants will serve these points without regard to other carriers so authorized

Alamo is willing to serve the following points in conjunction with service under its existing certificate from its Victoria terminal. Arneckeille, Concrete, Cost, Fordtran, Saturn, Slayden, and Westhoff. Alamo will serve these points without regard to other carriers authorized to serve them

Herder is willing to serve the following points from its La Grange terminal: Oldenburg, Warrenton, and Round Top. It is willing to serve the following points from its Gonzales terminal: Cost, Slayden, and Saturn. Herder will serve these points without regard to other carriers so authorized

Central is willing to serve all of the points now served exclusively by Red Arrow. For service to Graham, Central contemplates leasing space and opening a terminal in that city. Central will serve all points previously served exclusively by Red Arrow without regard to other carriers so authorized.

This new section is adopted on an emergency basis under the Motor Carrier Act, Texas Civil Statutes, Article 911b, §4(d), which authorize the commission to regulate motor carriers in all matters so as to carefully preserve, foster, and regulate transportation.

§5.42. Emergency General Commodity Authority.

(a) Beginning on February 1, 1988, Big State Freight Lines, Inc., is authorized to transport general commodities to and from the following points: Graham, Buffalo, Centerville, Fairfield (Big Brown), Richland, and Teague.

(b) Beginning on February 1, 1988, Merchants Fast Motor Lines, Inc., is authorized to transport general commodities to and from the following points: Bryson, Fargo, Graham, New Castle, Roaring Springs, South Bend, and Eliasville.

(c) Beginning on February 1, 1988, Alamo Express, Inc., is authorized to transport general commodities to and from the following points: Arneckville, Concrete, Fordtran, Saturn, Slayden, and Westhoff.

(d) Beginning on February 1, 1988, Herder Truck Lines, Inc, is authorized to transport general commodities to and from the following points: Oldenburg, Warrenton, Round Top, Cost, Slayden, and Saturn.

(e) Beginning on February 1, 1988, Central Freight Lines, Inc, is authorized to transport general commodities to and from the following points. Apple Springs, Angus, Arneckeville, Austonio, Axtell, Bethel, Big Brown Electic Station near Fairfield, Bluff Springs, Brookside, Bryson, Buffalo, Butler (Freestone), Bynum, Cayuga, Centerville (Leon), Clemville, Cologne, Colton, Concrete, Coolidge, Cost, Cotton Gin, Country Campus, Currie, Dew, Eastham Texas Prison System, Edmonson, El Campo South, Eliasville, Eureka (Navarro), Fairfield, Fargo, Fordtran, Garfield, Glendale (Trinity), Graham, Grapeland, Gruene, Hallsburg, Helen Gohlke, Ivan, Laguna Heights, Leona, Lovelady, Macdona, Malone, Midway (Madison), Newcastle, New Waverly, Oldenburg, Park, Prairie Hill (Limestone), Raisin-Colettoville, Richland, Roaring Springs, Round Top, Rural Shade, Saint Hedwig, Salmon, Saturn, Simsboro, Slayden, South Bend, Streetman, Teague, Tehuacana, Tennessee Colony, Trinity, Tucker, Turlington, Warrenton, Weldon, Weser, Westhoff, Westville, Winkler, Witson, and Wortham These points are listed in CCFA Tariff 100-D as points served only by Red Arrow.

(f) Authority granted under this section shall remain in effect until withdrawn by the commission or by operation of law.

(g) Service authorized under this section shall, to the maximum extent possible, be provided along existing routes of the carriers listed in subsections (a)-(e) of this section. Otherwise, service to points authorized under this section shall be provided along a route which yields the shortest distance between the points authorized by this section and any point currently held by carriers listed in this section.

Issued in Austin, Texas, on February 1, 1988.

TRD-8801029 Walter E. Lilie
Special Counsel
Railroad Commission of Texas

Effective date February 1, 1988
Expiration date April 30, 1988
For further information, please call (512) 463-7149

TITLE 22. EXAMINING BOARDS

Part XVIII. State Board of Podiatry Examiners

Chapter 382. Medical Radiologic Technologists

★22 TAC §382.1

The Texas State Board of Podiatry Examiners adopts on an emergency basis new §382.1 concerning medical radiologic technologists. Senate Bill 1439, as passed by the most recent legislative session, concerns the certification of medical radiologic technologists. Sections 2.08 of that bill applies to the Texas State Board of Podiatry Examiners and requires that the board adopt rules to regulate the way in which a board licensee may order, instruct, or direct another person in the performance of radiologic procedures. Section 3.01 further states that the board is to adopt rules no later than January 1, 1988.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4568 (j), which provide the Texas State Board of Podiatry Examiners with the authority to make rules, regulations, and bylaws not inconsistent with that Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of podiatry in this state, and the enforcement of the Act.

§382.1 Registration of Medical Radiologic Technologists.

(a) Any person performing radiologic procedures under the supervision of a podiatrist must register with the Texas State Board of Podiatry Examiners. This section does not apply to registered nurses or to persons certified under the Medical Radiologic Technologist Certification Act.

(b) The fee for registration required under this section shall be $5.00, payable to the Texas State Board of Podiatry Examiners by cashiers check or money order upon submission of the registration application.

(c) Registration may be suspended, revoked, or not renewed for the following reasons:

(1) violation of the rules of the Texas State Board of Podiatry Examiners;

(2) violation of the rules of the Texas Department of Health;

(3) violation of the Podiatry Practice Act of Texas;

(4) violation of the rules of the registrant's licensing agency; and

(5) nonpayment of registration fees.

(d) A registrant may perform only plain file procedures of the foot and ankle unless otherwise licensed, authorized by the Texas Department of Health, or performing procedures under standing delegation orders issued by a licensed podiatrist.

(e) All registrants who perform radiologic procedures must meet the minimum training and supervision standards promulgated by the advisory board of the Texas Department of Health, unless they perform said procedures under the supervision orders issued by a licensed podiatrist.

(f) This section is adopted as of February 2, 1988, to become effective and implemented on February 2, 1988.

Issued in Austin, Texas, on February 1, 1988.

TRD-8801072 Nazario Saldana
Attorney
Office of the Attorney General

Effective date: February 2, 1988
Expiration date: June 1, 1988
For further information, please call (512) 834-0558

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services

★25 TAC §§157.63, 157.77, 157.82

The Texas Department of Health adopts on an emergency basis amendments to the emergency amendment to existing §157.77 and to the emergency new §157.82, which were published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3507). These emergency sections were extended for an additional 60 days in the January 22, 1987, issue of the *Texas Register* (13 TexReg 374).

The amendments to the original emergency sections cover emergency medical services training program and course approval, and emergency medical services personnel training for firefighters.

The amendment to the emergency amendment to §157.77 is necessary to include the procedures for providing a training course for the use of an automatic external defibrillator (AED) and to include the course curricula for an AED. There are currently no national standards for AED curriculum, therefore, the Board of Health must adopt a state minimum standard, which is included in the amendment to the original emergency amendment. The curriculum for the use of a manual defibrillator is incorporated in national curriculum standards that will be presented to the Board of Health at a later date. The amendment to emergency §157.77 also includes a "grandfather" provision that would allow a medical director to delegate the use of an AED to certain certified firefighters who have completed the AED training course. This provision would be effective until January 1, 1989, and it would allow a transition period for fire departments within an EMS system to have their personnel EMS-certified.

The amendment to the emergency new §157.82 is necessary to clarify and narrow the application of the section. The purpose of the amendment is to establish the requirements for emergency medical services (EMS) personnel certification of a firefighter for the emergency care attendant (ECA) level of certification and to establish the application procedures and test requirements. The amendment to the emergency amendment excludes peace officers because the peace officer training curricula does not include training equivalent for ECA certification.

As regards the amendments to the emergency amendment and the new section, the Texas EMS Advisory Council recognizes that the automatic external defibrillator and similar life support devices constitute the practice of medicine and, as such, should be used in the state of Texas by physician prescription or direction. The Texas EMS Advisory Council also recommends that the automatic external defibrillator be used only by trained individuals as identified by EMS rule making authority of the Texas Board of Health.

The department adopts the amendments on an emergency basis for the following reasons. Firefighters are often the first responders to emergency medical situations, however, they must be trained in the use of an AED to use AEDS in emergency situations. An AED is connected to a patient with a cardiac arrest, turned on, and will improve survival in certain instances. Therefore, the amendments are being adopted on an emergency basis in order to enable firefighters, under medical supervision/direction, to immediately begin using AEDs in order to save lives in emergency situations.

The amendments are adopted on an emergency basis under the Emergency Medical Services Act, Texas Civil Statutes, Article 4447o, §§3.02-3.04, which provides the Texas Board of Health with the authority to adopt rules covering certification of EMS personnel; and Article 6252-13a, §5, which authorizes the Texas Board of Health to adopt emergency rules.

§157.77. EMS Training Program and Course Approval.

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

(d) Course curricula.

(1) ECA training course.

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

(C) **The automatic external defibrillator curricula in subsection (f) of this section shall be an operational skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this**

title (relating to Medical Direction/Supervision of Prehospital Care). [Those objectives pertaining to the use of the Automatic External Defibrillator shall be an optional skill. The teaching of the optional skill shall be at the discretion of the medical director and may be utilized only under medical direction/supervision.]

(2) B-EMT training course.

(A) The minimum curriculum for the B-EMT training course shall be the DOT Basic Training Program for Emergency Medical Technician Ambulance, as adopted by reference, in subsection (b)(1)(B) of this section except however, those objectives pertaining to the use of [The automatic External defibrillator,] military antishock trousers, or the pneumatic counter pressure device which shall be **an** optional **skill** [skills]. The teaching of the optional skill shall be at the discretion of the medical director and may be utilized only under medical direction/supervision.

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

(E) The automatic external defibrillator curricula in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/Supervision of Prehospital Care).

(3) SS-EMT training course.

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

(F) The automatic external defibrillator curricula in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/Supervision of Prehospital Care). [Those objectives pertaining to the use of the automatic external defibrillator or manual defibrillator shall be optional skills. The teaching of the optional skills shall be at the discretion of the medical director and may be utilized only under medical direction/supervision.]

(4) P-EMT training course.

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

(F) The automatic external defibrillator curricula in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/ Supervision of Prehospital Care).

(5) P-EMT completion training course.

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

(F) The automatic external defibrillator curricula in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/Supervision of Prehospital Care).

(e) (No change.)

(f) automatic external defibrillator training course.

(1) For the purposes of this section, an automatic external defibrillator (AED) shall include only those automatic defibrillators that are rendered not capable of manual override.

(2) A medical director of an EMS system that provides advanced life support may delegate the use of an AED to certified EMS personnel who successfully complete the AED training course. The medical director shall meet all the requirements of §157.79 of this title (relating to Medical Direction/Supervision of Prehospital Care).

(3) The minimum requiredd curriculum for an AED training course shall be the following:

(A) Introduction (30 minutes). The student shall be provided with an overview of the development of prehospital emergency care and the automatic defibrillator program. Cardiac arrest statistics shall be discussed considering other defibrillator programs. Ethical and legal responsibilities shall be discussed. The automatic recording monitor defibrillator concept is introduced.

(B) Defibrillator components and operation (30 minutes to 1 hour). The student shall learn the operation of the automatic recording monitor defibrillator chosen by the service program. This lesson includes electrode placement, monitoring, and full operating protocol.

(C) Mini code (2 hours). The student shall demonstrate steps in using the automatic recording monitor defibrillator in the classroom setting. The student must follow the appropriate procedures while performing airway control, chest compression, and defibrillator operation. It is vitally important that the student recognize if the patient is pulseless, then CPR shall be performed.

(D) Summary (30 minutes). An oral review of the procedures taught shall be conducted with directed questions and answers. This includes procedures to be followed in troubleshooting the defibrillator, and what steps to take in the event of defibrillator failure or repeated unsuccessful countershocks. No more than three countershocks shall be permitted in the field, per episode of ventricular fibrillation.

(E) Written and skills evaluation. Based on a written and skills evaluation, the medical director shall determine whether the student is proficient in the use of the AED.

(4) A medical director of an EMS system that provides advanced life support shall notify the department in writing, on a form provided by the department, if intent to teach an AED training course and to provide to the department the following information:

(A) the name of the EMS system;

(B) the name and social security number of each potential student;

(C) the name, address, telephone number, and medical license number of the medial director;

(D) the medical director's protocols for automatic defibrillation; and

(E) the medical director's plan for continuing education.

(5) The medical director shall provide the department with the names and social security number of the students who have completed the training course and have been determined to be proficient in the use of an AED.

(6) Until January 1, 1989, a medical director of an EMS system that provides advanced life support may delegate the use of an AED to persons who are not certified EMS personnel if the following conductions are met:

(A) the person is currently certified by the Texas Commissioner on Fire Protection Personnel Standards and Education under 37 TAC §233.31 (relating to Certificates) or the person is currently certified as an advanced volunteer firefighter by the Texas Volunteer Firefighter Certification Board;

(B) the firefighter has successfully completed an AED training course that meets the curricula required by this subsection; and

(C) the medical director provides the department the name and social security number of each firefighter who is proficient in the use of AED.

(7) Nothing in this subsection shall be construed to limit the ability of a physician to prescribe the use of an AED to a patient or other persons to provide for patient care.

§157.82 Emergency Medical Services Certification [of Peace Officers and] for Firefighters.

(a) Purpose. The purpose of this section is to establish the [certification] requirements for the emergency medical services **(EMS)** personnel certification of [a peace officer or] firefighter [that is currently employed by the state or local government] for the emergency care attendant **(ECA)** level of certification. **Many fire** fighters are in a job position that requires them to serve in the role of a first responder in an EMS system. These firefighters have

completed training courses that are equivalent to the department's ECA course. This section will allow firefighters to obtain EMS certification in addition to firefighter certification.

(b) Personnel covered. [Peace officers and] Firefighters may qualify for this section if [they are currently employed by the state or a local government and are currently under medical control. They must be in a job position that requires them to serve in the role of a first responder in emergency medical service.] **the firefighter holds:**

(1) **a basic firefighter certificate issued by the Texas Commission on Fire Protection Personnel Standards and Education; or**

(2) **an advanced certificate issued by the Texas Volunteer Firefighter Certification Board.**

[(c) Levels of EMS personnel certification authorized. The peace officer or firefighter may qualify to take the emergency care attendant certification examination under this section.]

(c)[(d)] Certification requirements. The [peace officer or] firefighter shall:

(1) **submit to the department an application for examination and a nonrefundable application fee of $12.50** [complete the requirements of §157.63(a)(3) and (4)(B) of this title (relating to Certification) and in addition, send documentation to the department that indicates previous training and experience that are directly related to the knowledge and skill objectives of the emergency care attendant curriculum];

(2) **send a copy of a basic firefighter certificate issued by the Texas Commission on Fire Protection Personnel Standards and Education or an advanced certificate issued by the Texas Volunteer Firefighter Certification Board;**

(3)[(2)] achieve a passing grade on all department skills examinations for the **ECA** level of certification [requested as required in §157.63(a)(5) of this title (relating to Certification)]; and

(4)[(3)] achieve a passing grade of 70 on the department's written examination **for the ECA level of certification.**

(d)[(e)] Certification period. After verification by the department of the information submitted by the applicant, the applicant who meets the requirements in subsection **(c)** [(d)] of this section shall be certified for four years commencing on the date of issuance of a certificate and wallet-sized **card** [certificate] signed by department officials. A certificate is not transferable. The wallet-size **card** [certificate] shall be carried by all EMS personnel while on duty.

(e)[(f)] Examination failure. **An** [the] applicant **under this section** who fails either the department skills [examination] or [the] written examination may retest **on each examination** one time **provided that all retests are completed** no later than [one time within] 90 days of the initial examination date [A request for retest of the written examination shall be made to the department at least 30 days in advance of the expiration of the 90-day period]

(f)[(g)] Recertification requirements. The applicant who receives EMS personnel certification shall comply with the requirements of §157.64 of this title (relating to Recertification) and §157.76 of this title (relating to Continuing Education) to recertify.

(g)[(h)] Other requirements. The following sections of this title shall be applicable to this section: §157.21 (relating to Criteria for Decertification, Emergency Suspension, Suspension, and Probation of Certificate); **and** §157.22 (relating to Procedure for **Revocation**/Suspension of Certificate) [; and §157.25 (relating to Criteria for Denial of Certification and Recertification)].

Issued in Austin, Texas, on February 1, 1988

TRD-8801004 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 1, 1988
Expiration date: March 23, 1988
For further information, please call (512) 465-2601

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 373. State Project Priority System

★31 TAC §373.2

The Texas Water Development Board adopts on an emergency basis an amendment to §373.2, concerning the definition of a small community. The section currently defines a small community as having population of 10,000 or less. The amendment raises the number to 25,000 or less and makes available advance of allowance of federal wastewater planning funds under the construction grants program to an increased number of communities in Texas. The section is adopted on an emergency basis because of the urgent need of the City of Socorro, with a population of approximately 21,000, to obtain such funds for planning wastewater treatment facilities to replace septic tanks which are contaminating area groundwater.

The amendment is adopted on an emergency basis under the Texas Water Code, §6.101 and §16 093, which provides the board with the authority to make rules and administer the construction grants program.

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

Small community—Any municipality with the population of **25,000** [10,000] or less.

Issued in Austin, Texas, on January 29, 1988.

TRD-8801038 Suzanne Schwartz
General Counsel
Texas Water Development Board

Effective date: February 1, 1988
Expiration date: April 30, 1988
For further information, please call (512) 463-7853

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter L. General Admiistration

★40 TAC §29.1112, §29.1125

The Texas Department of Human Services is renewing the effectiveness of the emergency adoption of amended §29.1112 and §29.1125, for a 60-day period effective February 13, 1988 The text of amended §29.1112 and §29 1125 was originally published in the October 23, 1987, issue of the *Texas Register* (112 TexReg 3910).

Issued in Austin, Texas, on February 3, 1988.

TRD-8801110 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Effective date: February 3, 1988
Expiration date: April 13, 1988
For further information, please call (512) 450-3765.

Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text** [Brackets] indicate deletion of existing material within a rule

TITLE 4. AGRICULTURE
Part I. Texas Department of Agriculture
Chapter 11. Herbicide Regulations

• **4 IAC §11.1, §11.2**

The Texas Department of Agriculture proposes amendments to §11.1 and §11.2, concerning counties covered by the Texas Herbicide Law and county special provisions The amendment to §11.1 adds Bailey and Wilbarger Counties to the list of counties covered by the Texas Herbicide Law The amendment to §11.2 deletes special provisions for Colorado County amends special provisions for Dickens County and adds special provisions for Bailey and Wilbarger Counties All amendments are made after public hearing and at the request of county commissioners court for these counties

Ellen Widess, director, Agricultural and Environmental Sciences Division, has determined that for the first five year period the sections are in effect there will be no fiscal implications for local government as a result of enforcing or administering the sections The anticipated costs to state government should be offset by fees collected The cost of compliance with the sections for small businesses will be a fee of $.10 per acre and a $20 equipment inspection fee, and will depend upon the number of acres treated and number of pieces of equipment inspected The costs to small and large business will be the same, depending upon number of acres treated and number of pieces of equipment inspected

Ms Widess, 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 reduced risk of economic loss and injury to susceptible crops from exposure to hormone-type herbicides The anticipated economic cost to individuals who are required to comply with the sections as proposed will be $.10 per acre fee for acreage treated and a $20 equipment inspection fee per piece of inspection treated

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

The amendments are proposed under the Texas Agriculture Code, §75.018, which provides the Texas Department of Agriculture with the authority to promulgate rules after notice and hearing for administration of the Texas Herbicide Law

§11.1 Counties Regulated The following counties shall be subject to all of the provisions of the Texas Agriculture Code, Chapter 75 (1981), unless specifically excepted by the provisions of §11.2 of this title (relating to County Special Provisions), Aransas, Austin, **Bailey**, Bell, Bexar, Brazoria, Brazos, Briscoe, Burleson, Calhoun, Cochran, Collin, Collingsworth, Cottle, Culberson, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donely, El Paso, Falls, Foard, Fort Bend, Frio, Gaines, Galveston, Hall, Hardin, Harris, Haskell, Hidalgo, Houston, Hudspeth, Jackson, Jefferson, Karnes, Kaufman, King, Knox, Lamar, Lamb, Liberty, Loving, McLennan, Martin, Matagorda, Midland, Milam, Motley, Newton, Orange, Parmer, Rains, Reeves, Refugio, Robertson, Rockwall, Runnels, San Patricio, Swisher, Travis, Tyler, Waller, Ward, Wharton, **Wilbarger**, [and] Williamson, **and Wilson**

§11.2. County Special Provisions

(a)-(e) (No change.)

(f) Dickens County.

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

(4) No permit is required for the ground application of Banvel; however, the filing of notice of intent to spray is required and should be filed with the Texas Department of Agriculture prior to application.

(5)[(4)] Any research conducted by the Texas Agriculture Experiment Station under the auspices of brush control and research using phenoxy herbicides will be allowed. Aerial research must have a buffer zone of at least 1/4 mile from any susceptible crops, and wind velocity must not exceed 10 mph during spraying period. Ground application must comply with the special provisions for ground application under the special provisions for dicamba. Research will be permitted during the period of May 15-September 30 under these conditions, and will be exempt from all fees. Notification shall be made to the Texas Department of Agriculture before beginning research projects.

(g)-(s) (No change.)

[(t) Colorado.

[(1) That portion of Colorado County lying north of IH10 is exempt from the Texas Herbicide Law and regulations pertaining thereto, except as may be provided as follows.

[(2) Between the dates of March 15 and July 31 each year, the following restrictions on the use of 2,4-D formulations shall apply

[(A) Only amine formulations may be used in that area lying south of Highway 90A and east of the Colorado River to the Wharton County Line.

[(B) The use of all 2,4-D formulations is prohibited in that portion of Colorado County south of Highway 90A and west of the Colorado River

[(C) No aerial application of 2,4-D formulations or any derivative may be made in Colorado County.]

(t)[(u)] Frio. Aerial application of 2,4,5-T is prohibited except for the months of April, May, and June of each year.

(u)[(v)] Lamar. All of Lamar County is exempt from regulation by the Texas Herbicide Law except that portoin beginning at the Red River County line on State Highway 271N, which point is the east boundary line of Lamar County; thence on a northwesterly direction along 271N to the Town of Pattonville; thence in a westerly direction from Pattonville along a road known as Jefferson Road for a distance of two miles; thence south on unnamed oil top county road, .9 mile to community of Shady Grove; thence in a westerly direction on unnamed oil top county road for one mile to the intersection of FM 905; thence south one mile on FM 905 to first unnamed oil top county road in community of Plainview; thence in a westerly direction on county road four miles to the Town of Biardstown to intersection of FM 1497; thence northwesterly on FM 1497, .3 mile to Hickory Creek; thence southeasterly on Hickory Creek to North Sulphur River, which is the south boundary line of Lamar County; thence easterly along the south county line to the southeast corner of the county; thence northerly along the east county line to its intersection with Highway 271N, the point

of beginning. Further, aerial application of hormone-type herbicides is prohibited in the regulated portion of Lamar County between April 15 and September 1 each year

(v)[(w)] Haskell.

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

(w)[(x)] Austin That portion of Austin County lying east and south of the line described in paragraph (1) of this subsection is regulated by the Texas Agriculture Code, Chapter 75

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

(x)[(y)] Cochran

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

(y)[(z)] Dimmit That portion of Dimmit County within the area described in paragraph (1) of this subsection is regulated by the Texas Agriculture Code, Chapter 75

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

(z)[(aa)] King Aerial application of hormone herbicides is prohibited between June 10 and October 15 of each year

(aa)[(bb)] Foard That portion of Foard County within the area described as follows is regulated by the provisions of the Texas Agriculture Code, Chapter 75, for the period beginning May 25 and ending October 10 of each year, all of that portion of Foard County lying east of a line which has its origins beginning at a point where the of §509, Block A, H.&T.C.RR. Co., survey; and thence southward along the eastern boundary lines of §§497-509 Block A, H.&T.C.RR. Co., survey; ending in the southeast portion of §497 at a point where latitude 33 degrees 55' intersects with the southeast portion of §497, Block A, H.&T.C.RR. Co., survey; then, all of the portion of Foard County lying north of a line which has its origins beginning at a point in the southeast portion of §497, Block A, H.&T.C.RR. Co., survey where latitude 33 degrees 55' intersects with the southeast portion of §497; and thence due eastward along latitude 33 55' ending at a point where latitude 33 degrees 55' intersects with the Wilbarger County line in the northwestern portion of §48, Block 18, A.H.&T.C.RR. Co., survey.

(bb)[(c)] Deaf Smith The use of all butyl ester formulation of 2,4-D and/or all high volatile formulations of 2,4-D is prohibited between the dates of April 15 until October 1 of each year.

(cc)[(dd)] Lamb.

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

(dd)[(ee)] Swisher.

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

(ee)[(ff)] Briscoe.

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

(ff)[(gg)] Motley. The Texas Herbicide Law, and regulations adopted thereunder, shall apply to Motley County only for the period beginning May 15 and ending October 31 of each year.

(gg)[(hh)] Collingsworth.

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

(hh) Bailey.

(1) During the period from October 1 of one calendar year through April 15 of the following calendar year, no permit or permit fee will be required for the following herbicides:

(A) 2,4-Dichlorophenoxyacetic Acid (2,4-D);

(B) 2,4, 5-Trichlorophenoxyacetic Acid (2,4,5-T);

(C) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA);

(D) 2-(2,4,5-Trichlorophenoxy) proponic Acid (Silvex);

(E) Polychlorinated benzoic acids; and

(F) derivatives and formulations of substances listed by subparagraphs (A) - (E) of this paragraph.

(2) The herbicides listed in paragraph (1) of this section may be used during the period from April 15 to October 1 of each calendar year, provided the user obtains a permit from the Texas Department of Agriculture prior to such use.

(3) The aerial application of the herbicides listed in paragraph (1)(A) - (D), inclusive, and any derivatives and formulations thereof, is prohibited for the period from April 15 to October 1 of each calendar year.

(ii) Wilbarger.

(1) Wilbarger County, in its entirety, shall be regulated under the Texas Herbicide Law, §§75.006-75.017, for the period beginning May 10 and ending September 15 of each year.

(2) The use of the following herbicides is prohibited during the regulated period beginning May 10 and ending September 15 of each year:

(A) 2,4,5-Trichlorophenoxyacetic Acid (2,4,5-T);

(B) 2,4-Dichenophenoxyacetic Acid (2,4-D Ester);

(C) 2-Methyl-4 Chlorophenoxyacetic Acid (MCPA);

(D) 2-(2,4,5-Trichlorophenoxy) propionic acid (Silvex).

(3) The aerial application of polychlorinated benzoic acids and 2.4-D Amine is prohibited during the regulated period except as provided in paragraph (4) of this subsection. Ground applications of polychlorinated benzoic acids and 2,4-D Amine may be made during the regulated period without the requirement of a permit.

(4) During the period beginning May 10 and ending May 20 of each year, the aerial application of 2,4-D Amine and polychlorinated benzoic acids is permitted upon the issuance of a permit by the Texas Department of Agriculture.

(5) Research conducted by the Texas A&M University System under the auspices of brush and weed control, using all herbicides, will be allowed during the regulated period. Aerial applications must provide a buffer zone of at least five statute miles from any susceptible crops, and wind velocity must not exceed 10 mph during application. Ground application must comply with the special provisions for Dicamba. Research will be allowed during the period beginning May 15 and ending September 15 of each year and will be exempt from all fees. The Texas Department of Agriculture shall be notified before the commencement of such research projects.

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

Issued in Austin, Texas, on February 3, 1988

TRD-8801101 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Earliest possible date of adoption. March 4, 1988
For further information, please call (512) 463-7583

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter A. Securities Activities and Subsidiaries

★7 TAC §3.7

The Banking Section of the State Finance Commission proposes new §3.7, concerning the establishment or acquisition of

operating subsidiaries by a state bank. Texas Civil Statutes, Articles 342-513, provide that a state bank may establish or acquire a subsidiary to perform those functions that a state bank or a bank holding company is authorized to perform. The Banking Section is authorized to establish limitations on the amount of capital a state bank may invest in operating subsidiaries. The new section establishes a basic regulatory framework to govern those activities permitted under Article 342-513, and sets forth investment limits for subsidiaries engaging in certain types of activities.

Hubert Bell, Jr., assistant general counsel, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Bell 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 an opportunity for state banks to fully engage in certain activities through subsidiaries as allowed under Texas Civil Statutes, Article 342-513, which was expanded by the legislature in 1985 to include activities permitted for bank holding companies. State banks will possess greater flexibility in selecting its overall corporate structure, within certain regulatory parameters, which could result in stronger institutions better able to meet the needs of the public. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Hubert Bell, Jr., Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Articles 342-113 and 342-513, which provide the Banking Section with the authority to promulgate rules and regulations not inconsistent witn the constitution and statutes of this state, and rules time to time amend same, which rules and regulations shall be applicable to all state banks and bank subsidiary corporations.

§3.7. Applications for Creation of Bank Subsidiaries—De Novo Establishment or Acquisition.

(a) Texas Civil Statutes, Article 342-503, provide that a bank subsidiary corporation may perform those functions that a state bank or a bank holding company may perform under the laws of this state. A state bank subsidiary may engage in those activities presently authorized, or which may be granted to bank holding companies, under the provisions of the Bank Holding Company Act, 12 United States Code §1841-1849 (West Supplement 1987); regulations promulgated by the board of governors of the Federal Reserve System (presently such regulations are codified at 12 Code of Federal Regulations Part 225); or any present or future orders, regulations, or interpretations issued by the board of governors concerning activities that are so closely related to banking or controlling banks as to be a proper incident thereto. A bank subsidiary may engage in permissible activities at any location that is authorized for a bank holding company.

(b) An application shall be filed with the banking commissioner (hereinafter commissioner), on forms he prescribes, if a state bank plans to establish or acquire a subsidiary to engage in activities permitted for a bank or a bank holding company or subsidiaries thereof. In any application in which applicant proposes to engage in an activity permitted for bank holding companies, applicant shall identify the specific statutory or regulatory provisions authorizing the proposed activity. The commissioner, as the primary regulator of state-chartered banks, shall approve applications to acquire or establish such bank subsidiaries if:

(1) in the opinion of the commissioner, there are no significant supervisory problems with respect to the applicant which would affect its ability to properly operate such subsidiary; and

(2) the application for the proposed bank subsidiary complies with the provisions of Texas Civil Statutes, Article 342-513.

(c) A banks subsidiary shall be subject to examination and regulation by the commissioner as if it were a state bank.

(d) Investment limitations for subsidiaries that are set forth in Texas Civil Statutes, Article 342-513, shall not apply if the activities of the subsidiary are limited to those that may be engaged in directly by the parent bank.

(e) This section shall apply to the establishment or acquisition of bank subsidiaries on or after April 1, 1988.

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 January 28, 1988

TRD-8801011 Jorge A Gutierrez
General Counsel
Department of Banking

Earliest possible date of adoption: March 11, 1988

For further information, please call (512) 479-1200.

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Loans

• 7 TAC §91.701

The Credit Union Commission proposes an amendment to §91.701, concerning loans. The amendment provides that loans, both personal and real estate, be amended to include their limitations, restrictions, and terms.

John R Hale, commissioner, 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 Hale, 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 reduction in losses to credit unions resulting from unsound lending, greater flexibility in the terms of loans available to Texas credit union members, and improved operating flexibility for Texas state chartered credit unions 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 Harry L Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699

This amendment is proposed under Texas Civil Statutes, Article 2461-1.01, et seq, §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act

§91.701. Loans

(a) Nonpreferential **treatment. The rates, terms, conditions, and availability of any loan or line of credit made to, or endorsed or guaranteed by, any credit union official or employee or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans to other credit union members.** [The board of directors may establish loan limitations and restrictions, not inconsistent with the law and these rules, relating to loan terms and amounts and applicable to all borrowers or to classes of borrowers; provided such loan restrictions and limitations shall be based upon financial factors and, in accordance with Federal Reserve Regulation B, shall not discriminate against any applicant;

[(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

[(2) because all or part of the applicant's income derives from any public assistance program; or

[(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.]

(b) **Prohibited fees. A credit union shall not make a loan or extend a line of credit if any commission, fee, or compensation of any type from any person or entity other than the credit union is to be received by any credit union official or employee or an immediate family member of any such individual in connection with underwriting, insuring, procuring, servicing, or collecting the loan or line of credit.** [Modification of an existing loan, whether by extension or renewal thereof, shall be evidenced by appropriate documentation retained in the credit union's files.]

(c) **Limitation on fixed rate loans. The aggregate of fixed interest rate loans having remaining maturities exceeding 10 years shall not exceed 500% of the credit union's reserves and undivided earnings unless prior written approval to increase such limit is granted by the commissioner.**

(d)[(c)] Personal loans.

(1) **Secured installment loans.**[Loan terms. Credit unions may make personal loans to members, either secured or unsecured for any lawful purpose. The maximum terms for such loans shall be 63 months from the date the loan was made unless specifically authorized elsewhere in this section.]

(A) Credit unions may make loans to members when fully secured by a pledge of or security interest in personal property, the fair market value of which can reasonably be expected to equal or exceed the unpaid balance of the loan during the term of the loan.

(B) Repayment periods may not exceed 183 months from the date the loan was made.

(C) Level payment, variable interest rate loans with maturities which exceed the applicable maximum only because of interest rate variations are not considered to be in noncompliance with this subsection.

[(2) Term loans. Interest shall be paid at least annually on all term loans.]

(2)[(3)] Insured and guaranteed loans. A credit union may make, **subject only to any limitations imposed by the Texas Credit Union Act, Chapter 7** [without regard to the terms], any loan, in any amount, secured or unsecured, which is at least **90%** [80%] insured or guaranteed as to both principal and interest by the State of Texas or the United States or any agency or instrumentality thereof.

(3) Unsecured installment loans.

(A) Credit unions may make loans to members which are not secured or not fully secured by a pledge of or security interest in personal or real property, for terms not to exceed 63 months from the date the loan was made.

(B) Level payment, variable interest rate loans with terms which exceed 63 months only because of interest variations are not considered to be in noncompliance with this subsection.

(4) Balloon payment loans. Credit unions may make loans under paragraphs (1) and (2) of this subsection to members which will not fully amortize through equal periodic payments over the term of the loan. Periodic payments no less frequent than annually are required which are at least equal to those which would amortize a conventional loan of equivalent amount within legal maturity limits, unless repayment of the loan within the scheduled term is reasonably assured by a third party insuror of acceptable financial quality, or the loan is secured by collateral in which the balloon payment does not exceed the projected residual value of the collateral. [Loans secured by shares, United States government bonds, or other funds on deposit or by insurance policies. Loans fully secured by a pledge of unrestricted or unencumbered shares and/or deposits in the credit union, or by an irrevocable assignment of a life insurance policy or savings account in another financial institution such as a bank, savings and loan association, or other credit union, may be made for a term not exceeding 123 months from the date the loan was made; provided, the cash surrender value of the insurance policies or the cash value of the shares, savings, or deposit accounts shall be sufficient at all times during the term of the loan to fully pay or satisfy the unpaid balance of the loan.]

(5) Term loans. Credit unions may make loans to members which are either single payment loans or provide for payments less frequent than monthly. Term loans, unless fully secured by shares and deposits in the credit union, must have a maturity of no longer than one year from the date of the loan. Interest shall be paid at least annually. The credit union's board of directors shall determine the criteria for the granging and renewing of term loans. [Manufactured home loans. Loans secured by a first lien in a manufactured home may be made for a term not to exceed 180 months from the date the loan was made.

[(6) Motor homes and travel trailers. Loans secured by a first lien in a motor home or travel trailer may be made for a term not to exceed 123 months from the date the loan was made.

[(7) Property improvement loans. If the proceeds of a loan are to be used exclusively for improvement of real property or the maintenance, repair, modernization, or equipment of real property, such loan may be made for a term not to exceed 180 months from the date the loan was made, provided that the credit union obtains a materialmen's and mechanic's lien to secure payment of the obligation pursuant to the applicable laws of this state, except loans made under paragraph (3) of this subsection.

[(8) Other secured loans. Credit unions may make loans to members (other than the special type loans set out herein) for periods not exceeding 123 months from the date the loan was made, when adequately secured by a pledge of, or security interest in, personal or real property, the fair market value of which can reasonably be expected to equal or exceed the unpaid balance of the loan at all times during the term of the loan. Loans granted under the provisions of this subsection may be made on real property without such loans being classed as real estate loans undersubsection (d) of this section.]

(e)[(d)] Real estate loans.

(1) Authority to make estate loans. Credit unions [with assets of $500,000.00 or more,] may make real estate loans to members secured by a mortgage, deed of trust, or other instrument creating or constituting a [first and prior] lien on real estate. Additional security may also be taken by the credit union in connection with any such loan if deemed necessary and proper.

(2) Requirements regarding real estate loan transactions **secured by first liens.** No credit union shall:

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

(C) make a real estate loan unless the insurable improvements thereon are insured against loss at least equal to the amount of the **lesser of the principal balance of the loan or the** appraised value of the improvements, by a fire and extended coverage policy or its equivalent, issued by an insurance company authorized to do business in Texas with the credit union named as loss payee;

(D) (No change.)

(E) make a real estate loan, **other** than a real estate interim construction loan, uless [:]

[(i)] the credit union shall require the member-borrower to pay [monthly], in addition to payments of interest and principal, **deposits to an escrow account for** [an amount equal to one-twelfth of the] estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing such loan. **Such deposits shall be at the same frequency as payments of principal and interest, shall be in equal increments, and at the end of an annual period shall be sufficient** [, to be held in an escrow account so as] to enable the credit union to pay such charges as they become due from the funds so received. The total of such [monthly] charges may be increased or decreased as is necessary for the payment of such charges. Every credit union shall keep a record of the amounts retained in each escrow account, submit an annual statement of the account to the borrower, and shall also keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estae securing its loans. The credit union may waive the escrow account requirement if an amount equivalent at least to the **estimated** annual insurance premium and annual taxes is maintained in **an** [the share] account of the member-borrower **at the credit union and that account is pledged to the credit union** for the term of the loan and the loan is not in arrears or delinquent at any time, provided that the credit union is furnished annually with paid-stamped tax receipts from all applicable taxing authorities and certificates of insurance coverage signed by a qualified officer of the issuing company. [;or]

[(ii) in lieu of the requirements for establishing escrow accounts for payment of taxes and/or insurance premiums, as required by clause (i) of this subparagraph, a credit union may require monthly payments (in addition to principal and interest payments), equal to one-twelfth of the estimated annual taxes and insurance premiums. Such additional payments shall be applied to the principal balance each month. The credit union shall then pay the annual taxes and insurance premiums when due and add the costs thereof to the principal amount of the loan on the dates payment is made. The credit union shall retain tax receipts and copies of the remittance (check or check voucher) in each individual loan file.]

(3) Requirements regarding loan transactions secured by other liens on real estate. The requirements for loans secured by liens on real estate other than first liens are the same as for those secured by firs liens except as follows:

(A) Fire and extended coverage insurance, or its equivalent, must be maintained in an amount equal to the lesser of the total of the credit union's loan and the loans secured by all prior liens or the appraised value of the insurable improvements.

(B) The maximum maturity of a [illegible] secured by a lien on real estate o[illegible] than a first lien is 243 months.

(C) The total of the credit union's loan and the loans secured by all prior liens cannot exceed 80% of the current appraised value.

(D) No escrow arrangements are necessary if it is verified that a prior lienholder has provided for the timely payment of taxes and insurance.

(4)[(3)] Maximum real estate term. Credit union real estate loans are subject to the following additional terms and conditions.

(A) On **purchase** money first mortgage real estate loans secured by improved residential property [other than property improvement loans], the maximum loan amount is 90% of the purchase price or appraised value of the property, whichever is less. Such loans shall be repaid, both as to interest and principal, within a period not exceeding 40 years from the date the loan is made regardless of the maximum loan amount. If such loans are insured by an agency of the United States government or by a private mortgage insurance company, the maximum loan amount is 95% of the purchase price or appraised value of the property, whichever is less. **For nonpurchase money real estate loans secured by a first lien on improved residential property, the maximum loan amount is 80% of appraised value, and the maximum maturity is 243 months.**

(B) On all real estate loans secured by improved nonresidential property, the maximum loan amount is **80%** [90%] of the **current** [purchase price or] appraised value of the property [, whichever is less,] and such loan shall be repaid, both as to interest and principal, within a period not exceeding 20 years from the date the loan is made. **If such loans are insured by an agency of the United States government or by a private mortgage insurance company, the maximum loan amount is 95% of the purchase price or appraised value of the property, whichever is less.**

(C) On all real estate loans secured by unimproved property, the maximum loan amount is 80% of the current [purchase price or] appraised value [of the property, whichever is less,] and such loan shall be repaid, both as to **principal and** interest [and principal], within a period not exceeding 20 years from the date the loan is made.

(D) On all **residential real** estate interim construction loans, the maximum loan amount is 90% of the fair market value ofthe property after completion of constructoin. **On all nonresidential real estate interim construction loans, the maximum loan amount is 80% of the fair market value of the property after completion of construction.** Such interim construction loans must be repaid, both as to principal and interest, within a period not exceeding 18 **months** [one calendar year] from the date of the loan. **If approved beforehand and if qualified,** such loans[, if qualified,] may be refinanced into permanent real estate installment loans, **otherwise the credit union shall have in its file a letter of commitment to provide permanent financing from a lender regularly engaged in making real estate loans.** [Accrued interest shall be paid by the borrower at the time of refinancing.] The requirement of an escrow account as set forth in this section is waived on [all real estate] interim construction loans **under this subsection.** Fire and extended coverage insurance shall be required during construction in an amount equal to the estimated fair market value of the property after completion of construction.

[(E) Total outstanding balances of all loans secured by real estate mortages made in accordance with subsection (d) of this section by any credit union shall not exceed 25% of the outstanding shares and deposits of such credit union unless prior written approval to increase such limit is granted by the commissioner.]

[(4) Exceptions. Credit unions with assets under $500,000 may, with prior written approval of the commissioner, make first mortgage real estate loans pursuant to this section. Such written approval may be limited to individual loans.]

(5) Exceptions. For loans secured by a lien on real estate, but less than $25,000 in an amount and 124 months in maturity, the board of diredtors may establish, by written policy, requirements different from those herein stated.

(6) Applicability of rules relating to commercial loans. A loan granted under this section which is also a commercial loan as defined in subsection (f)(2) of this section must meet the requirements of both this subsection and subsection (f) (commercial loans) of this section.

(f) Commercial loans.

(1) Authority to make commercial loans. Crecdit unions may make loans to members subject to limitations within this section, provided that prior to

engaging in commercial lending, or within 60 days of the effective date of this section if already engaged in commercial lending, the commissioner is so notified in writing.

(2) Definition. A commercial loan is a loan which meets all of the following qualifications:

(A) more than 1/2 of the proceeds are to be used to finance a business venture or investment;

(B) more than 1/2 of the repayment of the loan is dependent upon income generated from a business venture or investment; and

(C) Terms, interest rates, and frequency of payments shall be determined by written board policy.

(D) A commercial real estate loan shall be subject to the same requirements as a noncommercial real estate loan.

(4) Prohibitions. No credit union shall make a commercial loan:

(A) unless the loan is documented and administered in accordance with sound business practice and accepted industry standards;

(B) on which the entire repayment is dependent on the sale or lease of real property to an unknown purchaser or lessee;

(C) unless documentation is in place and properly signed and filed which will adequately perfect the credit union's interest in pledged collateral;

(D) in which the credit union has an equity participation; and

(E) unless the credit union has in place written loan policies specifically for commercial and investment loans.

