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Texas Register

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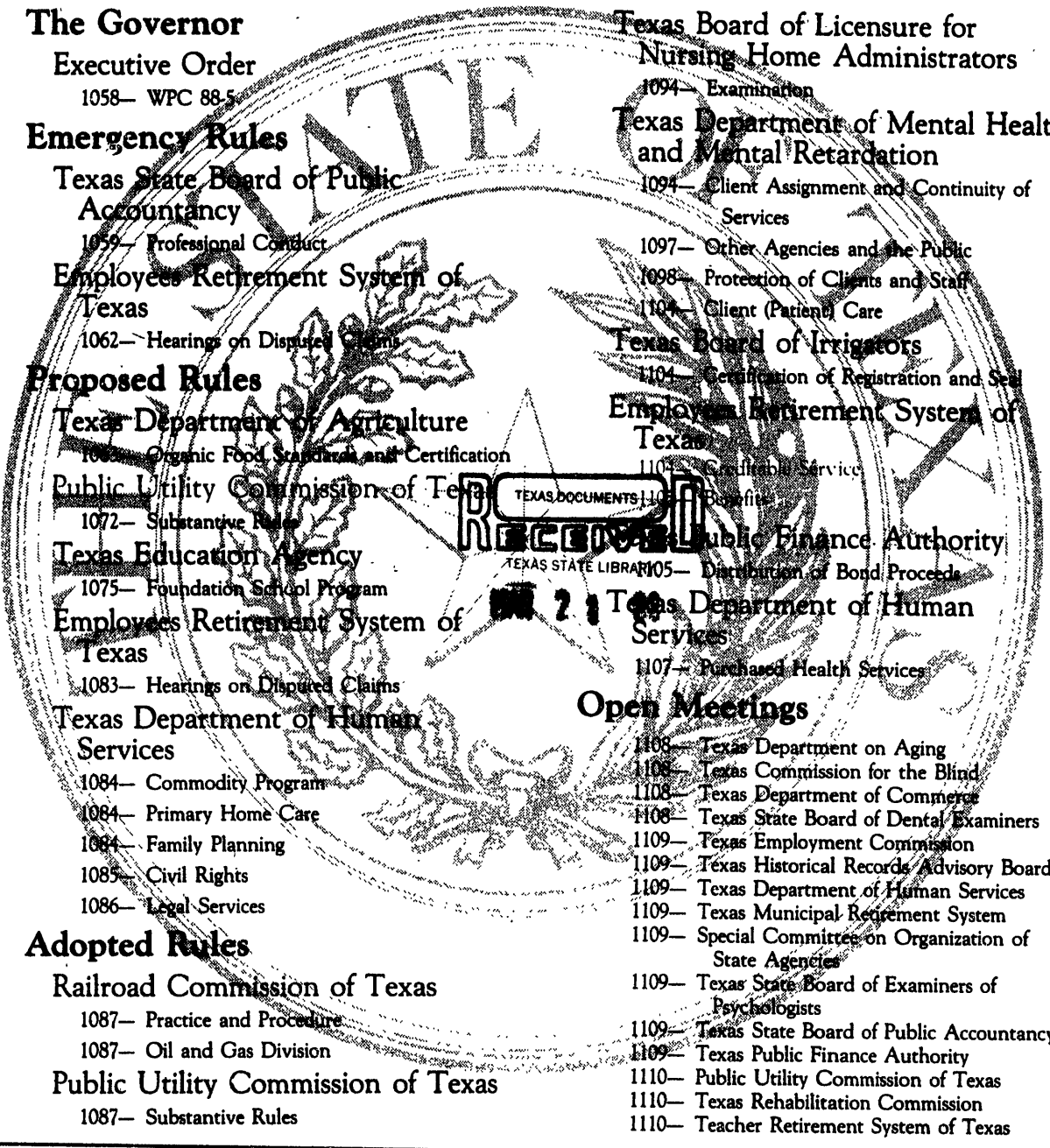
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Texas Register

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Information Available: The 10 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

27.15 is the section number of 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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- 1110— The University of Texas at Austin
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- 1110— Texas Water Development Board
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In Addition

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- 1112— Gasoline and Alcohol Mixture
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- 1113— Amended Request for Proposals

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TAC Titles Affected

TAC Titles Affected—March

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

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Part I. Texas Department of Agriculture

4 TAC §§18.1-18.38 1063

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16 TAC §1.32 1087

16 TAC §3.22 1087

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16 TAC §23.21 1072

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16 TAC §23.27 1089

16 TAC §23.31 1072

16 TAC §23.44 1074

16 TAC §23.54 1074

TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §105.1 1076

19 TAC §§105.41-105.46, 105.48, 105.50, 105.53-105.55 1076

19 TAC §105.49 1076

19 TAC §105.91 1076

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19 TAC §105.191 1081

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19 TAC §§105.251, 105.256, 105.257 1082

19 TAC §105.271 1082

19 TAC §105.311, §105.312 1082

19 TAC §105.331 1082

19 TAC §105.331 1082

19 TAC §105.351 1082

19 TAC §105.371 1083

TITLE 22. EXAMINING BOARDS

Part XIII. Texas Board of Licensure for Nursing

Home Administrators

22 TAC §245.3 1094

Part XXII. Texas State Board of Public Accountancy

22 TAC §501.2 1059

22 TAC §501.3 1059

22 TAC §501.11 1059

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §§402.41-402.51 1094

25 TAC §403.76, §403.77 1097

25 TAC §§403.501-403.507 1098

25 TAC §§403.551-403.558 1098

25 TAC §§404.1-404.14 1098

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25 TAC §§404.81-404.87 1103

25 TAC §§405.361-405.372 1104

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XIV. Texas Board of Irrigators

31 TAC §425.19 1104

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

34 TAC §67.89 1062, 1083

34 TAC §71.1 1104

34 TAC §73.15 1105

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34 TAC §§221.1-221.4 1105

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §11.6008 1084

40 TAC §29.502 1107

40 TAC §29.1101 1107

40 TAC §47.4902 1084

40 TAC §§56.901-56.905 1084

40 TAC §§73.4006, 73.4008, 73.4010 1085

40 TAC §§73.4105, 73.4107, 73.4110, 73.4111 1085

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40 TAC §79.1302 1086

The Governor

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

Office of the Governor Executive Order WPC 88-5

WHEREAS, the Texas National Research Laboratory Commission (NRLC) is created by Senate Bill 1169, 69th Legislature, 1985 Regular Session, Article 4413 (47d) Texas Revised Civil Statutes and is charged with developing a comprehensive plan for the presentation of a proposal for obtaining the Superconducting Super Collider high energy research facility; and

WHEREAS, by Executive Order WPC-87-4, I created the Superconducting Super Collider High Energy Research Facility Advisory Council (SSC Advisory Council); and

WHEREAS, the SSC Advisory Council has effectively and admirably performed its assigned duties, and has been instrumental in guiding the State of Texas to a finalist position in the quest for the site location of the Superconducting Supercollider; and

WHEREAS, there is now a need for an advisory body to assist the Governor and the Texas National Research Laboratory Commission in the identification, analysis, and tracking of events; recommendation of needed policies or policy changes, and sharpening the strategic focus thereof; and to otherwise undertake programs and responsibilities as requested by the Governor or the Texas National Research Laboratory Commission in the carrying out of policy;

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby rescind Executive Order WPC-87-4 and do hereby create and establish the TEXAS SCIENTIFIC ADVISORY COUNCIL.

The Texas Scientific Advisory Council will consist of not more than 20 members to be appointed and serve at the pleasure of the Governor. The Governor shall designate a chairman and vice-chairman from the membership who shall serve at the pleasure of the Governor.

The Texas Scientific Advisory Council will be charged with the responsibility of acting as an advisory body to assist the Governor and the Texas National Research Laboratory Commission in the identification, analysis, and tracking of events; recommendation of needed policies or policy changes, and sharpening the strategic focus thereof; and to otherwise undertake programs and responsibilities as requested by the Governor or the Texas National Research Laboratory Commission in the carrying out of policy.

The Texas Scientific Advisory Council shall meet at the call of the Chairman. A majority of the membership shall constitute a quorum. The Chairman shall, with the NRLC Chairman, establish the agenda for Advisory Council meetings.

The members of the Council shall serve without compensation, but will be reimbursed for their travel and expenses.

All agencies of State and local governments are hereby directed to cooperate with and assist the Advisory Council in the performance of its duties.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas, on February 19, 1988.

TRD-8801932

*William P. Clements, Jr.
Governor of Texas*

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 60 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 22. EXAMINING BOARDS Part XXII. Texas State Board of Public Accountancy Chapter 501. Professional Conduct

★ 22 TAC §501.2

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.2 for a 60-day period effective March 2, 1988. The text of the repealed §501.2 was originally published in the November 10, 1987, issue of the *Texas Register* (12 Tex-Reg 4158).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801831 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.2

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.2 for a 60-day period effective March 2, 1988. The text of the new §501.2 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4160).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801830 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.3

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.3 for a 60-day period effective March 2, 1988. The text of the amended §501.3 was originally published in the November 10, 1987, issue of the *Texas Register* (12 Tex-Reg 4160).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801832 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.11

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.11 for a 60-day period effective March 2, 1988. The text of the repealed §501.11 was originally published in the November 10, 1987, issue of the *Texas Register* (12 Tex-Reg 4160).

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TRD-8801834 William A. Sansing
Enforcement Coordinator
Texas State Board of
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Effective date: March 2, 1988
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For further information, please call
(512) 450-7066.

★ 22 TAC §501.11

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.11 for a 60-day period effective March 2, 1988. The text of the new §501.11 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4160).

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TRD-8801833 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.12

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.12

for a 60-day period effective March 2, 1988. The text of the amended §501.12 was originally published in the November 10, 1987, issue of the *Texas Register* (12 Tex-Reg 4161).

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TRD-8801836 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.13

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.13 for a 60-day period effective March 2, 1988. The text of the amended §501.13 was originally published in the November 10, 1987, issue of the *Texas Register* (12 Tex-Reg 4161).

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TRD-8801835 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

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Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.14

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.14 for a 60-day period effective March 2, 1988. The text of the amended §501.14 was originally published in the November 10, 1987, issue of the *Texas Register* (12 Tex-Reg 4162).

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TRD-8801837 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.21

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.21 for a 60-day period effective March 2, 1988. The text of the amended §501.21 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4162).

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TRD-8801838 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.



★ 22 TAC §501.22

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.22 for a 60-day period effective March 2, 1988. The text of the repealed §501.22 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4162).

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TRD-8801840 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

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Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.



★ 22 TAC §501.22

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.22 for a 60-day period effective March 2, 1988. The text of the new §501.22 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4162).

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TRD-8801839 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.



★ 22 TAC §501.23

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.23 for a 60-day period effective March 2, 1988. The text of the repealed §501.23 was

originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4162).

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TRD-8801842 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.



★ 22 TAC §501.23

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.23 for a 60-day period effective March 2, 1988. The text of the new §501.23 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4163).

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TRD-8801841 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.



★ 22 TAC §501.24

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.24 for a 60-day period effective March 2, 1988. The text of the repealed §501.24 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4163).

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TRD-8801844 William A. Sansing
Enforcement Coordinator
Texas State Board of
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Effective date: March 2, 1988
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For further information, please call
(512) 450-7066.



★ 22 TAC §501.24

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.24 for a 60-day period effective March 2, 1988. The text of the new §501.24 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4163).

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TRD-8801843 William A. Sansing
Enforcement Coordinator
Texas State Board of
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For further information, please call
(512) 450-7066.



★ 22 TAC §501.25

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.25 for a 60-day period effective March 2, 1988. The text of the amended §501.25 was originally published in the November 22, 1987, issue of the *Texas Register* (12 TexReg 4163).

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TRD-8801845 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
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For further information, please call
(512) 450-7066.



★ 22 TAC §501.31

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.31 for a 60-day period effective March 2, 1988. The text of the repealed §501.31 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4164).

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TRD-8801847 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

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(512) 450-7066.



Confidential Client
Communications

★ 22 TAC §501.31

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.31 for a 60-day period effective March 2, 1988. The text of the new §501.31 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4164).

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TRD-8801846

William A. Sansing
Enforcement Coordinator
Texas State Board of
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Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.32

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.32 for a 60-day period effective March 2, 1988. The text of the amended §501.32 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4164).

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TRD-8801848

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

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Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

Advertising and Soliciting

★ 22 TAC §501.41

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.41 for a 60-day period effective March 2, 1988. The text of the amended §501.41 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4164).

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TRD-8801850

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.42

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.42 for a 60-day period effective March 2, 1988. The text of the amended §501.42 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4165).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801849

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 2, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.43

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.43 for a 60-day period effective March 2, 1988. The text of the amended §501.43 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4165).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801851

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.44

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.44 for a 60-day period effective March 2, 1988. The text of the amended §501.44 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4165).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801859

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.45

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.45 for a 60-day period effective March 2, 1988. The text of the amended §501.45 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4166).

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TRD-8801853

William A. Sansing
Enforcement Coordinator
Texas State Board of
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Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.46

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.46 for a 60-day period effective March 2, 1988. The text of the amended §501.46 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4166).

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TRD-8801852

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.47

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.47 for a 60-day period effective March 2, 1988. The text of the new §501.47 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4166).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801854

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.47

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.47 for a 60-day period effective March 2, 1988. The text of the repealed §501.47 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4166).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801855

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
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(512) 450-7066.

★ 22 TAC §501.48

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of repealed §501.48 for a 60-day period effective March 2, 1988. The text of the repealed §501.48 was

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TRD-8801857 William A. Sansing
Enforcement Coordinator
Texas State Board of
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(512) 450-7066.



★ 22 TAC §501.48

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §501.48 for a 60-day period effective March 2, 1988. The text of the new §501.48 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4167).

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TRD-8801856 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
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(512) 450-7066.



Quality Control Review

★ 22 TAC §501.50

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §501.50

for a 60-day period effective March 2, 1988. The text of the amended §501.50 was originally published in the November 10, 1987, issue of the *Texas Register* (12 TexReg 4167).

Issued in Austin, Texas, on February 22, 1988.

TRD-8801858 William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: March 2, 1988
Expiration date: May 1, 1988
For further information, please call
(512) 450-7066.



TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 67. Hearings on Disputed Claims

★ 34 TAC §67.89

The Employees Retirement System of Texas (ERS) adopts on an emergency basis an amendment to §67.89, concerning the presentation of contested cases to the board of trustees (trustees) of the ERS. At its scheduled meeting on February 23, 1988, the trustees of the ERS adopted an amendment to subsection (d) of §67.89 in order to extend the five-minute limitation for oral argument imposed upon each party who is presenting a contested case to the trustees. Such time limitation will be extended, at the sole discretion of the trustees, to a total time period of 10 min-

utes for each party. The amendment is adopted on an emergency basis to enable parties to contested cases before the board to more fully argue their positions.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Title 110B, §25.103, which provide the trustees of the ERS with the authority to adopt rules for the administration of the ERS and for the transaction of any other business of the board of trustees.

§67.89. *Presentation of Contested Cases to the Board.*

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

(d) If a party has requested oral argument before the board, the trustee [board] will decide whether such oral argument will be allowed. If oral argument is allowed, the party will be given time, not to exceed five minutes, to present oral argument to the board. **The trustee may, in its sole discretion, allow additional oral argument not to exceed a total of 10 minutes for each party.**

(e) (No change.)

Issued in Austin, Texas, on February 23, 1988.

TRD-8801895 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: February 23, 1988
Expiration date: June 22, 1988
For further information, please call
(512) 476-6431, ext. 178.



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 18. Organic Food Standards and Certification

★4 TAC §§18.1-18.38

The Texas Department of Agriculture proposes new §§18.1-18.38, concerning a voluntary program for the certification of organic food. The section defines terms commonly used in the organic food industry; sets standards and procedures for certification and decertification of participating organic farms and of participating processors, distributors, and retailers of certified organic food. The section is proposed to encourage the proper development of agriculture, horticulture, and related industries by guaranteeing the integrity of and expanding the in-state and out-of-state markets for organic food produced in Texas.

Susan Raleigh, director, Consumer Services Program, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of \$44,144 for each year from 1988-1992. There will be no fiscal implications for local government or small businesses.

Ms. Raleigh also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased access to locally grown organic food; greater consumer confidence that organic food is produced, processed, and marketed according to nationally and internationally recognized industry standards; and reduced pollution of air, land, and water. The agency is unable to determine whether there will be any economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dan Kelly, Consumer Services Program, P.O. Box 12847, Austin, Texas 78711.

The new sections are proposed under the Texas Agriculture Code, Title 2, Chapter 12, §12.002, which provides the Texas

Department of Agriculture with the authority to encourage the proper development of agriculture, horticulture, and related industries, and Texas Agriculture Code, Title 2, Chapter 12, §12.016, which authorizes the department to adopt rules as necessary for the administration of §§12.001-12.015 of the code.

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

Active substance—An antibiotic, drug, or other synthesized substance, however administered, other than a vaccination or a botanical pesticide.

Allelochemic—A naturally occurring substance significant to organisms of a species different from that of its source, for reasons other than food as such.

Basic slag—An alkaline byproduct consisting of nonferrous metals, trace minerals, and other minerals bonded chemically with oxygen or other chemical components of limestone or dolomite during smelting of iron ore and whose main constituents are lime, magnesia, silica, alumina, manganese oxide, iron oxide, and sulfur; basic slag may also contain small amounts of boron, sodium, molybdenum, tin, vanadium, copper, zinc, titanium, potassium, strontium, chromium, zirconium, or other trace elements important in plant nutrition.

Commingled—Inseparably mixed or interspersed with other food and not distinguishable from it.

Contaminated—Unfit for use because of the presence in prohibited quantities of toxic, synthetic, or other prohibited substances.

Cover crop—A crop planted, usually in late summer and fall but also at other times, primarily to cover the soil surface and prevent erosion.

Department—The Texas Department of Agriculture (TDA).

Distributor—A person who is engaged in the business of selling food for resale, including, but not limited to, a wholesaler, broker, packer, repacker, shipper, or agent.

Farm—All agricultural land that is leased, owned, or otherwise held by and under the management of a certified producer or applicant for certification.

Farm plan—All documents relevant to the current and future management of an organic farm, including, but not limited to, written plans to rotate crops, build humus, and stabilize soil nutrients.

Farm unit—All agricultural land in a contiguous tract that is leased, owned, or otherwise held by and under the management of a certified producer or applicant for certification and that adjoins no other land leased or owned by or under the management of the producer or applicant.

Field—A contiguous tract of agricultural land leased, owned, or otherwise held by and under the management of a certified producer or applicant for certification.

Green manure crop—A crop planted primarily to be plowed under to increase soil tilth and fertility.

Guano—The droppings, dead bodies, and other residues from bat colonies in caves or in regions without rain.

Julian date—A calendar date expressed by a decimal number, three consecutive digits of which indicate the day of the year in a series from 001 (= January 1) to 365 (= December 31 of a nonleap year) or 366 (= December 31 of a leap year).

Logo—The copyrighted Texas Department of Agriculture Certified Organic and Texas Department of Agriculture Organic Certification

Pending—Transitional logotypes.

Low ecological profile—As applied to a soil-, crop-, or pest-management practice, means a practice that has a low degree of or no adverse effects on soil, water, or air quality.

Manuring—The application to soil of the excreta of agricultural animals, including stable litter and paunch wastes, or the plowing under of uncomposted plants (green manure crops) to increase tilth and fertility.

Organic farming—A system of ecological soil management that relies on building humus levels through crop rotations, recycling organic wastes, and applying balanced mineral amendments and that uses, when necessary, mechanical, botanical, or biological controls with minimum adverse effects on health and the environment.

Organic food—Food that is produced under a system of organic farming and that is processed, packaged, transported and stored so as to retain maximum nutritional value without the use of artificial preser-

vatives, coloring or other additives, ionizing radiation, or synthetic pesticides.

Pheromone—A substance that is secreted by an organism to the outside that causes a specific reaction in a receiving organism of the same species.

Processor—A person who is engaged in the business of manufacturing raw agricultural commodities into food products

Producer—A person who is engaged in the business of growing or producing food for human consumption.

Production unit—A production system that includes animals and all related inputs and production practices, such as feed sources and feed storage, stock sources, water quality, shelter, land, disease-control methods, living conditions, stress-management practices, and control of all associated processing and handling facilities, as applicable.

Proper tillage—Tillage that promotes the free movement of air (carbon dioxide, oxygen and nitrogen) and water through the soil and facilitates biological decay processes within the soil.

Raw manure—Agricultural animals' excrement, both solid and liquid, that has not been aged, aerated, composted, fermented, aerobically digested, or otherwise humified or processed in such a way as to improve its value as a biological activator.

Retailer—A person who is engaged in the business of selling food at retail.

Semiochemical—A naturally occurring chemical involved in the chemical interaction between organisms, including pheromones and allelochemicals.

Slaughter stock—An animal or animals raised for meat.

Soil health—A condition in which minerals, organic matter (e.g., humus, bacteria, fungi, etc.), water, and air coexist free of toxic contaminants and in proportions and with a profile, texture, structure, and porosity capable of supporting vigorous plant growth.

Toxin—A chemical, a drug, a radiological agent, or a biological agent that is present in an amount sufficient to cause significant adverse effects in humans, crops, livestock, other beneficial organisms, or the environment.

§18.2. Organic Production Practices. For the purposes of this chapter, production practices are classified as permitted, prohibited, or regulated by the department.

(1) Permitted and prohibited practices apply statewide.

(2) Practices regulated may vary from region to region as specified in this chapter.

§18.3. Soil Management. Fertility must be fostered primarily by managing the soil's organic content through proper tillage, crop rotation, and manuring.

(1) Tillage. Tillage systems must incorporate crop residues and other organic wastes into topsoil. Farming that minimizes

or eliminates tillage, such as mowing, grazing, or permacultural systems, is permitted.

(2) Crop rotation. Producers must rotate according to a written rotation plan all crops that are not:

(A) perennials;

(B) included in permaculture systems;

(C) grown in containers; or

(D) grown on a nonrotating basis in accordance with accepted regional organic practices.

(3) Rotation plan. A rotation plan may include:

(A) alternation of sod and row

(B) nitrogen-fixing crops;

(C) green manure crops;

(D) cover and nurse crops;

(E) deep-rooting crops;

(F) alternation of heavy and light feeders; or (

(G) plants with allelopathic or mineral-accumulating properties.

(4) Manuring.

(A) Raw manure may be applied to:

(i) green manure crops;

(ii) perennial crops;

(iii) crops not for human consumption; or

(iv) crops for human consumption, if the crop is harvested 120 days or more following the most recent application.

(B) Use of manure composted either by aerobic digestion (high heat) or controlled fermentation (low heat) is permitted.

(C) Use of liquid manure slurry is permitted if the slurry is aerated from a source that adds carbon to the slurry.

(D) Testing. The department shall require that the soil and subsoil of all fields to which substantial amounts of manure from off-farm sources are applied be tested for heavy metals, herbicides, or other suspected contaminants.

§18.4. Soil Amendments and Fertilizers.

(a) Additives. Mineral or other additives must enhance soil health as well as promote plant growth

(b) Nitrogen.

(1) Sources permitted. A producer may use as a source of nitrogen: green manures, nitrogen-fixing or cover crops, composted materials, nitrogen-fixing microorganisms, and other methods of supplying plants with nitrates at low concentrations

(2) Sources prohibited. Except as specified elsewhere in this chapter, a producer may not use as a source of nitrogen: anhydrous ammonia, ammonium nitrate, sewage sludge, contaminated organic materials, and mined or synthetic sources of soluble nitrates at high concentrations for the sole purpose of increasing production.

(3) Sources Regulated. Before using any supplemental nitrogen, the producer must ascertain that it is free of contamination

Evidence that the material is not contaminated must be available to the department on request. If supplemental nitrogen is needed, the following materials may be used in the context of an overall farm plan:

(A) vegetable meals;

(B) hides, blood meal, or meals made of other animal byproducts; or

(C) fish emulsion

(4) Sources regulated, one-time use. To start a soil-building program, transitional producers only may use no more than one of the following materials, one time only on each field, to start a green-manure crop:

(A) sodium nitrate;

(B) potassium nitrate;

(C) urea; or

(D) ammonium sulfate.