(5) Classification of loans and allowances for loan losses requirements. The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(A) Classifications are defined as follows.

(i) Substandard. Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(ii) Doubtful. A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

(iii) Loss. Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

(B) Loans classified shall be reserved as follows:

(i) loss loans at 100% of outstanding amount;

(ii) doubtful loans at 50% of outstanding amount; and

(iii) substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriated.

(g) Member business loans for credit unions insured by National Credit Union Share Insurance Fund.

(1) Applicability of rule. This section applies only to credit unions which are insured by National Credit Union Share Insurance Fund and is supplemental to the requirements of subsection (f) of this section.

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

(A) Associated member-Any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.

(B) Member business loan-Any loan or line of credit, the proceeds of which will be used for a business or agricultural purpose, except that the following shall not be considered as a member business loan regardless of the purpose:

(i) a loan or loans fully secured by a lien on a one to four-family dwelling that is any of the following:

(I) the member's primary residence;

(II) the member's secondary residence;

(III) one other such dwelling owned by the member;

(ii) a loan fully secured by shares or deposits in the lending credit uion or deposits in other financial institutions;

(iii) loans otherwise meeting the definition of a member business loan to any one obligor or associated member which, in the aggregate, do not exceed $25,000;

(iv) a loan fully insured or guaranteed by any agency of the federal government or of a state or any of its political subdivisions;

(v) a loan containing an advance commitment to purchase in fully by any agency of the federal government or of a state or any of its political subdivisions.

(3) Minimum requirements for member business policies. A member business loan made under subsection (e) of this section shall comply with the following requirements and the board of directors shall adopt specific member business loan policies which address, at a minimum, all of the following areas;

(A) types of business loans to be made;

(B) the credit union's trade area for business loan purpose;

(C) the maximum amount of credit union assets, relative to credit union's reserves and surplus, that will be invested in member business loans;

(D) the maximum amount

of credit union assets, relative to credit union equity, that will be invested in a given category or type of member business loan;

(E) the maximum amount of credit union assets, relative to the credit union's reserves and surplus, that will be loaned to any one member or group of associated members, subject to paragraph (5) of this subsection;

(F) qualifications and experience requirements for personnel involved in making and servicing business loans;

(G) analysis of the obligor's initial and ongoing financial capacity to service the debt;

(H) collateral requirements, including initial and ongoing appraisal procedures to determine value and marketability, lien placement procedures, and insurance requirements;

(I) interest rates and maturity limits for each type of member business loan to be made;

(J) listing, by name and title, of senior management employees of the credit union.

(4) Financial statement disclosures. The total number and aggregate dollar amount of member business loans shall be disclosed in the monthly financial statement of the credit union.

(5) Limitations. The aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit unions's reserves and surplus or the aggregate loan limit specified by the Act or rules, whichever is less, unless an exception is granted in writing by the commissioner after consulting with the regional director of the National Credit Union Adminstration.

(6) Prohibited transactions.

(A) A credit union shall not make member business loans to nonvolunteer credit union officials or senior management employees of the credit union or to any associated member or immediate family member of any such individual.

(B) A credit union shall not grant a member business loan in whch any portion of the income to be received by the credit union is tied to the profitability of the business or commercial endeavor for which the loan is made.

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

Issued in Austin, Texas on February 2, 1988.

TRD-8801102 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:March 11, 1988

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

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★7 TAC §91.802

(Editor's note: The Credit Union Department proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is published in the Emergency Rules section of this issue.)

The Credit Union Commission proposes an amendment to §91.802, concerning investments by credit unions. The Credit Union Commission finds that there is a need for express authorization for credit unions to invest surplus funds in investment trusts and to authorize investments in government-sponsored enterprises, commercial paper, and corporate bonds. Further, some credit unions need guidance for enhanced reporting of investments.

John R. Hale, credit union commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hale 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 sounder investment policies and practices. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

The amendment is proposed under Texas Civil Statutes, Article 2461-1.01, et seq., §8.01(9), which authorize the Credit Union Commission to adopt rules authorizing investments in response to changes in economic conditions or competitive practices, and the need for safety and soundness of credit union investments; and §11.07, which authorizes the Credit Union Commission to adopt reasonable rules necessary for the administration of the Texas Credit Union 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 February 1, 1988.

TRD-8801104 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:
March 11, 1988
For further information, please call
(512) 837-9236.

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TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 70. Industrialized Housing and Buildings

Subchapter C. Standards and Codes

★16 TAC §70.20, §70.21

The Texas Department of Labor and Standards proposes amendments to §70.20 and §70.21, concerning mandatory state codes and amendments to mandatory state codes. The amendments concern the most current editions of the NFPA-National Electrical Code and amendments therein.

Jimmy Martin, assistant director, Industrialzied Housing Division, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that manufacturers will build in accordance with the most current codes. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Jimmy Martin, Assistant Director, Industrialized Housing and Buildings, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 5221f-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement.

§70.20. *Mandatory State Codes.* All industrialized housing and buildings, modules, and modular components shall be constructed in accordance with the following codes and their appendices:

(1) NFPA-National Electrical Code, **1987** [1984] Edition; and

(2) (No change.)

§70.21. *Amendments to Mandatory State Codes.*

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

(c) The **1987** [1984] Edition of the National Electrical Code shall be amended as follows:

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

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801061 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Proposed date of adoption:
July 20, 1988
For further information, please call
(512) 463-3128.

TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 115. Extension of Duties of Auxiliary Personnel

★22 TAC §115.10

(Editor's note: The Texas State Board of Dental Examiners proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is published in the Emergency Rules section of this issue.)

The Texas State Board of Dental Examiners proposes new §115.10, concerning minimum requirements for those people who administer radiation to a person for medical purposes. The new section is proposed to comply with requirements in Senate Bill 1439, Article II, §3.01.

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

Mr. Nail also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better protection for the public from the harmful effects of excessive radiation used for medical purposes. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William S. Nail, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801074 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Proposed date of adoption:
March 26, 1988
For further information, please call
(512) 834-6021.

Part XVIII. State Board of Podiatry Examiners

Chapter 382. Medical Radiologic Technologists

★22 TAC §382.1

(Editor's note: The State Board of Podiatry Examiners proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is published in the Emergency Rules section of this issue.)

The State Board of Podiatry Examiners proposes new §382.1, concerning the registration of medical radiologic technologists. The new section is proposed to comply with requirements in Senate Bill 1439, 70th Legislature, 1987, effective January 1, 1988.

J.C. Littrell, D.P.M., executive director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state or local government or small businesses as a result of enforcing or administering the section. At this time, the board is unable to estimate the cost due to not knowing the number of medical radiological technologists that will register with the board.

Mr. Littrell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better and safer provisions for the citizens of the State of Texas. The possible economic cost to individuals who are required to comply with the section as proposed will be $5.00 (annual registration fee).

Comments on the proposal may be submitted to Sandra Marshall, 8317 Cross Park Drive, Suite 401, Austin, Texas 78701, (512) 834-0558.

The new section is proposed under Texas Civil Statutes, Article 4568(j), which provide the State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and bylaws not inconsistant with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceeding and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801073 Nazario Saldana
Attorney
Office of the Attorney
General

Earliest possible date of adoption:
March 13, 1988
For further information, please call
(512) 834-0558.

Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

Subchapter H. Licensing

★22 TAC §741.143

The State Committee of Examiners for Speech-Language Pathology and Audiology proposes amendments to §741.143 and §741.162, concerning issuance of license and general requirements.

The amendment to §741.143 updates and clarifies the provision concerning prorated fees. The amendment to §741.162 make each licensee responsible for license renewal before the expiration date, clarifies and updates the provisions concerning license renewals, and adds provisions concerning inactive status.

Stephen L. Seale, Chief Accountant III, has determined that for each year of the first five-year period that the sections as proposed will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five-year period the sections will be in effect the public benefit anticipated as a result of enforcing the sections as proposed will be to safeguard the public health, safety, and welfare by updating and clarifying procedures and policies concerning the licensing and regulation of Speech-Language Pathologists and Audiologists. The possible economic cost to individuals who are required to comply with the sections as proposed will be none.

Comments on the proposal may be submitted to June Robertson, Executive Secretary, State Committee of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183. Comments will be accepted for 30 days from the date of publication of the proposed sections in the *Texas Register*.

The amendment is proposed under Texas Civil Statues, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules consistent with the Speech-Language Pathology and Audiology Licensure Act, necessary to administer and enforce the Act.

§741.143. Issuance of License.

(a) (No change.)

(b) The initial license and the initial license fee shall be prorated according to the licensee's birth month. Any applicant approved for license within three months of the applicant's birth month shall pay the prorated amount plus one year [of the] license fee. Any applicant approved for less than 12 months, but **for** more than three months, shall pay a fee prorated for only those months. **The prorated fee and all licensee records are based on the month of approval through the last day of the birth month.**

(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 January 28, 1988.

TRD-8800898 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption:
April 16, 1988
For further information, please call
(512) 458-7502.

Subchapter I. License Renewal

★22 TAC §741.162

The amendment is proposed under Texas Civil Statues, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules consistent with the Speech-Language Pathology and Audiology Licensure Act, necessary to administer and enforce the Act.

§741.162. General.

(a) **Each licensee is responsible for license renewal before the expiration date.** The committee shall use the following system for license renewals.

(1) (No change.)

(2) **Each licensee shall annually pay the nonrefundable fee for license renewal. A 60 day grace period shall be allowed for payment of the renewal fee. The executive secretary shall not consider a license to be renewed until the completed license renewal form, proof of earned continuing education, and the renewal fee have been mailed to the executive secretary. The postmarked date is the date of mailing. After expiration of the grace period, the committee may renew each license after payment of the penalty set out in §741.181, of this title (relating to the Schedule of Fees and Late Renewal Penalties.)** [Renewal fees shall be prorated if the licensee's initial renewal date, as determined by the committee, occurs less than 12 months after the original date of licensure.]

[(3) Applicants approved within three months of their birth date will be asked to pay for the prorated amount plus one year. The form and prorated fee is based on the month of approval through the last day of birth month.

[(4) Each licensee shall annually pay the nonrefundable renewal fee for renewal of a license.]

(b) **Effective September 1, 1986, renewal of a license is contingent on the applicant meeting uniform continuing education requirements established by the committee; however, continuing education hours are not required for the first renewal. After a license is renewed for the first time, the licensee must begin earning approved continuing education hours.** [Each licensee is responsible for license renewal before the expiration date. A 60 day grace period shall be allowed for renewal. The executive secretary shall not consider a license to be renewed within the 60 days until both the completed license renewal form and the renewal fee have been mailed to the executive secretary. The postmarked date is the date of mailing. After expiration of the grace period, the committee may renew each license after payment of the penalty set out in §741.181 of this title (relating to the Schedule of Fees and Late Renewal Penalties.]

(c) At least 45 days prior to the expiration date of an individual's license, the executive secretary shall send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, **the number of continuing education hours required for renewal,** and a license renewal form which the licensee must complete and return to the committee with the required fee. **A licensed associate is also required to provide an updated supervisory responsibility statement signed by the associate's current licensed supervisor.**

(d) The [license renewal form shall require the] licensee **is required** to provide current addresses and telephone numbers, employment information, and other information **on the license renewal form** [including, but not limited to, continuing education completed].

(e) The committee shall issue a license verification card to a licensee who has met all requirements for renewal. The licensee must display the license verification card [in association] with the certificate.

(f) **Inactive Status. Inactive status is defined as the two year period of time between date of expiration of license and deletion of licensee's record. An inactive licensee may not practice.** **[Within three years of the effective date of the Act, September 1, 1983, renewal of a license is contingent on the applicant's meeting uniform continuing education requirements established by the committee.]**

(1) **Inactive status without penalties. For a license to be placed in an inactive status without paying late renewal penalties, the licensee must submit, prior to expiration of the 60-day grace period, a written request to the committee office, specifying the reason(s) for such request. Failure to earn continuing education hours is not an acceptable reason. No late renewal penalties will be assessed if inactive status is requested and granted prior to expiration of the 60-day grace period. The license will become inactive at the time of expiration for a minimum time period of one year. If the licensee wishes to reactivate the license at the end of the first or the second year of inactive status, the licensee:**

(A) **must pay all accrued renewal fees (with a maximum of two renewal fees); and**

(B) **must furnish proof of having earned, during the inactive period, (minimum one year, maximum two years) 10 approved continuing education hours. Dual licensees must submit proof of having earned 15 hours of continuing education. Proof is to be furnished at the time of reactivation.**

(2) **Emergency reactivation with penalties. If a licensee needs to reactivate the license at a time different from the first or second year renewal period, a different set of procedures will apply. Should an emergency situation arise which requires the reactivation of the license, a written request must be submitted to the committee stating the nature of the emergency. Following review, the executive secretary will inform the licensee of the decision, and if granted, of the**

fees and penalties assessed and the number of required approved continuing education hours that must have been earned during the inactive period.

(3) **Inactive status with penalties. If a licensee does not request this status, late renewal penalties, following the 60- day grace period, will be assessed at the rate of $15 per month. The licensee's file will become inactive after the 60-day grace period, and the employer will be notified. If the licensee wishes the license renewed, all accrued renewal fees and penalties must be paid and proof of earning 10 approved continuing education hours during the inactive period must be submitted. Dual licensees must submit proof of earning 15 approved continuing education hours during the inactive period.**

(4) **Deleted license following inactive status. A license that is not reactivated within the two year period after expiration may not be renewed, and the license may not be restored, reissued, or reinstated thereafter, but that person may reapply for and obtain a new license if requirements of this Act are met.**

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

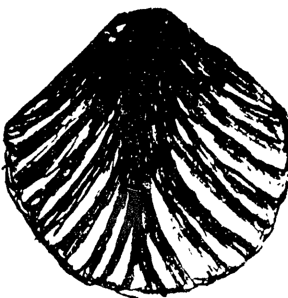
(i) **An individual who fails to renew** a [his/her] license within two years after the date of its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter. **That** [Those individuals] **individual** must apply for a new license and meet the criteria for licensure current at that time.

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 January 28, 1988

TRD-8800899 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption
April 16, 1988
For further information, please call
(512) 458-7502.



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 325. Solid Waste Management

Subchapter O. Guidelines for Regional and Local Solid Waste Management Plans

★25 TAC §325.561, §325.563

The Texas Department of Health proposes amendments to §325.561 and §325.563, concerning purpose and scope, and regional and local plan requirements. The amendments are mandated by House Bill 2051, 70th Legislature, 1987, and cover a hierarchy of methods for management of municipal solid waste, including a separate hierarchy of methods to manage sludge. These hierarchies are required to be a part of the criteria the Texas Department of Health utilizes to evaluate regional and local solid waste management plans; they are also to be considered by regional and local governments during the development of plans.

The most preferred methods of waste management are at the top of the hierarchies, while the least preferred management method, landfilling, is at the bottom of the hierarchies.

Stephen Seale, chief accountant III, Budget and Planning Division, Texas Department of Health, has determined that for the first five-year period that the sections as proposed will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the sections as proposed will be in effect the public benefit anticipated as a result enforcing the sections will be an increased awareness by the public as well as those entities involved in waste management that, among several management methods available, landfilling is the waste disposal method with the highest potential for adverse health effects and the highest potential for environmental pollution. There is no anticipated additional cost to an individuals who are required to comply with the proposed sections.

Comments will be accepted for 30 days after publication of the proposed sections in the *Texas Register*. In addition, a public hearing on the proposed amendments is scheduled for 10 a.m. on Tuesday, February 23, 1988, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin, Texas. Comments may be submitted to Hector H. Mendieta, P.E., Director, Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Inquiries may be made by phoning Mr. Mendieta or Glendon D. Eppler at (512) 458-7271.

These amendments are proposed for under House Bill 2051, 70th Legislature, 1987, which requires the Texas Department of Health to incorporate the defined hierarchy of waste management methods in the criteria for evaluating regional and local solid waste management plans; and under authority of Texas Civil Statutes, Article 4477-7 §3(a) and §4(c), which provide the Texas Board of Health with the authority to adopt rules on municipal solid waste management.

§325.561. Purpose and Scope.

(a) (No change.)

(b) Scope.

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

(3) Management activities. **The** regional plan shall provide an overview of solid waste management activities, including institutional arrangements and options for private sector involvement, with particular emphasis on identifying priorities and factors which need more detailed consideration at the local level. The local plan should address local activities, including contractual agreements, in a manner that is specific enough to provide for implementation of suggested courses of action. Aspects of solid waste management listed in subparagraphs (A)-(J) of this paragraph shall be considered, as appropriate:

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

(E) resource conservation and recovery:

***(i)* minimization of waste production;**

***(ii)* reuse and recycling;**

***(iii)*[*(i)*] source separation;

***(iv)* volume reduction;**

***(v)*[*(ii)*]incineration;

***(vi)*[*(iii)*]gasification; and

***(vii)*[*(iv)*]methane recovery;

(F)-(J) (No change.)

(4) (No change.)

(5) Management methods.

(A) To the extent economically and technologically feasible in regional and local plans, preference shall be given to the management methods for solid waste (except sludge) described in clauses *(i)-(iv)* of this subparagraph. The management methods are listed in descending order, from most preferred to least preferred.

***(i)* minimization of waste production;**

***(ii)* reuse or recycling of waste;**

***(iii)* treatment to destroy or reprocess the waste for the purpose of recovering energy or other beneficial resources in a manner that will not threaten public health, safety, or the environment; or**

***(iv)* land disposal.**

(B) To the extent economically and technologically feasible in regional and local plans, preference shall be given to the management methods for municipal sludge, as described in clauses *(i)-(vi)* of this subpa-

ragraph. The management methods are listed in descending order, from most preferred to least preferred.

***(i)* minimization of sludge production and concentrations of heavy metals and other toxins in the sludge;**

***(ii)* treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of the sludge;**

***(iii)* marketing and distribution of sludge and sludge products, if the marketing and distribution does not threaten public health, safety or the environment;**

***(iv)* land application for beneficial use;**

***(v)* land treatment; or**

***(vi)* landfilling.**

§325.563. *Regional and Local Plan Requirements.*

(a) Regional plans. A regional plan identifies the problems, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region.

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

(3) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

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

(D) assessment of current efforts to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(E) identification of additional opportunities for waste minimization and reuse or recycling of waste;

(F) recommendations for encouraging and achieving a greater degree of waste minimization and reuse or recycling of waste;

(G)[(D)] identification of public and private management agencies and responsibilities;

(H)[(E)] identification of solid waste management problems and establishment of priorities for addressing those problems;

(I)[(F)] planning areas and agencies with common solid waste management problems which could be addressed through joint action;

(J)[(G)] incentives and barriers for waste reduction and resource recovery, including identification of potential markets;

(K)[(H)] regional goals and objectives;

(L)[(I)] advantages and disadvantages of alternative actions; and

(M)[(J)] the recommended plan of action and associated timetable, including the need for new or expanded facilities and practices.

(4) (No change.)

(b) Local plans. A local plan addresses specific short- or long-range problems and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed which will affect the local planning area.

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

(3) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. As applicable, the local plan should include:

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

(D) assessment of current efforts to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(E) identification of additional opportunities for waste minimization and reuse or recycling of waste;

(F) recommendations for encouraging and achieving a greater degree of waste minimization and reuse or recycling of waste;

(G)[(D)] local goals and objectives associated with management problems;

(H)[(E)] advantages and disadvantages of alternative actions; and

(I)[(F)] the recommended plan of action and associated timetable for accomplishing the goals and objectives.

(4) (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 January 28, 1988.

TRD-8800893

Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption. April 16, 1988

For further information, please call (512) 458-7271.

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial

Subchapter B. Insurance Holding Company System Regulatory Act

★28 TAC §§7.201-7.205, 7.209, 7.210, 7.213

The State Board of Insurance proposes amendments to §§7.201-7.205, 7.209, and 7.210, and a new §7.213, concerning administrative regulation under the Insurance Holding Company System Regulatory Act (the Insurance Code, Article 21.49-1). The amendments and new section are necessary to provide editorial changes and clarifications and to reflect statutory amendments to Article 21.49-1 by recent House Bill 1911. The amendment to §7.201 establishes and modifies filing requirements for exemption statements and acquisition statements, and alerts the person filing to certain regulatory fees. The amendment to §7.202 establishes or modifies definitions for executive officer, ultimate controlling person, and voting security, and eliminates a definition for officer. The amendment to §7.203 requires insurers to make registration statements current upon acquisition of voting securities of domestic insurers and makes provisions of the Insurance Code, Article 21.49-1, §5, applicable to such acquisitions. The amendment to §7.204 requires that applications for approval by the commissioner of insurance for some transactions must include documentation of compliance with Article 21.49-1, §4(a), and evidence that a transaction will not adversely affect interests of policyholders. The amendment to §7.205 imposes additional filing and reporting requirements and other requirements upon acquisitions of control. The amendment to §7.209 imposes additional filing, disclosure, and documentation requirements concerning acquisition of control of a domestic insurer. The amendment to §7.210 requires biographical data for an individual who is an ultimate controlling person and requires disclosure of affiliated transactions in insurance holding company system registration statements. New §7.213 establishes a form as a guide for statements regarding the exemption from approval of the acquisition of control of a domestic insurer. Proposal of the amendments to §7.201 and §7.210 includes incorporation by reference of a biographical affidavit form. The board has filed a copy of the form with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the form may obtain copies from the Corporate Activities Division of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Scott Nance, manager of the holding company section, has determined that, for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The cost of compliance for small businesses will be the same as the anticipated economic cost to all persons required to comply with the proposed section. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses.

Mr. Nance 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 more efficient administrative regulation under the Insurance Code, Article 21.49-1. There will be no anticipated economic cost to persons required to comply with the proposed amendments and new section other than for the minimal cost of completing forms reporting on certain occurrences and transactions; except that the filing of reviewed financial statements under §7.209 or §7.213 may cost an applicant $1,000 or more, depending upon the complexity of the applicant's varied investments

Comments on the proposal may be submitted to Scott Nance, Manager, Holding Company Section, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendments and new section are proposed under the Insurance Code, Article 21.49-1, §11, which authorizes the State Board of Insurance to issue such rules, regulations, and orders as shall be consistent with and shall carry out the provisions of the Insurance Holding Company System Regulatory Act and to govern the conduct of its business and proceedings under the Insurance Code, Article 21.49-1.

§7.201. *Forms Filings.*

(a) General requirements

(1) The forms that are specified in **§§7.209-7.213** [§§7.209-7.212] of this title (relating to Form A, Form B, Form C, [and] Form D, **and Form E** are intended to be guides in the preparation of the statements, notices, and applications required by the **Insurance Code, Article 21.49-1** [Act]. They are to provide notice of the information required and the location in which it will be expected to be found.

In preparing any statement, notice, or application, the text of the form need not be repeated so long as there is clear identity of the matter to which the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made. The forms specified in **§§7.209-7.213** [§§7.209-7.212] **of this title (relating to Form A, Form B, Form C, Form D, and Form E** are also referred to in this **subchapter** [title] as Forms **A-E** [A-D, respectively]. Form A is also referred to as the acquisition statement, Form B as the registration statement, Form C as a disclaimer, [and] Form D as an extraordinary dividend, **and Form E as an exemption statement. For use in accordance with §7.210(e) of the title (relating to Form B), the State Board of Insurance adopts by reference the biographical affidavit form published by and available from the State Board of Insurance. Copies of this form may be obtained from the Corporate Activities Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.**

(2) **Three complete originally signed copies of each statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, in connection with any acquisition statement filed under §7.209 of this title (relating to Form A), and one** [Two] complete originally signed **copy** [copies] of **every other** [each] statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or by mail addressed to: **Corporate Activities Division** [Holding Company Section], State Board of Insurance, 1110 San Jacinto **Boulevard** [Street], Austin, Texas **78701-1998** [78786]. **Each statement, notice, or application shall be subject to the appropriate filing fee provided for in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee shall be forwarded to the Corporate Activities Division of the State Board of Insurance under separate cover along with a copy of the letter transmitting the statement, notice, or application.**

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

(b) Incorporation by reference, summaries, and omissions.

(1) (No change.)

(2) The right to incorporate by reference does not apply to §7.209 **and §7.213** of this title (relating to Form A **and Form E.**

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

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

(e) Information unknown or unavailable and extension of time to furnish.

(1) Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions.

(A) (No change.)

(B) the person filing shall include a statement either **demonstrating** [showing] that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose

knowledge the information rests and stating the result of a request made to such person for the information.

(2) (No change.)

§7.202 Definitions.

(a) The following words and terms, **when used in this subchapter,** shall have the following meanings, unless the context clearly indicates otherwis.

(1)-(8) (No change.)

[(9) Controlled insurer—An insurer controlled directly or indirectly by a holding company.

[(10) Controlled person-Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company.]

(9)[(11)] Insurance holding company system-Consists of two or more affiliated persons, one or more of which is an insurer.

(10[(12)] Insurer-Includes all insurance companies organized or chartered under the laws of this state, or licensed to do business in this state, including capital stock companies, mutual companies, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies and group hospital service companies, and any other entity which is made subject to the Insurance Code, Article 21.49-1, by applicable law, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

[(13) Officer-The person holding the office of chairman of the board of directors, president, vice-president, secretary or treasurer or any person holding an office corresponding thereto.]

(11)[(14)] Person-An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(12)[(15)] Security holder-Of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing. The term debt obligation shall not include trade, commercial or open accounts, matured claims, or agents commissions.

(13)[(16)] Subsidiary-Of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(14)[(17)] Voting security-**Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the State Board of Insurance deems to be of similar nature including, but not limited to, those described in such rules and regulations as the State Board of Insurance may prescribe in the public interest as a voting securety** [Includes any security convertible into or evidencing a right to acquire a voting security].

(15) Controlled insurer—An insurer controlled directly or indirectly by a holding company.

(16) Controlled person—Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company.

(17) Executive officer—The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy making function, or any other person who performs similar policy making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform such policy making functions for an applicant.

(18) Ultimate controlling person—That person which is not controlled by another person (as defined in this subsection).

(b) (No change.)

§7.203. Registration of Insurers.

(a)-(e) (No change.)

(f) Material changes. The following occurrences shall, without limitation on the meaning of the phrase "material changes," be deemed to be material changes for the purposes of filing an amendment to the registration statement:

(1) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person in control of such domestic insurer if, after such acquisition, such person, directly or indirectly, owns or controls less than 50% of the then issued and outstanding voting securities of such domestic insurer, in which case §7.210(b) and (c) of this title (relating to Form B) shall be made current;

(2) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person that, prior thereto, directly or indirectly, owns or controls more than 50% of the then issued and outstanding voting securities of such domestic insurer, in which case §7.210(b) and (c) of this title (relating to Form B) shall be made current;

(3)[(1)] a change in the control of the registrant, in which case the entire registration statement shall be made current (this paragraph is effective notwithstanding any other provision of **this subchapter** [these sections]);

(4)[(2)] a change in the information required by §7.210(f) and (g) of this title (relating to Form B), in which case the respective subsection shall be made current;

(5)[(3)] a change of the chief executive officer, president, or more than one-third of the directors reported in §7.210(e) of this title (relating to Form B), in which case the respective subsection shall be made current;

(6)[(4)] any transaction with an affiliate or affiliates which, when taken together with all other transactions with affiliates (excluding those transactions approved under §7.204(a)(1) of this title (relating to Commissioner's Approval Required) and those transactions for which notification is given under §7.204(a)(2) **of this title (relating to Commissioner's Approval Required))** occurring within 12 months next preceding, in the aggregate or cumulatively involve either ½ of 1.0% or more of an insurer's admitted assets, or 5.0% or more of an insurer's surplus, determined by whichever is the lesser, as of the 31st day of December next preceding. In such case, §7.210(c) and (f) of this title (relating to Form B) shall be made current together with a report of all transactions with affiliates regardless of size within 12 months next preceding.

(g)-(k) (No change.)

(l) Disclaimer. Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall be in accordance with §7.211 of this title (relating to Form C) and shall disclose all material relationships and bases for affiliation between such persons and such insurer as well as the basis for disclaiming such affiliation. A copy of any disclaimer filed with the commissioner, if the affected insurer is not a party thereto, shall also be furnished by the applicant to the insurer at the same time it is filed with the commissioner. The insurer shall, within 15 business days after receipt thereof unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer if it does not have a current registration statement on file with the commissioner. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. **After a disclaimer of control or affiliation has been filed by any person, any acquisition, directly or indirectly, of a voting security of the domestic insurer**

by such person shall be subject to the Act, §5.

(m) (No change.)

§7.204. Commissioner's Approval Required.

(a) (No change.)

(b) Transactions. Requests for approval of transactions pursuant to subsection (a)(1) of this section and notices of **proposed** transactions pursuant to subsection (a)(2) of this section, shall be [submitted in duplicate and shall be] accompanied by descriptions of the essential features of such transactions which are reasonably adequate to permit proper evaluation thereof by the commissioner. Such descriptions shall in all cases include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identities of all parties to such transactions; [and] whether any officers or directors of a party are pecuniarily interested therein, and copies of any **proposed** contracts, agreements, or memoranda of understanding between the parties relating to the transaction **along with sufficient competent documentation evidencing compliance with the standards specified in the Act, §4(a), and evidencing that the transaction will not adversely affect the interest of policyholders.** No such request or notice shall be deemed filed with the commissioner until the date all such material has been provided.

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

§7.205. Acquisition Statements—Filing Requirements.

(a) Filing and other regulatory requirements for **aacquisitions of control** [public tenders or offers for negotiated agreements] and certain other matters as specified in the Act, §5(a) [and (b)], are governed by the Act, §5(a) [and (b)]. For purposes of this subsection, a domestic insurer, as defined in the Act, §5(a)(2), shall include any [other] person controlling a domestic insurer unless such [other] person is either directly or through its affiliates primarily engaged in business other than the business of insurance. A failure to file complete and accurate information **in all material respects** [as required by statute] is grounds for a denial by the commissioner under the Act, **§5(c)** [§5(e)].

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition statement) shall be made in accordance with §7.209 of this title (relating to Form A), the acquisition statement. **The acquiring party shall provide additional financial information in the form or substance as required by the commissioner which is material to the finding required by the Act, §5(c)(1)(iii).** Any financial information required under the Act, §5(b)(3), may be waived by the commissioner if such information is not deemed material. No statement required by subsection (a) of this section shall be deemed filed with the commissioner until on the date all such material required and sufficient to constitute a full statement has been provided.

(c) Partnerships and corporate filings. If the person required to file the acquisition statement is a partnership, limited partnership, syndicate, or other group, **the commissioner may require that** the information called for by §7.209 of this title (relating to Form A) [shall] be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or if the person required to file the statement referred to in subsection (a) of this section is a corporation, **the commissioner may require that** the information called for by §7.209 of this title (relating to Form A) [shall] be given with respect to such corporation and by each **executive** officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation [if such officer, director, or security holder has any existing or contemplated relationship with the insurer as identified by §7.209 of this title (relating to Form A) and which otherwise has not been disclosed as specified in §7.209 of this title (relating to Form A)].

(d) Amendment. If any material change occurs in the facts set forth in the acquisition statement filed with the commissioner, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to **the domestic** [such] insurer within two business days after the person learns of such change. [Such insurer shall send such amendment to its shareholders.]

(e) (No change.)

[(f) Alternative filing materials. Alternative documents may be used for filing as permitted by the Act, §5(d).]

(f)[(g)] Approval by commissioner; hearings. All mergers, [other] acquisitions of control, and other matters as specified in the Act, §5(a)[and (b)], are subject to the Act, **§5(c)** [§5(e)]. **The acquiring party shall have the burden of providing sufficient competent evidence for required under the Act, §5(c)(1).** [The person required to file information under the Act, §5(a) and (b), shall separately file, for the commissioner's consideration at the hearing, annual reports to the stockholders of the insurer for the last two fiscal years. These reports are not required under the Act, §5(c).]

(g)[(h)] **Notices** [Mailings to shareholders]; payment of expenses.

(1) **Notices** [Mailings], payments of expenses, and other matters as specified in the Act, **§5(d)** [§5(f)], shall comport with that subsection.

(2) All provisions of **the Insurance Code,** Article 21.49-1, and of **this subchapter** [these sections] relating to the timely mailing of[: (A)] a copy of the acquisition statement,[;] and **relating to the timely mailing of** [(B)] a copy of the notice of hearing thereon before the commissioner to an insurer [and its security holders], may be waived by the written unanimous consent of the insurer[, all its security holders], and the person or persons filing such acquisition statement. Such written waiver shall acknowledge receipt of a copy of the acquisition statement.

(h)[(i)] Exemptions. The provisions of this section shall not apply to transactions and other matters exempted under the Act, **§5(e)** [§5(g)]. **An accuisition of a voting security of a domestic insurer specified in the Act, §5(e)(4) and (6), shall be disclosed by amendment to the registration statement as provided in §7.203(f) of this title (relating to Registration of Insurers). The written application for exemption in the acquisition of a voting security specified in the Act, §5(e)(5), shall be made in accordance with §7.213 of this title (relating to Form E), the exemption statement. The approval of an application under §7.213 of this title (relating to Form E) shall be deemed an amendment under §7.203 of this title (relating to Registration of Insurers) to an insurer's registration statement without further filing. An acquisition of a voting security of a domestic insurer by a security holder controlling, directly and indirectly, 50% of the then issued and outstanding voting securities of such domestic insurer, shall be subject to the Act, §5(e)(5). An acquisition of a voting security of an insurer domiciled in this state which is not subject to the Act, §5(a)(1), by virtue of the Act, §5(a)(2), shall be subject to the Act, §5(e)(3).**

(i)[(j)] Retention of control.

(1) For certain matters relating to certain violations of the Act, see the Act, **§5(f)(1)** [§5(h)(1)].

(2) For certain matters relating to retention of control, see the Act, **§5(f)(2)** [§5(h)(2)].

(j)[(k)] Duty of insurer. Authorized insurers are under a duty to notify the commissioner of control of, or of actions to acquire control of, an insurer as required by the Act, **§5(g)** [§5(i)].

(k)[(l)] Preliminary filings. Any acquisition statement may, at the discretion of the person or persons filing the same, be preliminarily filed with the commissioner for the purpose of obtaining a preliminary review by the commissioner. Any such filing shall be clearly marked or designated as a preliminary filing. Such preliminary filing shall not invoke the requirements of **this subchapter** [these sections] or **the Insurance Code,** Article 21.49-1, requiring that notice thereof be given to such affected insurer involved [nor to its security holders]. Such preliminary filing shall have no legal effect and **shall** not constitute compliance with **the Insurance Code,** Article 21.49-1, and **this subchapter** [these sections]. The commis-

sioner shall not be bound by the preliminary review nor deemed to have in any manner approved such filing.

(l)[(m)] Violations. The following shall be violations of this section:

(1) (No change.)

(2) the effectuation of, or any attempt to effectuate, an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

§7.209. Form A.

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

(c) Identity and background of the applicant.

(1) (No change.)

(2) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence **and fully describe any business which such person and any of its affiliates intend to commence**. [Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.]

(3) (No change.)

(d) (No change.)

(e) Nature, source, and amount of **funds or other** consideration.

(1) Describe the nature, source, and amount of funds or other **consideration** [considerations] used or to be used in effecting the acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the **nature and existence of all relationships** [relationship], if any, **in addition to the arrangements concerning the borrower and the lender, the amounts borrowed, or to be borrowed,** and copies of all agreements, promissory notes, and security arrangements relating thereto **and to such other relationships**.

(2) (No change.)

(3) If the source of the consideration is **provided by a commercial lender in the** [a loan made in the lender's] ordinary course of business and if the applicant wishes the identity to remain confidential, he must specifically request that the identity be kept confidential. When confidentiality is requested such identity shall be provided by a separate instrument filed with, but not forming a part of, the acquisition statement.

(4) (No change.)

(f) Future plans for insurer.

(1) Describe any plans or proposals which the applicant may have **or may contemplate making** to **cause the insurer to pay dividends or make other distributions** [declare an extraordinary dividend], to liquidate such insurer, to sell **any of** its asset, to [or] merge **or consolidate** it with any person or persons, [or] to make any other material change in its business operations or corporate structure or management, **or to cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party,** and **describe** any financial or employment guarantees given to present and contemplated management.

(2) Describe applicant's operational plans for the domestic insurer covering the succeeding 24 months, not limited to, change of location, change of name, increase in capital and/or surplus, reinsurance activity, type business to be written, and anticipated premium volume.

(3) For the domestic insurer, provide the full name of each individual, if known, who will be responsible for major areas of operations of the domestic insurer, including but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each area, evidence such individual's ability and experience to perform same.

(4) Describe any other arrangement or agreement, oral or written, entered into by an acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months.

(g) Voting securities to be acquired. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities [(including securities convertible into voting securities)] which the applicant, its affiliates, and any person listed in subsection (d) of this section plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition [, and a statement as to the method by which the fairness of the proposal was arrived at].

(h) Ownership of voting securities. State the amount of each class of any voting security of the insurer which is **legally, directly, indirectly, or** beneficially owned or **of which the acquiring party or any of its affiliates or any person listed in subsection (d) of this section has a right to acquire legal, direct, indirect, or beneficial ownership** [concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in subsection (d) of this section].

(i) Contracts, arrangements, or understandings with respect to voting securities of the insurer. **Provide a copy** [Give a full description] of any **written or a confirmed description of any oral, agreement** [contracts], arrangements, or understandings with respect to any voting security of the insurer in which the applicant, **any of** its affiliates, or any persons listed in subsection (d) of this section is involved, including **without limitation any such agreement, arrangement, or understanding relating to the** [but not limited to] transfer of any of the **voting** securities, joint ventures, loan or option **agreements** [arrangements], puts or calls, guarantees of loans, guarantees **against** loss, [or] guarantees of profits, division of losses or profits, or the giving or withholding of proxies. [Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.]

(j) Recent purchases of voting securities. Describe any purchases of any voting securities of the insurer by the applicant, **any of** its affiliates, or any person listed in subsection (d) of this section during **the** 12 calendar months preceding the filing of this statement. Include in such description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

(k) Recent recommendations to purchase. **Provide a copy of** [Describe] any **written, or a confirmed description of any oral,** recommendations to purchase any voting security of the insurer made by the applicant, **any of** its affiliates, or any person listed in subsection (d) of this section, or by anyone based upon interviews **with** or at the suggestion of the applicant, **any of** its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement.

(1) Agreements with broker-dealers. **Provide a copy** [Describe the terms] of any **written, or a confirmed description of any oral,** agreement, **arrangement** [contract] or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

(m) Financial statements and exhibits.

(1) (No change.)

(2) Subject to §7.201(e) of this title (relating to Forms Filings), the financial statements shall include the annual financial statements of the persons identified in subsection (c)(3) of this section for the preceding **three** [five] fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar **unaudited financial** information **as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that such unaudited financial statement is true and correct, as of its date, and that there has been, no material change in financial condition, as defined by the Act, §3, from the date of the financial statement to the date of the affidavit or certification** [covering the period from the end of such person's last fiscal year, if such information is available]. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. Unless exempted by the commissioner, the annual financial statements of the applicant shall be **made in accordance with generally accepted auditing standards and accom-**

panied by the certificate of an independent **certified** public accountant [, if available,] to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If such certificate is not available, then such financial statement shall be sworn to by the applicant as correctly reflecting its financial condition, and in such case, the commissioner of insurance at **the commissioner's** [his] discretion may require such financial statement to be certified by an independent public accountant. If the applicant is an insurer which is actively engaged in the business of insurance **and licensed to do business in this state, it may provide** [, the] financial statements **which conform to** [need not be certified, provided they are based on] the annual **statements** [statement] of **the insurer** [such person] filed with the insurance department of the **insurer's** [person's] domiciliary state and **which** are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of **the domiciliary** [such] state. **If the applicant is an individual person, such person shall provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he is not aware of any material modifications that should be made to the accompanying financial statement in order for it to be in conformity with generally accepted accounting principles and shall provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.**

(3) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto; any proposed employment, consultation, advisory, or management contracts concerning the insurer; **budget projections of the domestic insurer and the applicant for the succeeding length of time of debt service required by applicant in its acquisition of control**; and any additional document or papers required by regulation.

(4) In addition to the other material required to be filed by this section, a person as described in §7.205(a) of this title (relating to Acquisition Statements—Filing Requirements) shall file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years; these reports are for review of the State Board of Insurance, and are not **a** part of the material required to be submitted under the Act, **§5(b)(12)** [§5(c)(12), or to be mailed to shareholders under the Act, §5(f)]. However, the materials shall be open for public inspection at the offices of the State Board of Insurance during the pendency of the application.

(n) (No change.)

§7.210. Form B.

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

(e) Biographical information. Furnish **biographical data for the ultimate controlling person(s) if such person is an individual, or** [the following information] for the directors and executive officers of the ultimate controlling person **if the ultimate controlling person is not an individual, with such biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from the Corporate Activities Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998** [: the individual's name and address, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years].

(f) Transactions, relationships, and agreements.

(1) Briefly describe the following agreements in force, relationships subsisting, and transactions currently outstanding between the registrant and its holding company, its subsidiaries, and its affiliates:

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

(E) all management and service contracts and all cost sharing arrangements[, other than cost allocation arrangements based upon generally accepted accounting principles; and];

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company; **and** [.]

(G) any affiliated transaction not disclosed above which is subject to the Act, §4(d).

(2) No information need be disclosed if such information is not material. [(]See §7.203(d) of this title (relating to Registration of Insurers).[)] The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identity of all parties to such transaction; [and] relationship of the affiliated parties to the registrant; **and the holding company section number and/or commissioner's order number applicable thereto.**

(g)-(j) (No change.)

§7.213. Form E.

(a) Statement regarding the exemption from approval of the acquisition of control of a domestic insurer. Name of domestic insurer:____________________

Name of acquiring person (applicant):______.

Filed with the Texas State Board of Insurance, date:______.

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

____

____

____

(b) Insurer and method of acquisition. Provide a description of how additional control is being acquired.

(c) Background of the applicant.

(1) Furnish a chart or listing clearly identifying the interrelationships between the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, the nature of the proceedings, and the date when commenced.

(2) Fully describe any business which the applicant and any of its affiliates intend to commence.

(d) Nature, source, and amount of funds or other consideration.

(1) Describe the nature, source, and amount of funds or other consideration used or to be used in effecting further acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the nature and existence of all relationships, if any, in addition to the arrangements concerning the consideration borrowed between the borrower and the lender, the amounts borrowed, or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto and to such other relationships.

(2) Explain the criteria used in determining the nature and amount of such consideration.

(3) If the consideration is to consist in whole or in part of the insurance business and assets of the insurer or of a person controlled by the insurer, state the value thereof and how such value was arrived at.

(e) Future plans for insurer.

(1) Describe any plans or proposals which the applicant may have or may contemplate making to cause the insurer to pay

dividends or make other distributions, to liquidate such insurer, to sell any of its assets, to merge or consolidate it with any person or persons, to make any other material change in its business operations or corporate structure or management, or to cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party, and describe any financial or employment guarantees given to present and contemplated management

(2) Describe applicant's operational plans for the domestic insurer covering the succeeding 24 months, including, but not limited to, change of location, change of name, increase in capital and/or surplus, type business to be written, and anticipated premium volume. For the domestic insurer, provide the full name of any new employee or officer to be employed as a result of the further acquisition of control and provide biographical information in the form specified in §7.210(e) of this title (relating to Form B).

(3) Describe any other arrangement or agreement, oral or written, entered into by an acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months excluding those arrangements or agreements filed pursuant to the Act, §4(d).

(f) Ownership of and voting securities to be acquired. State the amount of each class of any voting security of the insurer which is legally, directly, indirectly, or beneficially owned or of which the acquiring party or any of its affiliates has a right to acquire legal, direct, indirect, or beneficial ownership. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities which the applicant and its affiliates plan to acquire separate and apart from the voting securities subject to this exemption statement, and the terms of the offer, request, invitation, agreement, or acquisition.

(g) Agreements with broker-dealers. Provide a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

(h) Financial statements and exhibits

(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this subsection the financial statements and exhibits so attached.

(2) Subject to §7 201(e) of this title (relating to Forms Filings), the financial statements shall include the annual financial statements of the persons identified in subsection (c)(1) of this section for the preceding fiscal year, and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that such unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, §3, from the date of the financial statement to the date of the affidavit or certification. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. Unless exempted by the commissioner, the annual financial statement of the applicant shall be made in accordance with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant to the effect that such statement presents fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law If such certificate is not available, then such financial statement shall be sworn to by the applicant as correctly reflecting its financial condition, and in such case, the commissioner of insurance at the commissioner's discretion may require such financial statement to be certified by an independent public accountant. If the applicant is an insurer which is actively engaged in the business of insurance and licensed to do business in this state. it may provide financial statements which conform to the annual statement of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state. If the applicant is an individual person, such person shall provide for the preceding fiscal year a reviewed financial statement accompanied by the certificate of an independent public accountant that he is not aware of any material modifications that should be made to the accompanying financial statement in order for it to be in conformity with generally accepted accounting principles and a balance sheet as of a date not earlier than 120 days prior to the filing of the statement accompanied by affidavit or certification that the balance sheet is true and correct as of its date. Any financial information required by this subsection may be waived by the commissioner if such information is not deemed material.

(3) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer, and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory, or management contracts concerning the insurer, and budget projections of the domestic insurer and the applicant for the succeeding length of time of debt service required by applicant in its acquisition of control.

(i) Signature and certification. Signature and certification of the following form:

"Signature

Pursuant to the requirements of the Insurance Code, Article 21.49-1, §5, ______________________________
Name of Applicant

has caused this application to be duly signed on its behalf in the City of______________________and State of ____________,

on the__________day of ____________________, 19_____.

____
Name of Applicant

(Seal)

By: ______________________________
(Name) (Title)

Attest:

____
(Signature of Officer)

____
(Title)

"Certification

The State of ______________

County of ____________________

Before me, the undersigned authority, on this day personally appeared ______________________________________known to me to be the ___________________________of ______________________________, who, after being placed on his oath, stated that he has read the preceding application and that the answers, exhibits, and attachments forming it are true and correct as to any factual statements contained therein.

____
(Signature)

Sworn to and subscribed before me on this ____ day of ____________, 19___, to certify which witness my hand and seal of office.

(Seal)

____
Notary Public in and for
the State of________________"

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 January 27, 1988.

TRD-8800819 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:
March 7, 1988
For further information, please call
(512) 463-6327.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Potentially Harmful Fish or Fish Eggs Importation

★31 TAC §§57.111-57.117

(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, 4200 Smith School Road, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Parks and Wildlife Commission proposes the repeal of §§57.111-57.117, concerning potentially harmful fish or fish eggs importation. These sections are repealed so that they can be replaced with new sections for the importation, possession, sale, or release of species which are harmful to human or animal life, as determined by the department

Jim Dickinson, director of finance, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Dickinson 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 assumed by the adoption of proposed new harmful fish or fish eggs importation rules by the Texas Parks and Wildlife Commission. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Neil E. (Nick) Carter, Chief of Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4860 or 1-(800)-792-1112, ext. 4860.

The repeals are proposed under the Parks and Wildlife Code, §66.007, which provides authority to determine and regulate harmful or potentially harmful tropical fish and fish eggs

§57.111. *General.*

§57.112. *Definitions.*

§57.113. *Finding of Fact.*

§57.114. *Restrictions.*

§57.115. *Permits.*

§57.116. *Reports.*

§57.117. *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 February 3, 1988.

TRD-8801100 Boyd M Johnston
General Counsel
Texas Parks and Wildlife Department

Earliest possible date of adoption March 11, 1988
For further information, please call (512) 389-4860

★31 TAC §§57.111-57.116

The Texas Parks and Wildlife Commission proposes new §§57.111-57.116, concerning potentially harmful fish or fish eggs importation. The new sections provide restrictive regulations for persons who import, possess, culture, sell, or release designated species of fish, or fish eggs, which are harmful or are potentially harmful to human or animal life, as determined by the department

Jim Dickinson, director of finance, has determined that for the first five-year period the sections will be in effect, there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $500 for each year from 1988-1992. There will be no effect on local government. Aquaculture businesses that desire to produce designated species of tilapia under the provisions of this proposed section will be required to purchase an annual permit and to comply with department rules for their aquaculture facilities. The anticipated economic costs would accrue to about 24 existing and an unknown number of new or development commercial tilapia aquaculture businesses. Each aquaculture business would: annually secure a tilapia aquaculture permit; expend money, as required by these proposed sections, to convert existing aquaculture facilities into closed-water systems for the culture of blue and mozambique tilapia; change the tilapia marketing system to the sale of dead tilapia only; and eliminate the use of live tilapia for bait or forage.

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 be protection of the people of Texas and Texas aquatic resources from the introduction of designated species of potentially harmful fish from other parts of the world. The proposed regulations list species of fish which have been determined by the department to be harmful or potentially harmful to animal or human life; restrict the possession of all listed species by any person unless a valid scientific, aquaculture, or zoological permit has been issued by the department; allow closed-system aquaculture of mozambique and blue tilapia under a tilapia culture permit; and provide other rules for their possession, transportation, and use.

Comments on the proposed amendments may be submitted to Neil E. (Nick) Carter, Chief of Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4860 or 1-(800)-792-1112, extension 4860.

The new sections are proposed under the Texas Parks and Wildlife Code, §66.007, which provides the Texas Parks and Wildlife Department with the authority to determine and regulate harmful and potentially harmful tropical fish and fish eggs.

§57.111. *General.* These sections apply to the importation, possession, sale, or release into the waters of this state of all species of fish, or fish eggs, which are harmful or potentially harmful to human or animal life, as determined by the department.

§57.112. *Definitions.*

Culture—The business of producing, propagating, transporting, possessing, and selling fish raised in a private pond as defined in the Texas Parks and Wildlife Code, Chapter 48.

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

Director—The executive director of the Texas Parks and Wildlife Department or his designee(s).

Partially restricted fishes are:

(A) Tilapia group—*All Tilapiine species (Tilapia = Sarotherodon = Orechromis)*;

(B) Carp group (grass carp)—*Ctenopharyngodon idellus*; and

(C) Peacock bass—*Cichla ocellaris*.

Public aquaria—One located at a zoological garden or similar establishment and used exclusively for the purpose of information or educational display of aquatic species to benefit the general public. Totally restricted fishes are:

(A) Bony-tongue group—*Arapaima gigas*;

(B) Piranha group—*Serrasalmus* species (all species) *Pygocentrus piraya Hydrocynus* species *Salminus maxilosus Hoplias malabaricus*;

(C) Electric Eel—*Electrophorus electricus*;

(D) Electric Catfish—*Malapterurus electricus*;

(E) Knifefish—*Gymnotus carapo*;

(F) Gar-pike, from Belize—*Belonesox belizanus*;

(G) Snakehead group—*Ophicephalus* species

(H) Parasitic South—*Channa*

species *Vandellia* species

(I) American catifish group—*Stegophilus* species;

(J) Trichomycteridea family;

(K) Freshwater Stingray—*Photomotrygon* species

(L) Walking Catfish group—*Clarias* species

§57.113. *Restrictions.*

(a) Possession, sale, importation, and release.

(1) Except as provided by these sections, no person may release into the water of this state, import, sell, purchase, or posses any of the fish, their hybrids, subspecies, or eggs defined as totally or partially restricted fishes, except hybrids of the grass carp group are excluded from this requirement.

(2) A person may only possess totally or partially restricted fishes if that person has documented evidence that the person possessed the fish prior to July 2, 1974.

(3) A person who holds a scientific or zoological permit may only possess totally or partially restricted fishes at a public aquarium.

(4) If eviscerated, partially restricted fishes may be possessed by any person.

(5) A person licensed as a fish farmer who also holds a tilapia culture license issued by the department may culture blue tilapia *(Tilapia aurea)* and Mozambique tilapia *(Tilapia mossambica)* as provided in these sections.

(b) Culture of tilapia.

(1) Transportation of live tilapia.

(A) Transport of live tilapia is permitted only by a licensed fish farmer with a valid Texas tilapia culture permit, or by a commercial shipper acting for the permittee, except for those fish covered under zoological or scientific permits.

(B) No person may transport live blue tilapia *(Tilapia aurea)* and Mozambique tilapia *(Tilapia mossambica)* except for fish longer than eight inches total length by licensed fish farmers that hold Texas tilapia culture permits.

(C) All transport of live tilapia must be accompanied by an interstate/intrastate Texas tilapia transport invoice; except for those fish covered under zoological or scientific permits.

(D) An interstate/intrastate 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 culture permit number; number and total weight of tilapia by species; a check mark indicating interstate import, interstate export, or intrastate type of shipment. The invoice must individually accompany each box or container 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 a permittee.

(E) Fish farmers shall notify the department at least 24 hours in advance of shipment of live tilapia.

(2) Texas live tilapia transport invoice.

(A) The Texas tilapia transport invoice must be provided by the permittee; one copy shall be submitted to the depart ment by the permittee by the 10th day of the month following shipping date and one copy shall be retained by the permittees for a period of at least one year following ship ping date.

(B) Permittee is responsible for supplying Texas tilapia transport invoice copies 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, except as otherwise noted. The shipper or receiver, or both if in Texas, must have a valid state fish farmer's license and Texas tilapia culture permit authorized by these sections.

§57.114. *Permits.*

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

(1) Tilapia are cultured in closed recirculating, filtered water systems (aquaria, raceways, fiberglass tanks, etc.) approved by the department.

(2) Closed culture systems are designed to prevent discharge of water containing adult or juvenille tilapia or their eggs from the permittee's property.

(3) Water being released is passed through mesh 1-mm bar measurement, or less, or into a dry-well, or other filtration device which has been approved by the department.

(4) Buildings housing tilapia culture facilities 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 the 100 year flood elevation. This dike is constructed in such a manner to exclude all flood waters. If the 100 year flood plain elevation cannot be determined, a permit shall not be issued for that site. Dike construction must be approved by the department.

(5) Security measures such as antipersonnel fencing, locks on doors and gates, etc. are included in the facility design so as to reasonably secure against theft or accidental release of tilapia by unauthorized individuals. Proposed security measures must be approved by the department.

(6) Water quality standards of all discharges satisfy federal, state, or local water quality regulations.

(7) Closed tilapia culture systems placed out of doors are covered with bird netting or similar material which prevents tilapia removal by predatory birds or other wildlife, but which presents minimal hazard to these animals.

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

(1) complete a Texas tilapia culture permit application and submit this application to the department;

(2) submit the Texas tilapia culture permit application;

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

(4) demonstrate to the department's satisfaction that an existing culture facility meets specifications described in §57.114 of this tile (relating to Permits), or present plans for facilities in planning or in construction that will meet these specifications.

(c) Requirements of Texas tilapia culture permit.

(1) Permits expire on the expiration date of the fish farmer's license. Permits must be renewed each year.

(2) Permits are not transferable from site to site or from person to person.

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

(4) The permittee agrees to allow inspection of their facilities by authorized employees of the department during normal business hours.

(5) The permittee agrees to provide a limited number of fish to authorized department employees upon request for identification and analyses.

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

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

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

§57.115. *Reports.*

(a) Holders of potentially harmful fish permits issued prior to January 1, 1974, may retain those live fish in their possession on that date and their progeny 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 posssessed under the current permit.

(b) Any individual specimens of totally or partially restricted fishes, or their eggs, in private ownership as of July 2, 1974, may be disposed of by making them available to holders of scientific or zoological permits who have authority to receive such specimens. Report of such transactions must be included in the annual report.

§57.116. *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 February 3, 1988.

TRD-8801099 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife Department

Earliest possible date of adoption: March 11, 1988
For further information, please call (512) 389-4860.

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

The Texas Water Commission (TWC) proposes the repeal of §§305.501-305.506 and new §§305.501-305.506, concerning the Waste Treatment Inspection Fee Program. These sections implement House Bill 1327, 70th Legislature, 1987, which amended the Texas Water Code, §26.0291 (b), by allowing the commission to consider permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutants, and heat load in determining the amount of the fee. The commission may also consider the designated use and segment ranking classification of water affected by discharges from the permitted facility.

New §§305.501, 305.505, and 305.506 have the same text as the sections that are proposed for repeal. As a matter of expediency, the TWC proposes to repeal the existing subchapter and propose a new subchapter. New §305.501 states that the purpose of the subchapter is to establish and maintain the Waste Treatment Inspection Fee Program.

New §305.502 adds the definitions of flow volume, head load parameter, inactive permit, parameter, and traditional pollutants. Also included are the abbreviations of biochemical oxygen demand (BOD), chemical oxygen demand (COD), million gallons per day (MGD), milligrams per liter (mg/l), standard industrial classification (SIC), total organic carbon (TOC), and total suspended solids (TSS). The definition of the phrase "annual waste treatment inspection fee" includes the new range in fees. The definition of daily average flow is proposed as the term "flow," and may include daily average flow, daily maximum flow, or an annual average or annual maximum.

New §305.503 proposes a new fee schedule. New §305.504 requires payment of fees within 30 days of the billing with all fee assessments to be based on permitted parameters. New §305.505 directs fees collected under the Waste Treatment Inspection Fee Program to be deposited in a waste treatment facility inspection fund. New §305.506 provides that cancellation, revocation, or transfer of a permit are not grounds for refund of payment of a waste treatment inspection fee and that a transferee of a permit is liable for inspection fee payment on the same basis as the transferor.

David Crawford, CPA, chief fiscal officer, has determined that for the first five-year period the proposed sections and repeals will be in effect there will be fiscal implications as a result of enforcing or administering the sections and repeals. The effect on state government is an estimated increase in revenue annually of $500,000 for 1988-1992. There will be no fiscal implications for local governments. The effect on small businesses will be a cost of compliance of $128,100 annually for 1988-1992. This compares to the cost of compliance for the largest businesses based on cost per facility of $1,000 (large business) versus $169.89 (small business). The usual manner of cost comparison based on cost per employee, cost per hour of labor, or cost per $100 of sales is inapplicable.

Mr. Crawford also has determined that for each year of the first five years the sections and repeals are in effect the public benefit anticipated as a result of enforcing the sections and repeals will be the increase in the waste treatment facility inspection fund, which is used to supplement other funds available to the TWC to pay the expenses of inspecting waste treatment facilities and to pay for processing plans and inspecting the construction of projects. There is no anticipated economic cost to individuals who are required to comply with the proposed sections and repeals.

Comments on the proposal may be submitted to Andrew N. Barrett, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069. Comments will be accepted 30 days after this publication.

Subchapter M. Waste Treatment Inspection Fee Program

★31 TAC §§305.501-305.506

(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 Water Commission, 1700 North Congress, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed pursuant to the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve general policy of the commission.

§305.501. Purpose.

§305.502. Definitions.

§305.503. Fee Assessment.

§305.504. Fee Payment.

§305.505. Fund.

§305.506. Cancellation, Revocation, and Transfer.

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

Issued in Austin, Texas, on February 2, 1988.

TRD-8801085 William G. Newchurch
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption: March 11, 1988
For further information, please call (512) 463-8069.

These new sections are proposed pursuant to the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve general policy of the commission.

§305.501. Purpose. It is the purpose of these sections to maintain the Waste Treatment Inspection Fee Program. Under this program, an annual waste treatment inspection fee is imposed on each permittee holding a permit under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

§305.502. Definitions and Abbreviations.

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual waste treatment inspection fee—A fee charged to each permittee holding a permit under the Texas Water Code, Chapter 26, and assessed once per year, ranging from $150 to $11,000.

(2) Commission—The Texas Water Commission.

(3) Final flow limit—The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(4) Flow—The total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, a maximum flow per day, an annual

average, or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(5) Flow volume—

(A) Type I—contaminated—these wastewaters include process wastewater flows or any mixed wastewaters containing more than 10% process wastewaters or containing more than one million gallons per day of process wastewaters;

(B) Type II—uncontaminated—these wastewaters are relatively uncontaminated. They include noncontact cooling water, or mixed flows which contain at least 90% noncontact cooling water and not more than one million gallons per day of process wastewater.

(6) Fund—The waste treatment facility inspection fund.

(7) Heat load parameter—The temperature limitation specified in a permit. For purposes of assessing the waste treatment inspection fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(8) Inactive permit—A permit which authorizes a waste treatment facility, but where the facility itself is not yet operational or where operation has been suspended.

(9) No-discharge permit—A permit which does not authorize the discharge of wastewaters into waters in the state, including, but not limited to, permits for evaporation ponds and irrigation systems.

(10) Parameter—A variable which acts as a set of physical properties whose values determine the characteristics of a waste discharge. Those parameters to be considered under the waste treatment facility inspection fee are: SIC group, flow volume, BOD/COD/TOC value, TSS value, ammonia value, heat load, and major/minor designation.

(11) Payment—Payment is effective upon receipt by the commission of the full amount of the annual waste treatment inspection fee.

(12) Permit—Any permit issued by the Texas Water Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7).

(13) Report discharge permit—A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported, but without any limitation on the volume of discharge.

(14) Stormwater discharge permit—A permit which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specified limitation on the volume of discharge.

(15) Traditional pollutants—The wastewater parameters typically found in wastewater discharge permits, specifically, BOD/COD/TOC, TSS, and ammonia. For purposes of assessing the waste treatment inspection fee, points are assigned to these parameters if they are allowed in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

(1) BOD—Five-day biochemical oxygen demand.

(2) COD—Chemical oxygen demand.

(3) MGD—Million gallons per day.

(4) mg/l—Milligrams per liter—all limits measured in mg/l are converted to pounds per day (lb/day) using the following conversion; mg/l by flow volume in MGD by 8.34 equals lb/day.

(5) SIC—Standard industrial classification assigned to a waste discharger.

(6) TOC—Total organic carbon.

(7) TSS—Total suspended solids.

§305.503. Fee Assessment.

(a) An annual waste treatment inspection fee is hereby assessed each permit for deposit in the fund. The amount assessed is determined by the parameters for which the facility is authorized as of each October 1. Where the permitted facility has not been constructed, or is inactive, the set point value of three points is assessed. Those permits authorizing only stormwater or report discharges as of each October 1 are assessed a set point value of 12 points for such discharges. The set point value for a no-discharge permit is four points. The maximum fee which may be assessed each permit is $11,000. In assessing a fee, the commission considers the following parameters.

(1) pollutant potential/SIC group;

(2) flow volume;

(3) traditional pollutants;

(4) heat load; and

(5) major/minor designation.

(b) The commission assigns a point value to each of the parameters in subsection (a)(1)-(5) of this section. The assigned value is weighted according to the permitted limits. The rating points are summed and multiplied by a rate factor of $50.

(c) For the purpose of fee calculation, COD and TOC are converted to BOD values and the higher value is assessed points. The conversion for TOC is: three pounds of TOC is equal to one pound of BOD (3:1). The conversion for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(d) For the purpose of fee calculation, a permit which authorizes a secondary treatment system consisting of ponds or lagoons at limits of 30 mg/l BOD and 90 mg/l TSS shall be assumed to be equivalent to 20 mg/l BOD and 20 mg/l TSS. This equivalency is based on treatment provided by different types of secondary treatment systems. The following schedule describes the method of calculating the fee:

1. POLLUTANT POTENTIAL
Primary SIC Code

Group			
	________	I	(0 points)
	________	II	(10 points)
	________	III	(15 points)
	________	IV	(20 points)
	________	V	(30 points)
	________	VI	(40 points)

Points Assigned = ____________

2. FLOW VOLUME

Wastewater Type	Flow	Points
Type I - Contaminated	≤ .05 mgd	3 points
Flow = __________	>.05 but ≤.25	5 points
	>.25 but ≤2.0	10 points
	>2.0 but ≤4.0	20 points
	>4.0 but ≤6.0	30 points
	>6.0 but ≤8.0	40 points
	>8.0 but ≤10.0	50 points
	> 10.0 mgd	60 points
Type II - Uncontaminated	≤1.0 mgd	3 points
Flow = ____________	>1.0 but ≤5.	10 points
	>5.0 but ≤10.	20 points
	>10. but ≤50.	30 points
	>50. but ≤500.	40 points
	> 500. mgd	50 points

Points Assigned = ________ (Maximum 60 points)

3. TRADITIONAL POLLUTANTS

(a) OXYGEN DEMAND (*)

Daily Average Load = ________	≤ 50 lb/day	1 point
(BOD, COD, or TOC Value)	>50 but ≤100	5 points
	>100 but ≤250	10 points
	>250 but ≤500	20 points
	>500 but ≤750	30 points
	>750 but ≤1000	40 points
	>1000 but ≤3000	60 points
	>3000 lb/day	80 points

Points Assigned = ________
(* COD and TOC limits are converted to BOD values and the higher value is used.)

(b) TSS

Daily Average Load = __________

≤ 50 lb/day	1 point
>50 but ≤100	5 points
>100 but ≤250	10 points
>250 but ≤500	20 points
>500 but ≤750	30 points
>750 but ≤1000	40 points
>1000 but ≤3000	60 points
> 3000 lb day	80 points

Points Assigned = __________

(c) AMMONIA

Daily Average Load = __________

≤250 lb/day	0 points
>250 but ≤500	10 points
>500 but ≤1000	20 points
>1000 but ≤3000	30 points
>3000 lb/day	40 points

Points Assigned = __________

4. HEAT LOAD

If heat loading parameter is not present	0 points
If heat loading parameter is present	10 points

Points Assigned = __________

5. MAJOR/MINOR DESIGNATION

If facility is rated as EPA minor facility	0 points
If facility is rated as EPA major facility	10 points

Points Assigned = __________

SET POINT PERMITS

(a) Inactive Permits................3 POINTS.......$150.00
(b) No Discharge Permits............4 POINTS.......$200.00
(c) Stormwater*/Reports Permits....12 POINTS.......$600.00
*For stormwater permits which have permitted flow parameters, a fee will be calculated upon those values using the point system.

TOTAL POINTS ASSIGNED = __________

RATE = ______ /POINT

TOTAL FEE ASSESSED = $__________

§305.504. Fee Payment. Annual waste treatment inspection fees are payable within 30 days of the billing each year for all permittees. Fees shall be paid by check, certified check, or money order payable to the Texas Water Commission. New permits will require full payment of the appropriate fee within 30 days of the billing, and thereafter will be assessed an annual waste treatment inspection fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on the permitted parameters (interim or final) specified in the permit, without regard to the actual quality of effluent that the permitted facility is discharging. Where the parameters authorized for a permitted facility change to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized limits. If a permit is amended to authorize lesser or greater parameters, the revised fee will be assessed at the next regular payment date following the final order of the Texas Water Commission effecting the amendment. If initial construction of a newly-permitted facility is not complete, the facility will be assessed a fee as an inactive permit. Fees are payable regardless of whether the permitted facility actually is in operation.

§305.505. Fund. All fees collected under this Waste Treatment Inspection Fee Program are to be deposited in the waste treatment facility inspection fund. The fund shall be managed in accordance with §305.501 of this title (relating to Purpose).

§305.506. Cancellation, Revocation, and Transfer. Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any annual inspection fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any annual inspection fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual inspection fee assessed for the permitted facility on the same basis as the transferor of the permit.

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

Issued in Austin, Texas, on February 2, 1988

TRD-8801090 William G Newchurch
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption
March 4, 1988
For further information, please call
(512) 463-8069

TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 23. Administrative Procedures

★34 TAC §23.3

(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 Teacher Retirement System, 1001 Trinity, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Teacher Retirement System of Texas proposes the repeal of §23.3, concerning procedures for adjudicative hearings. The section is repealed to allow for the adoption of a new chapter of procedural rules related to adjudicative hearings.

Wayne Fickel, TRS controller, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Fickel 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 is the proposal of a new chapter of procedural rules relating to adjudicative hearings. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The repeal is proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the board of trustees with the authority to adopt rules necessary to transact its business; and Article 6252-13a, §4(a)(1), which require agencies to adopt rules of procedure for adjudicative hearings

§23.3. Adjudicative Hearings.

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 January 29, 1988

TRD-8801017 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption
March 11, 1988
For further information, please call
(512) 397-6478.

Chapter 25. Membership Credit

Compensation

★34 TAC §25.32

The Teacher Retirement System of Texas (TRS) proposes new §25.32, concerning the applicability of the conversion rule to noncreditable lump sum bonuses paid pursuant to certain compensation programs established by school districts for nonteaching personnel not eligible for the teacher career ladder. The conversion rule of §25.30 operates to exclude from annual compensation, as defined in Texas Civil Statutes, Title 110B, §31.001(4) and §32.201, any noncreditable amounts which are converted into otherwise creditable salary and wages during the last seven creditable school years of employment before retirement. In providing a limited exception to the operation of the conversion rule, the new section provides an equitable solution to the seven-year application of the conversion rule to compensation programs for nonteaching personnel established in good faith by school districts in the wake of the confusion surrounding the impact on retirement credit of the career ladder provisions of House Bill 72. The new section affords equitable relief to persons excluded from the provisions of the teacher career ladder who have received a noncreditable supplement under such career-ladder like programs and who have since retired, who are now retiring, and who retire within seven years of the date the noncreditable supplement was last received. The new section applies to conversion only and does not make amounts creditable that are excluded by statute from credit because they are lump sum bonuses.

Wayne Fickel, TRS controller, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Fickel 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 provision of an equitable solution to the seven-year application of the conversion rule to compensation programs for nonteaching personnel established in good faith by school districts in the wake of the confusion surrounding the impact on retirement credit of the career ladder provisions of House Bill 72. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The new section is proposed under Texas Civil Statutes, Title 110B, §35.102, which

provide authority to the board of trustees to adopt rules to transact business.

§25.32. Conversion of Certain Career Ladder Payments.

(a) Section 25.30 of this title (relating o Conversation of Noncreditable Compensation to Salary) does not apply to noncreditable lump sum bonuses paid pursuant to a formal written plan, adopted in the 1984-1985 school year or thereafter but before January 1, 1988, in which employees received the bonuses based on the application of preexisting objective standards or written performance evaluations if the following requirements are met:

(1) the lump sum bonus payment under the plan is abandoned or changed to a creditable form of compensation no later than September 1, 1988;

(2) if the program includes any of the employer's highly compensated employees, then substantially all of the employer's nonteaching professional employees must be included in the program;

(3) the bonuses did not exceed the amounts which would have been available had the employee been eligible for the teacher career ladder (Texas Education Code, §16.057, et seq.);

(4) the standards or evaluations were administered consistently and in good faith; and

(5) if the lump sum bonus payment is converted to a creditable form of compensation, the payment plan must be converted for all employees covered under the plan.

(b) This section applies to a person:

(1) who retires or has retired in calendar year 1985 or thereafter; and

(2) who was not employed in a position eligible for the teacher career ladder but was employed by a school district required to provide the teacher career ladder.

(c) The following words and terms, when used in this section, shall have the following meanings.

(1) Highly compensated employee—An employee who receives compensation in excess of $50,000 or who is in the group of the 5.0% highest compensated employees of the employer reporting districts.

(2) Professional employee—A person who is paid according to a specified professional pay plan, including, but not limited to, those employed in the positions enumerated in Texas Education Code, §16.056(d).

(d) This section applies strictly to compensation programs established by school districts which were intended to be similar or equivalent to the teacher career ladder but which provide compensation to personnel excluded by the provisions of the teacher career ladder.

(e) It is the responsibility of the employee or retiree to establish that the conditions of this section have been met.

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 January 29, 1988.

TRD-8801016 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: March 11, 1988

For further information, please call (512) 397-6478.

Chapter 29. Benefits

Plan Limitations

★34 TAC §29.50, §29.51

The Teacher Retirement System of Texas (TRS) proposes new §29.50 and §29.51, concerning plan limitations on retirement benefits. The new sections are implemented to comply with the limitations of the Internal Revenue Code of 1954, §415, as amended, for continued tax qualified status. The sections set the required limitations on retirement benefits, define the terms commonly used in the section, and provide notice to members of the limitations.

Wayne Fickel, TRS controller, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Fickel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the sections will accurately state current law and provide notice to the members of the limitations on retirement benefits. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The new sections are proposed under Texas Civil Statutes, Title 110B, §35.102, which provide authority to the board of trustees to adopt rules necessary to transact its business.

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

Code—The Internal Revenue Code of 1954, as amended.

Defined contribution plan—A plan as defined in the Code, §414(i).

Employer—The state or any of its designated agents or agencies or political subdivisions responsible for education.

Member contributions—Those mandatory contributions within the meaning of the Code, §411(c)(2)(C), exclusive of any contributions that are picked up by the employer under the Code, §414(h).

Plan year—The plan's accounting year beginning on September 1 of each year and ending on the following August 31.

§29.51. Plan Limitations on Service Retirement Benefits.

(a) In this section, annual benefit means a benefit payable annually in the form of a straight life annuity (ignoring that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity, as defined in the Code, §417, with no ancillary or incidental benefits or rollover contributions and exclusive of any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under the Code, §415 (but inclusive of any such contributions that are picked up by the employer under the Code, §414(h), or that otherwise are not treated as a separate defined contribution plan). If the benefit is payable in any other form, the determination as to whether the limitation described in subsection (b) or (c) of this section has been satisfied shall be made by adjusting such benefit so that it is actuarially equivalent to the annual benefit described in this section in accordance with the regulations issued by the secretary of the treasury. For determining the annual benefit attributable to member contributions, the factors described in the Code, §411(c)(2)(B), and the regulations thereunder shall be used, regardless of whether the Code, §411, applies to the retirement system.

(b) For any plan year, the annual benefit payable to a member cannot exceed the lessor of:

(1) $90,000 (adjusted for cost of living in accordance with the Internal Revenue Code of 1954, §415(d), as amended); or

(2) 100% of the member's average annual compensation computed by taking into account only the member's three highest paid consecutive plan years. However, benefits of up to $10,000 per plan year may be paid without regard to the 100% limitation if the total retirement benefits payable to a member under all defined benefit plans maintained by the employer for the present and any prior plan year do not exceed $10,000 and the employer has not at any time maintained a defined contribution plan in which the member was a participant.

(c) Notwithstanding the provisions of subsection (b) of this section:

(1) in the case of a member who participated in the retirement system before January 1, 1983, the annual benefit under subsection (b) of this section shall not be less than his or her current accrued benefit within the meaning of the Tax Equity and Fiscal Responsibility Act of 1982, §235(g)(4); and

(2) in the case of a member who participated in the retirement system before January 1, 1987, the annual benefit in subsection (b) of this section shall not be less than his or her current accrued benefit within

the meaning of the Tax Reform Act of 1986, §1106(i)(3)(B).

(d) If the payment of retirement benefits begins before age 62, the $90,000 limitation as described in subsection (b) of this section shall be reduced actuarially using an interest rate assumption equal to the greater of 5.0% or the rate used to determine actuarial equivalence for other purposes of the Teacher Retirement System. However, retirement benefits shall not be reduced below $75,000 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of $75,000 if the payment of benefits begins before age 55. If retirement benefits begin after age 65, the $90,000 limitation shall be increased actuarially using an interest assumption equal to the lesser of 5.0% or the rate used to determine actuarial equivalence for other purposes of the Teacher Retirement System.

(e) An increase in a benefit payable that takes effect after the date payment of the benefit has begun, may not result in payment of an annual benefit that exceeds the member's average annual compensation, as computed under subsection (b)(2) of this section, multiplied by a fraction, the numerator of which is the dollar limitation under the Code, §415(b)(1)(A), as adjusted under the Code, §415(d), and the denominator of which is $90,000.

(f) If the member has less than 10 years of service credit in the Teacher Retirement System, the applicable limitation set forth in subsection (b) of this section shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of years (or parts thereof) of the person's service credit and the denominator of which is 10.

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 January 29, 1988

TRD-8801015 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
March 11, 1988
For further information, please call
(512) 397-6478.

Chapter 43. Adjudicative Hearings

★34 TAC §§43.1-43.47

The Teacher Retirement System of Texas (TRS) proposes new §§43 1-43.47 (comprising new Chapter 43), concerning procedures for adjudicative hearings. The new sections define what decisions by agency staff are subject to review by an adjudicative hearing, explain the procedures to be followed in an adjudicative hearing, and provide notice of the appropriate forum used to review individual complaints. The new sections also define the terms used in the administrative procedure and provide an appeals process for individuals not satisfied with the initial administrative determination on a matter subject to appeal through an adjudicative hearing.

Wayne Fickel, TRS controller, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small business as a result of enforcing or administering the sections.

Mr. Fickel also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be the clarification of procedures used for adjudicative hearings. There is no anticipated additional economic cost to individuals who are required to comply with the sections.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The new sections are proposed under Texas Civil Statutes, Title 110B, §35.102, which provide authority to the board of trustees to adopt rules necessary to transact its business; and Article 6252-13a, §4 (a)(1), which requires agencies to adopt rules of procedure for adjudicative hearings.

§43.1. Administrative Review of Individual Complaints. The Teacher Retirement System of Texas (TRS) is divided into administrative divisions which are further divided into departments for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department. In the event that a person is not satisfied with the determination, decision, or action of department personnel, the person may complain to the appropriate supervisors within the department and division. If not satisfied after consulting with the proper supervisory personnel, the person may consult with the administrative head of the appropriate division who shall mail a written final administrative decision.

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

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

Board—The Board of Trustees of the Teacher Retirement System of Texas.

Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Executive secretary—The executive secretary of the Teacher Retirement System of Texas.

Hearing officer—Any person appointed by the executive secretary to conduct hearing.

Member—A person who is a member, retiree, or beneficiary of the Teacher Retirement System.

Order—The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the board in a matter other than rulemaking.

Party—Each person named or admitted in a contested case.

Person—Any natural person.

Pleading—A written allegation by the parties of the Teacher Retirement System of Texas of their or its respective claims. Pleadings may take the form of applications, petitions, appeal letters, complaints, briefs, exceptions, replies, motions, notices, or answers.

Presiding hearing officer—The hearing officer appointed to hear the present case may also be referred to as the hearing officer.

Proceeding—Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of an appeal if the matter is a contested case.

TRS—The Teacher Retirement System of Texas.

Trustee—One of the elected or appointed members of the decision making body defined as the board.

With prejudice—Final and binding.

§43.4. Decisions Subject to Review by an Adjudicative Hearing. Any interested person shall be entitled to appeal the decision of a division head with regard to the following:

(1) any matter related to a member's service or disability retirement, death or survivor benefits, or request for refund of accumulated contributions;

(2) the eligibility of a person for membership in TRS;

(3) the amount of annual compensation;

(4) the amount of deposits or fees required of a member;

(5) any matter involving the granting, purchase, transfer, or establishment of service credit;

(6) any application for correction of error in the file of a member or beneficiary;

(7) the cancellation or suspension of benefits; or

(8) any other matter affecting eligi-

bility for benefits or the amount of benefits payable under the laws governing TRS.

§43.5. *Request for Adjudicative Hearing.* A party may appeal the final decision of a division head by filing a petition for adjudicative hearing with the executive secretary within 90 days from the date the division heads final administrative decision is mailed. The petition should conform to the requirements of §43.12 of this title (relating to Form of Petitions and Other Pleadings).

§43.6. *Filing of Documents.* All documents relating to any proceeding pending or to be instituted before the board shall be filed with the executive secretary or hearing officer at 1001 Trinity Street, Austin, Texas 78701.

§43.7. *Computation of Time.* In computing any period of time prescribed or allowed by this section, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

§43.8. *Extensions.* Unless otherwise provided by statute, the time for filing any of the documents mentioned in this section may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings which initiate a proceeding or which are made before a hearing officer has been assigned the matter, the executive secretary will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after a hearing officer has been assigned the matter, the hearing officer will determine whether good cause exists and whether an extension should be granted.

§43.9. *Docketing of Adjudicative Hearing.*

(a) The executive secretary shall assign the petition a docket number and shall schedule the case for hearing on a date at least 10 days after the issuance of notice of the hearing date to all parties. The executive secretary, the board of trustees, or the presiding hearing officer may reschedule the hearing in the interests of justice or administrative necessity or for good cause.

(b) The initial notice shall be given not less than 10 days prior to hearing by the hearing officer.

§43.10. *Authority of Executive Secretary or Hearing Officer to Grant Relief.* At any time after the petition is filed and before the hearing is conducted, the executive secretary or hearing officer may grant the relief sought by the petitioner and dismiss the petition, provided that the interests of other individual parties are not adversely affected.

§43.11. *Classification of Pleadings.* Pleadings filed with the executive secretary shall be appeal letters, notices, applications, appeals, claims, answers, exceptions, replies, motions, or briefs. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§43.12. *Form of Petitions and Other Pleadings.*

(a) Petitions, briefs, and other pleadings shall be typewritten or printed on paper not to exceed 8½ inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Reproductions may be used, provided all copies are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition for an adjudicative hearing shall specify the action desired from TRS.

(c) The original of any pleading filed with TRS shall be signed in permanent ink by the party filing it or by his authorized representative. Pleadings shall contain the address and phone number of the party filing the documents or the name, telephone number, and business address of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, telephone number of appellant, the name, and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address. If such information is not provided on the original petition, the executive secretary, board of trustees, or presiding hearing officer may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)."

(f) All pleadings shall contain the following:

(1) the name of the party supporting or opposing the action of the division head;

(2) a concise statement of the facts relied upon by the appellant;

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

(4) a certificate of service conforming to subsection (g) of this section; and

(5) any other matter required by statute.

(g) Written pleadings other than the original petition should be served by mail or personal delivery upon all other known parties of record and a certification of such service should be submitted with the original copy of the pleading filed with TRS. Service may be made upon a party by serving his attorney of record in the case. The following form of certification will be sufficient: "I hereby certify that I have this day ________ of ______________, 19____, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) The executive secretary or hearing officer may review pleadings filed with TRS to determine their sufficiency under these sections. If the pleadings do not materially comply with these sections, the executive secretary shall return the pleadings to the person filing them, along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file corrected pleadings. If the pleadings are not corrected to substantially comply with this section, the executive secretary may dismiss the complaint with prejudice.

§43.13. *Filing of Pleadings and Amendments.*

(a) Any party to a case may file answers, amendments to pleadings (provided it does not act as a surprise to the opposite party), and motions which conform to the requirements of this section. Any amendment which operates as a surprise to any other party may be granted only upon a written motion showing no harm will result. Failure to file an answer shall in no case result in a default judgment.

(b) The filing of motions, answers, amended pleadings, and corrected pleadings shall not be permitted to delay any hearing unless the executive secretary, board of trustees, or presiding hearing officer determines that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

§43.14. *Briefs.* Briefs shall conform, where practicable, to the form requirements of pleadings set out in this section. The points involved shall be concisely stated, the allegations in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

§43.15. *Motions.* A motion, unless made during a hearing, shall be made in writing, set forth the relief or order sought, the specific recourse and grounds for such relief, and be timely filed with the hearing officer. If parties have been designated, a copy shall be furnished by the movant to each applicant, appellant, and other party of record. Any reply to the motion shall be timely filed with the hearing officer with a copy served on the movant and other parties of record. Failure to furnish copies may be grounds for withholding consideration of the motions or

replies. Unless otherwise directed by the hearing officer, motions based on matters which do not appear of record must be supported by affidavit. When necessary in the judgment of the hearing officer, a hearing will be held to consider any motion.

§43.16. Notice of Hearing and Other Action.

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by TRS shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial notices shall include the following:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than five days before the date set for hearing, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(c) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 10 days before the date set for hearing. If granted, the hearing officer shall give notice, not less than three days before the date of hearing, of the additional issues and matters to be decided in the contested case.

(d) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

§43.17. Agreements to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding governed by this chapter, shall be enforced unless it shall have been reduced to writing and signed by the parties or the representatives authorized by this section to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

§43.18. Motion for Consolidation. A motion for consolidation of two or more appeals, applications, petitions, or other proceedings shall be in writing, signed by the movant, his attorney or representative, and filed with the hearing officer prior to the date set for hearing. No two or more appeals, applications, petitions, or other proceedings shall be consolidated or heard jointly without the consent of all parties to all such proceedings unless the hearing officer shall find that the two or more appeals, applications, petitions, or other proceedings involve common questions of law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

§43.19. Intervention. Any interested person desiring to intervene in any proceeding before the board may appear formally before the board, by filing a written motion to intervene at least 15 days in advance of the hearing date, and it may present any relevant, material, and proper testimony and evidence bearing upon the issues involved in the particular proceeding. In any proceeding involving notice of less than 30 days, this time for filing may be modified.

§43.20. Representation by Attorney. Any party may appear and be represented by an attorney authorized to practice law in the court of highest jurisdiction of any state of the United States or the District of Columbia. The attorney of record of any party shall be the attorney who signs the first pleading filed on behalf of the party or who files with TRS a written notice signed by the party designating the attorney as attorney of record in the case. He or she shall be considered to have continued as attorney of record to the end of the proceeding with TRS unless there is a statement to the contrary appearing in the record. Nothing in this chapter shall be interpreted to require a party to the hearing to be represented by counsel.

§43.21. Lead Counsel. A party represented by more than one attorney in a matter before TRS may be required to designate a lead counsel who shall have control in the management of the matter. The hearing officer may limit the number of counsel heard on any matter.

§43.22. Hearing Officer. The executive secretary shall designate a presiding hearing officer for any adjudicative hearing or set the hearing before the board of trustees. The presiding hearing officer may be the executive secretary, an employee of TRS, or a specially appointed hearing officer. The executive secretary may designate successive hearing officers in any case who may perform any functions remaining in the case without the necessity of repeating any previous proceedings.

§43.23. Powers of the Hearing Officer. The presiding hearing officer shall have the authority to:

(1) convene the hearing;

(2) administer oaths to all persons presenting testimony;

(3) rule on motions;

(4) rule on the admissibility of evidence;

(5) establish the order of presentation of evidence;

(6) examine witnesses;

(7) set hearing dates;

(8) set prehearing conferences;

(9) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents related to the hearing;

(10) define the jurisdiction of TRS concerning the matter under consideration;

(11) limit testimony to matter under TRS's jurisdiction;

(12) recess or continue any hearing over which he or she is presiding from time to time and from place to place;

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

(14) exercise any other appropriate powers necessary or convenient to carry out his or her responsibilities; and

(15) to extend the time for the decision date.

§43.24. Prehearing Conference.

(a) The hearing officer may hold a prehearing conference prior to any adjudicative hearing. The hearing officer shall set the time and location of the conference and give reasonable notice thereof to all parties. At the discretion of the hearing officer, persons other than parties may attend prehearing conferences. At the discretion of the hearing officer, additional prehearing conferences may be scheduled.

(b) The hearing officer may direct that one or more of the following be transmitted by each party to all other parties or their representatives and to the hearing officer by a date established by the hearing officer:

(1) a list of witnesses the party desires to testify with a brief narrative summary of their expected testimony;

(2) a written statement of the disputed issues for consideration at the hearing;

(3) a copy of any written statements to be offered at the hearing; or

(4) a copy of any other written testimony or documentary evidence the party intends to use at the hearing.