(c) Phosphorus.

(1) Sources permitted. A producer may use as a source of phosphorus: colloidal, soft-rock, and hard-rock phosphate; bone meal; bat guano.

(2) Sources prohibited. A producer may not use as a source of phosphorus: ordinary or triple superphosphate or other excessively soluble and/or acidifying materials with a high salt index.

(3) Sources regulated. If supplemental phosphorus is needed, the following materials may be used as temporary measures in the context of an overall farm plan:

(A) food-grade orthophosphoric acid in foliar formulations and fish-emulsion processing;

(B) organophosphates (soap phosphates); or

(C) basic slag.

(d) Potassium.

(1) Sources permitted. A producer may use as a source of potassium: wood ashes; rock dusts (granite, feldspar, green-sand); sulfate of potash magnesia (langbeinite); natural potassium sulfate; kainite; and recycled potassium-rich organic matter.

(2) Sources prohibited. A producer may not use as a source of potassium: muriate of potash (potassium chloride) or other sources with excessive solubility, high salt index, and chloride content.

(3) Source regulated. If supplemental potassium is needed, potassium sulfate from industrial processes may be used as a temporary measure in the context of an overall farm plan.

(e) Calcium.

(1) Sources permitted. A producer may use as a source of calcium: agricultural limestone; agricultural gypsum (hydrated calcium sulfate); kiln dust; calcified seaweed; corn calcium; and calcium oxide.

(2) Sources prohibited. A producer may not use as a source of calcium: quicklime; slaked or hydrated lime applied to the soil.

(3) Sources regulated. If supplemental calcium is needed, calcium-chloride-based foliar materials or ground oyster shell may be used as temporary

measures in the context of an overall farm plan.

(f) Magnesium.

(1) Sources permitted. A producer may use as a source of magnesium: dolomitic limestone; kieserite; and sulfate of potash magnesia (langbeinite)

(2) Sources regulated. If supplemental magnesium is needed, Epsom salts (hydrated magnesium sulfate) may be used as a temporary measure in the context of an overall farm plan.

(g) Sulfur. application to soil of elemental sulfur from mined sources is permitted.

(h) Micronutrients.

(1) Sources permitted. A producer may use as a source of micronutrients: liquid or powdered seaweed extract that is not chemically fortified; kelp meal; and rock powders.

(2) Sources prohibited. A producer may not use as a source of micronutrients: chemically fortified liquid or powdered seaweed extract; or excessive doses of any micronutrient.

(3) Sources regulated. If supplemental micronutrients are needed, the following materials may be used as temporary measures in the context of an overall farm plan:

(A) fritted trace elements or chelated minerals;

(B) acid-treated (sulfate or oxide) zinc, boron, copper, iron, manganese, or molybdenum; or (C) fish emulsions.

§18.5. Growth Regulators, Growth Promoters, Activators, Inoculants

(a) Sources permitted. A producer may use:

- (1) natural cytokinin formulations such as dry or liquid seaweed extract;
- (2) natural enzymes;
- (3) Herbal preparations;
- (4) biodynamic preparations;
- (5) rhizobial inoculants;
- (6) free-living nitrogen-fixing bacteria or other microbial cultures;
- (7) blue-green algae;
- (8) cellulolytic bacteria;
- (9) natural rooting hormones;
- (10) humates; or
- (11) adjuvants and wetting agents for foliar applications.

(b) Sources prohibited. A producer may not use:

- (1) synthetic growth promoters; or
- (2) synthetic growth regulators.

§18.6. Fertility Testing and Monitoring.

(a) The department may require soil and tissue testing to monitor fertility and evaluate soil-management methods.

(b) Soil may be tested and monitored using either the basic cation saturation ratios (BCSR) method or the sufficient level of available nutrients (SLAN) method.

(c) Other methods of testing for soil microbial levels, such as paper

chromatography, radiorespirometry, dehydrogenase activity, and bioassays, are permitted.

§18.7. Crop Management.

(a) Conformity to recognized organic practices. Plant materials; irrigation; and weed, pest, and disease controls must conform to recognized organic practices.

(b) Seeds and seedlings Producers should use plant materials produced without synthetic pesticides Other materials may be used if justified and authorized in writing by the department.

(1) Permitted. A producer may use:

(A) organically produced or untreated seeds and seedlings;

(B) nontoxic seed treatments such as hot water;

(C) legume inoculants; or

(D) fungicide-free pelletization.

(2) Prohibited. A producer may not use:

(A) synthetic-fungicide-treated seeds, unless authorized by the department;

(B) synthetic fungicides, pesticides, or soil fumigants in any seedlings or plant materials produced on-farm for organic production;

(C) materials or practices prohibited elsewhere in these standards on seeds or seedlings; or

(D) sterilization of greenhouse soils at temperatures higher than 180°F.

(3) Regulated. If justified and approved in writing by the department, a producer may use:

(A) seeds, seedlings, cuttings, sets, grafting stock, root stock, or other plant materials produced without the use of synthetic fungicides or pesticides, but fertilized non-organically;

(B) commercial soil mixes, vermiculite, or other media containing small amounts of soluble fertilizers for farm-produced seedlings;

(C) plant materials to which a synthetic pesticide has been applied, provided these plant materials produce no crop that is harvested or sold within 36 months of transplanting.

(c) Irrigation

(1) In areas where irrigation is necessary, an initial application for certification must include analyses of water quality and soil salinization

(2) The producer's overall farm plan must address any problems revealed by these analyses.

(3) As a condition of recertification, a producer with a demonstrated water-quality or soil-salinization problem must:

(A) retest for water quality or soil salinization the following year; and

(B) submit tissue-test results for at least one edible crop each year until no residue from contaminated water is found in the crop, and at least every third year thereafter.

(4) Exceptions. Use of irrigation water that is known to be contaminated with

toxic substances is prohibited. A producer may apply for and the department may grant written exceptions to this paragraph if:

(A) no other water is available; and

(B) no toxic residues from contaminated water are present in certified crops, as determined by at least one tissue test per farm per year until no residue from contaminated water is found in the crop, and at least every third year thereafter.

(d) Weed control.

(1) Permitted. A producer may use: timely mechanical or hand cultivation; crop rotations and use of smother crops; mulching with organic materials or intercrop plant species such as white clover; practices that prevent introduction of weed seeds into fields, such as mowing borders, cleaning equipment, and use of weed-free inputs; use of electrical or flame weeding equipment; biodynamic preparations; mowing and grazing.

(2) Prohibited. A producer may not use: synthetically compounded or petroleum-distillate herbicides; synthetic growth regulators; use of micronutrients at toxic levels to kill weeds in crops that tolerate excesses, such as boron in beet production.

(3) Regulated. If justified and approved in writing by the department in advance, a producer may use:

(A) plastic mulches; or

(B) mulches made of recycled newspapers.

(d) Pest Control. Pest prevention must be a primary consideration in planning production schedules, choosing crops, locating and sizing plantings, and deciding soil-management practices. If prevention fails, only control methods with low ecological profiles may be used.

(1) Permitted. A producer may use:

(A) preventive management, such as planting resistant varieties, timing plantings to avoid cycles of pest emergence, intercropping, crop rotations, and avoidance of excessive fertilization;

(B) mechanical or electrical controls, including traps, repellent crops and apparatus, vacuuming, water jets, physical barriers, and sound;

(C) biological controls, such as release of natural predators and parasites and manipulation of the habitat, supplemental food, and/or hosts of natural predators and parasites;

(D) sprays and dusts of low ecological profile, including insecticidal soaps, rock powders and diatomaceous earth, herbal preparations, dormant oil sprays in orchards, and solutions of pureed arthropods or plants such as hot peppers or garlic;

(E) microbial and viral diseases such as *Bacillus thuringiensis*, provided no petroleum-based synergists or carriers are used;

(F) pheromones used in traps and as mating disruptives;

(G) Other semiochemicals used in an ecologically sound manner, including pheromones and allelochemicals, for desired direct or indirect manipulations of pests (attractants, deterrents, repellents, locomotor stimulants, etc.);

(H) electrical devices; or

(I) shooting.

(2) Prohibited. A producer may not use:

(A) synthetically compounded pesticides, including insecticides, nematocides, acaricides, rodenticides, molluscicides, or ovicides;

(B) traps containing prohibited pesticides, unless justified and authorized in writing in advance by the department; or

(C) natural poisons that have long-term effects and persist in the environment, such as arsenic or lead salts.

(3) Regulated. If justified and authorized in writing by the department, a producer may use botanical insecticides such as pyrethrum, rotenone, sabadilla, quassia, and ryania.

(f) Disease control.

(1) Disease prevention must be a consideration in planning production schedules, choosing crops, locating and sizing plantings, and deciding soil-management practices.

(2) In greenhouses, ventilation, humidity, and temperature must be controlled to reduce plants' susceptibility to disease.

(3) Permitted. A producer may use:

(A) preventive management, such as planting resistant varieties, timing plantings to avoid cycles of pest emergence, intercropping, crop rotations, and avoidance of excessive fertilization; or

(B) herbal or plant-derived controls and mineral preparations not prohibited or regulated elsewhere in these standards.

(4) Prohibited. A producer may not use synthetic fungicides, fumigants, synthetic sterilizing agents, or synthetic bactericidal agents.

(5) Regulated practices. If justified and authorized by the department, a producer may use:

(A) copper and sulfur-based fungicides, including Bordeaux mixture, tribasic copper formulations, cupric oxide, copper sulfate, elemental and liquid sulfur, and lime sulfur (calcium polysulfide);

(B) chlorine bleach in dilute solutions as a disinfectant; or

(C) micronutrients such as zinc, provided care is taken to avoid toxic overdoses.

§18.8. Post-Harvest Handling.

(a) Methods of harvesting, storing, transporting, and marketing organic foods must insure freshness and nutritional quality.

(b) Permitted. A producer, shipper, packer, or other handler of Organic Food Standards and Certification organic food may:

(1) harvest crops only at proper maturity and in appropriate weather con-

ditions;

(2) handle perishable items only so as to avoid injuring them physically;

(3) dry and cure field crops to appropriate moisture levels by natural field drying, aeration, or other mechanical drying apparatus;

(4) chill perishable crops by means of uncontaminated water baths, cold rooms, or icing, and maintain constant low temperatures at every stage of transportation and distribution;

(5) use controlled-atmosphere (carbon dioxide or nitrogen) storage;

(6) disinfest crops of spoilage organisms or fruit flies by hot-water dipping or vapor-heat treatments;

(7) repel storage pests with nontoxic materials such as rock powders, diatomaceous earth, or herbal preparations; or

(8) monitor tissue nitrate levels in leafy crops grown under low light conditions.

(b) Prohibited. A producer, shipper, packer, or other handler of organic food may not apply to certified products at any point during post-harvest handling, transportation, or storage:

(1) synthetic fumigants;

(2) sprouting inhibitors, ripeners, or growth regulators;

(3) preservatives;

(4) coloring agents

(5) ionizing radiation; or

(6) waxes (except beeswax) or oils.

(c) Regulated. If justified and approved in advance by the department in writing, a producer, shipper, packer, or other handler of organic food may:

(1) apply specifically named disinfectants to storage containers and handling equipment. In such cases, the department may require a waiting period that must expire before the handler uses the container or equipment for certified food;

(2) apply specifically named post-harvest sulfur-based fungicides or botanical insecticides.

§18.9. Livestock Production and Animal Husbandry.

(a) For certification purposes, the production of livestock and animal products is regulated by production units.

(b) Feed.

(1) Animal feed. All animals must be fed organically grown feeds.

(2) Permitted. A livestock producer may use the following feeds:

(A) feeds raised organically;

(B) organically managed pasturage; or

(C) milk for young animals.

(3) Prohibited. A livestock producer may not use:

(A) plastic pellets for roughage;

(B) intentional malnutrition;

(C) intentional manure refeeding;

(D) feed containing hormones, antibiotics, or other synthetic compounds; or

(E) feed formulas containing

urea.

(4) Regulated. If appropriate organic feed is not available, the department may grant written permission to feed acceptable alternatives.

(5) Conditions of sale. No animal product produced using less than 100% organically grown feed may be sold as Texas Department of Agriculture certified organic. Such products may be sold under a transitional label.