(c) Witnesses and proposed written evidence may be added and narrative summaries of expected testimony amended at the hearing only upon a finding of the hearing examiner that good cause existed for failure to exchange the additional or amended material by the established date.

(d) At any prehearing conference, or in the prehearing conference summary, the hearing officer:

(1) may obtain stipulations and admissions, and otherwise identify matters on

which there is agreement;

(2) shall identify disputed issues for consideration at the hearing;

(3) may consider and rule prospectively upon objections to the introduction into evidence at the hearing on the merits of any written testimony, documents, papers, exhibits, or other materials;

(4) may identify matters of which official notice may be taken;

(5) may strike issues not material or not relevant; and

(6) may consider any other matter that may expedite the hearing or aid in the disposition of the matter.

(e) A prehearing conference may be held by means of a conference telephone call.

(f) The results of any prehearing conference shall be summarized in writing by the hearing officer and made part of the record.

§43.25. *Conduct of Hearing.*

(a) All hearings shall be open to the public except for parts of any proceeding in which confidential information in a member's file may be disclosed. The member may expressly waive his right to maintain confidentiality of the information before the proceedings will be opened to the public.

(b) All hearings will be held in the offices of the Teacher Retirement System of Texas in Austin, unless for good cause the hearing officer shall designate another place of hearing.

(c) The hearing officer shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, parties or their representatives may be off the record only when the hearing officer permits. If a discussion off the record is pertinent, the hearing officer may summarize such discussion for the record. Appearances are to be entered on the record by all parties, their attorneys, or representatives, and any persons who may testify during the proceedings. All persons present who may testify will then be placed under oath. Thereafter, parties may make motions or opening statements.

(d) Following opening statements, if any, by both sides, the petitioner shall be directed to proceed with his or her direct case.

(e) Where the proceeding is initiated at the executive secretary's or the board's own call, or where several proceedings are heard on a consolidated record, the examiner shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence.

(f) Opportunity for cross-examination and presentation of a direct case shall be afforded all parties of record. After all parties have completed the presentation of their evidence, and been afforded the opportunity to cross-examine the opposition witnesses, closing statements may be allowed. The petitioner shall be entitled to open and close.

(g) The hearing officer may also call upon any party or staff of TRS for further material or relevant evidence upon any issue before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection, cross examination, and rebuttal by the other interested parties.

(h) During any part of the direct or cross-examination of a witness, the hearing officer may ask the witness questions.

(i) At the request of a party, the hearing officer shall order the witnesses excluded so that they cannot hear the testimony of other witnesses, and the hearing officer may make the order of its own motion. This section does not authorize exclusion of a party.

§43.26. *General Admissibility.*

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of Texas shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by a reasonably prudent person in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law.

(b) When testimony is excluded by ruling of the hearing officer, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. Such offer of proof shall be sufficient to preserve the point for review. The presiding hearing officer may ask questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as presented in the offer of proof.

§43.27. *Exhibits.*

(a) Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of TRS and whenever practicable, shall conform to the requirements set forth in §43.12 of this title (relating to Forms of Petitions and Other Pleadings). The first page of the exhibit shall contain a statement of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) The original of each exhibit offered shall be tendered to the reporter or clerk for identification; one copy shall be furnished to the presiding hearing officer and one copy to each other party of record or his attorney of record.

(c) In the event an exhibit has been identified, objected to, and excluded, the presiding hearing officer shall determine whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to that party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the hearing officer with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Unless specifically permitted by the hearing officer, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the hearing officer allows an exhibit to be filed after the conclusion of a hearing, copies of the late-filed exhibit shall be served on all parties of record.

§43.28. *Admissibility of Prepared Testimony.* When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in a narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to cross-examination and his/her prepared testimony shall be subject to being stricken either in whole or in part.

§43.29. *Limit on Number of Witnesses.* The hearing officer shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§43.30. *Exceptions.*

(a) If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the hearing date, they shall be heard. If exceptions are sustained, the hearing officer shall allow a reason able time for amendment.

(b) Formal exceptions to rulings of the presiding hearing officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have been made known to the presiding hearing officer the action desired.

§43.31. *Oral Argument.* At the conclusion of the hearing, oral argument may be heard upon request or upon directive to the parties. Reasonable time limits may be prescribed.

§43.32. *Appearance.* Any person may appear at a hearing in person or by an attorney. A person appearing as an attorney may be required to prove his authority.

§43.33. *Failure to Appear.* Except for good cause and extenuating circumstances, the appellant or his authorized representative shall appear at the hearing. Failure to so appear may be grounds for withholding consideration of a matter, denial of the matter without prejudice, or dismissal of the appeal.

§43.34. *Conduct and Decorum at Hearing.* Every party, authorized representative, witness, or other participant in the proceed-

ings shall conduct himself with proper dignity, courtesy, and respect for TRS, the parties, witnesses, and all other participants. Disorderly conduct will not be tolerated. Attorneys must conform to the standards of ethical behavior required by the Code of Professional Responsibility of the State Bar of Texas. In a matter heard by a hearing officer, violation of this section shall be sufficient cause for the officer to recess the hearing and to request that TRS take appropriate action. TRS may deny the offending person the right to participate further in the proceeding for such period of time and under such conditions as may be just and reasonable or may take such other action as it deems just and reasonable.

§43.35. Official Notice. Official notice may be taken of all facts judicially cognizable. In addition, official notice may be taken of generally recognizable facts within special knowledge of the agency. All parties shall be notified either before or during the hearing, or by reference in preliminary reports, drafts of orders, or otherwise, of any material officially noticed, including any staff memoranda or data. All parties will be afforded an opportunity to contest the material so noticed.

§43.36. Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, the hearing officer or employees of TRS assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. A TRS employee may communicate ex parte with other employees of TRS, and pursuant to the authority provided in the Administrative Procedure and Texas Register Act, §14(q), employees of TRS assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of TRS who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

§43.37. Reporters and Transcript.

(a) When a party makes a written request that proceedings be transcribed, the party shall state in writing his election to furnish a stenographic reporter or to rely upon a transcript made by TRS from audio tape recordings of the hearing. The cost of the original transcript shall be assessed to the party or parties requesting the original transcript to be made by a stenographic reporter.

(b) A stenographic reporter furnished by a party must agree:

(1) to deliver the original transcript and copies, if any, to TRS not less than 15 working days after the close of the hearing;

(2) to recognize that TRS has the rights to the printing and distribution of additional copies of the transcript; and

(3) to respect the confidentiality of member files.

(c) The executive secretary may exclude any stenographic reporter for late delivery or poor quality of work in previous hearing.

(d) Errors claimed to be in a transcription of a contested hearing shall be noted in writing and suggested corrections may be offered within 10 days after the transcript is filed with the hearing officer, unless the officer shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the hearing officer. If not objected to within 12 days after being offered, the hearing officer will direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the hearing officer, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed, if at all.

§43.38. Dismissal Without Hearing.

(a) The hearing officer may entertain motions for dismissal without a hearing for any of the following reasons:

(1) failure to prosecute a claim;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal or voluntary dismissal of appeal;

(4) moot questions or obsolete petitions;

(5) lack of jurisdiction; or

(6) failure to comply with §43.12 of this title (relating to Form of Petitions and Other Pleadings).

(b) The hearing examiner shall dismiss the appeal of any person who has filed written notice of the appeal but who has defaulted by:

(1) failing to personally appear at the hearing if the appellant is not represented by an attorney at law unless such appearance is waived by agreement of all the parties;

(2) failing to personally appear at the hearing if the appellant is represented by an attorney at law unless the appellant gives notice at least 10 days prior to the date of the hearing that the appellant will not personally appear and such appearance is waived by agreement of all parties; or

(3) failing to request a hearing or take some other action specified by the hearing officer within 30 days after notice is mailed of intention to dismiss the claim.

(c) For good cause, the executive secretary may permit reinstatement of a dismissed appeal.

§43.39. Summary Judgment.

(a) A party may move with or without supporting affidavits for a summary judgment any time after a petition has been filed. The motion for summary judgment shall specify the grounds for which the judgment should be rendered. The motion and any supporting affidavits shall be filed and served at least 15 days before the time specified for the hearing which must be arranged with the hearing officer. The judgment sought will be rendered if the pleadings, discovery, affidavits, stipulation of the parties, and authenticated or certified public records on file at the time of the hearing show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or other response.

(b) A party adversely affected by a summary judgment decision may appeal the decision to the board of trustees provided written notice of appeal is filed with the executive secretary within 10 days after the decision is issued. If no such notice of appeal is timely filed, the decision rendered in the summary judgment proceedings shall be the final decision of TRS.

§43.40. The Record. The record in a contested case shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) rulings and objections made on questions and offers of proof;

(5) proposed findings, exceptions, and briefs;

(6) any decision, opinion, or report by the officer presiding at the hearing;

(7) all staff memoranda or data submitted to or considered by the hearing examiner or trustees of TRS who are involved in making the decision; and

(8) summaries of the results of any prehearing conferences held in connection with the case.

§43.41. Findings of Fact. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§43.42. Reopening of Hearing. Upon motion of any party or upon the motion of the hearing officer, the hearing may be reopened for good cause at any time before a decision is rendered.

§43.43. Subpoenas.

(a) The issuance of subpoenas in any proceeding shall be governed by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a, §14). Upon a written request by a party or upon the motion of the executive secretary, board of trustees, or presiding hearing of-

ficer, TRS may issue subpoenas addressed to the sheriff to require that attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a hearing.

(b) Motions for subpoenas to compel the production of books, papers, accounts, or documents shall be addressed to TRS, shall be verified, and shall state as specifically as possible the books, papers, accounts, or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harrassment, imposition, or undue inconvenience or expense to the party to be required to produce the same, the executive secretary or the hearing officer may issue a subpoena compelling the production of books, papers, accounts, or documents as deemed necessary.

(c) Subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act.

§43.44. *Discovery, Entry on Property; Use of Reports and Statements.*

(a) Upon motion of any party and upon notice to all other parties, and subject to such limitations of the kind provided for discovery under the Rules of Civil Procedure, TRS may order any party:

(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(b) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has risen.

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

§43.45. *Final Decisions and Appeals to the Board of Trustees.*

(a) The final decision in a matter subject to an adjudicative hearing will be rendered within 120 days of the date the hearing is finally closed, unless the hearing officer or executive secretary states a shorter period at the time the hearing is closed or unless another decision date is required by law.

(b) Within 75 days of the completion of the hearing, the hearing officer shall forward his report, proposal for decision, and the record to the executive secretary. Upon review of the record, the executive secretary may reverse or affirm the decision being appealed. The executive secretary shall then render a decision in each case or shall submit the case to the board of trustees for consideration with a proposal for decision.

(c) Any party adversely affected by a decision of the executive secretary, other than TRS, may appeal the decision to the board of trustees, provided that a written notice of appeal is filed with the executive secretary within 10 days after the decision of the executive secretary is issued. If no such notice of appeal is timely filed, or if the next regularly scheduled meeting of the board of trustees will occur after the deadline for a final decision established under this section, and the parties, other than TRS, are unwilling to waive the deadline for a final decision until that meeting, the decision of the executive secretary shall be the final decision of TRS. If notice of appeal is timely filed, the decision of the executive secretary shall serve as a proposal for decision. The final decision by the board of trustees in an appeal or in a case originally set before the board of trustees shall be based upon the existing record in the case, unless the board of trustees orders the hearing to be reopened.

§43.46. *Rehearings.* A party adversely affected by a final decision in a case must file a motion for rehearing within 15 days after the date such decision is rendered. If substantially new or amended evidence is presented in the motion which, in the judgment of the executive secretary, may cause the board of trustees to reverse the previous decision, the motion shall be granted. A grant or denial of the motion shall be issued within 45 days after the date the final decision is rendered.

§43.47. *Procedures Not Otherwise Provided.* If, in connection with any hearing, the executive secretary and the hearing officer determine that there are no statutes or other applicable rules resolving particular procedural questions then before the agency, the executive secretary will direct the parties to follow procedures consistent with the purpose of these sections.

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

Issued in Austin, Texas, on January 29, 1988.

TRD-8801018 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
March 11, 1988
For further information, please call
(512) 397-6478.

Withdrawn Rules

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

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Loans

★7 TAC §91.701

The Credit Union Department has withdrawn from consideration for permanent adoption an amendment to §91.701, concerning loans. The text of the proposed amendment appeared in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4170). The effective date of the withdrawal is February 3, 1988.

Issued in Austin, Texas, on February 3, 1988

TRD-8801103 Harry L. Elliott
Staff Services Officer
Credit Union Department

Filed: February 3, 1988
For further information, please call (512) 837-9236.

Investments

★7 TAC §91.802

The Credit Union Department has withdrawn from consideration for permanent adoption a proposed amendment to §91.802, concerning investments. The text of the proposed amendment appeared in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4173). The effective date of this withdrawal is February 3, 1988.

Issued in Austin, Texas, on February 3, 1988.

TRD-8801105 Harry L. Elliott
Staff Services Officer
Credit Union Department

Filed: February 3, 1988
For further information, please call (512) 837-9236.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services

★25 TAC §157.63

The Texas Department of Health has withdrawn the effectiveness of an emergency amendment to §157.63, concerning emergency medical care. The text of the emergency amendment appeared in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3507). The effective date of this withdrawal is February 1, 1988.

Issued in Austin, Texas, on February 1, 1988.

TRD-8801003 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 1, 1988
For further information, please call (512) 465-2601.

Chapter 289. Occupational Health and Radiation Control

★25 TAC §§289.145, 289.146, 289.152-289.155

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new §§289.145, 289.146, and 289.152-289.155, concerning occupational health and radiation control, asbestos exposure abatement in public buildings. The text of the proposed new sections appeared in the October 13, 1987, issue of the *Texas Register* (12 TexReg 3761). The effective date of this withdrawal is January 29, 1988.

Issued in Austin, Texas, on January 28, 1988.

TRD-8800977 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: January 29, 1988
For further information, please call (512) 458-7254

Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Direction of Affairs

★7 TAC §91.506

The Credit Union Commission adopts an amendment to §91.506, without changes to the proposed text published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4169).

The amendment is necessary because substantial increases in assets of credit unions and increases in the costs related to determining losses dictate increases in related bond coverage.

Increased surety bond limits will provide greater protection in the event of losses and claims covered by the bonds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 2461-1.01, et seq., §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801106 John R. Hale
Commissioner
Credit Union Department

Effective date: February 24, 1988
Proposal publication date: November 10, 1987
For further information, please call (512) 837-9236.

TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 176. Enterprise Zone Program

★10 TAC §§176.1-176.9

The Texas Department of Commerce adopts new §§176.1-176.9, with changes to the proposed text published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4508).

The new sections provide standards of eligibility and procedures for applications for designation of qualified areas as enterprise zones and for designation of qualified businesses as enterprise projects.

In response to concerns about awareness of the program, the department changed §176.1(b) to reflect the expanded purpose of the Enterprise Zone Program. Language is added to §176.1(c) to define the terms "affected entity" and "extraterritorial jurisdiction," and to expand the definition of the terms "depressed area" and "qualified business." In addition, the department responded to a request that the specific section in the chapter be stated instead of referencing the chapter only The department clarified §176.1(d) to reflect waiver of rules not statutorily imposed. The department deleted the provisions regarding statement and opinions expressed by the board or staff, precedents, and the temporary waiver of rules by the executive director. Section 176.2(b) was changed to reflect fewer copies of the application being required by the department. In response to comments, the department will allow more time to correct deficiencies in an application. Language is also added in §176.2(e) to reflect the schedule of board meetings. Section 176.3 is changed to provide standards for current data and to further define types of data that will be acceptable to the department. Section 176.3(c)(3) and (4) are rewritten to change the method of calculating chronic abandonment or demolition and substantial tax arrearages Section 176.4 and 176.5 are rewritten to clarify that certain provisions were optional in the application process and to clarify certain requirements in the application contents. Certain provisions in §176.6 are deleted in response to comments concerning competition among applicants. Section 176.7 is rewritten to reflect the automatic approval of some projects for neighborhood enterprise association. Requirements for application contents for the neighborhood enterprise association are changed in response to comments. Section 176.8 is changed to create an evaluation system that examines the applications for designation of enterprise projects based on the relevant factors as determined by the department. Approval standards for certification of neighborhood enterprise association are added to this section. Provisions are added to reflect the requirement of a public hearing before the department can remove the designation of an enterprise zone or project.

These standards were developed by the department in conjunction with a group of interested individuals. The department held a public hearing in Austin after publication of the proposed sections and heard comments from five persons. These persons included Julie Radisovech, City of McAllen; Greg Hartman, Senator Carlos Truan's Office; Karen Richmond, Karen Richmond and Associates, Pike Powers, Fulbright and Jaworski; and Joseph James, City of Austin. Eleven comments were received by mail. These included the Texas Association of Counties, Senator Carlos F. Truan, Senator Hector Uribe, Senator Richard Anderson, City of Austin, Karen Richmond and Associates, Fulbright and Jaworski, City of McAllen, City of San Marcos, City of El Paso and Dallas County.

Most commenters were neither for nor against the sections, but had suggestions or comments regarding specific language. Several commenters objected to the point system for designation of projects and to the authority of the executive director to waive requirements. The department also heard comments regarding the department authority to require additional information at any time. Most commenters objected to the proposed section that bans consideration of applications where localities are competing for the same project or relocation Others asked that clarification be made concerning whether a locality could submit one application for two or more zones One commenter also suggested that clarification was needed for what constitutes a low-income poverty area. Several commenters suggested that we change statutory provisions such as the definition of economically disadvantaged individual, the requirement of department approval for certain projects by neighborhood enterprise associations, and the minimum size standards for the zone boundaries. One commenter suggested that the photocoyying fee be stated in the sections. The commenters objected to the requirement of a color-coded map and to full disclosure of information from a business applying for designation as an enterprise project.

One commenter suggested that extraterritorial jurisidiction and franchise be defined in the sections. Some commenters suggested that the time for correcting deficiencies in applications be expanded Several commenters stated the need for a schedule of board meetings Several commenters wanted the provisions in the statute to be restated in the section instead of refering to the statute or to the section of the rule; others thought the restatement was too redundant. Commenters also suggested that the schedule for review and comment on the sections was inadequate for cities and counties to respond effectiviely. One commenter suggested that staff should notify applicant to acknowlege receipt of the application. Another commenter suggested that the citizen right to participate in the public hearing be stated in the rules. Comments were also heard concerning the need to have the powers and duties of the department to be outlined and the obligations mandated to other state agencies be outlined in the sections. Several comments were received regarding the number of copies of the application required by the department. One commenter suggested that the standards for chronic abandonment or demolition were excessive. Several commenters suggested that they were uncertain that certain provisions would be considered optional by the department, specifically the administrative authority and the neighborhood enterprise association. One commenter suggested that the department require notification of all local governments by the primary sponsoring entity.

The department believes the consensus reached by the department and reflected in these sections is the best balance of interests of the individuals and local government officials who will be applying for designation of enterprise zones and projects.

The new sections are adopted under Texas Civil Statutes, Article 5190.7, which provide the department with the authority to adopt rules pertaining to the adoption, implementation and administration of the Texas Enterprise Zone Program.

§176.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7. and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended, the Texas Department of Commerce prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Enterprise Zone Program.

(b) Purpose. It is the purpose of the Texas Enterprise Zone Act to establish a process that clearly identifies those distressed areas and provides incentives by both state and local government to induce private investment in those areas by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives and economic development program benefits.The purpose of these sections is to provide standards of eligibility and procedures for applications for designation of qualified areas as enterprise zones and for designation of qualified businesses as enterprise projects.

(c) 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 Enterprise Zone Act, Texas Civil Statutes, Article 5190.7, as amended.

Administrative authority—A board, commission, or committee appointed by the governing body to administer the Act within an enterprise zone.

Affected entity—The applicant, qualified business, qualified employee, or any other person that is a party to a transaction involving the designation of an enterprise zone or project.

Applicant—The municipality, county, or combination of municipalities or counties filing an application with the department for designation of an enterprise zone or enterprise project.

Application—An application, including supporting and supplemental instruments and documentation, for designation of an enterprise zone or for designation of an enterprise project under the Act and this chapter.

Board—The Board of Directors of the Texas Department of Commerce.

Department—The Texas Department of Commerce.

Depressed area—An area within the jurisdiction of a county or municipality designated by ordinance or resolution that is an area with pervasive poverty, unemployment, and economic distress. An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period; and

(B) the area meets one or more of the following criteria:

(i) the area was a low-income poverty area according to the most recent federal census;

(ii) the area is in a jurisdiction or pocket or poverty eligible for urban development action grants under federal law;

(iii) at least 70% of the residents of the area have an income below 80% of the median income of the residents of the locality or state, whichever is lower;

(iv) the nominating government establishes to the satisfaction of the department that either:

(I) chronic abandonment or demolition of commercial or residential structures exists in the area; or (II) substantial tax arrearages for commercial or residen tial structures exist in the area.

Economically disadvantaged individual—An individual who for at least the entire year before obtaining employment with a qualified business:

(A) was unemployed; or

(B) received public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty. An individual is unemployed if the individual is not employed and has exhausted all unemployment benefits, whether or not the individual is actively seeking employment.

Enterprise project—A qualified business designated by the department as an enterprise project under of the Act §10 and §176.5 of this title (relating to Requirements for Designation of Enterprise Projects) that is eligible for the state tax incentives provided by law for an enterprise project.

Enterprise zone—An area of the state designated by the department as an enterprise zone under of the Act, §9 and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone).

Executive director—The executive director of the department.

Extraterritorial jurisdiction—Territory in the extraterritorial jurisdiction of a municipality that is considered to be in the jurisdiction of the municipality.

Governing body—The governing body of a municipality or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

Local Government—A municipality or county.

Neighborhood enterprise association—A private sector neighborhood organization within an enterprise zone that meets the criteria set forth in of the Act, §21 and §176.7 of this title (relating to Certification of Neighborhood Enterprise Associations).

Qualified business—A person, including a corporation or other entity that the department certifies to have met the following criteria:

(A) the person is engaged in the active conduct of a trade or business in the zone;

(B) at least 25% of the business's employees in the zone are residents of the zone or economically disadvantaged individuals; and

(C) if a business that is already active within the enterprise zone at the time it is designated and that operates continuously after that time, the business has hired residents of the zone or economically disadvantaged workers after the designation so that those individuals constitute at least 25% of the business's employees in the zone.

(D) A franchise or subsidiary of a new or existing business may be certified by the governing body of an enterprise zone as a qualified business if the franchise or subsidiary is located entirely in the zone and maintains separate books and records of the business activity conducted in the zone.

Qualified employee—An employee who works for a qualified business and who performs at least 50% of his service for the business within the enterprise zone.

Qualified property—Any one or more of the following:

(A) tangible personal property located in the zone that was acquired by a taxpayer after designation of the area as an enterprise zone and was used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer after designation of the zone and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

Staff—The staff of the department.

(d) Amendment and suspension of rules. These sections may be amended by the board at any time in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended. The board may suspend or waive a section, not statutorily imposed, in whole or or in part, upon the showing of good cause or when, at the discretion of the board, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(e) Application of sections. All sections shall be applied collectively, to the ex-

tent relevant, in connection with specific determinations made by the department in the course of its administrative functions. The department will make its determination on the basis of specific characteristics and circumstances of the individual application and in light of the basic statutory purposes in the particular area.

(f) Examination of records. Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the documents to be viewed, and if photocopying is desired, the prevailing standard fee of the department will be charged to cover the cost of the request.

(g) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Finance Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711.

§176.2. Filing Requirements for Applications.

(a) Form. An application must be filed on letter-sized paper and must contain all information and documentation required under the Act and this chapter, as applicable. The application must be loosely bound with the information tabbed according to §176.4 of this title (relating to Application Contents for Designation of Enterprise Zones).

(b) Filing. The applicant shall file with the department an original and two copies of an application for designation of an enterprise zone or for designation of an enterprise project. A separate application must be submitted to the department for each area nominated for designation as an enterprise zone.

(c) Completeness. Each application must be as complete as practicable. The department will stamp or otherwise designate the date on which it receives each application. The date stamped or otherwise designated for any application received after the close of business on a business day will be the next business day. A business day is, for this purpose. Monday through Friday, 8 a.m. to 5 p.m., with the exception of official holidays observed by the State of Texas.

(d) Staff consideration of applications. The staff shall review the application to determine if the application meets the eligibility criteria under the Act and this chapter. Not later than ten business days after receipt of the application, the department shall notify the applicant that it has received the application and note any omissions or clerical errors that exist in the application The applicant has 45 days from the date the application is received by the department to correct any deficiencies.

(e) Board consideration of applications. The board shall meet to review the applications that have qualified for consideration by the board following staff review. A complete or corrected application must be submitted at least 30 days before the day of the next meeting at which the board will consider the application. At the meeting, the board will either approve the application, disapprove it, remand it to the applicant for further action, or make such other disposition of the application as may be appropriate. Board meetings are scheduled for the second Tuesday of each month, unless otherwise notified.

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

(a) An applicant may make written application to the department for designation of an area within the applicant's jurisdiction as an enterprise zone if such area meets the following eligibility criteria:

(1) the area has a continuous boundary;

(2) the area is at least one square mile in size but does not exceed the larger of the following:

(A) 10 square miles exclusive of lakes and waterways; or

(B) 5.0% of tbe area of the municipality, county, or combination of municipalities or counties nominating the area, but not more than 20 square miles, exclusive of lakes and waterways; and

(3) the area is an area with pervasive poverty, unemployment, and economic distress which meets the following criteria

(A) the average unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state or national average for that period and

(B) the area meets one or more of the following criteria:

(i) the area was a low-income poverty area according to the most recent federal census;

(ii) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law;

(iii) at least 70% of the residents of the area have an income below 80% of the median income of the residents of the locality or state, whichever is lower;

(iv) the governing body of the applicant establishes to the satisfaction of the department that either:

(I) chronic abandonment or demolition of commercial or residential structures exists in the area; or

(II) substantial tax arrearages for commercial or residential structures exist in the area.

(b) The department may not designate an area as an enterprise zone if in the jurisdiction of the municipality or county nominating the area as an enterprise zone there are three enterprise zones in existence that were nominated as enterprise zones by the governing body of that municipality or county.

(c) Documentation. For the purpose of showing that an area is qualified to be designated as an enterprise zone, the applicant must submit documentation, including the source, methodology, and certification of the data by the person or persons responsible for its preparation. The applicant may, subject to the approval of the department submit data, analysis, or other information which is generated locally by the applicant or on behalf of the applicant. The department will consider current any documentation, if at the time an application is received by the department, such documentation was the most current data that was available not more than 90 days preceding the date the application was recieved by the department.

(1) Unemployment data. The average rate of unemployment for the area nominated during the most recent 12 month period for which data is available from the Texas Employment Commission must be at least 1½ times the local, state, or national average for that period. The average rate of unemployment for areas located within a metropolitan statistical area (MSA) means the rate for that metropolitan statistical area. The rate for areas located within a non-metropolitan statistical area means the rate for the county where the area is located Computation of the average unemployment rate for the proposed enterprise zone will require choosing the smallest area including the zone for which unemployment data is available. When MSA or county-level data is used, and the proposed zone is included partially within more than one MSA or county, the applicant shall calculate the average unemployment rate using figures for each MSA or county which includes part of the zone, in proportion to the total zone population residing within each MSA or county.

(2) Income data. If a proposed zone includes portions of more than one city or county, the median income should be calculated using figures for each city or county which includes part of the zone, in proportion to the total zone population residing within each city or county. To determine a low-income poverty area, an applicant may use the standard for designation of pockets of poverty under the Federal Housing and Community Development Act, Title I. For this purpose, a low-income poverty area is one in which 30% of the residents have an income below the national poverty level as determined by the Federal Office of Management and Budget.

(3) Chronic abandonment or demolition or substantial tax arrearages. To qualify, the applicant must demonstrate to the department that 25% or more of the structures in such area are found by the governing body to constitute substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitute a substandard, slum, deteriorated, or deteriorating structure, the governing body of the applicant may consider as substandard a structure which:

(A) is abandoned;

(B) does not have plumbing;

(C) has been condemned or cited

for building or fire code violations by appropriate city authority;

(D) is in an inadequate state of repair under applicable public health, safety, fire, or building codes;

(E) is the subject of a tax or special assessment delinquency stated as a percentage of total taxes assessed, which exceeds the fair market value of the land involved and the improvements thereon; or

(F) is functionally or economically obselete as determined by a qualified appraiser.

(c) Citizen participation. The department will not approve the designation of an area as an enterprise zone unless:

(1) the governing body of the applicant shall first notify the department of the date it will hold a public hearing as required under the Act, §5(b) and these sections for the purpose of nominating an area as an enterprise zone. The notice to the department shall be given in writing not less than 14 days prior to the date of the public hearing; and

(2) notice of such hearing is given to the public by publishing once a week for two consecutive weeks in a newspaper of genral circulation in the municipality or county or combination of municipalities or counties. Such notice shall contain a description of the area proposed by the municipality or county or combination of municipalities or counties to be designated as an enterprise zone, and the date, time, and location of such hearing. The notice shall also state that all interested parties, including residents of the proposed zone, are encouraged to present their views at the hearing. The hearing must include a presentation on the proosed location of the zone and the provisions for any tax incentives applicable to business enterprises in the zone.

§176.4. Application Contents for Designation of Enterprise Zones.

(a) Each application for designation of an enterprise zone must contain the folowing information and documentation, as aplicable, and tabbed in the order listed below. If a certain tab is not applicable, please state.

(1) The participants. The application must list the name, street, mailing address, and telephone number of each of the following:

(A) the applicant governing body or bodies, applicant governing body or bodies' representative;

(B) if any, the administrative auhority, the administrative authority's representative; and

(C) if any, the neighborhood enerprise association, neighborhood enterprise association's representative

(2) The applicant. If a joint application is being submitted by a municipality, county, or combination of municipalities or counties, the information must be provided for each entity. The application must contain the following information and documentation concerning the applicant:

(A) the name, street address, mailing address, and telephone number of the applicant governing body;

(B) a certified copy of the resolution of the governing body of the applicant nominating the area within its jurisdiction as an enterprise zone under the Act, containing the information set forth in Act, §6 and designating a liaison. The resolution may include nomination of more than one zone area within the limits of the Act and within the jurisdiction of the applicant governing body to be filed with separate zone applications;

(C) if this is a joint application, a description and copy of the agreements between joint applicants providing for the joint administration of the zone; and

(D) the procedures for negotiating with communities impacted by the zone and with qualified businesses in the zone.

(3) Zone aminsitration. The application must contain the following information and documentation concerning administration of the zone:

(a) a brief description of how the zone will be managed, including the unit or department within the municipality or county responsible for oversight of zone activities and person or persons responsible for zone administration within the municipality or county;

(B) a description of the administrative authority, if any, including a list of members with representation, street, mailing address, and telephone number of each member; and

(C) a description of the functions and duties of the administrative authority, if any, including decision-making authority and the authority to negotiate with affected entities

(4) The neighborhood enterprise association, if any. The application must contain the following information and documentation concerning the neighborhood enterprise association, if any:

(A) a description of the neighborhood enterprise association, including a list of officers, with the street, mailing address, and telephone number of each;

(B) a statement describing the functions, programs, and services to be performed by designating neighborhood associations in the zone at the time of application; and

(C) a copy of the proposed agreement between the neighborhood enterprise association and the applicant.

(5) The zone. The application must contain the following information and documentation concerning the proposed zone:

(A) a map of the proposed enterprise zone location which clearly shows zone boundaries, including existing streets and highways;

(B) an analysis and any supporting documents and statistics demonstrating that the proposed zone area qualifies for designation as an enterprise zone under the Act;

(C) a statement setting forth the economic development and planning objectives for the zone;

(D) an estimate of the economic impact of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county; and

(E) in the case of a joint application, a statement detailing the need for a zone covering portions of more than one municipality or county.

(6) The local business incentives. The application must contain the following information and documentation concerning any incentives to be provided by the local government:

(A) a statement detailing any tax, or other incentives to be provided in the zone, as described in the resolution; and

(B) a statement detailing any incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone, other than those provided in the designating ordinance, that are not to be provided throughout the municipality or county.

(7) Public hearings The application must contain a transcript of all public hearings on the zone, including copies of the published notices and copies of the publisher's affidavits.

(b) The department may require additional information at any time for evaluation purposes.

§176.5. Requirements for Designation of Enterprise Projects.

(a) The department may not designate a nominated qualified business an enterprise project unless it determines that:

(1) the business meets the requirements set forth in Act, §3(a)(9) and this chapter;

(2) the qualified business is located in an enterprise zone having an unemployment rate of not less than 1½ times the average state unemployment rate at the time of project application.

(3) the applicant's governing body or bodies have demonstrated that a high level of cooperation between public, private, and neighborhood entities exists in the zone; and

(4) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant for development and revitalization of the zone.

(b) The department will not designate a qualified business as an enterprise project if in the enterprise zone there are two enterprise projects that were designated during the current fiscal year.

§176.6. Application Contents for Designation of an Enterprise Project. The application for designation of an enterprise project must contain the following information and

documentation, if applicable. If a joint application is being filed by one or more municipalities or counties, the information must be included for each applicant governing body.

(1) The participants. The application must contain the name, street, mailing address, and telephone number for each of the following involved in the designation of qualified businesses as enterprise projects:

(A) the applicant governing body, applicant governing body's representative;

(B) the qualified business, qualified business's representative;

(C) if any, the administrative authority, the administrative authority's representative; and

(D) if any, the neighborhood enterprise association, neighborhood enterprise association's representative.

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) a description of the applicant, including the name, street, mailing address, and telephone number of the applicant governing body;

(B) a certified copy of a resolution from the applicant governing body nominating the qualified business for designation as an enterprise project containing the findings in Act, §10(c)

(C) a complete description of the conditions in the zone at the time of project application that constitute pervasive poverty, unemployment, and economic distress for purposes of Act, §4(b);

(D) a description of each municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the zone in which the qualified business is located including:

(i) any agreements made since the designation of the zone between affected entities;

(ii) minutes of meetings or other written documents that outline the means of establishing cooperation and communication between any affected entities in the zone where the project will be located; if regular meetings are scheduled, state when the meeting will occur; and

(E) a description of the local effort made by the municipality or county, the administrative authority, if any, the qualified business, and other affected entities to achieve development and revitalization of the zone as described in Act, §10(h).

(3) The project. The application must contain the following information and documentation concerning the proposed project. Any analysis or breakdown, where applicable, should show benefits to economically disadvantaged individuals:

(A) A brief description of the project, location and intended use;

(B) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone for at least the first two years of the project, including:

(i) the anticipated number of new jobs it will create, including a statement indicating the number of full time employees working for the business and the number of those employees residing in the zone or the number of employees that are economically disadvantaged individuals;

(ii) the number of jobs to be retained;

(iii) types of jobs created or retained;

(iv) estimated annual payroll of new or retained jobs;

(v) the amount of investment to be made in the zone including estimated project costs and sources of payment;

(vi) approximate date of commencement and completion of the project; and

(vii) a description of the qualified business including the following:

(I) description and introduction of the business, including the name and location, legal structure, principal owners, nature of the business, and history of the business. If the business is a franchise, the department will require a certified copy of the document from the applicable governing unit(s) certifying the franchise or subsidiary of a new or existing business as a qualified business. The department will also require a certified statement from an authorized representative of the franchise or subsidiary that it is located entirely in the zone and that it maintains separate books and records of the business activity conducted in the zone;

(II) summary of future plans, including short and long range plans to include any expansions in the zone; and

(C) an analysis of the social impact that the designation of the qualified business as an enterprise project would have on the zone.

(4) The zone. The application must contain the following information concerning the zone:

(A) an analysis and any supporting documents demonstrating that the project is located in a zone with an unemployment rate of not less than 1½ times the average state unemployment rate;

(B) a brief historical description of the trade or business conducted in the zone and its function; and

(C) a description which includes the the types of projects that have been completed within the last year of designation of the zone, demonstrating the cooperation among the the public and private sectors; and information on the number of jobs created and revenue generated as a result of the projects.

§176.7. Certification of Neighborhood Enterprise Associations.

(a) Individuals residing in an enterprise zone may establish, under Act, §21 a neighborhood enterprise association. Following organization of the association, its board of directors must apply to the governing body for certification as a neighborhood enterprise association. After granting its certification, the governing body shall forward the application to the department for the department's final certification.

(b) The application for certification of a neighborhood enterprise association must include the following:

(1) a certified statement signed by chief executive officer of the association which contains the following information:

(A) that the proposed association is the only one for the geographic neighborhood area being represented;

(B) that the association membership is composed of residents of the enterprise zone;

(C) that the association is a nonprofit corporation organized under the Texas Non-Profit Corporation Act;

(D) that the association is eligible for federal tax exemption status under the Internal Revenue Code of 1986, §501(c);

(E) that all registered voters of the association's neighborhood area were sent by the same means as for the service of process:

(i) an explanation of the proposed new association and their rights in it; and

(ii) a copy of the association's articles of incorporation and bylaws;

(2) a map showing that the geographic neighborhood area has a continuous boundary, exclusive of lakes and waterways;

(3) a listing of the officers, including the chief executive officer, the board of directors, including the street, mailing address, and telephone number of each;

(4) a certified copy of the articles of incorporation and the bylaws of the association;

(5) a certified copy of the governing body's resolution granting certification as a neighborhood enterprise association.

(c) Neighborhood enterprise association project approval. The neighborhood enterprise association may implement projects, other than those enumnerated in the Act by submitting an application to the governing body and the department for approval of the specific project or activity Applications submitted for approval to the department must describe the nature and benefit of the project, including:

(1) how it will contribute to the self-help efforts of the residents of the area involved;

(2) how it will involve the residents of the area in project planning and implementation;

(3) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project;

(4) how it will enhance the enterprise zone in one of the following ways:

(A) by creating permanent jobs;

(B) by physically improving the housing stock

(C) by stimulating neighborhood business activity; or

(D) by preventing crime.

§176.8. *Approval Standards.*

(a) Final approval standards for designation of enterprise zones. Within 14 days of final approval of the designation of a zone by the board, the staff shall present the form of the negotiated agreements to the governing body or bodies of the applicant. Such agreements must include designation of the zone and the administrative authority, if any, and its functions and duties and any other information required under the Act and this chapter. The department shall complete the negotiations and sign the agreements in accordance with the Act, §9(c).

(b) Approval standards for designation of enterprise projects. The department shall designate qualified businesses as enterprise projects on a competitive basis. Applications for designation of Enterprise Zone Program Page 26 of 29 10 TAC 176 enterprise projects will be accepted during the following application deadlines:

(1) For the fiscal year ending August, 1988, the application deadlines are May 13, 1988 and July 8, 1988. No more than five projects will be designated during the first application period with the remaining fiscal year allowable projects to be designated during the last period. The deadlines for fiscal year 1989 and subsequent fiscal years will be published in the Texas Register at least 60 days in advance of such deadlines.

(2) In determining which qualified businesses will be designated enterprise projects, based on relative factors as determined by the department, the department shall base its decision on a weighted scale with 60% dependent on the economic distress of the enterprise zone in which a proposed project is located and 40% dependent on the local effort to achieve development and revitalization of the enterprise zone.

(A) Economic distress. This evaluation is designed to measure the level of economic distress as indicated by such things as high levels of poverty, unemployment, job and population loss, and general distress. In addition, the evaluation criteria is designed to assess the overall potential impact that the project is likely to have on the distress factors identified within the zone, as well as impact within the applicant's jurisdiction at large.

(B) Local effort. This evaluation criteria is designed to measure the level of local support on the part of a public entity and a private entity.

(c) Period for which designation is in effect.

(1) An area may be designated as an enterprise zone for a maximum period of seven years. Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) September 1 of the 7th calendar year following the calendar year in which such date occurs; or

(B) following a public hearing by the board, the date the department removes the designation of zone for the following reason:

(i) the area no longer qualifies for designation as an enterprise zone as forth in the Act, §4, or this chapter; or

(ii) the department determines that the governing body has not complied with commitments made in the resolution nominating the area as an enterprise zone.

(2) A qualified business may be designated as an enterprise project for a maximum period of five years. The designation of a qualified business as an enterprise project shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) five years after the date the designation is made or

(B) following a public hearing by the board, the date the department determines that the qualified business is not in compliance with any requirement for designation as an enterprise project.

(d) Approval standards for certification of Neighborhood enterprise associations. The department will review applicants submitted as certified by local governing units and may grant final certification as set forth in the Act, §21.

§176.9. *Reporting Requirements.*

(a) Annual reports Each municipality, county, or combination of municipalities or counties that authorized the creation of an enterprise zone shall submit an annual report to the department on or before March 1 of each year. The report must be bound and contain the information listed in the Act, §23. If such report is not received by the deadline, the department may, following a public hearing, consider termination of the designation of the enterprise zone.

(b) Other reports or documents. Each municipality, county, or combination of municipalities or counties that authorized the creation of an enterprise zone shall notify the department of any change in fact or circumstance which may bear on the continued qualification for designation of an enterprise zone or enterprise project. The department shall be notified within 30 days of the amendment or changes made to agreements and membership between the applicant, the neighborhood enterprise association, administrative authority, and the qualified business.

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 Janaury 29, 1988

TRD-8801112 J. William Lauderback
Executive Director
Texas Department of Commerce

Effective date: February 24, 1988
Proposal publication date. December 4, 1988
For further information, please call (512) 472-5059.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

★ 16 TAC §11.221

The Railroad Commission of Texas, Surface Mining and Reclamation Division, adopts an amendment to §11.221 without changes to the proposed text published in the August 7, 1987, issue of the Texas Register (12 Tex Reg 2546). The public comment period was extended to October 16, 1987, (12 Tex Reg 3399) and to November 18, 1987, (12 Tex Reg 3940) in response to requests from interested parties.

No comments were received regarding adoption of the proposed text of §11.221 as published However, numerous comments were received regarding several of the specific revisions to the state program proposed for adoption by reference in this rulemaking action.

Of 102 regulations proposed for amendment, 44 received public comment and are addressed in this final adoption order, which incorporates the four commission interim adoption orders dated November 23, 1987, January 11, 1988, January 18, 1988, and January 25, 1988.

The amendment to §11.221 adopts by reference specified revisions to the state program (coal mining regulations) concerning the following.

(a) Miscellaneous revisions. The amendments will make the Texas program no less effective than the federal program, which has been amended by the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM), concerning backfilling/grading, bonding, coal mine waste, enforcement, excess spoil fills, experimental practices/exploration, fish/wildlife, hydrology, permanent/temporary impoundments, permitting, reclamation, siltation structures, small operator assistance, special categories of mining, underground mining, and definitions.

(b) Use of explosives. The amendments incorporate more recent technical parameters, and place increased responsibility on design professionals, such as certified blasters, in establishing design standards for the use of explosives in Texas coal mining operations. Compliance with these revised standards will

help prevent unnecessary property damage and will assist operators in maintaining responsible relationships with residents and landowners adjacent to mining operations.

(c) Training, examination, and certification of blasters. The amendments establish standards and procedures for the certification of blasters by the commission.

(d) Self-insurance. The Texas Surface Coal Mining and Reclamation Act, §24, provides that on the basis of evidence satisfactory to the commission an applicant may be allowed to be self-insured. In the absence of state self-insurance criteria, the amendments adopt the commission's self-bonding financial test standard as one standard for self-insurance purposes.