(d) Supplements.

(1) Permitted. A producer may use:

(A) calcium phosphate materials such as bone meal and marl;

(B) calcium carbonate materials such as limestone, dolomite, and oyster shell;

(C) digestive aids or pH buffers from a natural source, such as colostrum, acidophilus, other *Lactobacillus* cultures, or vinegar;

(D) magnesium oxide, green-sand, seaweed and nonfortified seaweed products, minerals and other free-choice trace elements from natural sources; oyster shell; crushed granite as a grinding agent;

(E) selenium in any form ingested or injected at recommended doses; or

(F) vitamins from sprouted grains, fish-liver oils, brewer's yeast, molasses, or other natural sources

(2) Prohibited. A producer may not use: Growth promoters and hormones, whether implanted, ingested, or injected, including antibiotics and trace elements used to stimulate growth or milk production.

(e) Living conditions, shelter, stress management.

(1) Livestock must be provided with living conditions that minimize stress and are suited to their individual and collective needs.

(2) Seasonable access to pasture, fresh air, daylight, soil, and fresh plants is encouraged.

(3) Proper sanitation must be maintained to control parasites and disease, with attention to proper bedding materials and routine cleaning.

(4) Enough room is required for an animal to comfortably sit up, lie down, groom normally, turn around, and stretch its limbs.

(5) Permitted. A producer may use:

(A) shelters that allow maximum protection and fresh air; or

(B) access to pastures or outside runs and adequate mobility.

(6) Prohibited. A producer may not use:

(A) stacked-cage confinement;

(B) constraint by any mechanical means beyond the reasonable limits of mobility; or

(C) overcrowding.

(7) Regulated. With the department's permission a producer may use:

(A) stair-step cages for laying hens, one bird per cage. Cages must be no smaller than 10 inches wide, 16 inches deep,

and 16 inches high;

(B) other cage confinement; or

(C) use of farrowing crates or boxes after piglets are 14 days old.

(f) Health care.

(1) Permitted. A producer may use:

(A) preventive measures such as proper food and shelter, combined with anticipation of specialized nutrient needs or disease susceptibilities;

(B) garlic or other herbal remedies;

(C) holistic veterinary medicine, such as homeopathy, herbal preparations, or acupuncture;

(D) probiotic supplements, such as whey, *Lactobacillus acidophilus*, or colostrum;

(E) nontoxic pest controls, such as diatomaceous earth, rock powders, and herbal repellents;

(F) cleaning agents and disinfectants chosen from among soaps, biodegradable detergents, 5% iodine or 1%

potassium permanganate solutions, lye, alkali carbonates, caustic potash, lime, or bleach;

(G) iodine foot baths;

(H) dusting wallows for poultry, using permitted materials;

(I) tuberculosis and brucellosis tests (recommended for purchased stock); or

(J) vaccinations required by federal or state law.

(2) Prohibited. A producer may not use:

(A) routine administration of medication in the absence of symptoms;

(B) synthetic pesticides;

(C) subtherapeutic doses of antibiotics; or

(D) copper sulfate foot baths.

(3) Regulated. With the department's permission a producer may use:

(A) emergency treatment with drugs or other active substances for diagnosed health conditions;

(B) vaccinations other than those required by federal or state law; or

(C) botanical pesticides such as rotenone for control of warbles.

(4) Conditions of sale. Meat from animals to which drugs or other active substances have been administered may not be sold as certified organic.

(g) Stock sources, breeding, weaning.

(1) Slaughter stock (except poultry and fish) must be raised organically or purchased from a verifiable organic source.

(2) Breeding stock may come from any source provided the animal is not in the final third of gestation.

(A) Natural service is the preferred breeding method.

(B) Artificial insemination is permitted.

(3) Day-old poultry or fish starter stock may be purchased from any source.

(4) Laying stock purchased from a source other than a verifiably organic source

must be managed in accordance with these production standards for at least four months before their eggs may be certified.

(5) Early weaning is prohibited. The following minimums must be observed..

(A) piglets—three weeks..

(B) beef cattle—three months.

(C) sheep—two months; and

(D) veal calves—three days.

(6) Dairy calves, orphans, and young animals requiring milk must be provided whole milk; colostrum supplements are encouraged.

§18.10. Audit Trail for Livestock Products.

(a) A verifiable audit trail must be maintained on each animal or lot to permit tracing of feed sources, medications, supplements, vaccinations, and other inputs.

(b) With the exception of poultry, rabbits, fish, and smaller species, individual identification is recommended for each animal and required for treated animals (c) Slaughter animals must be traceable from birth through processing.

§18.11. Dairy and Egg Production.

(a) All legal sanitation requirements for milk-handling equipment shall be observed, and milk shall be tested for bacteria and somatic cells.

(b) Where possible, sanitary standards for milking equipment and udder washes should be met using approved materials.

(1) Soap-and-water teat washes before milking are recommended.

(2) If local regulations require the use of prohibited materials, equipment or udders must be rinsed at least two times more than is usually required for the material used.

(3) Treated cows must be milked at the end of the string.

(4) Eggs should be free of manure, but routine washing is discouraged.

(A) When eggs are washed, wash water must be at least 10°F warmer than the eggs.

(B) Oiling of eggs is prohibited.

(5) Chemically induced or forced molting of laying hens is prohibited.

§18.12. Mixed Conventional/Organic Livestock Production. No production unit may be certified organic if the same or a similar product is produced nonorganically on the same farm, unless there exist physical facilities and management procedures adequate to separate the respective production units.

§18.13. Slaughter.

(a) Animals must be treated humanely during loading, unloading, shipping, holding, and slaughter.

(b) Slaughter must be effected under sanitary conditions, which shall usually mean government-approved slaughterhouses.

(c) Animals must be clearly identified so as to preclude confusion with noncertified meat.

(d) Certified meat should be slaughtered as a separate batch or hung apart from noncertified meat.

§18.14. Processing of Animal Products. Processing of animal products must be consistent with §18.15 of this title (relating to Handling and Processing of Organic Crops), §18.16 of this title (relating to Meat, Dairy, and Egg Products), and §18.17 of this title (relating to Processing Methods and Ingredients), as applicable.

§18.15. Handling and Processing of Organic Crops. To insure that organically produced food is certifiable at retail, processors, packagers, manufacturers, and distributors must adhere to a verifiable program.

(1) Field crops. Field crops include grains, beans, and seeds.

(A) Cleaning and milling

(i) Certified commodities must meet United States and Texas government inspection standards. Before packaging or processing, all commodities must be mechanically cleaned to remove weed seeds, stones, straw, insects, dust, metal, and dirt.

(ii) Crops must be dried by natural field drying, bin aeration, or artificial drying at moderate temperatures.

(iii) Processing facilities must meet all applicable federal state, and local health requirements.

(iv) Processed flour must not exceed 55° (131°F) as it leaves the milling stones.

(v) Chemical additives, such as preservatives, antioxidants, bleaches, or stabilizers, are prohibited.

(B) Packaging.

(i) All packaging material must be free of fungicides, preservatives, and other chemical additives.

(ii) All milled products must indicate the lot number and the date of processing. This date may be shown as a Julian date or as a month, day, and year.

(iii) Processors should research and share information on the relative benefits and drawbacks of the various plastics and papers used for food packaging

(C) Storage and Transportation.

(i) Bags or other containers used to ship organic food must not have been used for any substance that could compromise the organic quality of the product. Reused containers must be of standard size and must be provided with suitable protective liners.

(ii) Storage areas for organic food must be ventilated and sealed or otherwise protected from encroachment by birds, rodents, or other pests.

(iii) Diatomaceous earth, *Bacillus thuringiensis* or other natural biological controls may be used in storage areas or during transportation.

(2) Fruit and vegetable crops.

(A) Raw ingredients and ad-

ditives. Labels must specify whether ingredients from nonorganic sources are used. Each primary ingredient of any processed product sold as organic must be from a certified organic source.

(B) Permitted A processed product sold as organic may include:

(i) only ingredients from certified organic sources, except ingredients that are not agricultural products, such as salt or wild foods;

(ii) yeasts or other microbial cultures; or

(iii) minimal levels of natural sweeteners or salt.

(C) Prohibited. A processed product sold as organic may not include:

(i) synthetic preservatives, coloring, flavoring, texturizers, emulsifiers, or additives of any kind;

(ii) ingredients known to contain excessive levels of nitrates, microelements, heavy metals, or toxic residues; or

(iii) added sulfites, nitrates, or nitrites

(D) Regulated A processed product sold as organic may include the following ingredients if a processor documents to the department's satisfaction a claim that the ingredients are necessary to market the product:

(i) natural sweeteners or salt, including organically produced honey, maple syrup, or other natural sweeteners, in amounts greater than those necessary for processing; or

(ii) natural preservatives, coloring agents, or other additives, such as natural ascorbic acid or beet juice.

§18.16. Meat, Dairy, and Egg Products.

(a) Organic meat, dairy, and egg products must be derived wholly from animals raised according to the provisions of this chapter.

(b) No synthetic or chemical agents may be used to preserve or alter such products.

§18.17. Processing Methods and Ingredients.

(a) Permitted Food may be processed using:

(1) appropriate bacterial cultures or fermentation systems;

(2) organically grown fruit, plant extracts, natural sweeteners, herbs, spices, or other ingredients;

(3) sea salt or brine preparations; or

(4) freezing, drying, vacuum packing, heat processing, or wood smoking if the wood has not been treated with synthetic chemicals.

(b) Prohibited. Food may not be processed using synthetic preservatives, coloring, flavoring, texturizers, emulsifiers, additives of any other type, or in aluminum containers.

(c) Regulated. Food may be process-

ed using aluminum spoons, ladles, or other aluminum utensils if stainless-steel utensils are not available

§18.18. Laboratory Analysis.

(a) Residue testing The department shall require tests of produce that it has reasonable cause to suspect may have become contaminated

(1) These tests shall include an analysis of nitrate content if the produce was grown using supplemental nitrogen sources or under low light conditions.

(2) The department may also require other residue tests for crop-improvement and enforcement purposes.

(b) Use of residue-test results.

(1) The producer of tested produce and the department shall use test results to improve farming practices and as technical data to support enforcement cases and policy review.

(2) The department shall decide in each case whether tested produce may be marketed as certified organic.

(3) The producer must pay for residue tests that show contaminants present. The department must pay for residue tests that show no contaminants present.

(c) Nutritional testing. The department may assist producers who wish to document the nutritional contents of organically grown food.

§18.19. Farm Context.

(a) In judging applications for certification, the department shall evaluate each farm as a production system within its own geographic, economic, and social context.

(b) Certification is of farms, farm units, production units and fields and is transferable upon reapplication, reinspection, and compliance with all other applicable provisions of this chapter.

§18.20. Farm Certification.

(a) Whenever possible, the department shall certify whole farms.

(b) If an applicant documents a clear intent to manage a farm organically, the department may grant certification based on progress over time and permit compromises with ideal practices in light of demonstrated improvement.

(1) This documentation shall be in the form of a detailed, three-year farm plan that has been reviewed and accepted by the department.

(2) A farm plan must include:

(A) a three-year rotation plan for each field, as applicable;

(B) a three-year plan to stabilize nutrients in the soil of each field; and

(C) a 25-foot buffer zone separating land managed organically from other cultivated agricultural land.

§18.21. Farm-Unit or Field Certification.

(a) The department may certify farm units or individual fields; however, producers are encouraged to convert their whole farms

(b) Documentation for farm-unit or field cer-

tification shall be in the form of a detailed, three-year farm plan that has been reviewed and accepted by the department.

(c) The farm plan must include:

(1) three-year rotation and nutrient-stabilization plans for each field under organic management;

(2) one-year, field-by-field crop and spray plans for each field of the farm that is adjacent to an organically managed field but is not managed organically;

(3) a 25-foot buffer zone separating land managed organically from other cultivated agricultural land;

(4) a description of facilities and methods that will be used to keep farm equipment from contaminating organically managed fields; and

(5) a description of facilities and methods that will be used to store and handle prohibited materials separately from permitted and regulated materials

(d) A crop grown in an organically managed field any part of which is located within 50 feet of a field to which a prohibited pesticide has been applied must be tissue-tested for residues of that pesticide before the harvest of the organic crop.

(e) The department shall not certify part of a farm unless:

(1) there exist distinct, defined boundaries between fields under organic management and other fields; and

(2) the proposed acreage will be used for a *bona fide* trial of organic management methods.

(f) The department may not certify land that has no previous history as cultivated cropland, orchard, or improved pasture, and that is being converted to organic production for the sole purpose of replacing land abandoned because of chemical contamination or depleted fertility resulting from previous farm-management practices.

§18.22. Transitional Periods.

(a) The department may certify land as organically managed only if harvest occurs at least three years after the most recent use of a prohibited pesticide and at least two years after the most recent use of a prohibited fertilizer.

(b) The department may certify as organically managed, without passage of a transitional period, any livestock production unit that complies with all applicable provisions of this chapter.

(c) An applicant for certification must present soil-test results for each field or greenhouse unit to be certified initially, and every third year thereafter.

(d) An applicant must also present the results of water, residue, and plant-tissue tests as required by the department.

§18.23. Recertification.

(a) If any part of a certified field, farm unit, or livestock production unit is taken out of organic management, it may be recertified after passage of three years

without the application of a prohibited pesticide and two years without the application of a prohibited fertilizer or other prohibited material.

(b) Produce from such a field, farm unit, or livestock production unit may not be sold under a Texas Department of Agriculture transitional label.

§18.24. Transitional Labeling.

(a) Except as prohibited elsewhere in this chapter, producers of plant crops who have satisfied all requirements for certification except passage of the required transitional period may market their produce under a Texas Department of Agriculture transitional label.

(b) Except as prohibited elsewhere in this chapter, producers of livestock products who have satisfied all requirements for certification except the requirement that animals be fed 100% organic feed may market their produce under a Texas Department of Agriculture transitional label.

(c) This transitional label may not use the terms "certified" or "Texas Certified Organic," but shall include the phrase "Organic Certification Pending."

§18.25. Labor Practices.

(a) Fair labor practices are consistent with agronomic responsibility, a fundamental principle of organic farming.

(b) For this reason, operators of certified organic farms must comply with all applicable federal, state, and local laws concerning minimum wages or other compensation, workers' compensation insurance, working conditions, sanitary facilities, rest periods, safety conditions, housing, and arbitration.

§18.26. Recordkeeping.

(a) The following records must be kept for each farm, farm unit, field, or other production unit for which application for certification is made:

- (1) field-by-field fertilization, cropping, and pest-management histories; and
- (2) if a crop is produced from more than one field, records should show via lot, bin, or shipment numbers and dates which field a particular shipment came from.

§18.27. Separation of Produce.

(a) A producer of both organic and nonorganic produce on the same farm must keep separate records for each of these two categories of produce.

(b) A producer of the same crop or produce both organically and nonorganically on the same farm must prove to the department's satisfaction that he or she has in place physical facilities and management procedures adequate to ensure that there is no possibility of crop mixing or commingling.

(c) In the absence of such proof, no food of that type from that farm shall be certified or sold as TDA-certified organic.

(d) This section applies to uncertified produce produced by a certified producer on an uncertified farm unit and to uncertified

produce resold by a certified farmer.

§18.28. Livestock Records. For livestock, records must be kept of:

- (1) all feed rations and their sources, including supplements;
- (2) sources of all purchased stock;
- (3) all medication and veterinary care administered;
- (4) all laboratory test results; and
- (5) as applicable, a description of the system used to separate organic and nonorganic production units.

§18.29. Availability of Records for Review.

(a) Records of all laboratory analyses performed for a farm, including soil tests, plant-tissue tests, forage tests, bacteria counts, and residue tests for toxic contaminants in soil, water, crops, or livestock products must be available for review by the department.

(b) Tests performed on any crop or livestock product must be identified so as to enable tracing of the product from its original source through the chain of sale and distribution.

§18.30. Verification Documents.

(a) Documents included. Verification documents consist of questionnaires, affidavits, inspection reports, laboratory analyses, and documents showing the path taken by an organic food product through post-harvest handling and distribution.

(b) Farm questionnaire. The department shall devise a questionnaire to be completed by applicants for certification. The questionnaire shall require information about:

- (1) farm size, number of fields, equipment available, and a map showing field and building locations;
- (2) a three-year history, current expected production, and management plan for each field;
- (3) each different type of livestock, with production and management details as for fields;
- (4) rotation and soil management plans; and
- (5) intended changes or improvements in farm management.

(c) Product specifications.

(1) Food processors.

(A) The department shall devise a questionnaire covering all nonfarm aspects of food processing and manufacturing, if applicable.

(B) Processors must complete a questionnaire at each stage where a food is substantially changed from its previous state.

(C) This questionnaire shall cover every aspect of the product relevant to the department's certification standards.

(2) Farm-input manufacturers.

(A) The department shall devise a similar questionnaire for manufacturers of soil amendments, foliar treatments, pesticides, and similar materials.

(B) In combination with appropriate laboratory analyses, products

whose use is regulated under certification standards may gain permitted status.

(d) Producer/processor affidavits and agreements.

(1) The department shall devise affidavits and agreements for producers, processors, and manufacturers.

(2) These affidavits and agreements shall include signed statements that the information provided is accurate.

(3) These documents must be notarized.

(e) Inspection reports.

(1) The department shall conduct at least one on-site inspection per year for every farm, plant, or processing facility for which a questionnaire is needed.

(2) These inspections shall be reported on form signed by the inspector that includes the following information:

(A) observations about the condition of the farm or facility;

(B) comments about the use of restricted or prohibited practices; and

(C) a judgment as to certifiability.

(f) Soil, nutritional, or residue analyses. Results of required analyses must be included in the documentation for each application for certification.

(g) Texas Open Record Act coverage. All verification documents and other certification records shall be subject to all provisions, including exemptions, of the Texas Open Records Act, Texas Civil Statutes, Article 6252-7a.

§18.31. Recordkeeping by Department.

(a) The department shall create and maintain files including all communications and decisions relating to the certification process.

(b) The files shall include copies of notices sent to participants, minutes of meetings, correspondence, and administrative memoranda.

§18.32. Auditing.

(a) The department may conduct or provide for audits of all documents that it uses to verify that certified products meet organic standards.

(b) These audits shall include, where appropriate:

(1) a plant inventory audit, listing percent accuracy in labeling; the amount bought and sold per product and producer or destination; and the number of vendors and amount of product per vendor; or

(2) a farm audit, listing the amounts sold per product, date and destination; and the area and location planted of each product, with dates of harvest.

(c) All audit records shall be subject to the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(d) Information contained in audit records that is exempt under the Texas Open Records Act shall remain confidential. Such exempt, confidential information shall include, but not be limited to:

(1) information that, if released, would give advantage to competitors or bidders; and

(2) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

§18.33. Application for Permission To Use the Texas Department of Agriculture "Certified Organic" Logo or the Texas Department of Agriculture "Organic Certification Pending--Transitional" Logo.

(a) Application and approval required. No person shall use, employ, adopt or utilize the TDA certified organic or transitional logo in the selling, advertising, marketing, packaging or other commercial handling of food and fiber products unless prior application has been made to the department for permission to make such use, employment, adoption or utilization and approval has been granted.

(b) Application materials.

(1) The department shall develop materials that provide interested parties with a clear explanation of standards, fees, deadlines, requirements, and review processes.

(2) Prospective applicants for certification shall be sent these materials including an application, an initial questionnaire and affidavits described in §18.30 of this title (relating to affidavits described Verification Documents).

(c) Submission of application.

(1) Applications submitted under this section shall be in writing on a form prescribed by the department.

(2) A separate application shall be submitted for each farm, farm unit, or processing plant.

(3) Applications and verification documents shall be submitted to Director, Consumer Services Program, Texas Department of Agriculture.

(d) Inspection.

(1) Upon receipt of an application and verification documents submitted by an applicant under this section and after preliminary review by the department, an inspection shall be conducted by the department.

(2) The department shall inspect the plants or farm of all applicants who fulfill initial screening requirements.

(e) Certification of retailers and distributors.

(1) The department shall certify retailers and distributors who agree to comply with these standards and shall maintain a list of certified retailers and distributors.

(2) Certified retailers shall conspicuously display a certificate of approval to sell TDA-certified organic food in each store where such food is offered for sale.

(3) The department shall supply retailers with reasonable quantities of approved signs, price cards, and shelf talkers without charge.

(4) The department shall inspect the

premises of certified retailers and distributors to insure compliance with these standards.

(5) Fresh raw unpackaged food bearing a TDA logo shall be retailed in Texas only by the producer or by a TDA-certified retailer.

(6) Fresh raw unpackaged food bearing a TDA logo shall be distributed in Texas only by the producer or by a TDA-certified distributor.

(f) Certification review and standards advisory committee.

(1) The department shall appoint a Certification Review and Standards Advisory Committee which shall assist the department in reviewing applications for certification and shall advise the department on revisions to this chapter and administration of the Organic Food Standards Program

(2) Within one year of implementation of this chapter the department, with the advice of the advisory committee, shall review implementation of this chapter and propose amendments as necessary.

(3) The Certification Review and Standards Advisory Committee shall be made up of five members, of which two are organic producers; one is a processor of organic food, one is a technical advisor, agronomist, or horticulturist; and one is a representative of consumers.

(4) Advisory committee members should be familiar with both organic production methods and the department's organic food certification standards.

§18.34. Action on Application.

(a) The director, Consumer Services Program, Texas Department of Agriculture, within 60 days of receipt of an application for permission to use the TDA "Certified Organic" logo or the TDA "Organic Certification Pending--Transitional" logo, shall schedule an inspection of the applicant's operation.

(b) Within 90 days of receipt of all required verification documents, including inspection reports and the results of any required laboratory analyses, the department shall make an initial determination of whether such permission shall be granted or denied, and notify the applicant in writing, setting forth the reasons for such grant or denial.

(c) The department shall act upon the application only after considering the recommendations of the Certification Review and Standards Advisory Committee.

(d) Any certification granted under this chapter shall be for a period of one year.

(e) In cases of persons who rely on regulated practices or sources, the applicant shall bear the burden of establishing to the review committee's satisfaction:

(1) that these practices or sources are agronomically or scientifically required; and

(2) That the applicant has a plan to discontinue the use of regulated practices over a set period of time.

(f) All decisions of the committee shall

be recorded and kept on file in the offices of the department's Consumer Services Program.

(g) If the applicant wishes to contest such initial determination, notice of protest shall be filed by the applicant with the director within 15 days of receipt by the applicant of notice of such initial determination. Notice of protest being timely filed, the application shall be considered as a contested case and a formal administrative proceeding shall be held before the department as provided for in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and Chapter 1 of this title (relating to General Practice and Procedure).

(h) If a timely notice of protest is not filed, the initial determination shall become final.

(i) An application for permission to use the TDA "Certified Organic" or TDA "Organic Certification Pending--Transitional" logos may be denied if:

(1) the application or verification documents contain insufficient information upon which to make a determination, or

(2) the application or verification documents demonstrate substantial non-compliance with any provision of this chapter.

§18.35. Termination of permission To Use the Texas Department of Agriculture "Certified Organic" Logo or the Texas Department of Agriculture "Organic Certification Pending--Transitional" Logo.

(a) Permission granted by the department for the use of the Texas Department of Agriculture "Certified Organic" or the Texas Department of Agriculture "Organic Certification Pending--Transitional" logos may be revoked at any time if:

(1) the use for which such permission was granted is abused;

(2) a certified person fails to keep records required to verify proper use of the logo, as specified in this chapter; or

(3) a certified person substantially fails to comply with any provision of this chapter.

(b) Proceedings for the revocation of permission to use the TDA "Certified Organic" or "Organic Certification Pending--Transitional" logos shall be conducted in the manner provided for contested cases by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 1 of this title (relating to General Practice and Procedure).

(c) TDA shall refer to the applicable prosecuting attorney for prosecution under applicable civil and criminal codes, including the Texas Deceptive Trade Practices Act, any person who fraudulently uses a TDA logo or misrepresents a product as certified.

§18.36. Logos. The department shall register two logos with the United States Department of Commerce as certification marks.