(e) Protection of historic properties. On February 10, 1987, OSM adopted final regulations concerning the consideration which must be accorded historic properties during the permitting of surface coal mining operations in response to In re: Permanent Surface Mining Regulation Litigation II (Number 79-1144, DDC 1985). The amendments incorporate those pertinent provisions not previously addressed in commission Rule Adoption Order Number SMRD 1-87.

(f) Two-acre exemption. On May 7, 1987, the President signed Public Law 100-34, which, effective June 6, 1987, deleted the two-acre exemption from the Surface Mining Control and Reclamation Act of 1977 (30 United States Code 1201 et seq.) The amendments delete the two-acre exemption from the commission coal mining regulations.

(g) Permit fees. The amendments update commission regulations to incorporate the fee schedule now set out in the Texas Surface Coal Mining and Reclamation Act, §18.

(h) Renumbering. The prefix "051.07.04" used in numbering each substantive coal mining regulation is no longer necessary and has no reference value. The amendment replaces this seven-digit number with a three-digit number which identifies the part of the state program regulations in which each regulation is located. The sequential numbering of the regulations will remain unchanged.

In accordance with 30 CFR 732.17, the proposed amendments to the state program were submitted to the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM) by letter dated July 31, 1987. OSM advised the commission by letter dated November 12, 1987, that the amendments as proposed are consistent with federal standards, with the exception of twelve specific comments regarding individual regulations. Applicable OSM comments are addressed by the commission in this final adoption order. Subsequent relevant OSM comments, if any, will be addressed in a future state rulemaking action.

No comments were received regarding the following enumerated coal mining regulations: .002, .003, .022, .102, .107, .116, .126, .14?, .172, .173, .188, .200, .210, .220, .230, .232, .237, .238, .243, .312, .317, .330, .339, .353, .357, .360, .361, .371, .375, .377, .390, .500, .509, .511, .512, .514, .519, .522, .526, .527, .528, .529, .530, .531, .551, .562, .565, .600, .680, .682, .695, .700, .701, .702, .703, .704, .707, and .708.

Comments regarding other proposed amendments to the coal mining regulations were received from the Citizens Action Program (CAP), City of Austin, Lower Colorado River Authority (LCRA), United States Department of the Interior-National Park Service, OSM, United States Department of Agriculture-Soil Conservation Service (SCS), State Historic Preservation Officer (SHPO), Texas Air Control Board (TACB), Texas Department of Health, Texas Mining and Reclamation Association (TMRA), Texas Parks and Wildlife Department (TP&WD), and Texas Utilities Mining Company (TUMCO).

The comments are on file and available for public inspection in the Office of the General Counsel, Surface Mining Section, 1701 North Congress Avenue, Austin. The comments were in favor of the proposed amendments in part and suggested changes in other areas.

Comments were received regarding the following amendments concerning bonding. The amendments are hereby adopted as indicated.

OSM recommends that language be added to §.301(b) to clarify that the succeeding increments to be initiated and bonded must not be during the initial term of the permit. The Railroad Commission of Texas (RCT) concurs, and revises proposed §.301(b), commencing with the second sentence, to read: "As operations on succeeding areas are initiated and conducted, the permittee shall file with the commission an additional bond or bonds to cover such areas in accordance with this section. The bond or bonds shall not be for an area that is smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term."

In 1983, OSM promulgated regulations at 30 CFR 800.11(b) which allowed incremental or phased bonding, or the posting of bond for an area smaller than the entire area to be mined in a given permit term. The Federal District Court for the District of Columbia, in *In Re: Permanent Surface Mining Regulation Litigation (II)*, Number 79-1144 (D.D.C. 1984) remanded those provisions as being contradictory to the Surface Mining Control and Reclamation Act of 1977 (30 United States Code 201 et seq.). Section 301(b), as revised herein, is in conformance with the court decision and is no les effective than 30 Code of Federal Regulations 800.d11(b).

The Texas Mining and Reclamation Association (TMRA) and OSM recommend in §313(a)(2), line 14, that the words "suspended solids" be retained and not changed to the word "sediment" as proposed. RCT concurs. The reference should continue to be to "suspended solids" in order to remain consistent with EPA effluent standard definitions, and to be no less effective than OSM regulations at 30 Code of Federal Regulations 800.40(c)(2).

TMRA recommends in §.313(a)(2), line 20, that a period be inserted following the word "Act", and that the words "Where a silt dam is to be retained as a permanent impoundment," be inserted preceding "the portion...." RCT concurs, and incorporates that revision. This revision will be consistent with OSM regulations at 30 Code of Federal Regulations 800.40(c)(2).

Comments were received regarding the following amendments concerning enforcement. The amendments are hereby adopted as indicated.

OSM recommends that §.672 be clarified to require mailing of information to be at RCT expense and to require a description of material available to be mailed and the procedure for obtaining such information to be maintained at a federal, state, or local government office in the county where mining is occurring or proposed to occur as required at 30 Code of Federal Regulations 840.14(c)(2). RCT concurs, and incorporates that revision by adding paragraphs (1) and (2) to §.672(b) as follow.

(1) A description of the information available for mailing and the procedure for obtaining such information will be maintained for public inspection at a federal, state, or local government office in the county where the mining is occurring or proposed to occur.

(2) Copies of subject information may, at the option of the commission, be provided promptly by mail to a requestor who is a resident of the area where the mining is occurring or is proposed to occur, at no expense to the resident.

Paragraph 672(c) will remain unchanged. This revision will allow interested persons reasonable access to the subject information, and will be no less effective than the OSM regulations at 30 Code of Federal Regulations 840.14(c)(2).

Comments were received regarding the following amendments concerning experimental practices and exploration. The amendments are hereby adopted as indicated.

TMRA recommends in §.327(f) that the present language be retained without change. While the proposed revision would conform to the language of 30 Code of Federal Regulations 815.15(e)(1), the RCT proposal fails to reflect the exemption contained in 30 Code of Federal Regulations 700.11(a)(2). RCT does not concur. The applicability of the provisions in §.327 are described in §.325, which is not being amended. It is not necessary to include that same information in both

sections The amendment, as proposed, conforms §.327(f) to OSM regulations at 30 Code of Federal Regulations 815.15 (e)(1) and makes it no less effective than the OSM regulation.

Comments were received regarding the following amendments concerning permitting. The amendments are hereby adopted as indicated.

TMRA recommends in § 100(c) that the word "renewal" be deleted from the proposed language Without additional clarifying language, this subparagraph might be read to place the burden of proof for a renewal of an existing permit on the operator which is inconsistent with the specific language of § 227 RCT does not concur Section 227 does not grant an automatic, unconditional right of renewal to all permit holders. It does provide that the commission may not arbitrarily award an existing permit to another applicant if the original permittee is in compliance with commission permit and renewal application requirements

TMRA suggests that in §.216(p) the reference to § 390 should be to § 399 and that because the phrase "longterm, intensive agricultural postmining land use" is not defined in the regulations, the intent of subparagraph (p) is unclear. RCT does not concur The requirements of § 399 are addressed separately under §.216(m) which is not being amended Section .216(p), as proposed, is concerned with whether the specific revegetation requirements of § 390 or § 555 have been satisfied.

Comments were received regarding the following amendments concerning underground mining The amendments are hereby adopted as indicated

TMRA recommends that in § 187(b)(4), the second sentence read "A demonstration of the suitability of topsoil substitutes or supplements...." In the seventh line, the word following percent should be "coarse" rather than "course," and the word "and" after "topsoil" in line 4-should be deleted because topsoil is presumed to be suitable. RCT concurs, and incorporates these revisions in this order

TMRA suggests that in § 194(a)(3), the third line should read "affect the likelihood and extent of subsidence and . . " RCT concurs, and incorporates this revision in this order

TMRA recommends in .517(a)(2) that the word "qualified" be deleted where it precedes the term "registered professional engineer". If a person is licensed to practice as a registered professional engineer, the word "qualified" is redundant since there are no objective criteria for the RCT to refer to to determine the qualification of such persons. RCT does not concur. The federal regulations require that the design of all impoundments be certified by a qualified registered engineer experienced in the design and construction of impoundments The use of the word "qualified" conforms this amendment to the present use of that word elsewhere in § 517 The amendment, as proposed, intends to relate "qualified" to the criteria of "experienced in the design and construction of impoundments." A new definition of the term "registered professional engineer" is proposed by the Commission in this rulemaking under § 008. That definition does not address the experience desired under § 517

TMRA recommends in § 517(g) that sentences be deleted that begin "The professional engineer or specialist shall be experienced in the construction of ..." because such language is redundant If a person is qualified to perform certain work, no further inquiry need be made by the RCT to determine whether such person is experienced in such work RCT does not concur, for the reasons set out under § 517(a)(2) Also, a new definition of the term "professional specialist" has been proposed by the commission in this rulemaking under § 008

TMRA and OSM suggest that in § 547(b) the opening words should be "No underground mining activity ..." RCT concurs, and incorporates that revision in this order Section 547(b) is found in Part 817, which pertains to performance standards relevant to underground mining activities.

Comments were received regarding the following amendments concerning use of explosives. The amendments are hereby adopted as indicated

TMRA recommends that in §.358(a), line 1, the word "blasting" be replaced by the words "a blasting program", and, in line 4, the words "permit area" be replaced by "blasting site." RCT concurs, and incorporates those revisions in this order. The same revisions will be incorporated in § 527 The term "blasting program" is more descriptive of what will normally occur, and indicates that once blasting begins, it will continue in accordance with the published blasting program schedule required by §.359. The large area covered by Texas surface coal mining and reclamation permits places most dwellings and structures "located within ½ mile of the permit area" well beyond any reasonable zone of danger. "Blasting site" is a more appropriate term, and it is also incorporated into §.359, which requires delivery of blasting schedules to each residence within 1/2 mile of the proposed blasting site.

TMRA recommends that in §.358(a), lines 5 and 6, the words "or to the Commission who shall promptly notify the operator" be deleted. RCT does not concur. The amendment, as proposed provides for notice directly to the operator, and also places a duty on the commission staff to promptly notify the operator when a request is received by the commission. Some persons may prefer to submit a request to the commission.

TMRA recommends that in §.358(d), the words "completed by the operator before the initiation of blasting" be replaced by "pursued with due diligence by the operator before the initiation of a blasting program." RCT does not concur. All preblasting surveys should be completed before blasting begins. This amendment makes §.358(d) no less effective than OSM regulations at 30 Code of Federal Regulations 816.62(e).

TMRA suggests that in §.359, subparagraphs (b)(2)(B) and (b)(2)(C) are defective as to form because the language to be deleted in each is enclosed in brackets but is not interlineated as required. RCT does not concur There is no special format requirement for the text of these amendments which are to be adopted by reference The commission chose to use this legislative format to make it easier to identify the revisions in these technical regulations This format has been well received, and subsequent to its use by the commission, the Secretary of State has adopted a similar format for state rulemaking, which requires only brackets to indicate deleted language

TMRA recommends that in §.362 the opening sentence be modified to add "where required" after "reports" on the second line. This would make it clear that seismograph readings and reports are not required for all blasting. RCT does not concur. That change is not proposed in this rulemaking, and is not necessary in that the term "where required" is already used in the present subparagraph .362(s) concerning seismographic records.

Comments were received regarding the following amendments concerning training, examination, and certification of blasters. The amendments are hereby adopted as indicated

TMRA recommends that in §.705, a new subparagraph (b)(6) be added to read: "For good cause shown by an applicant, the Director of the Surface Mining and Reclamation Division may waive the above time frames for certificate issuance, renewal, reissuance ..." The director should have the capability of waiving the specified time frames under conditions fully justified by an applicant. RCT concurs, and incorporates the following subparagraph (b)(6) in this order, to read as follows: For good cause shown by an applicant, the commission may consider a waiver of a time schedule required by this paragraph, upon the recommendation of the director of the surface mining and reclamation division.

TMRA recommends that §.706(a) be modified as follows: "Each applicant for the issuance or reissuance of a Commission Blaster Certificate shall pass a documented examination to determine his knowledge of the technical aspects of blasting operations and State and Federal laws and regulations governing the use of explosives. This examination shall be

administered in a form that evaluates but is not prejudiced by an applicant's individual communicative skills." TMRA members are aware of instances where highly qualified blasters may not have the verbal or written skills which would be necessary to become certified if this subparagraph is not modified. These people should not be disqualified from practicing in their area of expertise simply because of an inability to pass a written examination or, perhaps, because of their lack of proficiency with the English language. RCT does not concur. The commission does not anticipate this to be a problem under the language of §.706(a) as proposed.

OSM suggests that §.709 does not ensure the competence of the blaster in Texas laws governing the use of explosives. RCT does not concur. A blaster, under §.709, must be granted a commission blaster certificate prior to performing activities regulated by the coal mining regulations. That term, as defined in §.701(13) is a certificate issued to the person determined to be qualified under this Part. It is not the intent of §.709, as proposed, to automatically grant a commission blaster certificate to a person on the basis of certification in another jurisdiction alone. At this time, Texas does not have state laws that would be applicable under §.709.

TMRA recommends that §.710(a) be amended by adding "and establishment of the Commission Blaster Certification Program" after "this Part" in the second line. This would clarify that the requirements for certification would not be effective until after the Commission Blaster Certification Program is completed and in place. RCT does not concur. The Texas Surface Coal Mining and Reclamation Act, in §38, tasks the commission with promulgating rules requiring the training, examination, and certification of blasters. Several extensions have been received from OSM. Section .710 authorizes the Director of the Surface Mining and Reclamation Division to proceed immediately with preliminary matters. The reciprocity provisions of §.709 will be available not later than the effective date of this rulemaking.

Comments were received regarding the following amendments concerning permit fees. The amendments are hereby adopted as indicated:

TMRA suggests that in §.108, subparagraph (c) be deleted in its entirety. This subparagraph is not necessary and would require modification if in the future the State Legislature decides that these fees should be deposited in the State Treasury and credited to some other account. RCT does not concur. The language, as proposed, will allow persons referring to §.108 to be aware of the use of permit fees.

Comments were received regarding the following amendments concerning fish/wildlife. The amendments are hereby adopted as indicated.

TP&WD recommends adoption of §.380(b) as proposed as it would ensure protection of threatened or endangered species. RCT concurs.

TP&WD and OSM recommend deletion of the words "during the months of October, November, and December" from the second sentence of §.380(c) at lines five and six. RCT concurs, and incorporates that revision in this order. Restriction of the reporting requirement to that three-month period when eagles would normally be nesting in Texas is less effective than the OSM regulation at 30 Code of Federal Regulations 816.97(c) which does not place any time restrictions on discovery and reporting.

TMRA suggests that the third sentence of §.380(c) regarding the operator making a survey should be deleted in its entirety. RCT does not concur. The operator is most familiar with the area and its wildlife activities on a continuing basis.

TP&WD recommends rewording the third sentence of §.380(c) on lines 6-8 to read as follows. "The operator shall make a survey to determine whether nest sites have eagles present, the range and habitat used by eagles at occupied sites, and to determine whether other nesting sites are present. RCT concurs, and incorporates that revision in this order.

TMRA suggests that in the fourth sentence of §.380(c), the mine operator should be included in the group of those consulted with respect to appropriate actions that may need to be taken. RCT does not concur. The commission staff coordinate with the mine operator on a continuing and informal basis. It is not necessary to codify such consultation by incorporating it as a formal requirement in the regulation.

TP&WD recommends in the fourth sentence of §.380(c) at lines 8-10, replacement of the words, "where appropriate, with the state fish and wildlife agency" with "the Texas Parks and Wildlife Department". RCT concurs, and incorporates that revision in this order to make the reference more specific.

Comments were received regarding the following amendments concerning self-insurance. The amendments are hereby adopted as indicated.

TMRA recommends deletion of the proposed revision of §.311 because it would require mine operators to meet the financial tests for self-bonding in order to self-insure. RCT does not concur. The proposed revision is not intended to be a mandatory and exclusive restriction of §.311 in its present form. It merely provides an additional method which employs specific financial test criteria that a mine operator may utilize if desired. In order to clarify the intent, the revision is revised by this order to read as follows. The commission may, upon the request of an applicant that is self-bonded or determined to be eligible for self-bonding under §.309(j)(2), consider such applicant to meet the self-insurance requirements of this paragraph.

Comments were received regarding the following amendments concerning self-bonding. The amendments are hereby adopted as indicated.

The Texas Utilities Mining Company (TUMCO), the Lower Colorado River Authority (LCRA), and TMRA recommend that the commission's proposed amendments of §.309 be withdrawn for further consideration. They do not reflect the more recent, still pending OSM revisions to federal self-bonding regulations regarding third party guarantors published in the November 26, 1986, Federal Register; and they propose more stringent financial criteria for determining self-bond status. In addition, LCRA suggests that in §.309(j)(2), the specific financial ratios (total liabilities to net worth or current assets to current liabilities) are not appropriate for governmental entities such as LCRA, which, unlike a private business, is not subject to concerns of bankruptcy. RCT concurs, and hereby withdraws the proposed amendments to §.309. The Director of the Surface Mining and Reclamation Division recommends reproposal of amendments concerning self-bonding in a future rulemaking to address the concerns of TMRA, TUMCO, and LCRA. OSM has granted the director an extension until March 1988 regarding these proposed amendments.

Comments were received regarding the following amendments concerning protection of historic properties. The amendments are hereby adopted as indicated:

TMRA recommends that the commission withdraw from consideraton its proposed revisions to §§.111, .125, .151, .171, .191, and .216, concerning protection of historic properties. The present OSM counterpart regulations are under review and challenge in the United States District Court for the District of Columbia. RCT does not concur. The regulations in question have not been enjoined by the court. Specific concerns of the commission are addressed in this rulemaking under each applicable section.

The State Historic Preservation Officer (SHPO) commented favorably on §.111 and suggests at §.111(a)(3) that the terms "cultural resources" and "archeological resources" be defined in the regulations. RCT concurs, and will consider proposing appropriate definitions in a future rulemaking to afford the public an opportunity to comment on the definitions as proposed.

The SHPO comments favorably regarding §.125(b)(1) and (2); §.151(a) and (b); §.171(b)(1) and (2); and §.191(a) and (b). RCT concurs, and adopts the amendments as pro-

posed. However, the commission notes that in regard to the implementation of §.125(b)(2), §.151(b), §.171(b)(2), and §.191(b), it is the opinion of the commission that its legal authority is limited under federal law.

Section 106 of the National Historic Preservation Act assigns the responsibility for compliance with the Act and for protection of applicable historic sites to the federal agencies such as OSM The states do not have any direct responsibilities under §106. The commission through the OSM fiscal year 1987 Administrative and Enforcement Grant Condition Number 14 has agreed to assist OSM in meeting OSM's NHPA responsibility. Grant Condition Number 14 calls only for the commission to: consult with the Texas SHPO; notify OSM regarding the existence of historic sites, and comply with the requirements established by OSM to avoid or mitigate adverse effects upon such properties. The commission does not employ historians or archaeologists on staff. It is not the intent of the commission, by the adoption of these amendments, to assume the federal responsibilities and liabilities of OSM under the NHPA.

The SHPO recommends that §.151(b) be revised to include modifying clauses regarding the requirement (36 Code of Federal Regulations 800) for obtaining the comments of the advisory counsel on historic preservation prior to mitigation and treatment measures. RCT does not concur, for the reasons discussed in the previous paragraph. The advisory council on historic preservation, in its own regulations at 36 Code of Federal Regulations 800.4, discusses non-federal participation as follows. Although a federal agency may require non-federal parties to undertake certain steps required by these regulations as a prerequisite to federal action and may authorize non-federal participation under this section and in the consultation process under §800.6 pursuant to approved counterpart regulations, the ultimate responsibility for compliance with these regulations remains with the federal agency and cannot be delegated by it. It is the opinion of the commission that it would be inappropriate for a state regulatory authority to adopt a state regulation setting out coordination procedures between two federal agencies (OSM/ACHP) under the NHPA.

The SHPO comments favorably on §.216(p) and notes that while the commission, as OSM's delegate, has the ultimate responsibility for compliance with §106 of the NHPA, language should be added to §.216(p) to indicate the role of the advisory council on historic preservation. RCT does not concur, for the reasons discussed in previous paragraphs. The commission notes that the new criteria for permit approval or denial proposed as new §.216(p) is similar to the already existing criteria in §.216(e).

Therefore, in order to avoid potential conflict, and to maintain consistency within the section, the proposed amendment is revised by this order to be incorporated into an amended §.216(e) to read as follows. "The proposed operations will not adversely affect any publicly-owned parks or places included in or eligible for listing in the National Register of Historic Places, except as provided in § 071(c) This finding may be supported in part by inclusion of appropriate permit conditions, revisions in the operation plan, or a documented decision by the appropriate authorities that no additional protection measures are required under the National Historic Preservation Act" This revision eliminates the need to add a new, potentially conflicting paragraph (p) to § 216, and clarifies in § 216(e) the procedure for protecting historic sites in the Commission's state permitting process

Comments were received regarding the following amendments concerning definitions The amendments are hereby adopted as indicated

The Citizens Action Program (CAP), comments favorably that in §.008 the proposed definition of "affected area" clarifies the meaning of that term, especially by including reference to "physically altered condition"

TMRA recommends in the definition of "affected area" in §.008 deletion from line two of the words "used to facilitate" and from lines seven and eight, deletion of the words "any adjacent lands the use of which is incidental to surface coal mining and reclamation operations" RCT concurs, and hereby deletes "used to facilitate", as that term appears to be vague and in conflict with the definition of "surface coal mining operations" in §.003 However, the inclusion in that definition in §.003 of the phrase "any adjacent land the use of which is incidental to any such activities" warrants retention of the similar wording in the definition of "affected area" at lines seven and eight as proposed.

TMRA recommends in §.008 that the proposed revision of the definition of "coal processing plant or coal preparation plant" be withdrawn until after OSM has clarified the counterpart federal regulation. The proposed RCT amendment conforms to the current federal regulation at 30 Code of Federal Regulations 701.5 Both delete the words "and separated from its impurities", which raises a concern that the coal mining regulations could be construed to regulate the handling of coal within mine-mouth power plant facilities. Under the present coal mining regulations, the mere screening and crushing of coal is not interpreted to constitute "coal processing" since the coal is not thereby separated from its impurities. RCT does not concur. The amendment is not withdrawn However, to clarify the intent of the amendment, the proposed amendment is hereby revised by the addition of the following sentence: "It does not include facilities operated by the final consumer of the coal such as an electricity generating power plant, when the primary purpose of the facilities is to make the coal ready for conversion into a different energy form"

TMRA recommends in § 008 that the proposed definition of "substantially disturb" be withdrawn and not adopted for the reason that a change should not be made merely to track corresponding federal language. RCT does not concur The amendment as proposed incorporates additional specific references which help clarify the definition

CAP suggests that the commission could improve the definition of "substantially disturb" in § 008 by additionally defining the terms "significant" and "substantial" as: "to alter to such a degree that an area or resource is diminished, becomes unable to sustain itself or to regenerate the complex of [illegible] that occurred before mining or exploration" RCT does not concur. It would not be appropriate to include those definitions in this rulemaking however the commission will consider the feasibility of addressing these definitions in a future rulemaking to allow the public an opportunity to review and comment upon them

TMRA recommends under § 074 that the proposed definitions of "fragile lands" and "historic lands" be withdrawn from consideration for the same comments offered in previous paragraphs concerning protection of historic properties RCT does not concur, for the reasons set out in those same paragraphs In addition, the amendments as proposed incorporate specific references which help clarify the definitions

TMRA recommends deletion of subheading (c) on lines seven and eight of the definition of "cumulative impact area" in §.101. RCT concurs, and the deletion of subheading (c) is incorporated in this order The term "proposed operation", in subheading (a) is sufficiently broad to include the application addressed in subheading (c) As proposed, subheading (c) is unclear regarding applications which have been submitted to the commission and subsequently withdrawn or never approved

Comments were received regarding the following amendments concerning siltation structures The amendments are hereby adopted as indicated

TMRA recommends in § 344 deletion of subparagraph (a)(4) RCT concurs The sediment removal requirement is adequately addressed in § 344(h), which is not being amended

Comments were received regarding the following amendments concerning excess spoil fills The amendments are hereby adopted as indicated

TMRA suggests in §.363(j) at lines 4-5 deletion of the words "experienced in the

construcion of earth and rock fill embankments' RCT does not concur. These words are in the existing regulation and were not proposed for amendment in this rulemaking.

TMRA suggests in § 363(j) deletion of lines 14-20 beginning with "The certified report..."; in § 363(e) at lines 11-1 deletion of the words 'color photographs shall be taken of the underdrain system" and deletion of §.363(o) in its entirety. Certification by a professional engineer and field inspection of construction activities should make color photograph requirements unnecessary. RCT does not concur. Color photographs during construction will help identify the source of potential problems which may arise after construction is completed. This requirement was specifically identified by OSM as being less effective than the federal regulations at 30 Code of Federal Regulations 816.71

OSM recommends in § 363(j)(2) addition of the words 'and protective filter systems" following "placement of under drainage systems' RCT concurs, and incorporates that revision in this order

Comments were received regarding the following amendments concerning coal mine waste. The amendments are hereby adopted as indicated

(1) TMRA suggests in § 368(c) the word "qualified" be deleted as being redundant when used as a modifier of the term "registered professional engineer" RCT does not concur. The amendment as proposed conforms § 368(c) to the federal regulations at 816.81 which requires design certification of a disposal facility by a qualified registered professional engineer experienced in the design of similar structures. A new definition of the term "registered professional engineer" is proposed by the commission in this rulemaking under § 008. That definition does not address the experience required under § 368 to be "qualified" by being "experienced in the design of similar earth and waste structures"

CAP comments favorably that §.369 is improved by the amendment as proposed RCT concurs

TMRA recommends in § 369(a)(1) at line 3 insertion of the word "applicable" after 'during" In some local situations, all of the listed critical construction periods may not be necessary RCT does not concur Critical construction periods are specified in § 369(a)(1)(A)-(D) There is no intent in the amendment as proposed to provide exceptions

TMRA recommends in § 369(a)(2) at line 1 deletion of the word "regular". RCT does nor concur It is the intent of the commission that "regular" in § 369(a)(2) be interpreted as it is commonly used to mean "periodic" or "recurring" This is intended to assist the engineer responsible for the construction in his or her dicision regarding the establishment of inspection frequency

TMRA recommends in § 369(a)(4) at lines two-three replacement of the words 'provide ... certified report to the commission promptly after each inspection' by "maintain at the mine site and make available to commission staff on a quarterly basis inspection documentation certifying...' This approach keeps all construction records in one place and makes the information readily available for the commission's inspection staff RCT does not concur. It is the intent of the commission to receive the certified reports directly after each inspection The amendment to § 369(a)(4) as proposed does not prohibit the retention of duplicate records at the mine site.

TMRA suggests in § 369(a) deletion of paragraph (5) regarding photographs RCT does not concur. Color photographs during and after construction will help identify the source of potential problems which may arise in the future This requirement was specifically identified by OSM as being less effective in commission regulations than in the federal regulations at 30 Code of Federal Regulations 816.81

OSM recommends in § 376(d) at line two the insertion of the words intended to impound coal mine waste following the words waste or and at line four insertion of the words "design" between the words "6-hour' and "precipitation" RCT concurs. and incorporates those revision in § 376(d) in order to make this regulation no less effective than the federal regulations at 30 Code of Federal Regulations 816.84.

Comments were received regarding the following amendments concerning reclamation. The amendments are hereby adopted as indicated

United States Department of Agriculture, Soil Conservation Service (SCS) comments in favor of §.395(a) The comparison of ground cover and productivity to criteria, representative of reference areas and unmined lands in the area being reclaimed should offer the flexibility needed in determining reclamation success rather than strict comparisons to specific reference areas

RCT concures TMRA recommends deletion of the word and' from § 395(a) line 5 RCT concurs. and incorporates that revision in this order

TMRA recommends deletion of § 395 (b)(3)(*v*) because ground cover requirements for grazing land or pasture land are addressed in § 395(b)(3) and the proposed (b)(3)(*v*) does not constitute an exception to § 395(b)(3) SCS also comments that the proposed (b)(3)(*v*) appears to offer an exception to the 90 percent requirement in § 395(b)(3). RCT concurs, and deletes §.395(b)(3)(*v*) from the proposed amendment.

CAP suggests in §.396 that a tree in its third year in reclaimed soil may be alive but its future is still undetermined. SCS comments favorably that the requirements of §.396 as proposed snould insure an adequate number of trees that are sufficiently established to meet the land use objectives. RCT concurs that the proposed § 396 should not be revised.

TMRA recommends that the proposed amendment to §.396 be withdrawn until OSM can adopt final amendments to the counterpart federal regulation of 30 Code of Federal Regulations 816.116(b)(3)(*ii*), which OSM proposed to amend on July 27, 1987. RCT does not concur. The proposed amendment will not be withdrawn. However, in order to conform the proposal to that of OSM, the commission incorporates a revision to proposed §.396(c)(4) by replacing the word "eight" with the word "six" on line 4. This comports with the 60% requirement which OSM has proposed at 30 Code of Federal Regulations 816.116(b)(3)(*ii*)

Comments were received regarding the following amendments concerning backfilling/grading The amendments are hereby adopted as indicated

CAP comments favorably that the proposal will improve §.145.

SCS comments favorably that in §.145, as proposed, the addition of required demonstrations of topsoil and substitute suitability based on identified soil parameters should assist in the identification and use of the best available soil material for use as topsoil.

TMRA recommends in §.145(b)(4) replacement of ".384-389" by ' 334-.338" in line 3; deletion of "and" on line 4 between "topsoil" and "substitutes"; and replacement of "of" by "or" on line 4 between "substitutes" and "supplements". RCT concurs, and incorporates those revisions in this order

TMRA recommends in 7.145(b)(4) at line seven clarification of the term "different kinds of soils" RCT concurs, and revises the proposal by replacing the word "soils" with the words "soil series"

TMRA recommends in §.145(b)(4) at line 10 deletion of the words "or desirable". RCT does not concur. It is not the intent of the commission to limit the possible procedures to only these determined to be "necessary".

TMRA recommends in § 384(b)(2) at line three deletion of the words "both on and" to provide consistency with regulations on hydrologic balance. RCT does not concur. It is the intent of the commission in § 384(b)(2) that the placement of backfilled material minimize effects on the site as well as off the site.

Comments were received regarding the following amendments concerning permanent/temporary impoundments. The amendments are hereby adopted as in-

dicated:

TP&WD comments favorably regarding §.347.

TMRA recommends in §.347(a)(2) deletion of the sentence at lines five-eight requiring registered professional engineers or other qualified professional specialists to be experienced in the design and construction of impoundments. This language is redundant RCT does not concur. The federal regulations require that the design of impoundments be certified by persons experienced in the design and construction of impoundments.

TMRA recommends deletion of §§.347(a)(3), .347(a)(5), and .347(a)(6) because similar language was suspended by OSM in the counterpart federal regulation at 30 Code of Federal Regulations 816.49 on November 20, 1986. RCT concurs, and postpones to a future rulemaking consideration of these paragraphs.

TMRA suggests withdrawal of the proposed amendment to §.347(e) because slope protection is adequately addressed in the original text, and because "sudden drawdown" is an undefined term. RCT does not concur. The proposed amendment to §.347(e) adds more specific references regarding the importance of providing slope protection. The intent of the commission is that "sudden drawdown" is to be interpreted as it is employed in common useage.

TMRA recommends deletion of §.347(k) Inspection and monitoring are on-going procedures and §.347(k) is duplicative of these activities. Remedial measures should be undertaken immediately, with reporting hazards to the commission being a secondary response. RCT does not concur. Inspection and monitoring are not continuous activities. Hazards may be detected in the interim between such activities. The amendment to §.347(k) is not intended to require reporting to the commission prior to necessary remedial action on-site.

Comments were received regarding the following amendments concerning hydrology. The amendments are hereby adopted as indicated:

TMRA suggests in §.127(a)(1) that only major aquifers need to be discussed. RCT does not concur. The intent of the amendment is to address those aquifers which may be adversely impacted by mining. The geologic description will help determine the nature of the aquifer.

TMRA recommends in §.127(a)(2) deletion of the words "and other parameters" on line two. RCT does not concur. However, the proposed amendment is revised to read: "and other geologic parameters" in order to clarify the reference.

TMRA suggests that §.127(a)(3) should be revised to address only major or significant water supplies. RCT does not concur. The intent of the proposed amendment is to address surface and ground waters that are potentially impacted.

TMRA suggests in §.127(b)(4) that analysis of the coal seam should not be included. RCT does not concur. Proposed §.127(b)(4) replaces existing §.127(b)(1)(*v*) which currently requires analysis of the coal seam.

TMRA recommends deletion of §.146(a)(4)-(8) because these are duplicative of effluent standards addressed elsewhere in commission rules or regulated by other agencies. RCT does not concur. Proposed §.146(a) does not duplicate effluent standards, but calls for information identifying the measures to be taken to meet such standards.

OSM recommends in §.146(a)(5) at line three replacement of the word "sediment" with the words "suspended solids". RCT concurs, and incorporates that revision in this order.

TMRA recommends in §.146(c)(1) that only significant surface waters be addressed, such as streams with drainage areas greater than five square miles, and impoundments of greater than five surface acres. RCT does not concur. In order to determine the probable hydrologic consequences of the proposed activities, it is not feasible to restrict consideration to only significant surface waters.

TMRA recommends in §.146(c)(3) at lines four-six deletion of all words following the word "balance", because there is an implication that AFM and TFM materials will contaminate any groundwater present. RCT does not concur Proposed §.146(c)(3) requires supplemental information if there is an indication that AFM or TFM is present that "may" result in contamination.

TMRA recommends in § 146(d)(2) at line four deletion of the word "statistically", because without specific limits this term is too vague. RCT does not concur That term specifies the type of additional data that may be included regarding PHC determination.

TMRA recommends that proposed §.341(f) be withdrawn because it is duplicative of other regulations RCT concurs and incorporates that revision in this order

TMRA recommends in §.342(a)(4) at lines four and five deletion of the words "and related environmental resources" The referenced finding should address only water quality and quantity. RCT concurs, and incorporates that revision in this order

TMRA recommends in § 350(a)(4) at lines three-four deletion of the words "or more frequently as prescribed by the Commission" As groundwater changes are quite slow, it seems appropriate to leave monitoring at a quarterly frequency. RCT does not concur. While the commission would not normally require more frequent reporting, the intent is to provide that procedure in §.350(a)(4) should circumstances so require.

The revised coal mining regulations as adopted by reference are attached to and made a part of this order for all intents and purposes. They are hereby adopted under Texas Civil Statutes, Article 5920-11, §6 (Vernon Supp 1987) which authorizes the Railroad Commission of Texas to promulgate rules pertaining to surface coal mining and reclamation operations.

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

Issued in Austin, Texas, on February 1, 1988

TRD-8801031 Jim Nugent
Chairman
Railroad Commission of Texas

Effective date: March 22, 1988
Proposal publication date August 7, 1987
For further information, please call
(512) 463-7149

Part IV. Texas Department of Labor and Standards

Chapter 70. Industrialized Housing and Buildings

Subchapter A. Legislative Intent, Purpose, Scope, and Definitions

★16 TAC §70.4

The Texas Department of Labor and Standards adopts an amendment to §70.4, without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4626)

The amendment is required to clarify definitions.

The addition of definitions and the clarification of others resulting from this amendment, by adding definitions and clarifying others, will reduce confusion, increase efficiency, and provide for better enforcement.

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 5221f-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement

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

Issued in Austin, Texas, on January 28, 1988.

TRD-8801064 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date: December 18, 1987
For further information, please call
(512) 463-3128.

Subchapter C. Standards and Codes

★16 TAC §70.20, §70.21

The Texas Department of Labor and Standards adopts amendments to §70.20 and §70.21, without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4727)

The amendments make editorial changes to reduce confusion

The amendments will increase efficiency by clarifying types of codes referred to in the sections

No comments were received regarding adoption of the amendments

The amendments are adopted under Texas Civil Statutes, Article 5221f-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement.

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

Issued in Austin, Texas, on February 1, 1988

TRD-8801062 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date December 18, 1987
For further information, please call
(512) 463-3128.

Subchapter D. Administration and Enforcement

★16 TAC §§70.32-70.34, 70.37, 70.38, 70.41, 70.45

The Texas Deparment of Labor and Standards adopts amendments to §§70.32-70.34, 70.37, 70.38, 70 41, and 70.45. Section 70.34 is adopted with changes to the proposed text published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4886). The other sections are adopted without changes and will not be republished.

The amendments are necessary due to new statutory requirements and the need for more detailed procedures to enhance compliance.

The amendments provide more definitive procedures for the administration of the design review process, plant inspections, third party inspections, and sanctions and penalties to deal with substandard performance of council-approved third parties.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5221f-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement.

§70.34. Review and Approval of Designs and Plans.

(a) An approved design review agency or the department shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory construction codes in accordance with the interpretations, instructions, and determinations of the council. The reviews are to be performed or directly supervised by the design review agency's certified plans reviewers for that discipline (i.e., electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A design review agency's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.43 of this title (relating to The Criteria for Approval of Design Review Agencies.) The department or design review agency will obtain from the manufacturer such information as is necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory codes and the sections in this chapter.

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

(e) The department or design review agency will signify approval of a drawing, specification, calculation, or other document by application of the stamp of the council to each page thereof. An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design manual, compliance control manual, and on-site documentation. The original council stamp with original signature will be required on these pages. The signature on the original council stamp must be the signature of the manager or chief executive officer of the design review agency. The manager or chief executive officer of the design review agency must be registered in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of design review agencies established by the council. When the department acts as a design review agency, the original signature must be the signature of the chief engineer. The stamp shall not be placed on any designs, plans, or specifications which do not meet the requirements of the applicable mandatory state codes or the requirements of these sections. The manufacturer and the design review agency (or department) must keep copies of the approved documents. The DRA must keep a copy on file of all approved documents deleted or superseded from a design package for a minimum of five years. The manufacturer must make a copy available to the person performing in-plant inspections. A design review agency will forward one copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.

(f)-(h)(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 January 28, 1988.

TRD-8801063 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date: December 25, 1987
For further information, please call
(512) 463-3128.

Subchapter E. Fees and Reports

★16 TAC §§70.50-70.52

The Texas Department of Labor and Standards adopts amendments to §§70.50-70.52, without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4727).

The amendments will clarify reporting and filing requirements and will generate sufficient revenue pursuant to Article 5221f-1, §7(a).

The amendments require builders to file a report even in the case of no activity. TPIA/TPI must keep inspection reports for five years. Sufficient revenue will be generated for program administration.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5221f-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement.

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

Issued in Austin, Texas, on January 28, 1988.

TRD-8801060 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date: December 18, 1987
For further information, please call
(512) 463-3128.

Subchapter F. General and Miscellaneous

★16 TAC §70.103

The Texas Department of Labor and Standards adopts an amendment §70.103, without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4728).

The amendment is necessary to clarify existing language by including the manufacturer in the scope of the section concerning alterations and deviations.

The amendment clarifies who may not perform alterations or deviations from approved design packages an on-site construction documentation thereby making compliance and enforcement easier.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221f-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement.

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

Issued in Austin, Texas, on January 28. 1988

TRD-8801059 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date: December 18, 1987
For further information, please call
(512) 463-3128.

Chapter 75. Air Conditioning and Refrigeration Contractor License Law

★16 TAC §75.4

The Texas Department of Labor and Standards adopts an amendment to §75.4, without changes to the proposed text published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4402).

The Texas Department of Labor and Standards adopts this amendment in order to comply with legislative mandates of House Bill 175, 70th Legislature, 1987, requiring any corporation to present the department with a certificate of good standing from the state comptroller which shows that no delinquent taxes are due the state.

The section will function as a new requirement for applicants to receive a license to perform air conditioning and refrigeration contracting.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate rules and regulations necessary to effectuate the purpose of the Act.

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

Issued in Austin, Texas, on January 27, 1988.

TRD-8801065 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date. March 23, 1988
Proposal publication date: November 24, 1987
For further information, please call
(512) 463-3128.

★16 TAC §75.6

The Texas Department of Labor and Standards adopts the repeal of §75.6 without changes to the proposed text published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4341).

The repeal makes possible the simultaneous proposal of new §75.6.

The repeals deletes outdated information.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate rules and regulations necessary to effectuate the purpose of the Act.

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

Issued in Austin, Texas, on January 27, 1988.

TRD-8801066 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date November 13, 1987
For further information, please call
(512) 463-3128

The Texas Department of Labor and Standards adopts new §75.6, without changes to the proposed text published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4323).

The Texas Department of Labor and Standards adopts the new section to comply with modified insurance commission requirements for policy structures and limits.

The new section will require licensed applicants to provide proof of insurance in the specified amounts for the applicable class of license.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate rules and regulations necessary to effectuate the purpose of the Act

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

Issued in Austin, Texas, on January 27, 1988.

TRD-8801067 Larry Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: March 23, 1988
Proposal publication date: November 13, 1987
For further information, please call
(512) 463-3128.

TITLE 22. EXAMINING BOARDS

Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

Subchapter J. Fees and Late Renewal Penalties

★22 TAC §741.181

The State Committee of Examiners for Speech-Language Pathology and Audiology adopts an amendment to §741.181, without changes to the proposed text published in the November 13, 1987, issue of the *Texas Register* (12 TexReg 4244).

The amendments are necessary to cover increased costs in administering the speech-language pathology and audiology program. The amendments increase the application, initial license, dual initial license, renewal, dual renewal, and temporary certificate of registration license fees.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512j, §16, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning fees prescribed in connection with the licensing of Speech-Language Pathologists, Audiologist, Licensed Associates in Speech-Language Pathology, and Licensed Associates in Audiology.

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

Issued in Austin, Texas, on January 28, 1988.

TRD-8800897 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: March 1, 1988
Proposal publication date: November 13, 1987
For further information, please call (512) 458-7502.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Procedures and Policies

★25 TAC §§1.2, 1.5, 1.7

The Texas Department of Health adopts amendments to §§1.2, 1.5, and 1.7, without changes to the proposed text published in the October 6, 1987, issue of the Texas Register (12 TexReg 3592).

The amendments update and clarify the board's policies and procedures to comply with and implement with Senate Bills 168 and 1312, 70th Legislature, 1987, which became effective September 1, 1987.

The amendments clarify appointment of board members by adding language requiring that at least one board member be a physician who specializes in the treatment of disabled children; updates the board meeting rules by adding language for procedures that allow any person in attendance to record, by tape recorder or video camera, proceedings of any public meeting of the board or committees of the board; adds language which describes items for consideration in which executive sessions of the board or its committes are to be held; and describes the requirements and procedures for keeping and making available a certified agenda of the proceedings

No comments were received regarding the adoption of the amendments

The amendments are adopted under Texas Civil Statutes, Article 4418b, §1.05, which provide the Texas Board of Health with the authority to adopt rules for its own policies and procedures.

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

Issued in Austin, Texas, on January 28, 1988.

TRD-8800894 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date. February 18, 1988
Proposal publication date October 6, 1987
For further information, please call (512) 458-7236.

Chapter 31. Special Supplemental Food Program for Women, Infants, and Children

★25 TAC §31.2

The Texas Department of Health adopts an amendment to §31.2 without changes to the proposed text published in the December 15, 1987, issue of the *Texas Register* Section 31.2 adopts by reference the publication titled *WIC State Plan of Operations* as amended February, 1988.