(1) Texas Department of

Agriculture "Certified Organic" logo. One logo shall include the phrase "Texas Department of Agriculture Certified Organic" and take the following form:



(2) Use of "Certified Organic" logo. The Texas Department of Agriculture "Certified Organic" logo and the phrase "Texas Certified Organic" shall be applied or used to refer only to food produced on land or in livestock production units that the department has certified under this chapter.

(3) Transitional logo. A second logo shall include the phrase "Texas Department of Agriculture Organic Certification Pending—Transitional" and shall take the following form:



(4) Use of transitional logo. The Texas Department of Agriculture "Organic Certification Pending—Transitional" logo shall be applied or used to refer only to food produced on land or in livestock production units that the department classifies as in transition to organic certification under this chapter.

(5) Information to Consumers. The department shall produce and make available to consumers information about the logos and the TDA certification program, standards, and procedures.

§18.37. Use of Logos.

(a) Conditions of use. A party to a contract executed under this chapter may use the TDA certified or transitional logo, whichever is appropriate, on containers, labels, tags, signs, stickers, decals, or other packaging, promotional or informational materials, subject to the following conditions.

(b) Retail sale. The following conditions apply to the use of the logo on or around nonprocessed food items offered for retail sale:

(1) no hand-drawn TDA logo may appear on an in-store sign.

(2) a certified retailer or distributor may not purchase or apply pressure-sensitive labels bearing a TDA logo, except that with the department's permission a certified retailer may apply pressure-sensitive labels to meat or poultry products.

(c) Labeling. Certified food may be labeled using:

(1) a producer-applied label;

(2) a price card displaying a printed TDA logo; or

(3) both of the labeling methods referred to in paragraphs (1) and (2) of this subsection.

(d) Approval of printers. The department shall approve printers to manufacture signs, price cards, shelf talkers, pressure-sensitive labels, and other labeling or packaging materials bearing a TDA logo and shall maintain a list of approved printers

(1) From time to time TDA shall furnish approved printers with a list of certified retailers and producers.

(2) Approved printers may sell materials bearing a TDA logo only to persons on this list.

(3) An approved printer shall maintain records of purchasers, quantities, types of materials, and dates of sale of all materials bearing a TDA logo and make these records available to the department on request.

(4) A certified retailer may purchase such materials (except pressure-sensitive labels) from an approved printer.

(5) A certified producer may purchase pressure-sensitive labels or packaging materials bearing a TDA logo from an approved printer.

(e) Conditions of retail sale. The following conditions apply generally to the retail sale of TDA certified organic products.

(1) A certified retailer may use a TDA-approved sign to label only certified food produced in Texas by a TDA-certified producer.

(2) Certified retailers must have in

place physical facilities and management procedures adequate to prevent commingling of TDA-certified organic food with other food.

(3) Products bearing a TDA logo must be easily identifiable to consumers and must be clearly distinguishable from similar products that are not TDA-certified organic.

(f) Accidental contamination or commingling. A retailer or distributor may not apply a TDA logo to or represent as TDA-certified, organic food that is known to be contaminated or that has been commingled with other food during distribution or stocking.

§18.38. Enforcement and Complaint Investigation.

(a) The department shall perform inspections of certified producers, retailers, distributors, and applicants for certification at least annually at a time when normal production or sales activity can be observed.

(b) The department shall conduct unannounced inspections in cases of suspected violations of standards.

(c) Any person with cause to believe that any provision of this chapter has been violated may file a written complaint with the department setting forth the facts of the alleged violation.

(d) The department shall investigate each complaint related to certified organic food and provide the complainant with a report describing the investigation and any remedial actions taken.

(e) The department shall maintain records of all complaints, investigations, and remedial actions. These records shall become part of the reviewing record of any proceeding involving a certified person or applicant for certification.

(f) The department shall maintain a toll-free telephone number to provide information on filing of complaints and to provide general information regarding this chapter to consumers and the public at large.

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 18, 1988.

TRD-8801772

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest possible date of adoption:
March 28, 1988

For further information, please call
(512) 463-7583.

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility

Commission of Texas

Chapter 23. Substantive Rules Rates

★ 16 TAC §23.21

The Public Utility Commission of Texas proposes an amendment to §23.21, concerning invested capital (rate base). The amendment to §23.21(c) will allow, where appropriate, adjustments to test year figures to reflect known and measurable changes to invested capital occurring after the end of the test year. The amendment to §23.21(c)(2)(E) is designed to clarify the commission's intent to allow nuclear plant commercial operation date showings to be made during a utility's general rate case.

Lambeth Townsend, 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. Townsend 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 reduced litigation costs due to fewer rate cases over the long run; fewer deferred accounting cases; and consolidation of nuclear commercial operation date cases into general rate cases, and reduced carrying costs due to a decrease in deferred costs. 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 Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.21. *Cost of Service.*

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

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) (No change.)

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. **Adjustments may be made to invested capital for known and measurable changes occur-**

ing after the test year where appropriate. Components to be included in determining the overall rate base are as follows.

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

(E) Nuclear plant in service. A nuclear generating unit shall not be eligible for inclusion in a utility's rate base as plant in service until such time as **the utility has shown that the unit is** [has been determined by the commission to be] in commercial operation. Such **showing** [a determination] of commercial operation is separate and apart from, and bears no relationship to, issues such as prudent and efficient planning and management, excess capacity, or whether the unit meets the test of used and useful, and shall not be construed as satisfying the utility's burden of proof as to such other issues in the same or subsequent proceedings. A utility seeking to **show** [a determination] that such a unit is in commercial operation must:

(i)-(v) (No change.)

(vi) file with the commission [at the time such determination is requested] a fully documented explanation of the cause of each unscheduled and unanticipated delay of 100 hours or more and each Nuclear Regulatory Commission notice of violation received in the preoperational or startup test programs, as defined in clauses (i) and (ii) of this subparagraph, together with fully documented descriptions of the measures taken by the utility to correct and prevent reoccurrence of the incident which caused delay and the measures taken in response to the notice of violation.

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 22, 1988.

TRD-8801812

Phillip A. Holder
Secretary
Public Utility
Commission of Texas

Earliest possible date of adoption:

April 1, 1988

For further information, please call

(512) 458-0100.



Certification

★ 16 TAC §23.31

The Public Utility Commission of Texas proposes an amendment to §23.31, concerning certification criteria. The proposed amendment will limit the ability of utilities to provide new retail public utility service, including the extension and construction of electric lines, in dually certificated service areas by requiring commission approval of such service in certain specified circumstances. The proposal will also allow for the decertification of a utility to a dually certificated service area if doing so will prevent duplication of facilities.

Lewis Gray, director of administration, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of \$95,328 each year from 1989-1993. There will be no effect on local government or small businesses.

Mr. Gray also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in the number of duplicated electric utility facilities, which is in turn expected to minimize costs to ratepayers. 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 Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication. The commission invites parties to include in comments legal argument on the following issues: whether the commission has jurisdiction and authority to adopt the published rules; whether anti-trust violations would be constituted if utilities were to negotiate settlement and recertification of areas currently multiply certificated; whether there are other options available to the commission to curtail wasteful duplication of facilities; if the commission lacks authority or anti-trust problems make the approach in the published rules unworkable, the appropriate approaches to legislation that would address the multiple certification problems.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to do all things necessary and convenient to the exercise of the commission's power and jurisdiction, including the publication of requests for legal argument regarding the issues set out in the previous paragraph.

§23.31. *Certification Criteria.*

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

(c) Certificates for new service areas and facilities. Except for certificates granted under subsection (b) of this section, the commission may grant applications and issue certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. For an electric utility generating unit, the commission may grant an application only when it finds that purchased power, conservation, and alternative capacity and associated energy sources available at a lower or equal cost to the ratepayers, together with capacity from qualifying facilities with which contracts have been executed, cannot be reasonably expected to be available in sufficient quantity and for sufficient duration to allow the utility to modify its capacity expansion plan so as to provide for deferral or cancella-



tion of the generating unit for which certification is requested. The commission may issue the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission may amend or revoke any certificate issued under this section upon a finding of fact that the public convenience and necessity requires such amendment or revocation. The cost of construction of a new electric generating unit found reasonable in granting a certificate may be taken into consideration in determining the amount of construction work in progress and the plant in service associated with that unit to be included in the rate base of the utility. In addition, the projected design electrical rating, capacity factor, and heat rate associated with the unit shall be taken into consideration in determining recoverable fuel expenses associated with the operation of the unit.

(1) (No change.)

(2) A certificate is not required for the following:

(A) a contiguous extension of those facilities described in the Public Utility Regulatory Act, §51, provided, however, no extension of electric lines to provide retail public utility service shall be made by a retail public utility within its certificated area which would duplicate the services or facilities of another retail public utility of the same type certificated to serve in the same area; nor shall a retail public utility construct lines to provide retail public utility service to a consuming facility which is nearer to the service facilities of another retail public utility of the same type certificated to serve the same area unless upon application and after notice and hearing the commission finds that the services rendered or to be rendered cannot be provided adequately by such other retail public utility certificated to serve the area.

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

(E) the construction or upgrading of distribution facilities within the utility's service area; [and] provided, however, no extension of electric lines to provide retail public utility service shall be made by a retail public utility within its certificated area which would duplicate the services or facilities of another retail public utility of the same type certificated to serve in the same area; nor shall a retail public utility construct lines to provide retail public utility service to a consuming facility which is nearer to the service facilities of another retail public utility of the same type certificated to serve the same area unless upon application and after notice and hearing the commission finds that the services rendered or to be rendered cannot be provided adequately by such other retail public utility certificated to serve the area.

(F)-(H) (No change.)

(3) (No change.)

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

(h) Amendment of retail service area certification of electric utilities. Upon application of an electric utility which has a certificate of convenience and necessity to provide retail service to an area which is also certificated for retail service by one or more other electric utilities or upon the commission's own motion, the commission shall hold a hearing, and if it finds that the certification of an area, if certified to more than one retail public utility, will result in duplication of facilities, it shall amend and/or revoke certification of the area, as necessary to prevent the duplication, except for certificates of prior operation granted under the Public Utility Regulatory Act, §53. Pending a decision by the commission for the amendment and/or revocation of a certificate under this subsection, the commission shall direct that any new requests for service in the disputed area be handled on an interim basis in a timely fashion by the certificated utility with facilities adequate to provide the requested service and closest to the consuming facility. The extension of such service shall not necessarily prejudice the ultimate decision of the commission under the standards of this subsection.

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 23, 1988.

TRD-8801889 Phillip A. Holder
Secretary
Public Utility
Commission of Texas

Earliest possible date of adoption:

April 1, 1988

For further information, please call
(512) 458-0100.

Customer Service and Protection

★ 16 TAC §23.42

The Public Utility Commission of Texas proposes an amendment to §23.42, concerning refusal of service. The proposed amendment will limit the ability of utilities to provide new retail public utility service in dually certificated service areas by requiring commission approval of such service in certain specified circumstances.

Lewis Gray, director of administration, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of \$95,328 each year from 1989-1993. There will be no effect on local government or small businesses.

Mr. Gray also has determined that for each year of the first five years the sec-

tion is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in the number of duplicated electric utility facilities, which in turn expected to minimize costs to ratepayers. 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 Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757 within 30 days after publication. The commission invites parties to include in comments legal argument on the following issues: whether the commission has jurisdiction and authority to adopt the published rules; whether anti-trust violations would be constituted if utilities were to negotiate settlement and recertification of areas currently multiply certificated; whether there are other options available to the commission to curtail wasteful duplication of facilities; if the commission lacks authority or anti-trust problems make the approach in the published rules unworkable, the appropriate approaches to legislation that would address the multiple certification problems.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to do all things necessary and convenient to the exercise of the commission's power and jurisdiction, including the publication of requests for legal argument regarding the issues set out in the preceding paragraph.

§23.42. Refusal of Service.

(a) Compliance by applicant. Any utility may decline to serve an applicant until such applicant has complied with the state and municipal regulations and approved rules and regulations of the utility on file with the commission governing the service applied for the following reasons.