The amendment modifies Section III of the state plan concerning the food delivery system by implementing cost reduction measures in order to be able to serve more eligible people with existing WIC food dollars. The WIC program will request rebate bids from infant formula manufacturers whereby the company submitting the best rebate offer per can be designated as the primary brand/manufacturer of milk and soy based formulas authorized for issuance. The amendment does not affect the special formulas authorized by the WIC program for infants with specific needs. The state government will save an estimated $15.1 million in food the first year and will be able to serve approximately 41,000 more clients per month with existing funds, thereby facilitating the expansion of the WIC program into additional unserved counties as a result of the implementation of this amendment.

The following is a summary of the comments from individuals and/or organizations concerning the adoption of the amendment. Included with the comments is a brief response by the Texas Department of Health.

Freedom of choice. The right to a freedom of choice was raised as a statement against sole source bidding of formula by several commenters. The department recognizes that choice based on brand preference would be impacted by its proposal. The department believes the substantial savings that a single source of formula would provide and the additional participants that could be served with those savings render the proposal for sole source prudent public policy.

Monopolistic policy. Several commenters stated that a sole source system for WIC infant formula purchases would create an environment conducive to a monopoly or would itself be a monopoly. The department disagrees that competitive bidding for a product creates a monopoly. Cor[illegible]tive bidding is used throughout governm[illegible] procure all goods and services of mater[illegible]due including prescription drugs. Since this system is recognized by federal management circulars and has been used for many years to obtain products without creating monopolies, it is unlikely that in this one area alone, infant formula for the WIC program, a monopoly would be created. In addition, the WIC program accounts for only 30% of the total formula sales in this state and nationally.

Potential distribution problems. Comments were received that potential distribution pro-

blems could arise if an insufficient supply of the contract formula was available or a tainted batch of formula was identified. The department believes that such emergency situations could be conveniently handled by its food delivery system. The current Texas food delivery system allows quick, easy, and inexpensive transition from multi-brand to sole source. A new formula card with a single brand will be used for the sole source formula while the original multi-brand card would be retained to use in special cases or in the event of a recall or insufficient stock situation

Discrimination against participants. Comments were received that a single source of formula would result in WIC participants being treated differently from non-WIC consumers and food stamps recipients. The department believes that the WIC program by its nature has always restricted the food choices that WIC participants have and thus have treated them differently from non-WIC consumers.

The WIC program, by federal regulations, limits not only the specific types of foods but also the specific brands that can be purchased.

Recalls of formula. Comments were received that a recall of formula by a sole source provider would be disruptive of WIC program operations. This issue is closely related to the topic of distribution problems. As explained previously, the department believes the Texas WIC food delivery system can conveniently handle emergency contingencies by expanding the use of its multi-brand formula cards that would normally be used only for issuance of exception formulas.

Price escalations. Comments were received that price escalations could occur in future years that would significantly erode the level of savings that are now being predicted for a sole source system. The department can not predict what prices might be in the future but feels that increases in a sole source system are no more likely than in the second and subsequent years of an open market system. The department is aware that wholesale formula prices have increased approximately every nine months for at least the past five years in the absence of competitive bidding for the formula purchased by the WIC program.

Loss of samples. commenters voiced concern over the lack of incentive for formula companies to continue providing free formula to clinics and hospitals if the WIC program adopts a sole source system. The department believes that sample formula will not cease to be offered to non-WIC clinics and hospitals.

The primary reason samples have been provided by the companies in the past was to give new mothers an opportunity to try their product hoping that they would continue the infant utilizing their brand. Since two-thirds of all infants are non-WIC participants in Texas, the logic behind the company's practice remains intact. It is just as likely that competition for the non-WIC market will heighten with the loss of WIC sales by some companies.

Recommendation by the American Academy of Pediatrics. Conflicting statements from commenters were received about the stance of the American Academy of Pediatrics (AAP) regarding sole source contracting for WIC infant formula. Some commenters stated the Academy was opposed to the proposition while others held the Academy favors sole source procurement. The department has obtained a copy of a policy statement issued by the AAP in October of 1986, which spoke against sole source bidding for WIC formula. However, the department obtained an edition of the "AAP News" dated February 1987, containing a revised position by the president of the AAP The revision contained statements that the AAP believed the WIC program should be expanded to include more children, and if that could be done by reducing the cost of the formula by a bidding process, the AAP would be supportive.

Rebates are unconstitutional. One commentor suggested that the Texas Constitution specifically forbids rebates. The department had its Office of General Counsel research the cited provision located at the Texas Consitution, Article 16, §25, to render an opinion. The Office of General Counsel has issued an opinion stating that the WIC rule, as proposed, is not violative of the Constitution.

Board of Health lacks statutory and appropriation authority. A comment was received that questioned the Board of Health's statutory and appropriation authority necessary to authorize a rebate plan and spend the rebated savings when received. The department has researched these issues and has received a ruling from the comptroller of public accounts that the department has such authority under the General Appropriations Act, Article V, §28.

Department must seek legislative direction to use rebate savings A commenter suggested that the department would require the direction of the Texas Legislature in order to use the rebated monies. The department feels this question is very closely related to the appropriation authority issue as explained earlier. However, the department has received written policy information, from the United States Department of Agriculture, which provides approximately 96% of the funds for the operation of the program, that rebates are properly classified as a food cost reduction and therefore a credit. The statement goes on to say that the rebates, as credits, retain their character as federal food program funds. These monies do not become state general revenue and can only be used to apply against allowable costs of the program

Bidding could reduce incentives for companies to do research. Comments were received voicing a concern that the formula companies might reduce their expenditure for research. The department can only assume that the formula company's original motivation for doing research was a desire to give their company a competitive edge while seeking to improve the health of the nation's infants Those national goals should not be affected by the decision of the State of Texas to seek competitive bids for its WIC program.

Breastfeeding is more cost effective Comments were received indicating that promoting breastfeeding is more cost effective than infant formula initiatives.

The department agrees and has always advocated and supported breastfeeding among WIC participants. The low incidence of breastfeeding, especially among low income women, is a result of the lack of support for the breastfeeding mother from society as a whole. While new breast feeding initiatives are being planned, the department remains concerned about the cost for the majority of infants who are now being formula fed

Prices will rise for non-WIC shoppers. A comment was received that non-WIC shoppers might experience a rise in prices due to the bidding of formula for the WIC program. The department does not believe this to be likely. If prices rise, they probably would have done so even in the absence of any action by the Texas WIC program. Wholesale prices determine to a large extent what retail prices are set at The wholesale price for formula is set nationally and not on a state by state basis. Past history has shown that the wholesale prices are raised by all of the major manufacturers about the same time to about the same level. However, competition for the non-WIC market should increase as companies try to recover lost market share.

Bidding will affect formula quality and physician/patient communications.

Comments were received that formula quality and the communication between the physician and the patient will decline. The department finds little basis for this concern. The quality of infant formula is regulated by the Infant Formula Act of 1980 which sets the standards for the industry. Additionally, under the proposal by the WIC program, an alternate formula may be prescribed by a physician for an infant that shows an intolerance to the contract brand. The physician would continue to play an important role in determining the best feeding alternatives, i.e., breastfeeding, iron-fortified formula, for their patients.

Bidding may set a precedent for other drugs. A comment was received that the WIC program's actions could be precedent setting and spread to other prescription items The department believes that competitive bidding is already well established and is pervasive throughout state and federal government

Prescription drugs are not immune from bidding and are currently included in the many items purchased competitively by the state.

Babies have varying needs.

Comments were received that all babies are not alike and have varying needs including their tolerance to specific formulas. The department agrees and knows that a small percentage of the program's infants will require an alternate brand of formula The bid proposal and resultant contract will contain a provision allowing the issuance of an alternate brand of formula for infants demonstrating an intolerance to the contract formula

State must provide additional administrative monies. A comment was received that the state will have to provide additional administrative monies to its local agencies if it hopes to use rebated savings to increase participation.

The department realizes that administrative monies are needed to fully implement rebate savings. Legislation was signed by the president on January 8, 1988, that would permit the conversion of some portion of formula rebates into administrative monies for the WIC program.

Rules governing alternate formula must be established. A commenter suggested that the state should establish specific rules to govern the conditions under which an alternate formula can be issued. The department concurs that a program policy will be required. Such policy would be developed by the department's staff prior to implementation of a primary brand of formula by the WIC program.
the burden of rule changes often fall on the shoulders of the local agencies. He recommended that the state not require additional reporting and record keeping at the local level. The department has not developed the reports and records necessary to account for a sole source formula rebate system. However, very little change is contemplated at the local level. Most accounting and record keeping will be an automated by-product of our current voucher processing system.

Demonstration project recommendation A commenter suggested that before implementing statewide, the state consider a demonstration project to work out all the details. The department will take this suggestion under advisement.

Task force recommended. Comments were received that suggested the establishment of a task force of local agency directors, physicians, etc., to study alternate methods of cost reduction and/or to monitor and report on the operation of the initiative to the board of Health. The department feels that public input has already been solicited and incorporated where possible

Past price increases warrant competitive practices. Comments were received indicating that formula company prices have gone up regularly and in tandem between companies. They felt that the price increases were excessive and warrant competitive bidding practices. The department concurs that prices have increased with regularity and far exceeded the inflation allowance awarded in the United States Department of Agricultural grants.

Unsupportable projections by formula companies. A comment was received that projections and assumptions made by the formula companies as criticisms against sole source, were not supportable with objective data. The department concurs that some assumptions made were without merit.

No difference between formulas. Several comments were received that suggested the formulas produced by all of the major manufacturers are very similar in their nutritional composition and are of equal nutritional value. Infant formula products are so tightly regulated that there is no medical advantage for using one company's product over another. Department officials and nutritionists concur. All of the major infant formulas provide adequate nutrition for the normal infant.

Issues have been clouded. One commenter stated that the real issue in the WIC infant formula debate has been lost in the shuffle. The issue is or should be what's best for the mothers and children. If the program is as benefical as most say it is, then the goal should be to serve as many eligible people as you can. The department agrees and has cited that goal as its primary impetus in the proposed rule change.

Federal funds may be reduced. A comment was received that the sole source rebate proposal was needed to keep federal funds from being reduced. The department recognizes that the new United States Department of Agricultural funding mechanisms will reward states who have low food costs by providing them with a greater percentage share of the national appropriation.

Savings are greatest under sole source proposal. A comment was received that the savings inherent in a sole source bid are greater than those that can be achieved with the open market system The department concurs that the savings appear to be considerably greater for Texas if a sole source system is adopted.

Savings from open market equals savings from sole source. Comments were received that offers have been made to Texas that would render an equivalent amount of savings in a open market system as are projected for the sole source proposal. The department does not agree. The market pricing data used to arrive at that conclusion was not found to be verifiable based upon an independent market survey specific to Texas WIC vendors. Additionally, other assumptions made including the degree of compliance to the contract brand were not well grounded. Finally, if all assumptions and projections made were correct, they applied only to an initial phase-in year. Thereafter, the savings from sole source far exceed an open market system

Developing an efficient program to serve more people is not the issue. One commenter stated that the central issue is which purchasing procedure most effectively meets the needs and protects the participants. The issue is not developing an efficient WIC program to serve more needy infants. The department disagrees. Texas has 41 counties with no WIC services whatsoever The department does not have the funds necessary to correct that deficiency without efficiency measures. If the department selects an alternative based upon protecting the participant's freedom of choice, the department could leave a large segment of our state without services.

The following organizations were in favor of the adoption of the proposal: the Texas Association of Local WIC Directors, the Texas Association of Community Health Centers; the Children's Defense Fund; the Center on Budget and Policy Priorities; the Texas Association of Community Action Agencies; the Texas Baptist Christian Life Commission; the Texas Catholic Conference; the Texas Conference of Churches; the Texas Maternal and Child Health Coalition representing Texas Impact, Central Texas Perinatal Association, Texas Alliance for Human Needs, and National Association of Social Workers/Texas; the WIC Directors from the States of Oregon and Tennessee; the Legislative Black Caucus; Hunger Awareness Action; and the Consumers Union.

The following organizations were against the adoption of the proposal: the Southwest Food Industry Association; the Texas Medical Association; The Texas Pharmaceutical Association; the Texas Osteopathic Association; and the First United Methodist Church of Fort Worth.

The amendment is adopted under Texas Civil Statutes, Article 4414b, §1.05; and the Omnibus Hunger Act of 1985, 69th Legislature, Chapter 150, Title II; Texas Codes Annotated, Human Services, Chapter 33; the Child Nutrition Act of 1966, 42 USCA §1786; and 7 Code of Federal Regulations Part 246, which authorize the Texas Board of Health to adopt rules covering the Special Supplemental Food Program for Women, Infants, and Children.

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

Issued in Austin, Texas, on January 28, 1988.

TRD-8800890 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 18, 1988
Proposal publication date: December 15, 1987
For further information, please call (512) 465-2640.

Chapter 37. Maternal and Child Health Services

Crippled Children's Services Program

★25 TAC §§37.81-37.84, 37.86, 37.88-37.90, 37.93

The Texas Department of Health adopts amendments to §§37.81-37.84, 37.86, 37.88-37.90, and 37.93. Sections 37.86 and 37.93 are adopted with changes to the proposed text published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4402). Sections 37.81-37.84 and 38.88-37.90 are adopted without changes and will not be republished.

The amendments expand, update, and clarify the program rules and provide guidelines for approval of inpatient rehabilitation facilities, and provide for case management as a service which must be provided by the Crippled Children's Services Program. In addition, these amendments provide procedures for implementation of insurance guidelines and permits, separate patient eligibility criteria, and service criteria for pilot studies.

A commenter express general support for the client centered concepts incorporated in the case management and eligibility guidelines in the proposed amendments.

Concerning §37.86(b)(1)(E), an official of a health maintenance organization suggested that health maintenance organiza-

tions are not set up on a cost reimbursement basis as defined under health insurance. The department agrees and has clarified the language to cover these organizations.

Concerning §37.93(6), a commenter suggested minor wording changes for clarification purposes. The department agrees and has clarified the language.

The commenters expressed support for the adoption of the proposed amendments, but requested some clarification in the language.

Names of those making comments are Evelyn F. Ireland, Texas Health Maintenance Organization Association and Carmen A. Quesada, Executive Director, Association for Retarded Citizens.

The amendments are adopted under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Board of Health with the authority to adopt rules concerning the Crippled Children's Program.

§37.86. Authorization of Services.

(a) (No change.)

(b) Use of other benefits. Under the provisions of the law, any health insurance or other benefits available to the patient must be utilized prior to the use of program funds.

(1) Health insurance.

(A) Any health insurance that provides coverage to the patient must be utilized before the program can pay for services. Providers must request authorization of service but must file a claim with the health insurance prior to submitting any claim to the program for payment. Providers are encouraged to submit claims to the program as soon as possible after receiving notification of third party payments or denials.

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

(D) Should any claim be rejected by health insurance on the grounds that the services were not pre-authorized or delivered in accordance with procedures that are required by the health insurance, the program will deny payment if following the procedures of the health insurance would have resulted in payment of the claim.

(E) Should the program pay a claim that health insurance could have paid but did not pay, the program may file a claim with the health insurance and recover its costs directly or may request the provider file a claim and reimburse the program should the health insurance policy, contract, or agreement restrict direct payment to the program.

(2) Liability cases. If a patient's medical condition has resulted from accidental injury or any other cause in which a claim against liability insurance could be filed or recovery of expenses incurred for damages against an individual or any other entity could be sought, services may be authorized. The program may, without obtaining consent or concurrence from any party, seek to recover its costs independently and directly through any recourse available or file an intervention action at the direction of the commissioner through the attorney general's office in any cause of action to gain reimbursement of expended state funds.

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

(f) Out of state services.

(1) (No change.)

(2) Exception: Exceptions may be made in those situations that develop in Texas where it is a financial hardship or clearly a great medical risk for a patient to be transported to an adequate medical facility in Texas when an out-of-state facility within 50 miles of the Texas border is closer. Under these circumstances, all program policies and procedures will apply, including the legal requirement that physicians and dentists who are licensed to practice in Texas and who are active Texas Medicaid providers be utilized.

§37.93. Payment of Services. No payment will be made for services not authorized by the program except as indicated in paragraph (8) of this section. Payment for any service authorized by the program may be made only after the delivery of the service. If a service has been authorized by the program for payment, the family must not be billed for the service or be required to make a pre-admission or pre-treatment payment or deposit. Providers and facilities must agree to accept established fees as payment in full although such fees may be below usual and customary charges.

(1) Claims, payment, denial, and rejection. All payments made in behalf of a patient will be for claims received by the program within 90 days of the date of service, or 90 days from the date of standard authorization, and/or within the submission deadlines listed in subparagraphs (B)-(C) of this paragraph, or as stated in paragraph (6) of this section. Claims will either be paid, denied, or rejected, generally within 45 days of receipt by the program and 30 days after July 1, 1987.

(A) (No change.)

(B) Denied claims are claims which are incomplete, submitted on the wrong form, or contain inaccurate information when originally submitted.

(i) (No change.)

(ii) If the claim is incomplete because it lacks the health insurance explanation of benefits (EOB), payment may be made if the claim copy and completed EOB's are received by the program as outlined in paragraph (3) of this section.

(iii) (No change.)

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

(2) Hospitals.

(A) Ratio of Medicare allowable costs to charges (RCC).

(i) Payments to hospitals will be adjusted by the hospital's indigent health care RCC, for the date and type of service provided.

(ii) All charges submitted to the program for inpatient or outpatient services will be reduced by the amount that is provided by other benefits covering the patient. The RCC will be applied to the total charges, excluding personal items, before deducting the payment from the payor of other benefits. An itemized billing detailing services rendered to the patient must be submitted with the payment claim form.

(B) Other methods of payment. The program may utilize other methods of payment to hospitals if the RCC is discontinued or if the program adopts a more cost effective method to pay for inpatient care. The program must give at least a 30-day notice to approved hospitals at any time there is a change in method of payment.

(3) Claims with health insurance coverage. Any health insurance that provides coverage to the patient must be utilized before the program can pay for services. Providers must file a claim with health insurance prior to submitting any claim to the program for payment.

(A) Health insurance denial. If a claim is rejected by health insurance, the provider may bill the program if the letter of denial is submitted with the claim form. If the denial letter is not available, the provider must include on the claim form the name and telephone number of the insurance company, the policy number, and name of the insured for each policy covering the patient, and the name of the insurance company employee who provided the information on the denial of benefits.

(B) Explanation of benefits (EOB's). The health insurance EOB's must accompany any claim sent to the program for payment if available. If unavailable, the provider must include on the claim form the name and telephone number of the insurance company, the amount paid, the policy number, and name of the insured for each policy covering the patient.

(C) (No change.)

(D) Late filing. Claims rejected by health insurance on the basis of late filing will not be considered for payment.

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

(6) Ninety-day claims submission deadline. No claim may be considered for program payment if it reaches the program later than 90 calendar days after the date of service, or 90 days from the date of standard authorization, whichever is later. Claims involving health insurance as provided in paragraph (1) of this section, are an exception.

(7) Overpayments.

(A) Overpayments are payments made by the program due to the following:

(i) duplicated billings;

(ii) services paid by public or private insurance or other resources;

(iii) payments made for services not delivered;

(iv) services disallowed by the program; and

(v) subrogation.

(B) Overpayments made in behalf of patients to providers must be reim-

bursed to the department by lump sum payment or, at the department's discretion, out of the current claims due to be paid the provider in behalf of patients. This will also apply to any person or persons who have a legal obligation to support the patient and have received payments from a payor of other benefits. The opportunity for an administrative hearing is available to providers and to the patient or person(s) responsible for the patient, as provided in §37.96 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(8) Linkage with Medically Needy Program. Patients eligible for both the program and the Medically Needy Program (MNP) through the Texas Department of Human Services (DHS) may submit unpaid claims used in meeting the MNP spend-down provision, for payment consideration by the program if the services were rendered for a program eligible condition and the services were rendered no more than 30 days prior to the date the program received the patient's application. Claims must be submitted to the program after submission to DHS's Medically Needy Program. The program may consider these claims for payment if funds are available and if the program receives within 30 days the claim returned by DHS. These are the only claims that the program may consider for payment without authorization. The program may waive the requirement that claims for certain services be submitted to the MNP if such requirement would deny those services to patients participating in the MNP.

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

Issued in Austin, Texas, on February 1, 1988

TRD-8801044 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date February 23, 1988
Proposal publication date November 24, 1987
For further information, please call
(512) 465-2681

Chapter 97. Communicable Diseases

Control of Communicable Diseases

★25 TAC §97.12, §97.13

The Texas Department of Health adopts new §97 12 and §97.13 with changes to the proposed text published in the December 11, 1987 issue of the *Texas Register* (12 Tex Reg 4627)

The new sections implement provisions of the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, and the Code of Criminal Procedure, Texas Codes Annotated, Article 21.31. Section 97.12 defines the conditions under which persons might be exposed to AIDS or HIV during a medical procedure. The emphasis is placed on prevention of infection rather than on testing for HIV anitbodies. Section 97.13 defines the procedures for testing of persons indicted for certain crimes for the presence of AIDS, HIV, or sexually transmitted diseases.

A number of comments were received concerning proposed §97.12. A commenter supported the proposed section as written. A commenter supported the proposed section but recommended that the categories of procedures in subsection (b) be broadened by adding a category involving an invasive procedure during which bleeding may occur. The same commenter suggested that the wording in subsection (b) be clarified. A commenter supported the proposed section but recommended that testing be allowed without regard to the patient's consent to the test. A commenter, who neither supported nor opposed the proposed section, requested clarification of the need for informed consent of a patient prior to testing. Six commenters opposed the proposed section on the ground that the categories in subsection (b) were much too broad and would allow mandatory testing of virtually all dental patients and pregnant women. A commenter, who served as a member of the legislative conference committee that added Article 9 of Article 4419b-1, said that the proposed section was not consistent with the legislative intent in Article 9. The author of House Bill 1829, 70th Legislature, 1987, (Article 9 of Article 4419-1), was concerned that the proposed section would shift the emphasis from barrier protection to testing.

The commenter was troubled that health care costs would increase significantly as a result of the proposed section and would be borne by the patient. Two commenters expressed concern that the proposed section would greatly increase cost of care and gave a specific example concerning a particular state agency providing custodial care. This agency itself commented on the proposed section and expressed concern that the proposed section was in conflict with Article 4419b-1, §9.02(a)(4), and could conflict with established agency guidelines and protocols. A commenter emphasized that the four categories of procedures listed were taken from a provision in the publication adopted by reference in subsection (a) that defined invasive procedures and appropriate barrier precautions. The commenter argued that to use the definition to then define areas of risk sufficient to justify testing was totally contrary to the import of the guidelines of the Center for Disease Control. This commenter and the next one recommended that a requirement for informed consent and counseling of the patient should be made a part of the section A commenter stated that the emphasis should be on barriers to infection, that testing be decided on a case-by-case basis, and that the section should clearly state that a confirmatory (e.g. western blot) test is necessary for sound medical decisions.

Finally, a commenter noted that as long as discrimination against persons who are test for HIV antibodies exists, the limits on mandatory testing should be narrow rather than broad. Taking all comments on §97.12 into consideration, the Board of Health has made several changes to the section. The effect of the changes is to allow testing prior to a medical procedure if it involves invasive surgical procedures (including angiographic, bronchoscopic, endoscopic, and obstetrical procedures) and if health-care personnel have their mucous membranes or skin come into contact with the patient's body fluids or tissues. The board recognizes the need for additional responses to the issues raised by commenters; with the guidance of the board's disease control committee, the department will issue one or more advisory guidelines on the appropriate and inappropriate use of tests for HIV antibodies to assist health-care providers in the management of patients and clients.

A number of comments were received concerning proposed §97.13. As regards subsection (b), the department agrees with the comments that the local health authority should be included in the groups of persons who need to know the pseudonym of the victim, that the test results provided by a physician to the local health authority should be in writing, and that test results shall be provided exclusively to the local health authority. The department has changed the proposed text to clarify that the victim shall be notified of the test results during a personal meeting with the local health authority. In addition, the department has added the requirement that the victim will be counseled on the test results whether or not the test result is positive or negative for a communicable disease. The department agrees with the comment that the proposed section did not address the problems of notifying a victim who was outside the jurisdiction of the local health authority. The department has added a provision that if the victim resides out-of-state, notification may be made by telephone; if the jurisdiction is in the state, notification may be made by the local health authority in the jurisdiction where the victim resides. The department agrees with the comment that the local health authority should be able to delegate the notification to staff. The proposed test has been changed by adding a new subsection (g) that allows the local health authority to delegate the notification to a person who is under the local health authority's jurisdiction.

The following organizations commented in favor of §97.12: the Texas Medical Association; the HCA Navarro Regional Hos-

pital; and the Harris Methodist Health System. The following organizations commented against the proposed section: the Texas Infectious Disease Society; the Lesbian/Gay Rights Lobby of Texas; the Texas Department of Mental Health and Mental Retardation; and the AIDS Legal Committee of Austin. The Hermann Trust commented but did not take a position in support or against the proposed section. Two individuals commented in opposition to the proposed section. The Dallas County Health Department was the only organization to comment on §97.13, and the department supported the proposed section.

The new sections are adopted under the Communicable Disease Prevention and Control Act, Texas Civil Statutes, §2.02, which authorizes the Board of Health to adopt rules to implement the Act, and the Texas Code of Criminal Procedure, Texas Codes Annotated, Article 21.31, which provides the Board of Health with the authority to adopt written infectious disease control protocols that establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and the victims of the alleged offense.

§97.12. *Exposure of Health-Care Personnel to HIV or AIDS.*

(a) Emphasis must be placed on preventing the transmission of HIV or AIDS and not on testing for its presence. Health-care personnel shall follow the guidance given in "Recommendations for Prevention of HIV Transmission in Health-Care Settings," *Morbidity and Mortality Weekly Report*, August 21, 1987, Volume 36, Number 2S, United States Public Health Service, Centers for Disease Control, which publication is adopted by reference. Copies are filed in the Bureau of AIDS and STD Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public review during working hours.

(b) Health care personnel are at risk of exposure to HIV or AIDS during a medical procedure if the personnel:

(1) have their mucous membranes or skin in contact with any body fluid or tissue (other than the patient's intact skin); and

(2) if the procedure to be performed is an invasive procedure that involves surgical entry into tissues, cavities, or organs or the repair of major traumatic injuries, including angiographic, bronchoscopic, endoscopic, and obstetrical procedure.

§97.13. *Guidelines for Testing Certain Indicted Persons for Certain Diseases.*

(a) A court may order a person who is indicted for sexual assault or aggravated sexual assault to submit to a medical procedure or test for presence of sexually transmitted diseases or AIDS or HIV or other agent of AIDS, under authority of the Code of Criminal Procedure, Texas Codes Annotated, Article 21.31. The physician who is directed by the court to perform the medical procedure or test shall follow the rules in this section that prescribe the criteria for testing and that respect the rights of the victim of the alleged offense and the rights of the person accused.

(b) In order to protect the privacy of the person being tested, the court, in consultation with the local health authority, shall use or arrange the use of a pseudonym for the person on all requests and reports pertaining and known only to the physician, the local health authority, the person being tested, and the court. The person performing the procedures or test shall make the results available directly to the local health authority.

(c) For AIDS, HIV infection, syphilis, gonorrhea, viral hepatitis B, and genital infections from *Chlmydia trachomatis*, the procedures and tests shall be those specified in the department's publication *Identification and Confirmation of Reportable Diseases*, as adopted by reference in §97.3 of this title (relating to the Reportable Diseases and Health Conditions). For other sexually transmitted diseases, the physician shall request instructions from the commissioner or his designee.

(d) The local health authority shall meet with the victim of the alleged offense and disclose the results of the medical procedures or test; no other person shall be present during the notification unless permitted by the victim. The local health authority shall advise the victim of the medical implications of the test results whether or not the test results are positive or negative. The local health authority shall instruct the victim to receive further medical intervention by the victim's personal physician. If the victim resides outside the State of Texas, the notification may be made by telephone.

(e) The local health authority shall notify the person accused of the results of the procedure or test and, if the result indicates the presence of a communicable disease, shall instruct the person accused as required by the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4.02(a), and shall perform the appropriate duties and make the reports, as required by §97.5 of this title (relating to Reporting and Other Duties of Local Health Authorities and Regional Directors).

(f) After reporting of the results of the procedure or test to the victim and to the person accused, the local health authority shall file an affidavit with the court attesting that he or she has executed the order. Disclosure of the test results to any persons other than the victim and the accused person is prohibited under the Code of Criminal Procedure, Texas Codes Annotated, §21.31.

(g) A local health authority may delegate any duty imposed by this section to a person who is under the local health authority's supervision. If a victim or a person tested under this section resides outside the jurisdiction of the local health authority, the notifications required by this section may be made by the local health authority in the jurisdiction where the person resides.

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801045 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 22, 1988
Proposal publication date: December 11, 1987
For further information, please call (512) 458-7304.

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Chapter 141. Massage Therapists

★25 TAC §141.4

The Texas Department of Health adopts an amendment to §141.4, without changes to the proposed text published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4183).

The amendment reduces application, registration, renewal, and registration renewal penalty fees required for registration as a massage therapist. When the fees were established in December, 1985, a conservative estimate of the number of registrants was used. The fees are reduced to avoid accumulation of a surplus in the massage therapists and establishments fund.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512k, §7, which provide the Texas Board of Health with the authority to adopt rules concerning the regulation of massage therapists and to set fees imposed by the Act without accumulating an unnecessary surplus in the massage therapists and establishments fund.

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801046 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: March 1, 1988
Proposal publication date: November 10, 1987
For further information, please call (512) 458-7531.

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Chapter 145. Long Term Care

Subchapter E. Procedures on Long Term Care Facilities

★25 TAC §145.94

The Texas Department of Health adopts the repeal of existing §145.94 and new §145.94. New §145.94 is adopted with changes to the proposed text published in the September 4, 1987, issue of the *Texas Register* (12 TexReg 3019). The repeal of §145.94 is adopted without changes and will not be republished.

New §145.94 describes the procedures and criteria for the investigation of prospective employees and current employees of nursing homes and custodial care homes. The section is necessary to implement Senate Bill 200, 70th Legislature, 1987, amending Texas Civil Statutes, Article 4442c, §18, which requires nursing homes and custodial care homes to request there be a criminal conviction check made of persons to whom employment is offered, with certain exceptions. On a voluntary basis, current employees may also be investigated.

Senate Bill 200 provides the Texas Department of Human Services with the authority to investigate a prospective employee or any employee of a nursing home or custodial care home to determine if the individuals have criminal conviction records. The investigation is made on behalf of the Texas Department of Health. Nursing homes and custodial care homes must request the investigation be made on persons to whom employment is offered, with certain exceptions, and the facilities may voluntarily request an investigation on any person already employed. The facility may not hire or continue to employ persons who are found to have a record of certain criminal convictions.

There were two commenters presenting written comments, and there were several telephone calls and verbal comments received relating to the implementation of the proposed sections. The calls and written comments have been considered by the department in the design of the final sections.

Concerning new §145.94(c), two written comments and several telephone comments stated that a requesting facility should receive a response when there is no criminal conviction record found and not just when there is a criminal conviction record found. Some of these comments indicated that a facility never knows when to convert temporary employment of a person to permanent employment. The policy of the Department of Human Services does not provide for a response when no criminal conviction record is found; this policy is similar to other record-search policies of that agency. The department has added wording in new §145.94(c) to state that a requesting facility is to maintain records of all requests and document responses received from the Texas Department of Human Services. The Department of Human Services has advised the Texas Department of Health that if no response has been received by 30 days after the request, there is likely no match.

Concerning §145.94(b), written comments from one source and several telephone-received comments stated that the section should clarify requirements for employees of a contracted service, of a manpower pool, or of similar arrangements. The department agrees that clarification would be helpful and has added wording to new §145.94(b).

Concerning new §145.94(c), written comments were received from two sources and several telephone-received comments stated that clarification is needed on what is meant by submitting a request for a criminal record investigation within the 72nd hour of acceptance of employment. Also, the commentors indicated that clarification needs to be made on whether a postmark date could be used in reference to calculating the 72nd hour. The department agrees that clarification is needed on both issues and has added appropriate wording to §145.94(c).

Concerning new §145.94(i), a verbal comment was received stating that the person being investigated is entitled to know the results of the investigation.

Language in the law provides for the person to consent in writing for release of the records found on the investigation; with that provision, the department believes the person is entitled to the information, and wording to that effect is provided in new §145.94(i). The department has also provided clarification wording in new §145.94 (i) to state that consent for release applies to the results of the investigation, whether there is a record.

Concerning new §145.94(i), a question was asked if the results of a past investigation are included in the written consent for release. The department believes there is no difference in the intent of the law with respect to a current investigation or a past investigation, and has provided clarifying language in new §145.94(i).

Concerning new §145.94(i), two comments were made that perhaps in an organization of more than one facility, a person who has already been investigated and employed in one facility could transfer to another facility without the necessity for a new investigation. The department does not believe the language of the law provides for waiver of a new investigation in this or similar situations, and has provided wording in this regard to new §145.94(i).

The only organization making comments was the Texas Health Care Association. That organization expressed neither being for nor against the sections but rather that some areas not adequately addressed in the sections needed to be addressed. Other comments and questions were from individuals.

The repeal is adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to promulgate rules relative to long term care facilities, including nursing homes and custodial care homes; and under Senate Bill 200, 70th Legislature, 1987 which authorizes the Texas Department of Human Services, on behalf of the Texas Department of Health, to investigate a prospective employee or an employee of a nursing home or custodial care home to determine if the individuals have criminal conviction records that would prevent their employment.

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

Issued in Austin, Texas on January 28, 1988.

TRD-8800891 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 18, 1988
Proposal publication date: September 4, 1987
For further information, please call (512) 458-7706

The new section is adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to promulgate rules concerning long term care facilities, including nursing homes and custodial care homes; and under Senate Bill 200, 70th Legislature, 1987, which provides the Texas Department of Human Services, on behalf of the Texas Department of Health, with authority to investigate prospective employees or employees of a nursing home or custodial care home to determine if the individuals have certain criminal conviction records that would prevent their employment.

§145.94. *Investigation of Facility Employees.*

(a) On behalf of the Texas Department of Health, the Texas Department of Human Services will administer a program of investigating prospective employees or current employees of a licensed nursing home or custodial care home or employees of a nursing home or custodial care home applying for a license, to determine if such persons have criminal conviction records. This program of investigation is called for under Texas Civil Statutes, Article 4442c, §18. The Texas Department of Human Services is entitled to obtain criminal conviction records maintained by the Texas Department of Public Safety and/or the Federal Bureau of Investigation.

(b) Except as provided by subsection (c) of this section, before a nursing home or custodial care home makes an offer of employment to a person applying for employ-

ment at the facility, the facility shall provide to the Texas Department of Human Services the name and relevant information relating to the person as required by the Texas Department of Human Services. Texas Civil Statutes, Article 4442c, §18, states that immediately after receiving the information from the facility, the Texas Department of Human Services shall request that the Department of Public Safety conduct a criminal conviction check on the person. If the nursing home or custodial care home is part of a larger complex of buildings, the requirement of a criminal conviction check applies to an offer of employment made to a person who will work primarily in the immediate boundaries of the nursing home or custodial care home. The requirement of a criminal conviction check does not apply to an offer of employment made to a nursing home administrator, a nurse, or other person licensed under other law. The requirement of a criminal conviction check does not apply to employees working for a contracted service, for a temporary help employment organization, or under similar arrangement. At the request of a facility, the Texas Department of Human Services, on behalf of the Texas Department of Health, shall investigate any person employed at a nursing home or custodial care home, including an administrator, nurse, or other person licensed under other law.

(c) A nursing home or custodial care home may make an offer of temporary employment to a person applying for employment at the facility pending the results of the criminal conviction check on the person. The facility shall provide to the Texas Department of Human Services the name and relevant information relating to the person not later than the 72nd hour after the hour on which the person accepts temporary employment. Since acceptance of employment is not always sure until the time a person to be employed reports for duty, the acceptance of employment on which the 72nd hour is calculated shall be the date of employment; however, a facility is encouraged to make early requests. The postmark date of a request may be used in calculating the 72nd hour. The facility may not hire a person on a permanent basis until the facility receives the results of the criminal conviction check. All requests and documented responses received from the Texas Department of Human Services shall be retained in the individual employee's permanent personnel file.

(d) Immediately after receiving the results of the criminal conviction check, the Texas Department of Human Services shall notify the facility of the results and provide a copy of the results to the Texas Department of Health, as required by Texas Civil Statutes, Article 4442c, §18. The Texas Department of Public Safety may not provide to the Texas Department of Human Services, the Texas Department of Health, or the facility, the criminal conviction records of a person being investigated, unless the criminal records relate to

(1) any felony or misdemeanor classified as an offense against the person or the family;

(2) any felony or misdemeanor classified as public indecency;

(3) a felony violation of any statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, or

(4) any felony violation of the Texas Penal Code, §31.03.

(e) The Texas Department of Human Services may require the facility to submit a complete set of fingerprints, social security number, or the complete name of the person being investigated.

(f) A nursing home or custodial care home shall inform each applicant for employment that the facility is required to conduct a criminal conviction check before it may make an offer of employment to a person and that the facility may request a criminal conviction check on that person.

(g) Except as provided by subsection (h) of this section, if the results of a criminal conviction check reveal that an applicant for employment at a nursing home or custodial care home has been convicted of an offense listed in subsection (d) of this section, the facility may not hire the person. Except as provided by subsection (h) of this section, if the results of a criminal conviction check reveal that an employee or a person hired on a temporary basis under subsection (c) of this section has been convicted of an offense listed in subsection (d) of this section, the facility shall immediately terminate the person's employment.

(h) A nursing home or custodial care home may employ or continue employing a person convicted of an offense under the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, other than an offense under the Act, §4.052 or §4.053, or an offense listed in that Act, §4.012(b), if the person produces evidence that the person has successfully completed a drug rehabilitation program.

(i) All criminal records received by the Texas Department of Human Services are privileged information and are for the exclusive use of the Texas Department of Human Services, the Texas Department of Health, and the facility for which the Texas Department of Human Services requested the information. Except on court order or with the written consent of the person being investigated, the records or results of the investigation may not be released or otherwise disclosed to any other person or agency. Similarly, except on court order or with the written consent of the person who has been investigated in the past, the records or results of that past investigation may not be released or otherwise disclosed to any other person or agency. Since the person being investigated can consent to release of the records or results of the investigation, the requesting facility may share that information with the person being investigated. Written consent from a person being investigated for the records or results of the investigation to be disclosed to another nursing home or custodial care home does not relieve the other nursing home or custodial care home of its duty to request its own investigation.

(j) A person commits an offense if the person releases or discloses any information received under Texas Civil Statutes, Article 4442c, §18, without the authorization prescribed in subsection (i) of this section. An offense under this subsection is a felony of the second degree.

(k) A nursing home or custodial care home or any of its officers or employees shall not be held liable civilly for failure to comply with this section if the institution makes a good faith effort to comply.

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

Issued in Austin, Texas, on January 28, 1988.

TRD 8800892

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

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For further information, please call (512) 458-7706

Chapter 289. Occupational Health and Radiation Control

Asbestos Exposure Abatement in Public Buildings

★25 TAC §§289.141-289.144, 289.147-289.151, 289.156

The Texas Department of Health adopts new §§289.141-289.144 and 289.147-289.156, with changes to the proposed text published in the October 13, 1987, issue of the *Texas Register* (12 TexReg 3761). Proposed new sections §§289.145-289.146 and §§289.152-289.155 are being withdrawn in this issue of the *Texas Register* because their provisions have been incorporated into the final adopted sections.

The Texas Board of Health is required by Texas Civil Statutes, Article 4477-3a, §3(a) and §11(a), to adopt rules to implement a program concerning asbestos exposure abatement in public buildings. The program is to be established and administered entirely on a fee basis. Generally, the final sections which implement the program concern licensure for contractors, building owner-operators, and supervisors who perform any asbestos abatement activity in a building subject to access or occupancy by the general public. Also covered

are those persons who are responsible for such abatement activities and the registration of abatement workers. Specifically, the sections cover purpose, scope and exclusions, definitions, licensure, licensing standards, notification and inspections; reprimands, suspensions and revocations, registration of abatement workers; training; compliance standards, and waste disposal

The department received extensive comments to the proposed sections during the public comment period. As a result, the Board of Health has made several modifications to the sections. In addition, the department's asbestos advisory committee and department staff have made numerous wording changes to clarify the text of the sections, including combining, withdrawing and rearranging sections. These changes are mentioned in detail in the following summary of comments. The changes, however, have not changed the fundamental requirements of the sections.

Concerning §289.141(b), a commenter suggested that the language describing the scope of the rules as regulating any other asbestos related activity is too broad. The department agrees and has changed the subsection to limit regulatory authority to asbestos related activities that are related to the encapsulation and removal of asbestos

Concerning §289.141(c), a commenter suggested that the law applies to all public buildings and questions why certain residential buildings that have fewer than 10 dwelling units are excluded. The department agrees and has changed the language to exclude all private residences. The department interprets the law to be applicable to the public areas of a multi-unit residential building

Concerning §289.141(c), a commenter suggested that industrial plants are excluded from compliance with this subsection. The department disagrees to the extent that any plant site may contain certain buildings allowing general access of employees or visitors, which would be subject to compliance. Those buildings within the plant site where access is strictly controlled or prohibited because of dangers to health and safety are excluded, as well as outdoor portions of the site

Concerning §289.142, a commenter suggested that the definition of friable material is not the one in the federal regulations. The department disagrees, as the definition used is found in the EPA manual, entitled "Guidance for Controlling Asbestos-Containing Materials in Buildings"

Concerning §289.142, several commenters suggested changes or additions to the definitions listed in this section. As a result the department has done the following. definition statements for asbestos, asbestos abatement, asbestos contractor, asbestos exposure, encapsulation, friable material, and HEPA filters have been simplified. Definitions for asbestos removal, Code of Federal Regulations (CFR), Model Accreditation Plan (EPA), National Institute of Safety and Health (NIOSH), and regulated area have been added.

Concerning §289.142, the department has redefined the term "person" to be consistent with the statutory definition in Texas Civil Statutes, Article 4477- 3a.

Concerning §289.142, the department has redefined the term "public building" to be consistent with the statutory definition in Texas Civil Statutes, Article 4477 3a.

Concerning §289.143, a commenter complained of the excessive length of the licensing provisions in §§289.143, 289.145, and 289.146, which made them confusing. The department agrees and has combined the three sections into the final §289.143. The revised and final §289.143 now includes the provisions of the proposed §289.145 and §289.146. Because of this combining of related material, the lettering sequence of paragraphs within this section has been changed, the annual license fee has been reduced to $475, and proposed §289.145 and 289.146 will not be adopted as separate sections. They are being withdrawn in this issue of the *Texas Register*

Concerning §289.143(a), several commenters questioned the use of the term "business", which has several distinct definitions. The term "business" is not defined in Article 4477-3a. This department has given the term "business" its ordinary meaning, as provided in Texas Codes Annotated, Government Code, §312.002.

Concerning §289.143(b), a commenter suggested that asbestos abatement consultants or advisors should be licensed. The department agrees only to the extent that they perform as abatement contractors or supervisors, as stipulated in Texas Civil Statutes, Article 4477-3a, §2, and has added language to this effect in this subsection. The department has clarified this subsection to emphasize that an individual who is supervising the removal or encapsulation of asbestos in public buildings is required to be licensed

Concerning §289.143(f), a commenter suggested that those persons who obtain bulk material samples or airborne particulate samples need not be licensed.