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

(4) Adequate service available. No extension of electric lines to provide retail service shall be made by a utility within its certificated area which would duplicate the services or facilities of another retail public utility of the same type certificated to serve in the same area, and no retail public utility shall construct or extend lines to provide retail utility service to a consuming facility with is nearer to the service facilities of another retail public utility of the same type certificated to serve the area, unless upon application to the commission and after hearing, the commission finds that the services rendered or to be rendered cannot be provided adequately by such other retail public utility certificated to serve the area.

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

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

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April 1, 1988
For further information, please call
(512) 458-0100.

★ 16 TAC §23.44

The Public Utility Commission of Texas proposes an amendment to §23.44, concerning new construction. The proposed amendment will limit the ability of utilities to provide new retail public utility service, including the extension and construction of electric lines, in dually certificated service areas by requiring commission approval of such service in certain specified circumstances.

Lewis Gray, director of administration, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of \$95,328 each year from 1989-1993. There will be no effect on local government or small businesses.

Mr. Gray also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in the number of duplicated electric utility facilities, which is in turn expected to minimize costs to rate-payers. 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 Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication. The commission invites parties to include in comments legal argument on the following issues: whether the commission has jurisdiction and authority to adopt the published rules; whether anti-trust violations would be constituted if utilities were to negotiate settlement and recertification of areas currently multiply certificated; whether there are other options available to the commission to curtail wasteful duplication of facilities; if the commission lacks authority or anti-trust problems make the approach in the published rules unworkable, the appropriate approaches to legislation that would address the multiple certification problems.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to do all things necessary and convenient to the exercise of the commission's power and jurisdiction, including the publication of requests

for legal argument regarding the issues set out previously.

§23.44. *New Construction.*

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

(c) Response to request for service.

Subject to the provisions of §23.42 of this title (relating to Refusal of Service), every public utility shall serve each qualified applicant for service within its certificated area as rapidly as is practical.

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

(d) No duplication of facilities. No extension of electric lines to provide retail public utility services shall be made by a retail public utility within its certificated area which would duplicate the services or facilities of another retail public utility of the same type certificated to serve in the same area; nor shall a retail public utility construct lines to provide retail public utility service to a consuming facility which is nearer to the service facilities of another retail public utility of the same type certificated to serve the same area unless upon application and after notice and hearing, the commission finds that the services rendered or to be rendered cannot be provided adequately by such other retail public utility certificated to serve the area.

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 23, 1988.

TRD-8801891 Phillip A. Holder
Secretary
Public Utility
Commission of Texas

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April 1, 1988
For further information, please call
(512) 458-0100.

★ 16 TAC §23.54

The Public Utility Commission of Texas proposes new §23.54, concerning private pay telephone service. The new section includes codification of terms and conditions and rate structure of pay phone telephone service.

Jesus Sifuentes, 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. Sifuentes also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be uniform statewide terms and conditions of pay phone service as well as uniform rate structure for same service. The anticipated economic cost to individuals who are required to comply with the

proposed section will be the cost of filing tariff in compliance with the section when and if ever filed.

Comments on the proposal may be submitted to Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

The new section is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.54. *Private Pay Telephone Service.*

(a) General. Private pay telephone service includes all coin, coinless, credit card, cordless, or any other type of telephone where the end user pays someone other than the telephone company for access to the network.

(b) Available upon request. Upon formal request for service by any prospective private pay telephone owner or provider, a local exchange telephone company is required to file a tariff providing for interconnection of privately owned pay telephones.

(c) Initial filing requirements. The initial filing for approval of a privately owned pay telephone tariff shall include the proposed tariff, a surrogate cost study based on the traffic sensitive and nontraffic sensitive costs of providing interconnection to company owned pay telephones, and supporting testimony. Small companies may be exempt from the requirement of providing company specific cost studies, but shall comply with the provisions of subsection (i) of this section. Notice shall be given in accordance with §21.22 of this title (relating to Contents of Notice for Rate Setting Proceedings) and shall specifically state that approval of a privately owned pay telephone tariff is sought.

(d) Customer responsibilities. All privately owned pay telephone tariffs shall contain the following customer responsibility provisions.

(1) The privately owned pay telephone service customer must permit all local calls and calls to telephone company numbers such as repair service, directory assistance service, and to public emergency numbers such as 911.

(2) Customer provided instrument implemented private pay telephones must be registered in compliance with Part 68 of the Federal Communications Commission's Registration Program or connected behind an FCC registered coupler. Privately owned pay telephones must provide the following:

(A) access to an operator service which shall be available 24 hours a day, at no charge and without requiring a coin or credit card;

(B) access to 911 emergency service, where available, at no charge and without requiring a coin or credit card. Where 911 service is not available, local emergency

numbers must be posted on the instruments instruction card and must be accessible without a charge and without requiring a coin;

- (C) access to directory assistance;
- (D) completion of local and toll calls;

(E) in close proximity to the set, instruction for use, including specific instructions for the services in subparagraphs (A)-(D) of this paragraph, refunds and complaints, one-way calling is so equipped, long distance access instructions, and repair or out-of-service conditions; and

(F) in close proximity to the set, conspicuous notice that the customer provided instrument implement private pay telephone set is not a telephone company instrument.

(3) The customer will be responsible for the payment of charges for all local and toll messages, including local and long distance directory assistance charges originating from or accepted at this type of service, except as otherwise indicated. If the customer subscribes to billed number screening or selective class of call screening, the customer will not be responsible for charges incurred for calls placed in violation of the billed number or selective class of call screening restrictions. Additionally, whether or not selective class of call screening is available, the telephone company will not bill any third numbered billed or collect calls to a number which has been identified to the operator as a privately owned pay telephone.

(4) The privately owned pay telephone customer must:

(A) conspicuously display in close proximity to the set, notice that detailed toll billing records showing the time and date of all calls, together with the called numbers, will be provided by the local exchange company to the privately owned pay telephone customer, who shall be identified by name in the notice;

(B) comply with all applicable federal, state, and local laws and regulations concerning the use of these telephones by disabled and/or hearing impaired persons;

(C) provide a local telephone directory in close proximity to each privately owned pay telephone;

(D) comply with all of the commission's rules and regulations regarding the use of customer provided instrument implemented pay telephones;

(E) place no time limit on local calls, and the charge for a local call can be no more than the rate charged for a local call made on a public or semi-public pay telephone; and

(F) charge no more for a directory assistance call than the rate charged by the local exchange company to the private pay telephone customer.

(e) Local exchange company responsibilities.

(1) Directory listings will be provided to the customer on request.

(2) Access for privately owned pay telephone customers is available is all exchanges.

(3) Selective class of call and billed number screening will be provided where such facilities are available.

(4) The local exchange company will not charge any long distance calls to any pay telephone number which has been identified to the operator as a pay telephone.

(5) The local exchange company will not initiate a maintenance call to a private pay telephone without attempting to contact the private pay telephone owner or its agent.

(f) Violation of regulations.

(1) If a customer is found to be in violation of tariff provisions, the local exchange company will notify the customer of the violation in writing. The customer must correct the violation and notify the local exchange company in writing that the violation has been corrected within 15 days of receipt of notice of a violation.

(2) If the customer does not comply with this provision, the local exchange company will disconnect service to the privately owned pay telephone until the customer complies with the provisions in the tariff.

(g) Rate structure. Rates must be designed on a flat access line and a local message usage rate basis. Multi-element measured rates are prohibited. In areas without measuring capabilities, the company may use a flat rate usage surrogate instead of a per call message rate.

(h) Cost studies.

(1) The surrogate cost study filed with the initial application for approval of a privately owned pay telephone tariff shall include the following information:

(A) total company nontraffic sensitive revenue requirement;

(B) interstate subscriber plant factor;

(C) intrastate subscriber plant factor;

(D) total number of access lines in service;

(E) unseparated traffic sensitive revenue requirement;

(F) total number of local messages; and

(G) average number of local calls from a company owned public telephone.

(2) The company shall collect and report actual data showing the cost of providing private pay phone service, and report such data to the commission on a quarterly basis. These reports must include the following:

(A) revenues and expenses associated with the provision of each element of private pay telephone service;

(B) the number of private pay telephones installed;

(C) the number of company owned public phones displaced; and

(D) the average number of calls

placed from private pay telephones in areas with measuring capabilities.

(3) Cost studies using actual data shall be filed within 45 days after the first pay telephone customer has received service for 12 months. These cost studies shall include cost and revenue information necessary to design rates based on actual costs.

(4) Cost studies shall be included in the first general rate case filed after the first pay telephone customer has received service for six months. These cost studies shall include cost and revenue information necessary to design rates based on actual costs.

(i) Telephone cooperative and small companies. Cooperatives and companies with less than 5,000 access lines are exempt from filing pay telephone cost studies except as indicated in this subsection. These companies shall file surrogate cost studies based on nontraffic sensitive and traffic sensitive revenue requirements plus contribution.

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 22, 1988.

TRD-8801888

Phillip A. Holder
Secretary
Public Utility
Commission of Texas

Earliest possible date of adoption:

April 1, 1988

For further information, please call
(512)458-0100.

✦ ✦ ✦

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 105. Foundation School Program

The Texas Education Agency proposes the repeal of §§105.1, 105.41-105.46, 105.48, 105.50, 105.53-105.55, 105.91, 105.111, 105.151, 105.191, 105.211, 105.231, 105.251, 105.256, 101.257, 105.271, 105.311, 105.312, 105.331, 105.351, and 105.371, amendments to §105.49 and §105.92, and new §105.331, concerning the Foundation School Program as set up in Chapter 105.

These sections were not amended after the passage of House Bill 72, 68th Legislature, Second Called Session, although the funding provisions in that legislation made much of the material in the sections obsolete. All sections which reflect the funding system prior to House Bill 72 are proposed for repeal. §105.92 is amended to clarify that all paraprofessional and professional personnel are required to be certified, licensed, or otherwise qualified according to standards established by the State Board of Education. Personnel in instructional/administrative officer positions must hold appropriate supervisor's

or administrator's certification. Persons assigned to the administrative officer position must hold at least the bachelor's degree. New §105.331, concerning records and audits, provides for prompt adjustments of payments when the need for such adjustments is revealed as part of a school district audit.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed sections and 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 sections and repeals.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, have 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 deletion of sections which do not reflect provisions of current law. 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 Dr. Beverly Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

★ 19 TAC §105.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.1. Goal.

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 22, 1988.

TRD-8801914 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



**Subchapter C. Allocation of
Personnel Units**

**★ 19 TAC §§105.41-105.46, 105.48,
105.50, 105.53-105.55**

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.41. Basic Allocation.

**§105.42. Allocation of Units under the
Sparse Area Provision.**

**§105.43. Allocation of Units for Districts
which are Not Sparse and Have Less than
1,000 Students in ADA.**

**§105.44. Personnel Unit Adjustment for
Special Education, Vocational Education,
and School-Community Guidance Center
Personnel.**

**§105.45. Adjustment in Personnel Unit Al-
locations for Districts with a Marked Increase
or Decrease in ADA.**

**§105.46. Minimum Staffing Authoriza-
tion.**

**§105.48. Vocational Education Units and
Costs.**

§105.50. Rehabilitation Districts.

**§105.53. Countywide Day School for the
Deaf.**

**§105.54. Allocations for the Regional Day
School Program for the Deaf.**

**§105.55. Funding Preschool Programs for
Children with Hearing Loss.**

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 22, 1988.

TRD-8801913 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
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For further information, please call
(512) 463-9212.



**Subchapter C. Allocation of
Funds for Windham
Independent School District
[Personnel Units]**

★ 19 TAC §105.49

The amendment is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

**§105.49. Windham Independent School
District Allotment.**

(a) Allocation of funds. Windham Independent School District shall be entitled to the annual allotment of Foundation School Program funds as specified in the General Appropriation Act.

(b)-(l) (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 22, 1988.

TRD-8801912 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



Subchapter E. Salary Schedule

★ 19 TAC §105.91

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.91. Policy.

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 23, 1988.

TRD-8801911 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



★ 19 TAC §105.92

The amendment is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.92. *Minimum Salary Schedule.*

[(a) The position descriptions, required certification and education standards for positions in the public education compensation plan are as follows.

[(1) Pay grade: 1.

[(A) Number months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: educational aide I.

[(C) Description of positions assigned to class title: as specified in Subchapter Q of Chapter 141 of this title (relating to Paraprofessional Certification).

[(D) Required preparation and education: high school diploma or GED certificate, certified.