The department agrees, and has so stated in this subsection, as the samples are not involved with abatement

Concerning §289.143(b), a commenter suggested that it would cost $1200 to license an asbestos abatement project supervisor under these sanctions. The department disagrees. Almost without exception, the potential applicants for a supervisor's license are already qualified as to training and experience, and the cost of training (if needed) and licensing should not exceed $900 average.

Concerning §289.143(i)(2), a commenter suggested that an applicant for licensing should be allowed more than 20 working days to supply information required to complete an application. The department disagrees. Twenty working days is nearly a month, and the department is required by law to complete such processes within a stated time or be subject to penalty.

Concerning §289.147, several commenters suggested substantial changes in information required with abatement project notifications. Upon consultation with the department's asbestos advisory committee, the department agrees to eliminate such a separate list, which will simplify the notification process and reduce prior notice to 10 days.

Concerning §289.147(b), a commenter suggested that the provisions for emergencies involving disturbance of asbestos materials are not appropriate.

The department disagrees, as the provisions are required by Texas Civil Statutes, Article 4477-3a, §2(b). The final section provides for a telephoned notification under such circumstances.

Concerning §289.147(c), several commenters asked whether the department will require compliance with federal asbestos standards. The department answers affirmatively, pointing out that all applicants must show capability of compliance with EPA and OSHA regulations as a condition for receiving and maintaining a license as required by Texas Civil Statutes, Article 4477-3a, §3(c). In addition, Article 4477-3a, §7(a)(3), requires reprimand, suspension, or revocation of a license should a licensee fail to meet federal standards.

Concerning §289.147(d), a commenter suggested that the department should not be permitted to enter into inspection contracts with other parties. The department disagrees. This is entirely within the powers of the board of health and the department, and all such contracts are subject to careful accounting and compulsory safeguards.

Concerning §289.148(a), a commenter pointed out that the grounds for reprimand, suspension, or revocation lacked provisions for failure to comply with the work practices of the EPA or OSHA, failure to protect workers from asbestos exposures in excess of the permissible exposure limit (PEL), failure to prevent asbestos contamination of adjacent areas, or failure to decontaminate any person or area inadvertently contaminated. After review by the department's asbestos advisory committee, the department has included these provisions as grounds for disciplinary action.

Concerning §289.149(b), several commenters expressed concern over the total cost of hiring asbestos workers. Upon the recommendation of the department's asbestos advisory committee, the depart-

ment has reduced the registration fee for workers to $25.

Concerning §289 150(a)(2), a commenter suggested that the number of classroom hours required for completion of the required annual review course for licensees be reduced from 12 to eight hours The department agrees to this reduction The EPA national accreditation standards, which the State of Texas is required to adopt by 1989, provides for an eight-hour minimum standard for such courses (40 Code of Federal Regulations §763, Subpart E, Appendix C)

Concerning §289 150(b), several commenters suggested that the federal requirement for three days of training for accreditation of asbestos workers (40 Code of Federal Regulations §763, Subpart E, Appendix C) is an excessive requirement for registration of asbestos workers in Texas The department disagrees because this amount of worker training is already in effect nationally for any abatement activity performed in a school building. Federal regulation requires that Texas must adopt this accreditation plan, or one more stringent the next time the legislature meets (1989), however until the required adoption of the federal regulation in Texas, an interim requirement of not less than 16 hours of training according to 29 Code of Federal Regulations §1926 58 (k)(3), completed within 12 months of application for registration, shall be acceptable

Concerning §289 150(d), a commenter suggested that 15 days is too short a time period for grading examinations and preparing an attendance report The department disagrees Training programs using the Scantron Device or a similar instrument can routinely grade examinations for an entire class in a few minutes

Concerning §289 143, a commenter suggested that a building owner operator must be licensed even if he uses an outside contractor for asbestos abatement work

The department disagrees Use of a licensed contractor is an option for any building owner-operator and requires no licensing

In addition, the department has made editorial changes to the sections for the purpose of clarification

The following organizations commented on the adoption of the proposed new sections: Asbestos Advisory Committee (Board of Health appointments), Asbestos Control Consultants, Inc . Baylor Health Care Systems (building operator), City of Austin (building operator); E I S Holdings, Inc , Espey, Houston/SME, Inc Hall-Kimbrell Environmental Services, Hartford Steam Boiler Inspection and Insurance Company; Houston Lighting and Power Company; I.C.E., Inc. (contractor); Kemron Environmental Services; Law Engineering; Ramzel-Waddell, Inc. (contractor); Safety Buildings Alliance; State Purchasing and General Services Commission (building operator); Texaco, Inc (building operator) Texas Building and Construction Trades Council; Texas Department of Health; Texas Hospital Association (building operator); Tri-Pro Services, Inc (contractor), University of Texas Medical Branch (building operator) Whitaker Environmental Services (contractor), and H B Zachry Company (contractor)

With the exception of E I S Holdings, Inc , all commentors were in favor of the adoption of the new sections However, there were extensive comments, as outlined in the summary, which resulted in numerous minor changes The department's asbestos advisory committee was the source of most of the detail changes Tri Pro Services, Inc is on record as offering several reasons why the rules are unworkable as proposed

These new sections are adopted under the Texas Civil Statutes, Article 4477-3a, §3(a) and §11(a), which provide the Texas Board of Health with the authority to adopt rules for the registration of workers and licensure of persons engaging in the removal or encapsulation of asbestos, or other asbestos-related activity, in all buildings of public occupancy or access.

§289 141 General Provisions

(a) Purpose The purpose of these sections is to establish the means of control and elimination of public exposure to airborne asbestos fibers, a known carcinogen and dangerous health hazard, by regulating asbestos abatement activities in public buildings

(b) Scope These sections apply to all buildings which are subject to public occupancy or to which the general public has access, and to all persons engaged in removing asbestos from or encapsulating asbestos in a public building for any purpose, including repair, renovation, dismantling or demolition, installations or maintenance operations, or any other activity that may involve the disturbance or removal of asbestos containing materials in public buildings Also included are the qualifications for accreditation of these persons and for compliance with these sections and all applicable standards of the United States Environmental Protection Agency, and the Occupational Safety and Health Administration

(c) Exclusions Whereas these sections apply to buildings capable of public occupancy, those buildings or portions of buildings to which all access is strictly and entirely controlled or prohibited because of processes or functions dangerous to human health and safety are excluded from these sections. Private residences are excluded, as well as federal buildings or military installations

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

Asbestos—Fibrous mineral forms (chrysotile, amosite crocidolite tremolite, anthophyllite, and actinolite)

Asbestos abatement - An activity that has the effect of reducing or eliminating the concentration of asbestos fibers or the amount of asbestos containing materials in reference to the removal or encapsulation of asbestos-containing materials or products.

Asbestos-containing material (ACM)—Materials or products that contain more than 1.0% by weight of any kind or combination of mineral asbestos, as determined by EPA-recommended methods

Asbestos contractor A person who is hired to perform asbestos removal or encapsulation for others under contract or other agreement.

Asbestos exposure Exposure to airborne asbestos fibers as a result of disturbance or deterioration of mineral asbestos or asbestos-containing materials

Asbestos Hazard Emergency Response Act of 1986 (AHERA) Public Law 99-519-A law amending the Federal Toxic Substances Control Act 15 United States Code 2601 et seq , to inspect all school buildings (Grades K-12), and to require all school administrations to develop plans for controlling asbestos in or removing asbestos from school buildings, and providing penalties for non-compliance

Asbestos project supervisor—An individual who is in responsible charge of the personnel, practices, and procedures of an asbestos abatement operation or activity.

Asbestos-related activity Any activity in connection with a public building concerning asbestos removal, including the disturbance, dislodgment, removal of asbestos, encapsulation enclosure, repairs, renovation, maintenance, installation, dismantling or demolition, that has as its objective, or results in, the removal or encapsulation of asbestos

Asbestos removal—Any action that disturbs, dislodges, or otherwise removes asbestos-containing material.

Board— The Texas Board of Health.

Building owner-operator—The responsible management for any public building.

Code of Federal Regulations—Code of Federal Regulations. The 29 Code of Federal Regulations series are OSHA regulations, and the 40 CFR series are EPA regulations.

Commissioner—The Texas Commissioner of Health.

Department—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7255

Encapsulation-- A type of asbestos containment in which the surface of the asbestos-containing material is either penetrated by the encapsulant or covered with a membrane of the encapsulating material.

EPA— The United States Environmental Protection Agency, which administers federal regulations concerning the environmental effects of asbestos materials.

Friable material—Materials that can be crumbled or pulverized by hand pressure

HEPA (High-efficiency particulate air) filters—A filter capable of removing 99.97% of airborne particles 0.3 micron or larger in diameter.

Licensee—A person who meets all qualifications and has been issued a license by the department under these sections.

Model Accreditation Plan (EPA)—A plan which provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity (40 Code of Federal Regulations §763, Subpart E, Appendix C).

NIOSH—The National Institute of Occupational Safety and Health.

OSHA—The Occupational Safety and Health Administration of the United States Department of Labor, which administers federal regulations pertaining to employee safety and protection during asbestos-abatement activities.

Person—A corporation, organization, governmental subdivision or department, business trust, estate, trust, partnership, association, and any other legal entity.

Physical examination—A medical history, an examination by a physician, and a spirometric test. A physical examination may also include a chest x-ray at the discretion of the physician. A physical examination is required by federal regulations of all persons who shall come in close proximity to asbestos during any asbestos-abatement activity.

Public building—A building that is open to the public or that has public access, including but not limited to government buildings and public schools.

Regulated area—The isolated work area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits (PEL) for concentrations of airborne asbestos may exist

§289.143. Licensure

(a) A person must be licensed in compliance with the provisions of these sections to engage in the business of removing asbestos or encapsulating asbestos in a public building, whether as an asbestos abatement contractor, a building owner-operator using his own employees, or as an asbestos project supervisor

(b) The annual license fee is $475. No portion of this fee shall be refunded if a license is suspended or revoked, or if a licensee otherwise discontinues licensed activities.

(c) An individual may not engage in the supervision of removing asbestos, encapsulating asbestos, or any asbestos-related activity in a public building unless that individual is licensed under these sections. Consultants or advisors must be licensed only if they assume the role of the supervisor in responsible charge of the conduct of an abatement operation

(d) Persons obtaining bulk material samples or airborne particulate samples are not required to be licensed. If such persons enter a regulated work area, they are subject to compliance with the OSHA requirements of 29 Code of Federal Regulations §1926.58, titled "Occupational Exposure to Asbestos".

(e) To qualify for a license, an applicant must demonstrate in a manner acceptable to the department that he meets the applicable qualifications listed in paragraphs (1)-(5) of this subsection. An applicant who is not an individual shall designate an individual who is employed by or under contract with the applicant for the purpose of meeting the requirements of this subsection.

(1) An applicant must have a minimum of one year's experience with asbestos abatement practices and procedures, which shall be submitted in written form, giving locations and dates of such abatement activities, a description of the duties performed by the applicant in each instance, and sufficient references including names, address, phone numbers, etc., to permit verification

(2) An applicant must have completed an EPA-approved course of instruction within the past 12 months of not less than 32 classroom hours relating to asbestos practices and procedures with a passing grade of 70 or better on the examination. Persons who have completed this required training with a passing grade since January 1, 1987, and who apply for licensing on or before April 1, 1988, shall be accepted under this provision

(3) An applicant must be capable of compliance with all OSHA and EPA asbestos standards

(4) All individuals subject to license renewal must complete an annual update course of instruction approved by the department so as to fulfill the training requirements for licensing or renewal

(5) All individuals must furnish acceptable evidence of a physical examination within the past one-year period that was conducted by a physician in accordance with OSHA regulations in 29 Code of Federal Regulations §1926.58(m), relating to medical surveillance

(f) The terms and conditions of all licenses shall be subject at any time to revision, amendment, or modification by rules or orders issued by the board or the department. No license issued under these sections may be assigned or transferred

(g) Applications for a license under these sections must be made on forms provided by the department, must be verified by the applicant, and must be accompanied by a check or money order for the amount of the license fee. Only applications which are complete may be considered by the department.

(1) the department shall have 90 days after receipt of application to determine acceptance. In the event that an application is found to be incomplete, the department will notify the applicant of the required information necessary to complete the application.

(2) the applicant shall have 20 working days from the mailing date of the notification to supply the information to complete the application, or in the event the application is discarded, abandoned, or remains incomplete after 90 days, the department shall retain the application fee

(h) At least 30 days before any license is due to expire, the department shall send a renewal notice to the licensee at his last known mailing address. A licensee may not apply for a renewal of license sooner than 60 days before the expiration date of the current license. A license that has lapsed for a period of more than 60 days shall not be eligible for the renewal procedure.

§289.144. Licensing Standards.

(a) No license shall be issued under these sections, and no license shall be renewed or remain in effect unless the licensee demonstrates to the satisfaction of the department that the following standards are met.

(1) Every asbestos operation undertaken by an asbestos abatement contractor or building owner-operator shall be supervised by at least one licensed supervisor who shall be directly responsible for each asbestos abatement operation

(2) Each employee or agent of any licensee who comes into contact with asbestos, or who engages in an asbestos removal project, an asbestos encapsulation project, or other asbestos-abatement activity shall have an annual physical examination, be properly equipped and trained, and be licensed or registered in accordance with these sections.

(3) Each licensee shall keep a complete record of each asbestos activity or operation in public buildings to the extent of his or her participation. The record shall include the name and address of the contractor or building owner-operator, the name and address of project supervisor(s), the location and description of operation(s), the description of abatement procedures, the description of personal safety practices, the name and address of waste disposal site, the dates of participation in the operation, and a roster of registered asbestos workers employed. The record shall be kept for 30 years. Each licensee shall also keep a copy of all violations issued against him by the EPA, OSHA, or a state agency. These required records shall be made available, upon request, for inspection and review by the department.

(4) Each licensee shall assist and cooperate with all properly-identified representatives of the department in the conduct of asbestos inspections and air or monitoring procedures at all reasonable or necessary times, with or without prior notice, in accordance with §289.147 of this title (relating to Abatement Notification, Plans Review, and Inspection). Such inspections may be made at proposed, actual, or former sites of asbestos-related activities, or of the premises, records, equipment, and personnel of licen-

sees or applicants thereto, or those who have held active licenses previously.

(5) Each licensee who employs registered asbestos workers, in accordance with §289.149 of this title (relating to Registration of Employees/Asbestos Workers) shall be responsible for establishing and maintaining a respirator protection program.

(6) The licensee must maintain in safe working condition a sufficient number of approved respirators to meet all anticipated requirements of his employees. Any employee whose facial characteristics, hair, mustache, or beard preclude a tight fit (pressure-test fit) of his respirator shall not be allowed to enter the regulated work area enclosure of an asbestos operation.

(b) Each licensee shall have in his possession, for study and reference purposes, either a copy of the text of each of the following documents or publications. Copies of the documents or publications are available for public review during working hours at the office of the Occupational Health and Safety Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas.

(1) *Guidance for Controlling Asbestos Materials in Buildings*, EPA Manual 560/5-85-024 (June 1985);

(2) national emissions standards for hazardous air pollutants," 40 Code of Federal Regulations Part 61, Subparts A and M, (EPA);

(3) asbestos abatement projects: worker protection rule, 40 Code of Federal Regulations Part 763, Subpart G, (EPA);

(4) asbestos containing materials in schools, 40 Code of Federal Regulations Part 763, Subpart E, as amended, (EPA);

(5) occupational exposure to asbestos, 29 Code of Federal Regulations §1926.58, (OSHA);

(6) occupational health standards for a respiratory protection program, 29 Code of Federal Regulations §1910.134, (OSHA);

(7) Texas Civil Statutes, Article 4477-3a, governing the regulation of asbestos in Texas, (House Bill 36, 70th Legislature, 1987), and

(8) §§289.141-289.144, 289.147-289.151, and 289.156 of this title (relating to Asbestos Exposure Abatement in Public Buildings).

(c) A licensee shall have on hand in safe working condition for immediate use the following.

(1) a quantity of not less than 1½ air-purifying respirators with replaceable HEPA filters, as described in §289.142 of this title (relating to Definitions), for each licensed or registered individual in his employment or under his supervision at any given time. The required respirators may be of the half-face [illegible] face style, or powered air-purifying re[illegible]s in either face style;

(2) a sufficient quantity of replacement HEPA filters of the exact type necessary for each of the respirators available for use so as to permit a daily change of filters for each respirator is use; and

(3) at least one vacuum-cleaning machine equipped with a HEPA exhaust filter for vacuuming asbestos debris.

(d) A licensee, when required by the nature of the asbestos-related activity, shall possess on hand and in working condition, either:

(1) a supplied air system using a compressor or bottled air, capable of delivery of Grade D breathing air with a sufficient quantity of NIOSH-approved Type C supplied-air full-face respirators, connecting hoses, and regulators to completely equip their abatement crew within the regulated work area, or

(2) a self-contained breathing apparatus (SCBA) equipped with NIOSH-approved full facepiece in sufficient quantity to equip each member of their abatement crew within the work area, and with sufficient additional air tanks to supply the crew for a work period.

§289.147 Abatement Notification, Plans Review, Inspections

(a) Whenever a licensee proposes to engage in an asbestos-related activity in a public building, notification of intent shall be made to the department not less than 10 days before such activities are to commence, and in the manner required by the department.

(b) In an emergency that results from a sudden, unexpected event that is not part of a planned renovation or demolition, the department may, upon request, waive the requirement for a license, but notification shall be required. Emergency notification shall be made to the department as soon as possible, but within 48 hours. Telephone (512) 458-7255.

(c) The department shall conduct on-site inspections of each licensee's abatement activities periodically. An on-site inspection may include an inspection of the licensee's records and equipment, and a determination of the extent of compliance with EPA and OSHA regulations, as listed in §289.144(b) of this title (relating to Licensing Standards).

(d) The department may enter into agreements or contracts with other public agencies or private contractors to conduct all or part of these inspections.

§289.148 Reprimand, Suspension, and Revocation

(a) The department may reprimand any licensee, or may suspend, revoke, deny, or refuse to issue or to renew a license on any of the following grounds:

(1) fraud or deception in obtaining, attempting to obtain, or renewing a license;

(2) failure to comply with EPA or OSHA work practices. These standards are listed in §289.144(b) of this title (relating to Licensing Standards);

(3) failure at any time to comply with the provisions of §289.144(a) of this title (relating to Licensing Standards);

(4) failure to maintain or to permit inspection of the records required of all licensees;

(5) employing or permitting an unregistered worker or unlicensed supervisor to work on any asbestos project or operation;

(6) engaging or attempting to engage in an asbestos-related activity without a valid license;

(7) failure to comply with any rule adopted by the board or order issued by the department;

(8) failure to provide notice of an asbestos project or operation as required by §289.147(a) of this title (relating to Abatement Notification, Plans Review, and Inspections);

(9) conviction within the past five years of a felony or a misdemeanor (involving fraudulent activities relating to construction or the building trades in general);

(10) failure of a contractor licensee to complete an asbestos abatement project or operation due to insufficient financial resources;

(11) failure to protect workers from asbestos exposures in excess of the current permissible exposure limit (PEL);

(12) failure to prevent asbestos contamination of areas adjacent to the abatement area; or

(13) failure to decontaminate any part of a facility or its environment, or any persons inadvertently contaminated with asbestos during an operation.

(b) If the department proposes to reprimand, suspend, or revoke a license, it shall notify the licensee or applicant in writing in accordance with the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(c) Before the department takes any action to reprimand, suspend, or revoke a license, the licensee shall be given an opportunity for a hearing. Hearings shall be conducted in accordance with the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the department's hearing procedures in §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

§289.149 Registration of Employees as Asbestos Workers

(a) An employee shall be registered with the department as an asbestos worker prior to undertaking to remove asbestos, encapsulate asbestos, or make repairs, installations, do maintenance or other asbestos-related activity in a public building.

(b) Applications for registration must be made on a form prescribed by the department and must be accompanied by the registration fee in the amount of $25. Payment of fee shall be made by check or money order.

(c) To qualify for registration as an asbestos worker the applicant must have completed an EPA approved course for asbestos workers or attended, completed all parts, and passed an examination of an approved training course for asbestos workers in accordance with §289.150 (relating to

Standards for Training Courses for Licensure and Registration).

(d) No registered asbestos worker or applicant for registration shall be compelled to sign any statement concerning worker training, physical examination, worker protection standards, equipment, asbestos abatement practices, instances of asbestos dust exposure, or waste disposal practices that may result in fraud or deception.

§289.150. Training Courses for Licensure and for Registration.

(a) Training courses for asbestos license qualification are limited to those courses approved or certified by EPA. Minimum specifications for these courses are to be found in 40 Code of Federal Regulations Part 763, Subpart E, Appendix C, Model Contractor Accreditation Plan. The courses required are as follows:

(1) the abatement practices and procedures course, requiring 32 classroom hours; and

(2) the annual review or update course, requiring eight classroom hours;

(b) For asbestos worker registration, the department may approve a company course of instruction if the asbestos training curriculum fulfills the requirements for asbestos abatement workers requiring three days of instruction found in the EPA Model Contractor Accreditation Plan, 40 Code of Federal Regulations §763, Subpart E, Appendix C, or in the OSHA publication, Occupational Exposure to Asbestos, 29 Code of Federal Regulations §1926.58(k), which requires 16 hours of instruction.

(c) All sessions of training courses required for qualification under this section shall be open to audit by representatives of the department. The department is authorized to make inquiries concerning any aspect of the training required by these sections.

(d) The department shall receive reports of each training session within 15 days of the end of the session. The information reported shall include the following:

(1) the name, social security number, and address of those who complete the training;

(2) the name of the employer; and

(3) the results of the examination, if administered.

(e) Full duplicate records for each training session are to be retained by the training agency for five years.

(f) Out-of-state asbestos training may be acceptable on an individual basis for qualification providing that identity can be established and that the courses are substantially the same as required by this section. Information provided on such training must be acceptable to the department, which may require a re-examination prior to acceptance of an application.

§289.151. Work Practices for Asbestos-Related Activities. A person who is licensed, in accordance with the sections under this undesignated head, must follow:

(1) all work practices for asbestos-related activity that are required by federal regulation and that were made a part of the training course for licensure; and

(2) the provisions in the EPA publication titled, Guidance for Controlling Asbestos-Containing Materials in Buildings, 1985 edition, also known as the purple book, which is referenced in §298.144(b) of this title (relating to Licensing Standards).

§289.156. Asbestos Waste Disposal. All waste materials containing friable asbestos from any asbestos abatement operation shall be handled in compliance with §325.136 of this title (relating to the Disposal of Special Wastes). Section 325.136 is found in Chapter 325 of this title (relating to Solid Waste Management) and the program covered by §325.136 is administered by the Department's Division of Solid Waste Management.

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

Issued in Austin, Texas, on January 28, 1988

TRD-8800900 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 18, 1988
Proposal publication date: October 13, 1987
For further information, please call (512) 458-7254.

Chapter 325. Solid Waste Management

Subchapter A. General Information

★25 TAC §325.5

The Texas Department of Health adopts amendments to §§325.5, 325.91, 325.93, and 325.95. Sections 325.91, 325.93, and 325.95 are adopted with changes to the proposed text published in the October 16, 1987, issue of the *Texas Register* (12 TexReg 3819-3821). Section 325.5 is adopted without changes and will not be republished.

The amendments are made in response to laws passed in the 70th Legislature, 1987, including House Bill 2174, House Bill 814, House Bill 5, and House Bill 175. House Bill 2174 requires that the term "rubbish" be added to the definition of "solid waste" in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. The definition of solid waste in §325.5 is changed accordingly. House Bill 814 requires that within 270 days after the department has requested information needed to make an application administratively complete, the applicant shall provide the requested information or the application will be void. The legislated change is implemented by the amendments in §325.91(f). House Bill 5 requires that the department publish the minimum, median, and maximum time periods within which processing of a permit application has been completed in the previous 12-month period. The department must also establish a period within which the applicant will be notified if the application is administratively complete, and a period within which a final determination will be made after the application is administratively complete. If either of the latter two published processing times is exceeded (without good cause) for any applicant that is a small business, then that small business applicant may receive back its permit application fee. The amendments to §325.91(a), (c), (d), and (f), implements the requirements of House Bill 5. House Bill 175 provides that the department may not issue any permit or license to any corporation that is delinquent in paying a tax owed to the state. This condition placed on permit issuance is implemented by the amendment to §325.93(a).

A public hearing was conducted in Austin on November 4, 1987. Written comments were received through November 16, 1987. The following is a summary of the comments received on the proposed sections, during the public hearing and the comment period.

Concerning §325.91, there was a comment that the section is much too long and complicated (due to a series of past and present amendments) and should be divided into smaller logical units. The department agrees and has divided the section into subsections (a)-(f).

Concerning §325.91, two commenters expressed dissatisfaction with the time periods for permit processing, stating that they are excessively long.

However, one commenter conceded that the problem lies in the fact that state resources allocated for processing of municipal solid waste facility permits are insufficient for timely processing; the problem is not in the wording of the section. The second commenter suggested specific time periods which he considered reasonable for the various steps in permit processing. The department has not changed any of the time periods because the periods are determined as specified in House Bill 5, §3 and §8, 70th Legislature, 1987, which require the time periods be computed by utilizing the comparable time periods for permit applications for which processing was completed between June [illegible] 1987 and August 31, 1987.

Concerning §325.91, there was an objection to use of the words, "opposition legal tactics." This language is deleted, and the phrase "public hearing continuances" is substituted.

Concerning §325.91, there was a request for deletion of language which required the department's chief counsel to investigate alleged instances where the department exceeded, without good cause, the allowable time period for processing a permit application. The reference to the chief counsel is deleted.

Concerning §325.91, a commenter said that the law under which the appeal for a refund of application fees is authorized (House Bill 5) does not require a formal hearing in instances when the commissioner of health rules in favor of the department. The description of the appeal process is revised; it does not provide for a formal hearing if the commissioner of health does not rule in favor of returning an applicant's fees

Regarding §325.93, several comments were received concerning the process for determining whether a corporation which is an applicant for a permit owes any unpaid taxes to the state The comments generally relate to one of two questions. at what point in the application process should an inquiry be made to the State Comptroller's Office to determine whether taxes are owed, and what should be the specific process for making an inquiry of the state comptroller's office In responding to the first question, the department has determined that the process of applying for and receiving a municipal solid waste facility permit is too long and variable to have the inquiry take place except at the very conclusion of the application process. To include the inquiry any earlier in the application process would increase the possibility that a corporation's status could change, with the result that the corporation could actually owe taxes on the date the permit is issued. If this were to occur, then parties opposing permit issuance would have sufficient reason to have the permit issuance ruled as improper In responding to the second question, the department realizes that the same inquiry process must be followed by hundreds of programs in many state agencies; therefore, the process should be coordinated with the State Comptroller's Office and with other state agencies.

The new law provision requiring that inquiry be made whether a corporation owes taxes before a permit is issued to a corporation will result in thousands of inquiries to the Comptroller's Office each year. The inquiry process must be as simple and quick as possible for all involved, so that inquiries may be handled in a timely manner. It has been determined that the State Comptroller's Office maintains a computer file which shows the current tax status of all corporations operating in Texas This information will be made accessible, by computer link, with other state agencies that require the information An inquiry should be able to be completed in a matter of minutes.

Results of the inquiry can be made a matter of record by the person making the inquiry, by entering information about the inquiry and corporation's status in a memo.

The language in §325.93(a)(2)(B)(i) is changed to allow the department discretion in the form and process for determining whether a corporation owes taxes.

No comments were received which were against the proposed amendments in their entirety; there were only comments which addressed specific provisions or wording. Those making comments include the Sierra Club, Lone Star Chapter; Texas Disposal Systems, Inc., Austin; Waste Management of North America, Inc., Central Region, Irving; Osborne Engineering, Austin; the Office of General Counsel, Texas Department of Health; and the Office of the State Comptroller, State of Texas.

This amendment is adopted under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Texas Board of Health with the authority to adopt rules on municipal solid waste management; and under House Bill 2174, 70th Legislature, 1987, which covers the definitions of solid waste

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

Issued in Austin, Texas, on January 28, 1988

TRD-8800895 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date February 18, 1988
Proposal publication date October 16, 1987
For further information, please call (512) 458-7271

Subchapter E. Permit Procedures and Design Criteria Application Review Process

★25 TAC §§325.91, 325.93, 325.95

The amendments are adopted under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provides the Texas Board of Health with the authority to adopt rules on municipal solid waste management, and under the following laws passed by the 70th Legislature, 1987: House Bill 5, which relates to the time frame within which a permit application must be processed House Bill 814, which requires a solid waste facility permit applicant to provide application information within 270 days after the information is requested, and House Bill 175, which prohibits a state agency from issuing a permit or license to any corporation that owes taxes to the state

§325.91. General.

(a) The chief of the bureau is responsible for accomplishing all departmental actions necessary for the processing, technical evaluation of permit applications, and referral to the Office of General Counsel for issuance of a notice of opportunity for a public hearing or scheduling of the public hearing The chief of the bureau or his designated representative will be designated a party in accordance with the Administrative Procedure and Texas Register Act in all cases and will submit a recommendation for approval or denial of applications for permits, or for their renewal, amendment, or transfer.

(b) Receipt of the permit application Part B/site development plan will initiate a review period within which the bureau will inform the applicant that the permit application is administratively complete or deficient and set out the additional information that is required. This period shall be 185 days initially and will be reviewed annually based on the bureau experience

(c) An applicant shall submit any portion of an application that the department determines is necessary to make the application administratively complete within 270 days of receiving notice from the department that the additional information or material is needed Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this subsection, the application shall be considered withdrawn

(d) Based on the date of filing of an administratively complete permit application, as established by the preliminary evaluation of the bureau, the department will either deny or approve the permit application within a period established by bureau experience (exclusive of length of any required public hearing, which includes continuances, delays associated with need for the applicant to supply additional data, delays associated with out-of hearing negotiation between the applicant and opposition parties, etc., as determined by the department). This period shall be 310 days initially and will be reviewed annually. The department experience, based on the previous 12-month period (initially only June, July, August 1987), indicates the following processing times, including delays associated with the bureau workload, applicant's response times, public hearing continuances, and applicant/opposition negotiations, from the date the permit application is initially received to the date of the final permit decision: a minimum of 253 calendar days; a median of 475 calendar days; and a maximum of 1,248 calendar days.

(e) The review period of subsection (a) of this section and the evaluation/determination period of subsection (d) of this section are based on actual experience of nine permits issued during the initial three month period mandated by the legislature The methodology involved was the application of a correction multiplier, derived from the Student t formula for the mean periods computed from the nine permits at the 99% confidence level that the time period will not be

exceeded.

(f) The chief of the bureau, or his designated representative, will designate a professional engineer as project engineer, and such other staff members as may be necessary, to assist him in performing all processing and evaluation actions for each application. The chief of the bureau, or his designated representative, shall determine when the permit application is sufficiently complete to schedule a public hearing. The chief of the bureau, or his designated representative, may temporarily approve an applicant's request for a variance under the provisions of this subchapter E, if considered justified, and may temporarily waive any requirement which he considers not essential to the evaluation of the application or for holding a public hearing. A temporary waiver/variance shall be affirmed, modified, or set aside at the public hearing or during the final decision-making process. The applicant is responsible for presenting justification at the public hearing for the waiver/variance temporarily granted by the chief of the bureau or his designated representative. If the applicant requests a variance from the requirements under the provisions of this subchapter, the chief of the bureau will ensure that the request is incorporated into the application. When the application is determined to be administratively complete, with all the required forms, attachments, and fees, the department will forward to the applicant a notice of filing of application which the applicant, at his own expense, shall cause to be published one time in a newspaper regularly published or circulated in the county in which the solid waste site is located. Such publication shall be accomplished by the applicant, and a publisher's affidavit relative to such publication shall be forwarded to the department immediately thereafter. Technical review of the permit application will not commence until the publisher's affidavit has been received. The publication of this notice of filing of application shall be in addition to the publication of the notice of opportunity for a public hearing and/or the notice of public hearing required by §325.93 of the title (relating to Scheduling and Preparation for a Public Hearing).

(g) If a permit applicant is a small business as defined in House Bill 5, enacted by the 70th Legislature, 1987, and is of the opinion that either of two processing times have been exceeded through no fault of the applicant and without good cause, the applicant may appeal to the commissioner of health for timely resolution of any dispute arising from violation of these defined action periods. (The two periods of time during application processing which should not be exceeded and for which an appeal may be made include the initial 185 day period in which the department is to inform the applicant whether the application is administratively complete, found in subsection (b) of this section; and the 310 day period between the day the application is determined to be administratively complete and the day that the application is either denied, approved, or withdrawn, found in subsection (d) of this section.) To appeal, the applicant shall give written notice to the commissioner that he/she requests full reimbursement of all filing fees paid because his application was not processed within the adopted time periods and the department's delay in processing the application was without good cause. If an appeal is made, the program administrator shall submit to the commissioner a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will determine the final action and provide written notification of his decision to the applicant and the program administrator. If a resolution is made in favor of the permit applicant, then all permit application fees shall be reimbursed to the applicant Good cause is established if:

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

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

(3) any other conditions exist giving the agency good cause for exceeding the period established for processing a permit.

§325.93. Scheduling and Preparation for a Public Hearing.

(a) The bureau, on its own motion, may request that a hearing be scheduled or that an opportunity for a public hearing be provided, and will make available copies of its draft brief upon request.

(1) (No change.)

(2) If the bureau does not receive a written request for a public hearing from a person deemed to have a justiciable interest, the chief of the bureau will submit to the department's Office of General Counsel a final brief containing the bureau's technical evaluation of the permit application, analysis, conclusions, and recommendations, accompanied by the proposed permit.

(A) (No change.)

(B) Subject to the conditions in clauses *(i)-(iii)* of this subparagraph, the commissioner reviews the bureau's brief, findings of fact, conclusions of law, and recommendations of the Office of General Counsel and either approves or denies the permit. Normally, the decision to approve or deny the permit will be made within 10 days after the Office of General Counsel forwards its recommendations, but this time may be extended by the commissioner when required by circumstances.

(i) If the applicant is a corporation under the Texas Business Corporation Act, and the commissioner determines that the permit should be issued, then the commissioner shall inform the bureau of his intent. The bureau shall inquire of the State Comptroller's Office whether the applicant is delinquent in a tax owed the state. The bureau shall forward a memorandum containing the results of the inquiry to the commissioner. If no taxes are owed to the state, then the commissioner shall notify the applicant that the permit is issued. If taxes are owed, then the commissioner shall notify the applicant that the permit will not be issued until the taxes are paid. After the applicant notifies the commissioner that the taxes are paid, then the bureau shall inquire of the office of the State Comptroller a second time, to confirm payment. The bureau shall forward a memorandum containing the results of the second inquiry to the commissioner. If the taxes are paid, then the commissioner shall notify the applicant that the permit is issued.

(ii) If the applicant is not a corporation under the Texas Business Corporation Act, and the commissioner determines that the permit is issued, then the applicant shall be notified of the commissioner's approval, without making inquiry of the State Comptroller's Office.

(iii) If the commissioner denies the permit, then no inquiry shall be made of the State Comptroller's Office and the applicant shall be notified of the commissioner's denial.

(C) The applicant will be advised by the department of the commissioner's final decision by letter.

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

§325.95. Final Determination on Application.

(a) (No change.)

(b) Unopposed cases. After the record is closed, the bureau will complete the technical evaluation of all data submitted prior to and during the hearing and before the closing of the record, including comments received from the various review agencies. The chief of the bureau will submit a brief containing the bureau's technical evaluation of the permit application, analysis, conclusions, and recommendations to the hearing examiner, providing a copy to the applicant. The recommendations or proposed permit provisions submitted by the Texas Air Control Board shall be incorporated into the bureau's brief. The hearing examiner reviews the bureau's brief and, if he does not receive any exceptions to the brief from the applicant, forwards the brief to the commissioner together with his findings of fact and conclusions of law. The commissioner reviews the findings of fact, conclusions of law, and recommendations and either approves or denies the permit. Normally, the final decision will be made within 60 days after the closing of the hearing record, but this time may be extended by the hearing examiner at the public hearing when required by circumstances. If the applicant is a corporation under the Texas Business Corporation Act, and the commissioner determines that the permit should be issued, then the issuance of the permit and notification to the appli-

cant shall be subject to the additional conditions relating to payment of taxes by a corporation in §325.93(a)(2)(B)(i) of this title (relating to Scheduling and Preparation for a Public Hearing). The applicant will be advised by the department of the commissioner's final decision by letter. If the applicant determines that the bureau's brief contains conclusions and recommendations that are adverse to the applicant and files exceptions with the hearing examiner, the hearing examiner will prepare a proposal for decision and provide copies to the applicant and the chief of the bureau. The ensuing actions and final determination will then be as for an opposed case, as described in subsection (c) of this section.

(c) Opposed cases. In opposed cases in which the commissioner neither hears the evidence nor reads the complete record, a proposal for decision will be prepared by the hearing examiner. Prior to the closing of the hearing record, the hearing examiner shall establish a schedule for all ensuing actions through the final determination by the commissioner. All parties shall have an opportunity to file briefs with the hearing examiner, providing copies thereof to all other parties who shall then have an opportunity to file reply briefs with the hearing examiner. The chief of the bureau will revise his draft brief as necessary, taking into consideration all new evidence received at the public hearing and file a brief in all cases. The hearing examiner will then prepare a proposal for decision and provide copies to all parties. All parties filing exceptions and briefs to the proposal for decision shall provide copies of such exceptions and briefs to all other parties who shall then have an opportunity to file replies with the hearing examiner. Following the receipt of replies from all parties or the termination of the specified period of time for receipt of such replies, the Office of General Counsel will forward the proposal for decision, together with all briefs, exceptions, and replies received, through the associate commissioner for environmental and consumer health protection to the commissioner. Following his review of the proposal for decision, exceptions, briefs, replies, and staff recommendations, the commissioner shall issue a final decision in the form of a permit, with special provisions attached thereto, if appropriate; a denial order, containing the grounds for such denial; or any other action as may be authorized by state law. If the applicant is a corporation under the Texas Business Corporation Act, and the commissioner determines that the permit should be issued, then the issuance of the permit and notification to the applicant shall be subject to the additional conditions relating to payment of taxes by a corporation in §325.93(a)(2)(B)(i) of this title (relating to Scheduling and Preparation for a Public Hearing). Subsequent to this final decision by the commissioner, a motion for rehearing may be filed by any person affected by the decision. This motion must be filed within 15 days of the commissioner's decision and persons opposing or otherwise responding to the motion for rehearing shall be provided an opportunity to file a reply to the motion. The commissioner shall have 45 days from the time of the final decision (i.e., the issuance of the permit or denial order) to rule on the motions for rehearing, unless such time is extended by the commissioner by written order. Anyone who has filed a motion for rehearing may appeal the commissioner's final decision to a district court in Travis County within 30 days after a motion for rehearing has been overruled either by written order of the commissioner or by operation of law. Time limitations for the filing of motions, responses, exceptions, and briefs shall be governed by the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

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

Issued in Austin, Texas, on January 28, 1988

TRD-8800896 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 18, 1988
Proposal publication date: October 16, 1987
For further information, please call (512) 458-7271

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 293. Water Districts

Creation of Water Districts

★31 TAC §293.12, §293.17

The Texas Water Commission adopts amendments to §§293.12, 293.17, 293.43 and 293.45, and new §293.18, without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4761).

The amendments and new section are adopted pursuant to House Bill 1328, 70th Legislature, 1987, which amends the Texas Water Code, §5.235, and authorizes the Texas Water Commission to establish fees for certain applications relating to water districts and for a percentage of bond proceeds. The application fees established by these sections replace the existing application fee structure. The bond proceeds fee is a new fee authorized by House Bill 1328.

These sections are exactly the same as the emergency rules published in the September 11, 1987, issue of the *Texas Register* (12 TexReg 3143).

No comments were received regarding adoption of the amendments and new section.

These amendments are adopted under House Bill 1328, 70th Legislature, 1987, which authorizes the Texas Water Commission to establish fees for certain applications relating to water districts and for a percentage of bond proceeds; and under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties.

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

Issued in Austin, Texas, on February 2, 1988

TRD-8801089 William G. Newchurch
Director
Legal Division
Texas Water Commission

Effective date: February 23, 1988
Proposal publication date: December 18, 1988
For further information, please call (512) 463-8069

★31 TAC §293.18

The new section is adopted under House Bill 1328, 70th Legislature, 1987, which authorizes the Texas Water Commission to establish fees for certain applications relating to water districts and for a percentage of bond proceeds, and under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties.

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

Issued in Austin, Texas, on February 2, 1988.

TRD-8801088 William G. Newchurch
Director
Legal Division
Texas Water Commission

Effective date: February 23, 1988
Proposal publication date: December 18, 1988
For further information, please call (512) 463-8069

Issuance of Bonds

★31 TAC §293.43, §293.45

The amendments are adopted under House Bill 1328, 70th Legislature, 1987, which authorizes the Texas Water Commission to establish fees for certain applications

relating to water districts and for a percentage of bond proceeds; and under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties.

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

Issued in Austin, Texas, on February 2, 1988

TRD-8801087 William G Newchurch
Director
Legal Division
Texas Water Commission

Effective date: February 23, 1988
Proposal publication date December 18, 1988
For further information, please call
(512) 463-8069

Chapter 313. Edwards Aquifer

Subchapter D. Applications Requirements and Processing Fees for Approval of Plans and Amendments

★31 TAC §§313.61-313.66

The Texas Water Commission adopts new §§313.61-313.66 (comprising new Subchapter D), without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4762). The plans affected by the new sections include water pollution abatement plans, sewage collection system plans, and static hydrocarbon and hazardous substances storage facility plans. Approval of the plans by the executive director is currently required in §§313.3, 313.4, 313.8, 313.23, 313.24, and 313.28. Since the plans are required for certain projects in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties, the new sections will apply in those counties.

Section 313.61 explains that an application for approval of any plan or amendment listed must be filed with the executive director. Section 313.62 explains who must file applications required under this new Subchapter D. Section 313.65 explains who must pay the fees, to whom the fees must be paid, and when the fees are due. This section also provides that the executive director need not review the application and he may return it if the fees in the correct amount are not submitted The application may be resubmitted with the proper fees. Section 313.66 sets forth the amount of fees to be paid for each type of application.

These sections were adopted previously on an emergency basis to avoid undue delay in implementing the terms of Senate Bill 434, 70th Legislature, 1987, effective September 1, 1987, which relates to fees to be charged for certain applications filed with the executive director under Chapter 313 The emergency sections were published in the September 4, 1987, issue of the *Texas Register* (12 TexReg 3001) The emergency sections were renewed for a 60-day period, effective December 30, 1987, in the January 1, 1988, issue of the *Texas Register* (13 TexReg 11)

These new sections are the same as the emergency sections, except for the following changes

In §313.63(a)(1), the words, "if such representative is responsible for the overall operation of the facility" were omitted The staff felt that the operation of the facility may not be known when the application is filed in many cases

In §313.63(a)(3), the words "ranking official" were omitted because this term was not clear The words "a duly authorized representative" were added and proof of authorization is required

In §313.64(a)(1), the words "is located" were added after the word "project" The new words were added to make the meaning of this clause clearer This clause requires the applicant to submit the name of the development or subdivision where the project in question is located

No comments were received regarding adoption of the new sections

These new sections are adopted under the Texas Water Code, §26.0461, as enacted in Senate Bill 434, 70th Legislature, 1987, which provides the commission with the authority to impose fees for the filing of certain plans subject to review by the Texas Water Commission under its rules for the protection of the Edwards Aquifer and under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties

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

Issued in Austin, Texas, on February 2 1988

TRD-8801086 William G Newchurch
Director
Legal Division
Texas Water Commission

Effective date February 23, 1988
Proposal publication date December 18, 1988
For further information, please call
(512) 463-8069

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission on Human Rights

Chapter 327. Administrative Review

★40 TAC §327.12

The Texas Commission on Human Rights adopts new §327.12, without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2563)

The purpose of this section is to provide a procedure for disposing and retaining case files and documents relating to complaints of employment discrimination filed under the Texas Commission on Human Rights Act (Texas Civil Statutes, Article 5221k) and complaints deferred to the Texas Commission on Human Rights by the United States Equal Employment Opportunity Commission This section establishes uniform procedures for disposing of or retaining case files and related documents

Such case files and related documents shall be retained by the commission in accordance with the section, but case files and related documents shall be disposed in accordance with state procedures and laws after proper clearance with the State Auditor's Office and state librarian.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 5221(k), which provide the Texas Commission on Human Rights with the authority to adopt, issue, amend, and rescind procedural rules to carry out the purposes and policies of this Act

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

Issued in Austin Texas, on February 2, 1988.

TRD-8801094 William M Hale
Executive Director
Texas Commission on Human Rights

Effective date February 23 1988
Proposal publication date August 7, 1987
For further information, please call
(512) 837-8534.

State Board of Insurance Notifications Pursuant to the Insurance Code, Chapter 5, Subchapter L

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

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

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

The State Board of Insurance has adopted amendments to the Texas Automobile Manuals II and III.

The board has adopted physical damage rating symbols for certain 1988 model private passenger automobiles

The symbols adopted were developed from manufacturers F.O.B. list price data and adjusted in accordance with the prescribed vehicle series rating rule. The F.O.B. list price/symbol chart from which the appropriate symbols are derived is on page two of the symbol and identification section of the Texas Automobile Manuals II and III.

If applicable, the appropriate symbol has been raised or lowered based on the experience thresholds set out in the vehicle series rating rule in the symbol and identification section of the Texas Automobile Manuals.

The amendment is effective at 12:01 a.m. on the 15th day after notice of this action is published in the *Texas Register.*

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

Issued in Austin, Texas, on February 1, 1988.

TRD-880104 | Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date February 25, 1988
For further information, please call (512) 463-6327

The State Board of Insurance has considered a request by the United States Fire Insurance Company to revise the effective date of the rate revisions and optional additional deductible of $10,000 applicable to the currently approved Insurance Agents Errors and Omissions Liability Program originally approved by Board Order Number 51724, dated November 3, 1987

It is requested that the effective date of the rate revision and optional deductible of $10,000 be amended to February 1, 1988, instead of December 1, 1987

This filing was approved by Board Order Number 51803 on an emergency basis for a period of 120 days from and after February 1, 1988. It is the board's opinion that this order should replace the previous orders

This filing is approved to become effective 15 days after notice thereof is published in the *Texas Register* and further approves this filing to replace Board Order Number 51803

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

Issued in Austin, Texas on February 1, 1988

TRD-8801040 | Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date February 24, 1988
For further information, please call (512) 463-6327

The State Board of Insurance has approved revisions of the Texas retrospective rating plan for workers' compensation and employers' liability, automobile liablility, automobile physical damage, general liability, theft and glass insurance.

Revisions to the plan were made necessary, in part, by the board's adoption of revised worker's compensation and employers' liability basic manual rates which became effective on 12:01 a.m, January 1, 1988

The revisions update primary plan rating values, i.e., expected loss ratio, tax multiplier, loss conversion factor, expense ratios, excess loss premium factors, and tables of rating values

Additionally the board approved a revised table of expected loss ranges which effectively updates the table of insurance charges

Additionally, the board approved revised eligibility requirements for Retrospective Rating Options I-V

All revisions were approved under the authority and jurisdiction of the Insurance Code, Articles 5.77, 5.96, and 5.97, and are applicable to all retrospective rating plans made effective on and after 12:01 a.m., March 1, 1988.

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

Issued in Austin, Texas, on February 1, 1988.

TRD-8801109 | Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date March 1, 1988
For further information, please call (512) 463-6327

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of a emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at leas 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 detail than what is published in the *Texas Register.*

Texas Air Control Board

Friday, February 12, 1988. The Texas Air Control Board will meet in Room 332, 6330 Highway 290 East, Austin. Times and agendas follow.

8:30 a.m. The Monitoring and Research Committee will consider Texas Chemical Council's concerns regarding continued contractual work by Dr Marvin S Legator for the Texas Air Control Board, research priorities for fiscal year 1988, and contract with the University of Texas Medical Branch at Galveston for fiscal year 1988.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: February 3, 1988, 9:10 a.m.

TRD-8801118

9:15 a.m. The Mobile Source Emissions Committee will consider resource requirements for I/M enhancements resulting from post-1982 supplemental State Implementation Plan (SIP) revisions for Dallas and Tarrant Counties, mobile source requirements of the Environmental Protection Agency draft 1987 SIP guidance

Contact: Bill Ehret, 6330 Higway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: February 3, 1988, 9:11 a.m.

TRD-8801120

10 a.m. The Regulation Development Committee will discuss and consider public hearing on proposed revisions to the State Implementation Plan for inhalable particulate matter, discuss and consider public hearing on proposed revisions to regulation VI, permits

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: February 3, 1988, 9:10 a.m.

TRD-8801119

10:30 a.m. The board will approve minutes of the December 18, 1987, meeting; consider public testimony; hear reports, enforcement report, consider agreed enforcement orders, resolution regarding post 1987 ozone nonattainment, proposed agency contract, and new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354

Filed: February 3, 1988, 9:11 a.m.

TRD-8801121

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Texas Bond Review Board

Thursday, February [illegible], 1988, 9:30 a.m. The Staff Planning Session of The Texas Bond Review Board made an emergency revised agenda to a meeting held in the Lieutenant Governor's Room, State Capitol, Austin. According to the agenda, the session considered University of Texas System proposed issuance of bonds by the Travis County Research and Development Authority on behalf of the Board of Regents of the University of Texas System The emergency status was necessary to allow timely consideration by staff of application submitted unexpectedly to the board for approval at the board's regular monthly meeting on February 16,1988

Contact: Tom K. Pollard, Sam Houston Building, Room 711, Austin, Texas 78711, (512) 463-1741

Filed: February 3, 1988, 10:30 a.m.

TRD-8801116

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State Cogeneration Council

Friday, February 19, 1988, 10 a.m. The State Cogeneration Council will meet at the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard Austin According to the agenda summary, the council will introduce members and provide them with background on the council's enabling legislation; elect a chairperson; discuss existing and new state agency cogeneration projects, administrative procedures, and a preliminary agenda for the council's next meeting.

Contact: Malcolm Verdict, Office of the Governor, State Capitol, Austin, Texas 78701, (512) 468-1995.

Filed: February 3, 1988, 10:02 a.m.

TRD-8801113

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Texas Education Agency

Thursday, February 11, 1988, 1:30 p.m. The Committee for Finance and Programs of the State Board of Education will meet in Room 1-104, William B Travis Building, 1701 North Congress Avenue Austin According to the agenda summary, the committee will consider permanent school fund (PSF), foundation school program, state textbook program, commissioner's authority to waive SBOE rules, grievance procedures for local school districts, vocational education trustee for Lackland Independent School District, Apprenticeship and Training Advisor Committee, grants for preschool program evaluation and adaptive/assistive device center, development of drug education curriculum; determination of allocation; impact of fall 1987 enrollment data on foundation school program costs in 1987-1988; legislative appropriations request for 1989-1990 and 1990-1991, and 1988-1989 program/operating budgets, Texas textbook system, master plan for vocational education, governor's task force on vocational education; special provisions for vocational education, remedial and compensatory instruction

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: February 3, 1988, 3:37 p.m.

TRD-8801145

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Texas Employment Commission

Wednesday, February 10, 1988, 8:30 a.m. The Texas Employment Commission will

meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting; consider resolution of boundary dispute concerning TEC property in Brownwood including authorization to sell/purchase, internal procedures of commission appeal action on tax liability cases and higher level appeals in unemployment compensation cases listed on docket six, and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: February 2, 1988, 2:28 p.m.

TRD-8801069

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Texas Housing Agency

Thursday, February 11, 1988. The Texas Housing Agency will meet in the Galleria, Holiday Inn Crown Plaza, 2222 West Loop South, Houston. Times and agendas follow.

7 a.m. The Finance and Audit Committee will consider data processing report regarding automated systems, schedule bond counsel interviews, RFP for intergovernmental relations liaison, fiscal year 1988 capital and operating budgets, financings in progress and management letters; hear MIS reports, consider task force group, treasurer transfer of 1980 Series A and 1982 Series A investment responsibilities, investment guidelines, interchange series, and state/federal partnership for alternative housing needs. The committee will also meet in executive session to discuss personnel matters pertaining to staff evaluations, personnel policy review and THA organizational structure.

Contact: Dan A. McNeil, P.O. Box 13941, Austin, Texas, (512) 474-2974.

Filed: February 3, 1988, 4:34 p.m.

TRD-8801152

8:30 a.m. The Personnel and Planning Committee will consider personnel policy and RFP for statewide housing study. The committee will also meet in executive session to discuss personnel matters pertaining to staff and THA organizational structure.

Contact: Dan A. McNeil, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

TRD-8801153

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Texas Department of Human Services

Tuesday, February 16, 1988, 9 a.m. The Children's Trust Fund Full Council of the Texas Department of Human Services will meet in the Big Thicket Conference Room, Hyatt Regency-Town Lake, 208 Barton Springs Road, Austin. According to the agenda, the council will consider drawing to determine length of term; approve minutes of the previous meeting; consider organizational history and structure; evaluation and assessment overview; Joseph P. Kennedy foundation community of caring presentation, public awareness campaign package; and discussion of fiscal year 1989 renewal process and calendar.

Contact: Janie Fields, 8140 MoPac Building, Suite 2000, Austin, Texas, (512) 477-1234.

Filed: February 2, 1988, 2:21 p.m.

TRD-8801068

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State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Thursday, February 11, 1988, 10 a.m. The State Board of Insurance will meet in Room 414, to consider proposed revision of fire extinguisher rules, emergency and proposed rule concerning surplus lines insurance for fire extinguishers, emergency and proposed revision of rules concerning sales, installation, maintenance and servicing of fire detection and fire alarm devices and systems, 28 TAC Chapter 27. Emergency and proposed amendment of 28 TAC §27.313. Discussion of fire protection sprinkler advisory council and of procedure for approval of testing laboratories under Insurance Code, Articles 5.43-1, 5.43-2, and 5.43-3. Board orders on several different matters as itemized on the complete agenda. Fire Marshall personnel, litigation, statistical and rate development personnel. Research and Information Services: personnel. Commissioner: personnel; litigation; and proposed 28 TAC §19.801-19.810.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: February 3, 1988, 9:49 a.m.

TRD-8801124

Tuesday, February 16, 1988, 9:30 a.m. The board will meet in Room 414, to consider Docket 1542-Appeal by Jerry D. Hering from Commissioner's Order 87-0454. Public hearing held on November 5, 1987.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463 6526.

Filed: February 3, 1988, 9:50 a.m.

TRD-8801123

Tuesday, February 16, 1988, 9:30 a.m. The board will meet in Room 414, to consider Docket 1542-Appeal by Jerry D. Hering from Commissioner's Order 87-0454. Public hearing held on November 5, 1987.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: February 3, 1988, 9:50 a.m.

TRD-8801123

Monday, February 29, 1988, 10 a.m. The board will meet in Room 414, to consider Dockets 1555, 15556, and 1558 concerning adoption of premium rates for the writing of title insurance in the State of Texas and amendments to the basic manual of rules, rates, and forms for the writing of title insurance in the State of Texas, 28 TAC §9.1. Public hearing held December 17, 18, and 21, 1987, and January 7, 1988.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: February 3, 1988, 9:50 a.m.

TRD-8801122

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Legislative Education Board

Tuesday, February 16, 1988, 1:30 p.m. The Legislative Education Board will meet in the Old Supreme Court Room 310, Capitol Building, Austin. According to the agenda, the board will consider rising junior test, Edgewood v. Kirby briefing, compensatory education funds use and performance-based accreditation process, vocational education-CVAE funding seventh and eighth grades and alternatives to social promotion, and alternative teacher certification-review of rules, hear status report on implementation of Senate Bill 994, and report and analysis of EXIT test results.

Contact: Daryl Dorcy, State Capitol, Room 244, Austin, Texas 78701, (512) 463-1000.

Filed: February 2, 1988, 3:11 p.m.

TRD-8801081

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Texas Optometry Board

Thursday, February 11, 1988, 8:30 a.m. The Texas Optometry Board will meet in the Doubletree Hotel, 8250 North Central Expressway, Dallas. According to the agenda summary, the board will consider reports of secretary-treasurer, legal counsel, executive director, and committee chairpersons; consider adoption of proposed §271.6 (amendments); discuss HCR 36 and IAB meeting; consider appearances of licensees who failed to meet requirements of continuing education for license renewal. Committees will meet according to the following schedule: 3 p.m.-Investigation-Enforcement, 3:30 p.m.-Rules Committee, 4:30 p.m.-Continuing Education Committee. A grad-

ing session will be held at 8 p.m. February 10 to determine successful candidates taking board. The board will also meet in executive session in compliance with Texas Civil Statues, Article 6252-17, §2(e)

Contact: Lois Ewald, 1300 East Anderson Lane, Suite C-240, Austin, Texas 78752, (512) 835-1938.

Filed: February 2, 1988, 3:40 p.m.

TRD-8801083

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Texas Public Finance Authority

Wednesday, February 17, 1988, 10:30 a.m. The Texas Public Finance Authority will meet in Room 104, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the authority will approve minutes of the previous meeting; consider 11 a.m. bid opening for Texas Public Finance Authority State of Texas general obligation bonds, Series 1988A; consider resolution authorizing Texas Public Finance Authority State of Texas general obligation bonds, Series 1988A, consider a memorandum of understanding and financing agreement with the Texas Department of Corrections, a funds management agreement 1988A general obligation bonds with the state treasurer, a paying/registrar agreement with First RepublicBank Austin, N.A., an official statement, other matters, adoption of proposed rules for disbursement of bond proceeds, contracts of bond counsel and financial advisor, and set date and time of next meeting.

Contact: Ann Moriarty, 201 East 14th Street, Austin, Texas 78701, (512) 463-5544.

Filed: February 2, 1988, 2:50 p.m.

TRD-8801076

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Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Wednesday, February 3, 1988, 9 a.m. The Hearings Division made an emergency revised agenda concerning Docket 7790-Petition of the General Counsel for an evidentiary proceeding to determine market dominance contested among interexchange telecommunications carriers and extension of time for ruling on appeal of examiner's order nine. The emergency status was necessary because expiration of time for ruling on appeal.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: Febraury 2, 1988, 2:56 p.m.

TRD-8801078

Thursday, February 18, 1988, 3 p.m. The EAS Advisory Committee will hear presentation and report by the EAS Advisory Committee.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 2, 1988, 2:59 p.m.

TRD-8801080

Tuesday, February 23, 1988, 10 a.m. The Hearings Division will consider Docket 7928-Applicatoin of Central Power and Light Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:03 p.m.

TRD-8801129

The Hearings Division will consider Docket 7929-Application of El Paso Electric Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2 p.m.

TRD-8801130

The Hearings Division will consider Docket 7934-Application of Southwestern Public Service Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:05 p.m.

TRD-8801131

The Hearings Division will consider Docket 7931-Application of Houston Lighting and Power Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:06 p.m.

TRD-8801132

The Hearings Division will consider Docket 7930-Application of Texas-New Mexico Power Company for approval of standard avoided cost calculation for the purchase of firm energy and capcacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:07 p.m.

TRD-8801133

The Hearings Division will consider Docket 7932-Application of Southwestern Electric Power Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:08 p.m.

TRD-8801134

The Hearings Division will consider Docket 7933-Application of West Texas Utilities Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:09 p.m.

TRD-8801135

The Hearings Division will consider Docket 7935-Application of Texas Utilities Electric Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 3, 1988, 2:10 p.m.

TRD-8801136

April 11, 1988, 10 a.m. The Hearings Division will consider Docket 7924-Application of West Texas Rural Telephone Cooperative, Inc. to detariff inside wiring and effect miscellaneous tariff changes.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: February 2, 1988, 2:58 p.m.

TRD-8801079

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Texas Racing Commission

Thursday, February 11, 1988, 10 a.m. The Texas Racing Commission will meet in

the Senate Chamber, State Capitol, Austin. According to the agenda, the commission will elect temporary chairman, discuss organization; set a time and date for meetings; and discuss executive secretary and other personnel matters and potential trips to view facilities and meet with other racing commissions.

Contact: Nelva Lou Shelton, P.O. Box 1418, Kingsville, Texas 78363, (512) 592-6411.

Filed: February 3, 1988, 9:53 a.m.

TRD-8801111

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Texas State Senate

Friday, February 26, 1988, 9 a.m. The Space Science Industry Commission of the Texas State Senate will meet in the Houston Chamber of Commerce Main Conference Room, 25th Floor, 1100 Milam Building, Houston. According to the agenda, the commission will hear testimony on private and entrepreneurial development of space related projects in Texas.

Contact: Kathleen R. Coates, State Capitol, Austin, Texas 78701, (512) 463-0117.

Filed: February 2, 1988, 3:11 p.m.

TRD-8801082

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Structural Pest Control Board

Wednesday, February 3, 1988, 1:30 p.m. The Structural Pest Control Board met in emergency session in Suite 250, Building C, 1300 East Anderson Lane, Austin. According to the agenda, the board considered motion for rehearing by Antonio E. Suarez doing business as Di-Tone Inspection Service. The emergency status was necessary because decision must be made on rehearing by the February 5, 1988 and the regularly scheduled board meeting was not until February 8, 1988.

Contact: David A. Ivie, 1300 East Anderson Lane, Suite 250, Building C, Austin, Texas 78752.

Filed: February 2, 1988, 2:31 p.m.

TRD-8801070

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Select Committee on Tax Equity

Thursday, February 18, 1988, 9 a.m. The Select Committee on Tax Equity will meet in the Senate Chamber, State Capitol, Austin. According to the agenda, the committee will discuss state and local sales tax and related policy issues.

Contact: Billy Hamilton, Reagan Office Building, Room 304h-5, Austin, Texas 78711, (512) 463-1238.

Filed: February 3, 1988, 8:43 a.m.

TRD-8801117

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Texas Water Commission

Thursday, March 17, 1988, 9 a.m. The Office of Hearings Examiner will meet in the Commissioner's Courtroom, Ellis County Courthouse, Franklin Street, Waxahachie. According to the agenda summary, the office will consider application of Trinity River Authority of Texas, P.O. Box 240, Arlington, Texas 76010 for a permit (Proposed Permit 13415-01) to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 3,500,000 gallons per day from the Red Oak Creek Wastewater Treatment Plant. The proposed facility would serve as a centralized facility for the cities of Cedar Hill, DeSoto, Glenn Heights, Lancaster, Ovilla, and Red Oak.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: February 2, 1988, 11:41 a.m.

TRD-8801058

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Regional Meetings

Meetings Filed February 2, 1988

The Brown County Appraisal District, Board of Directors, met at 403 Fisk Avenue, Brownwood, on February 3, 1988, at 10:30 a.m. Information may be obtained from Linda Meeks, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

TRD-8801054

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Meetings Filed February 3, 1988

The Burnet County Appraisal District, Board of Directors, will meet at 215 South Pierce, Burnet, on February 8, 1988, at 6:30 p.m. Information may be obtained from Amy Shrader, 215 South Pierce, Burnet, Texas 78611, (512) 756-8291.

The Education Service Center, Region VI, Board of Directors, will meet in Huntsville, on February 18, 1988, at 5 p.m. Information may be obtained from M.W. Schlotter, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161, ext. 131.

The Education Service Center, Region X, Board of Directors, will meet in the Boardroom, 400 East Spring Valley, Richardson, on February 10, 1988, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas, (214) 231-6301.

The Edwards Underground Water District, Board of Directors, will meet at 1615 North St. Mary's, San Antonio, on February 9, 1988, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78215, (512) 222-2204.

The Garza County Appraisal District, Board of Directors, will meet in the Appraisal Office, Courthouse, Post, on February 10, 1988, at 9 a.m. Information may be obtained from Jean Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Golden Crescent Service Delivery Area, Private Industry Council, Inc., will meet at 1301 East Rio Grande, Victoria, on February 10, 1988, at 6:30 p.m. Information may be obtained from C[illegible]a Schoener, P.O. Box 2149, Victoria, Texas 77902.

The High Plains Underground Water Conservation District, Board of Directors, will meet in the Conference Room, 2930 Avenue Q, Lubbock, on February 16, 1988, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Nolan County Central Appraisal District, Board of Directors, will meet in Suite 317A, Nolan County Courthouse, Sweetwater, on February 9, 1988, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The San Patricio County Appraisal District, Board of Directors, will meet in the Courthouse Annex, Sinton, on February 11, 1988, at 9:30 a.m. Information may be obtained from Kath[illegible] Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The Central Tax Authority of Taylor County, Board of Directors, will meet at 340 Hickory Street, Abilene, on February 10, 1988, at 10 a.m. Information may be obtained from Ralph Anders, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

TRD-880117

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Meetings Filed February 4, 1988

The Blanco County Appraisal District, Board of Directors, will meet at the Blanco County Courthouse Annex, Johnson City, on February, 9, 1988, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Deep East Texas Council of Governments, Board of Directors, will meet in the King's Inn, Crockett, on February 5, 1988, at 11 a.m. Information may be obtained from K[illegible] Bayli[illegible] 274 East Lamar Street, Jasper, Texas 75[illegible]1.

The Education Service Center Region XVIII, Board of Directors, will meet at 2811 Laf[illegible] Boulevard, Midland, on February 11, 1988, at 7:30 p.m. Information may be obtained from Vernon Stokes, P.O. Box 602[illegible] Midland, Texas 79711, (915) 563-2380.

The Lamar County Appraisal District, met at 15[illegible] Lamar Avenue, Paris on February 8, 1988, at [illegible] p.m Information may be obtained from Rodney Anderson, 1523 Lamar Avenue Paris Texas 7[illegible]460.

The Central Appraisal District of Rockwall County, Board of Directors, will meet at 10[illegible] North San Jacinto Street, Rockwall, on February 9 1988, at 7:30 p.m. Information may be obtained from Ray E. Helm 106 North San Jacinto Street, Rockwall, Texas 75087 (214) 7[illegible]2-2034.

The South Plains Association of Governments, Executive Committee and Board of Directors, will meet at [illegible]32[illegible] 58th Street, Lubbock, on February [illegible], 1988 at 9 a.m. and 10 a.m., respectively. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452.

The Tarrant Appraisal District, Appraisal Review Board will meet at 2309 Gravel Road, Fort Worth, on February 25, 1988, at 8:30 a.m Information may be obtained from Linda Freeman, 2309 Gravel Road, Fort Worth, Texas, 76118.

TRD-8801164

In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Health

Correction of Error

The Texas Department of Health submitted a proposed sections which contained errors as submitted and published in the January 12, 1988, issue of the *Texas Register* (13 TexReg 236).

In the preamble to §157.83, the last sentence to the seventh paragraph contained an error as submitted by the department. The sentence should read: "Comments will be accepted for 30 days after publication of this proposed in the *Texas Register*."

In the preamble to §§289.121, 289.123, and 289.124, the seventh, eighth, and ninth paragraphs contained errors as published in the *Texas Register*. The paragraphs should read:

"Based on concurrence by the department's office of general counsel, no amendments are proposed for §289.122 and §289.125 of this title (relating to the Control of Radiation). Section 289.122 adopts by reference Part 42. entitled "Registration of Radiation Machines and Services." This section is exempted because the permits issued are certificates of registration

Any delay in issuance does not prevent an individual from commencing or conducting a business using radiation machines. Section 289.125 adopts by reference Part 45 "Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste." No time period is specified since no application has been received to date, and no applicant is a small business

In addition, the licensure review activities have federally mandated time requirements. Time estimates are somewhat conservative because they are based on the length of time from original application to issuance or denial of a license. These times include delay periods incurred by the applicant to furnish additional information when the application is insufficient or incomplete Time periods established in the sections exclude response times by the applicants to agency requests for more information."

Public Hearing

In the October 2, 1987, issue of the *Texas Register* (12 TexReg 3507), the department adopted on an emergency basis amendments to existing 25 TAC §157.63 and §157.77 and amendments to new 25 TAC §157.82 Section 157.63 concerns certification of Emergency Medical Services (EMS) personnel, §157.77 concerns EMS training program and course approval, and §157.82 concerns EMS personnel training for certification of peace officers and firefighters

In this issue of the *Texas Register*, the department is adopting on an emergency basis amendments to the emergency rules published in the October 2, 1987, issue of the *Texas Register*.

The Board of Health intends to adopt the emergency amendments published in this issue on a permanent basis in March, 1988. In order that the general public will have the opportunity to comment on these emergency amendments, the department will hold a public hearing concerning the amendments on Friday, February 19, 1988, beginning at 10 a.m., at the Hilton Hotel, 6000 Middle Fiskville Road, Austin.

Issued in Austin, Texas, on February 1, 1988.

TRD-8801006 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: February 1, 1988
For further information, please call (512) 465-2601.

Requests for Applications

Applications are available for continuation, expansion, and new funding under the Texas Early Childhood Intervention Program. Applications may be submitted by public and private agencies and organizations that are current or potential providers of services to children with developmental delays.

Applications for new and expansion programs will be considered competitively. The purpose of this program is to provide comprehensive intervention services for children with developmental delays or who are at risk of developmental delay and their families.

Applications should be mailed to ECI Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; or hand delivered to the ECI office, 1101 East Anderson Lane, Austin, Texas. Inquires regarding this request for proposals should be directed to Richard Parker at (512) 465- 2671.

Applications must be received in the ECI office by 5 p.m., March 14, 1988, or they must be postmarked on or before March 13, 1988.

Funding priorities are established by the Interagency Council and will be detailed in the application. Quality ranking will be based upon priorities addressed, interagency grant review team ranking, geographic needs, and ECI staff recommendations In addition, funding available for support of these applications is contingent upon state and federal legislative appropriations. Funding will be effective September 1, 1988.

Issued in Austin, Texas, on February 3, 1988

TRD-8801096 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: February 3, 1988
For further information, please call (512) 465-2671.

Texas Housing Agency

Public Notice

The Texas Housing Agency, pursuant to the Internal Revenue Code of 1986, §25, will implement a new cycle of the Qualified Mortgage Credit Certificate Program (the program) for low and moderate-income first time homebuyers and other eligible borrowers. The agency will designate qualified mortgage lenders in Texas that will receive a fee from the applicant to accept and process applications from prospective eligible borrowers that seek a mortgage credit certificate (MCC). This public notice is being published at least 90 days prior to the issuance of a new cycle of MCC's by the agency.

An MCC entitles an eligible recipient to a credit against that recipient's federal income tax obligation. The amount of credit is determined by multiplying the MCC rate (concurrently set at 20%) by the amount of mortgage interest paid or accrued by the taxpayer for each taxable year, up to a maximum of $2,000 per year An individual claiming the credit may also be entitled to additional withholding allowances. The agency will issue MCC's to eligible homebuyers on a first come-first served basis. For the first 30 days of the program, the agency plans to process applications only on homes having an acquisition cost which is the lesser of $80,000 or the federal limits. Eligible homebuyers must have an income which does not exceed the maximum federal income limits for this program.

Principal Residence Requirement. An MCC may be issued for the acquisition of a single family residence in Texas that reasonably can be expected to become the principal residence of the holder of the MCC within a reasonable time after the financing is received. An MCC applicant may not have had any present ownership int[illegible] in a principal residence at any time within the three years prior to the date of execution of the mortgage to which the MCC is tied.

Purchase Price Requirement. The acquisition cost of the principal residence, other than a targeted area residence, may not exceed 90% of the average area purchase price applicable to that residence. For targeted area residences, the acquisition cost may not exceed 110% of the applicable price.

New Mortgage Requirement. An MCC may not be used for the acquisition or replacement of an existing mortgage. Subject to certain exceptions, the MCC may only be issued to an individual who did not have a mortgage, whether or not paid off, on the residence to which the MCC is issued at anytime prior to the execution of the new mortgage.

Transfer Restriction. Although an MCC may be transfered, such transfer will be subject to approval by the agency.

The information contained in this notice is of necessity general and brief, because the program must comply with a variety of complex federal and state laws and regulations. The agency is preparing a program brochure that is available upon request.

To be placed on the brochure mailing list or to obtain further information about the program, please contact the Texas Housing Agency, P.O. Box 13941, 811 Barton Springs Road, Suite 300, Austin, Texas 78711, 472-7500 or 1-(800)-792-1119, Attention: Andy Davis.

The description of the program contained in this public notice is subject to the agency's MCC Manual, as amended.

Issued in Austin, Texas, on February 2, 1988.

TRD-8801095 Dan A. McNeil
Executive Administrator
Texas Housing Agency

Filed: February 2, 1988
For further information, please call (512) 474-2974.

Texas Department of Human Services

Request for Proposals

The Texas Department of Human Services (TDHS) is requesting proposals for day care services to children.

Description. The department is purchasing day care services for children to prevent abuse and neglect and to enable eligible parents to work or to receive training for employment.

Contract Limitations. The contract period will be May 1, 1988 through December 31, 1988. Funding for the contract will not exceed $442,134. Services will be provided in Beaumont and north Jefferson County through a broker system.

Evaluation and Selection. The following criteria will be included as part of the evaluation process of proposals received: administrative efficiency and experience particularly that related to day care and multi-site programs; plan for providing services, cost; extent to which proposed services match need, and level of compliance with licensing standards Final selection will be based upon the department's evaluation of proposals against these criteria.

Contact Person. For additional information or to request a proposal packet, please contact Mr Pat Morgan, Contract Manager, Texas Department of Human Services, Mail Code 244-1, P.O. Box 767, Nacogdoches, Texas 75963-0767, (409) 569-7931, ext. 330

Closing Date. Written proposals must be received by the department by 5 p.m. on March 11, 1988. Proposals received after that time will not be considered.

Issued in Austin, Texas, on February 2, 1988.

TRD-8801097 Marlin W Johnston
Commissioner
Texas Department of Human Services

Filed: February 3, 1988
For further information, please call (512) 450-3765.

Texas State Board of Medical Examiners

Amended Consultant Contract Award

This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c.

In the August 7, 1987, issue of the *Texas Register* (12 TexReg 2596), the Texas State Board of Medical Examiners

published notice to invite proposals for the services of a consultant to assist in the development of a systems improvement plan for the agency This contract was awarded to Arthur Andersen and Company. Notice is given that the Texas State Board of Medical Examiners is amending the contract to increase the amount of the consultant's contract not to exceed $18,000.

Issued in Austin, Texas, on February 2, 1988.

TRD-8801071 G V. Brindley, Jr.
Executive Director
Texas State Board of Medical Examiners

Filed: February 2, 1988
For further information, please call (512) 452-1078.

Texas Department of Mental Health and Mental Retardation

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Mental Health and Mental Retardation (TDMHMR) is requesting proposals for consulting services.

Description. The consultant will update the TDMHMR's long-range service delivery information systems plan. Specific activities to be performed are review present scope of operations; identify systems requirements; update service delivery function charts; draft project descriptions; develop software, hardware, organizational, and implementation strategies This project updates the work of a previous project which was conducted with the assistance of a reputable accounting firm under contract with TDMHMR.

Contact Person. Prospective bidders may contact Sally Anderson, Director, Office of Information Services, TDMHMR, P.O Box 12668, Austin, Texas 78711-2668, (512) 465-4570

Procedure for Selection of Consultant. The TDMHMR will consider the demonstrated competence, knowledge, and qualifications to complete the work satisfactorily and on time. These factors will be used for each individual who will be assigned to the project, and for the firm as a whole, as well as the reasonableness of the proposed fee. The TDMHMR has the sole discretion and reserves the right to cancel the request if it is considered in the best interest of the agency to do so.

Consultant Information. In order to protect the department's previous investment in Method 1, and to eliminate the costs incurred to develop the consultants knowledge of department operations, TDMHMR intends to award this contract to Arthur Anderson and Company.

Closing Date. The closing date for receipt of offers is February 19, 1988.

Issued in Austin, Texas, on February 2, 1988

TRD-8801093 Gary E Miller
Commissioner
Texas Department of Mental Health and Mental Retardation

Filed: February 2, 1988
For further information, please call (512) 465-4591

Middle Rio Grande Development Council

Consultant Proposal Request

The Middle Rio Grande Development Council (MRGDC), 403 East Nopal Street, Carrizo Springs, in accordance with Texas Civil Statutes, Article 625211-c, files a consultant proposal request.

The Middle Rio Grande Development Council is accepting proposals for professional services to produce video tapes and related media materials to help promote use of the JTPA Program by businesses and/or participants.

The contractor will produce a video tape based on an existing draft of a script to be used with area businesses to inform them of the benefits of the JTPA Program and thereby increase their use of the program. The video will be shot on location in the MRGDC region. The master format will be ¾ inch broadcast quality or better. The bid should include all costs for preproduction, production, and post production, including 20 VHS ¼ inch dubs. Costs should be divided under these three categories. The response should indicate any special effects, titles, zooms, split screens, squeezes, etc., that are proposed to be used and indicate how and where they would be used. Bid should include all music rights. If desired, these special effects, etc., may be included as optional cost items.

The script is available upon request from the address following. In addition, MRGDC owns approximately three hours of stock cover footage that could be used in the production of this project. It is estimated that approximately 20% of the total footage required could be taken from this stock footage. More information on the content of this footage is available at the address following.

MRGDC is seeking a long term relationship for professional services in the area of video and media production. The successful bidder will be eligible to perform additional projects for MRGDC on a negotiated basis. Therefore, in addition to the specific bid on the current project, bidders should provide general information on the company and services. Resumes of the principals and any regular subcontractors that might be used should be included. Samples of previous work and a list of clients should be included.

The low bidder will not necessarily be the company chosen. MRGDC reserves the right to contract with more than one responding firm to perform parts of the services required. MRGDC also reserves the right to negotiate the costs for services with the successful company for the current project and future projects.

Bidders will be evaluated on the following criteria: cost of the bid for current project based on script; creative suggestions, including special effects, to enhance the current script; production schedule proposed for current project; familiarity with the MRGDC region and the JTPA Program; ability to service the region (i.e. time and distance, availability, amount of time that would be spent in the region, etc.); previous experience and projects; equipment and services (availability and costs); flexibility and commitment to quality; and reliability and business track record.

Proposal packets may be obtained by contacting Greg Davenport, 209 North Getty, Uvalde, Texas 78801, (512) 278-2527. Proposals must be received no later than March 14, 1988.

Issued in Austin, Texas, on January 29, 1988

TRD-8801055 Michael Patterson
Executive Director
Middle Rio Grande Development Council

Filed: February 2, 1988
For further information, please call (512) 278-2527.

Texas College of Osteopathic Medicine/North Texas State University

Consultant Proposal Request

This request for consulting services is filed under Texas Civil Statutes, Article 6252-11c.

The Texas College of Osteopathic Medicine (TCOM), under the direction of North Texas State University Board of Regents, invites offers for wage and salary/compensation consultant services to review, advise, and coordinate activities relating to the development and installation of a modern compensation program

The contact for offers of consulting services is Mary McAnally, Director of Purchasing, Texas College of Osteopathic Medicine, 3516 Camp Bowie Boulevard, Fort Worth, Texas 76107, (817) 735-2680. Details of the proposed scope of services are available upon request.

The deadline for receipt of offers of consulting services is March 11, 1988. Proposals received after 5 p.m. on March 11, 1988, will be returned unopened to the proposer.

TCOM intends to evaluate each proposal and may then award a contract based upon the consultant's demonstrated competence, knowledge, qualifications, and the reasonableness of the proposed fee.

Issued in Austin, Texas, on February 1, 1988

TRD-8801030 Jan Dobbs
Board Secretary
North Texas State University

Filed: February 1, 1988
For further information, please call (817) 735-2680.

Railroad Commission of Texas

Correction of Error

The Railroad Commission of Texas adopted a new section which contained an error as published by the *Texas Register* in the January 22, 1988 issue of the *Texas Register* (13 TexReg 406).

In §5.462, subsection (e) should read:

"(e) Public necessity. The availability of existing bona fide MBE certificate holders may be considered as a factor in determining adequacy of existing carrier service where a bona fide MBE applicant demonstrates, through public witness evidence, a public necessity for use of the services of a bona fide MBE certificate holder as a primary means of meeting requirements of state or federal law, and local ordinances for use of contractors qualifying as a bona fide MBE certificate holder and/or bona fide MBE transportation contractor under these regulations, and where existing carriers opposing the application fail to establish that they are capable of adequately meeting the demonstrated need for the availability of bona fide MBE certificate holders and/or bona FIDE MBE transportation contractors."

Texas Water Commission

Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 25-29, 1988.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal

Period of January 29, 1988

A. E. Staley Manufacturing Company, Horizon Chemical Division, Crosby; demonstration facility which manufactures carbohydrate based chemical surfactants; at 16615 Ramsey Road in the Community of Crosby, Harris County; 02896; amendment

Bill Milburn, Inc., Austin; storage pond system; approximately two miles south of United States Highway 290 and approximately 7,000 feet west of Brodie Lane in Travis County; 12964-01; renewal

Cominco American, Inc., Borger; waste disposal well; 938 feet south of the north line and 1,397 feet west of the east line of Section 25, Block Y of the Arnold and Barrett Survey, Abstract Number 5, approximately two miles southwest of the City of Borger, Hutchinson County; WDW 115; renewal

The City of Kress; oxidation pond system; approximately one mile southeast of the intersection of State Highway 87 and FM Road 145 in Swisher County; 10409-01; amendment

Natchez Joint Venture, Houston; wastewater treatment plant; approximately 2.25 miles west of the intersection of State Highway Six and FM Road 521 and approximately 5.75 miles southeast of the intersection of State Highway Six and FM Road 1092 (Stafford-DeWalt Road) in Fort Bend County, 13399-01; new

Texas Parks and Wildlife Department, Huntsville; wastewater treatment facilities; between the service area and

the Prairie Branch camping area, approximately 10 miles southeast of Huntsville in Walker County; 11830-01; renewal

Chaparral Steel Company, Midlothian; steel plant; on a 298 acre tract of land, ¼ mile south of Highway 67 and 1,000 feet west of Ward Road, approximately two miles south of Midlothian, Ellis County; HW-50162-000; new

Bilma Public Utility District, Houston; wastewater treatment facilities, approximately 8,000 feet northeast of the intersection of Louetta Road and Stuebner-Airline Road, 11,000 feet southeast of Spring Cypress Road and Stuebner-Airline Road in the City of Houston, Harris County, 12025-02; renewal

Harris County MUD Number 11, Houston; wastewater treatment plant; approximately 500 feet west of the intersection of Steubner-Airline Road and Aldine Western Road and south of and adjacent to Harris County Flood Control Ditch P148-00-00 in Harris County; 11351-01; renewal

Leon Springs Utility Company, San Antonio, wastewater treatment facilities; in the southwest corner of the Bridgewood Hills Subdivision, adjacent to Leon Creek, approximately 3½ miles north of the intersection of Highway 10 and Loop 1604 in Bexar County; 12557-01; renewal

Tennis West Sewage Association, Inc , El Paso; wastewater treatment facilities, immediately northeast of FM Road 260 (Country Club Road) and approximately 2.8 miles west of its intersection with Highway 10 in El Paso County; 11605-01, renewal

James P. S. Griffith, Houston, wastewater treatment plant; in the northern portion of the City of Houston, approximately 1,000 feet north of, in the northern portion of the City of Houston, approximately 1,000 feet north of Jetero Boulevard just east of Lee Road in Harris County; 11160-01, renewal

Garrett Creek Ranch, Inc., Paradise; treatment facilities; approximately 3½ miles southwest of the City of Paradise and 1½ miles east of FM Road 2123 in Wise County; 13427-01; new

Oiltanking of Texas, Inc., Houston; bulk liquid storage terminal; on the north side of the Houston Ship Channel and southwest of the intersection of Jacintoport Boulevard and Sheldon Road, Harris County; 02053; renewal

Occidental Chemical Corporation, Deer Park; plant producing plastic materials and industrial organic chemicals; approximately one mile north of State Highway 225, at a point approximately 3.5 miles northwest of the intersection of State Highway 225 with State Highway 134 in the City of Deer Park, Harris County; 00002; renewal

Chemical Waste Management, Bayou Farms Facility, Port Arthur; industrial solid waste management facility; just south of State Highway 73 and approximately one mile southwest of the Highway 73-Taylor Bayou Crossing, Jefferson County, 02409; renewal

Philip Williams, doing business as Keystone Feedyard, Pearsall; feedlot, on State Highway 85, approximately 3½ miles east-northeast of the intersection of State Highway 85 and FM Road 1582 in Frio County; 02967; new

Play Ball, Inc Houston, wastewater treatment facility; on the northern property line of the permittee, which is approximately ½ mile west of the intersection of Mason Road and Westheimer Road (FM Road 1093) in Harris County 13043-01; new

Exxon Chemical Company a Division of Exxon Corporation, Houston; plant manufacturing special products for the oil industry, at 8230 Stedman Street, approximately 2,000 feet northeast of the [illegible]ing Basin on the Houston Ship Channel in the City of Houston, Harris County 00610; renewal

Amarillo By-Products, Inc., Amarillo meat rendering facility; at 4815 Southeast First Avenue in the City of Amarillo, Potter County, 02979; new

Ralph J. Berg Bryan, wastewater treatment plant; southeast side of Leonard Road (FM Road 1688), approximately two miles southwest of the City of Bryan, Brazos County, 11038-01, amendment

Westwood Shores Municipal Utility District, Trinity; wastewater treatment facilities, approximately one mile north of FM Road 356 and three miles east of the City of Trinity in Trinity County, 11300-01; renewal

Federal Savings and Loan Insurance Corporation as Receiver for Sunrise Saving and Loan Association, Houston; wastewater treatment facility, on the southern bank of Decker Branch of Spring Creek and approximately 3,300 feet east of FM Road 149 in Montgomery County; 12838-01; renewal

Issued in Austin, Texas, on January 29, 1988.

TRD-8801028 Karen A Phillips
Chief Clerk
Texas Water Commission

Filed: February 3, 1988
For further information, please call (512) 463-7898.

Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted

An enforcement order was issued to Gulf Chemical and Metallurgical Corporation on February 1, 1988, assessing $1,200 in administrative penalties, with stipulated penalties imposed

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P O Box 13087, Austin, Texas, 78711-3087, (512) 463-8069

Issued in Austin, Texas, on February 2, 1988

TRD-8801057 Gloria A Vasquez
Notices Coordinator
Texas Water Commission

Filed: February 2, 1988
For further information, please call (512) 463-7906.

Motion to Modify Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

A modified enforcement order was issued to the City of Mount Pleasant on February 1, 1988, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle A. McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on February 2, 1988.

TRD-8801056 Gloria A Vasquez
Notices Coordinator
Texas Water Commission

Filed: February 2, 1988
For further information, please call (512) 463-7906.