[(2) Pay grade: 1

[(A) Number months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: educational secretary I.

[(C) Description of positions assigned to class title: as specified in Subchapter Q of Chapter 141 of this title (relating to Paraprofessional Certification).

[(D) Required preparation and education: high school diploma or GED certificate, certified.

[(3) Pay grade: 2.

[(A) Number months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: educational aide II.

[(C) Description of positions assigned to class title: as specified in Subchapter Q of Chapter 141 of this title (relating to Paraprofessional Certification).

[(D) Required preparation and education: high school diploma or GED certificate, certified.

[(4) Pay grade: 2.

[(A) Number months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: educational secretary II.

[(C) Description of positions assigned to class title: as specified in Subchapter Q of Chapter 141 of this title (relating to Paraprofessional Certification).

[(D) Required preparation and education: high school diploma or GED certificate, certified.

[(5) Pay grade: 3.

[(A) Number months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: educational aide III.

[(C) Description of positions assigned to class title: as specified in Sub-

chapter Q of Chapter 141 of this title (relating to Paraprofessional Certification).

[(D) Required preparation and education: high school diploma or GED certificate, certified.

[(6) Pay Grade: 3.

[(A) Number months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: educational secretary III.

[(C) Description of positions assigned to class title: as specified in Subchapter Q of Chapter 141 of this title (relating to Paraprofessional Certification).

[(D) Required preparation and education: high school diploma or GED certificate.

[(7) Pay grade: 4.

[(A) Number months paid: 10.

[(B) Class title: teacher trainee I.

[(C) Description of positions assigned to class title: emergency permit. Teacher without degree. Teaches students under frequent supervisory check by principal, grade-level or department head.

[(D) Required preparation and education: normally no less than three years college.

[(8) Pay grade: 5.

[(A) Number months paid: 10.

[(B) Class title: teacher trainee II.

[(C) Description of positions assigned to class title: emergency permit. Teacher with college degree but deficiencies in education preparation in professional or academic background. Teaches students under frequent supervisory check by principal, grade-level or department head.

[(D) Required preparation and education: college degree but certain educational deficiencies.

[(9) Pay grade: 5.

[(A) Number months paid: 10.

[(B) Class title: certified nondegree teacher.

[(C) Description of positions assigned to class title: teaches at grade level or in teaching field for which prepared under general supervision only.

[(D) Required preparation and education: fully certified as teacher, but no college degree.

[(10) Pay grade: 7.

[(A) Number months paid: 10.

[(B) Class title: nurse.

[(C) Description of positions assigned to class title: school nurse.

[(D) Required preparation and education: R.N. with or without bachelor's degree.

[(11) Pay grade: 7.

[(A) Number months paid: 10.

[(B) Class title: teacher.

[(C) Description of positions assigned to class title: teaches at grade level or in teaching field for which prepared, under general supervision.

[(D) Required preparation and

education: bachelor's degree, no deficiency in professional education or in teaching field. Fully certified.

[(12) Pay grade: 7.

[(A) Number months paid: 10, 11, 12.

[(B) Class title: vocational teacher.

[(C) Description of positions assigned to class title: teaches in approved vocational program, under general supervision.

[(D) Required preparation and education: bachelor's degree and/or certified in field.

[(13) Pay grade: 7.

[(A) Number of months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: special education teacher.

[(C) Description of positions assigned to class title: teaches in approved special education program, under general supervision

[(D) Required preparation and education: bachelor's degree and certified in field.

[(14) Pay grade: 7.

[(A) Number of months paid: 10, 11 (as approved), 12 (as approved).

[(B) Class title: bilingual education or other special language program teacher.

[(C) Description of positions assigned to class title: teachers in a bilingual education or other special language program.

[(D) Required preparation and education: bachelor's degree; certified in field.

[(15) Pay grade: 7.

[(A) Number of months paid: 10.

[(B) Class title: aerospace-aviation education teacher.

[(C) Description of positions assigned to class title: teaches in aerospace-aviation education program.

[(D) Required preparation and education: bachelor's degree; certified flight instructor's license, or secondary certification plus one of the following:

[(i) private pilot license or higher;

[(ii) basic ground instructor license or higher;

[(iii) six semester hours or the equivalent in aerospace-aviation education course or workshop.

[(16) Pay grade: 7.

[(A) Number of months paid: 10, 11 (as approved), 12 (as approved).

[(B) Class title: special education related service personnel other than occupational or physical therapist.

[(C) Description of positions assigned to class title: provides special education related services which are not instructional in nature.

[(D) Required preparation and

education: bachelor's degree in specialty and state or national licensure or appropriate certification.

[(17) Pay grade: 7.

[(A) Number of months paid: 10.

[(B) Class title: librarian I.

[(C) Description of positions assigned to class title: supervises school library/learning resources center or functions as one of several librarians or learning resource specialists on a major campus.

[(D) Required preparation and education: bachelor's degree, certified.

[(18) Pay grade: 7.

[(A) Number of months paid: 10.

[(B) Class title: visiting teacher I.

[(C) Description of positions assigned to class title: works on personal, educational, family, and community problems with children, parents, school personnel, and community agencies, under general supervision.

[(D) Required preparation and education: bachelor's degree, certified.

[(19) Pay grade: 7.

[(A) Number of months paid: 10.

[(B) Class title: guidance

associate.

[(C) Description of positions assigned to class title: works under one-to-one supervision of fully certified counselor.

[(D) Required preparation and education: bachelor's degree, certified.

[(20) Pay grade: 8.

[(A) Number of months paid: 10.

[(B) Class title: teacher.

[(C) Description of positions assigned to class title: teaches at grade level or in teaching field for which prepared, under general supervision.

[(D) Required preparation and education: master's degree, fully certified.

[(21) Pay grade: 8.

[(A) Number of months paid: 10.

[(B) Class title: nurse.

[(C) Description of positions assigned to class title: school nurse.

[(D) Required preparation and education: R.N. and master's degree.

[(22) Pay grade: 8.

[(A) Number of months paid: 10, 11, 12.

[(B) Class title: vocational teacher.

[(C) Description of positions assigned to class title: teaches in approved vocational program, under general supervision.

[(D) Required preparation and education: master's degree, certified.

[(23) Pay grade: 8.

[(A) Number of months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: special education teacher.

[(C) Description of positions assigned to class title: teaches in approved special education program, under general

supervision.

[(D) Required preparation and education: master's degree, certified.

[(24) Pay grade: 8.

[(A) Number of months paid: 10, 11 (as approved), 12 (as approved).

[(B) Class title: special education related service personnel other than occupational or physical therapist.

[(C) Description of positions assigned to class title: provides special education related services which are not instructional in nature.

[(D) Required preparation and education: master's degree and state or national licensure or appropriate certification.

[(25) Pay grade: 8.

[(A) Number of months paid: 10, 11, (as approved), 12 (as approved).

[(B) Class title: bilingual education or other special language program teacher.

[(C) Description of positions assigned to class title: teachers in a bilingual education or other special language program.

[(D) Required preparation and education: master's degree; certified in field.

[(26) Pay grade: 8.

[(A) Number of months paid: 10.

[(B) Class title: aerospace-aviation education teacher.

[(C) Description of positions assigned to class title: teaches in aerospace-aviation education program.

[(D) Required preparation and education: master's degree; certified flight instructor's license, or secondary certification plus one of the following:

[(i) private pilot license or higher;

[(ii) basic ground instructor license or higher;

[(iii) six semester hours or the equivalent in aerospace-aviation education course or workshop.

[(27) Pay grade: 8.

[(A) Number of months paid: 10.

[(B) Class title: librarian II.

[(C) Description of positions assigned to class title: supervises school library/learning resource center or functions as one of several librarians/learning resource specialists on a major campus.

[(D) Required preparation and education: master's degree, fully certified.

[(28) Pay grade: 8.

[(A) Number of months paid: 10.

[(B) Class title: physician.

[(C) Description of positions assigned to class title: serves as school physician.

[(D) Required preparation and education: M.D. degree or D. O. degree, licensed by the State of Texas.

[(29) Pay grade: 9.

[(A) Number months paid: 10.

[(B) Class title: special duty teacher.

[(C) Description of positions assigned to class title: teaches regular load at

grade level or in teaching field for which prepared, under general supervision, and performs special duty as sponsor of major student program; directs after-hour recreation or lighted library; serves as team leader in team teaching; serves as teacher in a school-community guidance center; directs band or major music group, or serves as coach.

[(D) Required preparation and education: fully certified as teacher and special training for special duty assignment and holder of master's degree.

[(30) Pay grade: 9.

[(A) Number of months paid: 10.

[(B) Class title: teacher, Bachelor of Laws or Doctor of Jurisprudence.

[(C) Description of positions assigned to class title: teaches at grade level or in teaching field for which prepared, under general supervision.

[(D) Required preparation and education: Bachelor of Laws or Doctor of Jurisprudence; fully certified.

[(31) Pay grade: 9.

[(A) Number of months paid: 10.

[(B) Class title: guidance center teacher.

[(C) Description of positions assigned to class title: teaches in a school-community guidance center.

[(D) Required preparation and education: master's degree; fully certified.

[(32) Pay grade: 9.

[(A) Number of months paid: 10.

[(B) Class title: teacher, doctor's degree.

[(C) Description of positions assigned to class title: teaches at grade level or in teaching field for which prepared, under general supervision.

[(D) Required preparation and education: doctor's degree, fully certified.

[(33) Pay grade: 10.

[(A) Number of months paid: 10.

[(B) Class title: visiting teacher II.

[(C) Description of positions assigned to class title: works on personal, educational, family, and community problems with children, parents, school personnel, and community agencies.

[(D) Required preparation and education: master's degree, certified.

[(34) Pay grade: 10.

[(A) Number of months paid: 10, 11 (as approved), 12 (as approved).

[(B) Class title: occupational therapist.

[(C) Description of positions assigned to class title: provides special education occupational therapy services.

[(D) Required preparation and education: bachelor's or higher degree from program accredited by the American Occupational Therapy Association and the American Medical Association; certification by the American Occupational Therapy Association.

[(35) Pay grade: 10.

[(A) Number of months paid: 10, 11 (as approved), 12 (as approved).

[(B) Class title: physical therapist.

[(C) Description of positions assigned to class title: provides special education physical therapy services.

[(D) Required preparation and education: bachelor's degree; licensure by the Texas Board of Physical Therapy Examiners.

[(36) Pay grade: 10.

[(A) Number of months paid: 10.

[(B) Class title: guidance center teacher.

[(C) Description of positions assigned to class title: teaches in a school-community guidance center.

[(D) Required preparation and education: master's degree; fully certified.

[(37) Pay grade: 10.

[(A) Number of months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: counselor I, school psychologist, associate school psychologist.

[(C) Description of positions assigned to class title: provides guidance and counseling services to students.

[(D) Required preparation and education: fully certified.

[(38) Pay grade: 10.

[(A) Number of months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: education diagnostician.

[(C) Description of positions assigned to class title: provides educational diagnostic services and individual educational plan development.

[(D) Required preparation and education: fully certified.

[(39) Pay grade: 10.

[(A) Number of months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: supervisor I.

[(C) Description of positions assigned to class title: provides consultant services to teachers in a grade level or adjacent grades or in a teaching field or group of related fields.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor).

[(40) Pay grade: 10.

[(A) Number of months paid: 10, 11 (special education and vocational education as approved), 12 (special education and vocational education as approved).

[(B) Class title: vocational job placement coordinator.

[(C) Description of positions assigned to class title: responsible for student job placement and employability skills.

[(D) Required preparation and education: master's degree, vocational counselor's certificate, three years' teaching/wage earning experience.

[(41) Pay grade: 10.

[(A) Number of months paid: 10.

[(B) Class title: parttime principal.

[(C) Description of positions assigned to class title: serves as parttime principal on campus with 11 or fewer teachers.

[(D) Required preparation and education: certified as administrator.

[(42) Pay grade: 10.

[(A) Number of months paid: 10.

[(B) Class title: administrative officer I.

[(C) Description of positions assigned to class title: serves as principal functional assistant to superintendent or higher grade administrative officer.

[(D) Required preparation and education: college degree, major or minor in assignment.

[(43) Pay grade: 10.

[(A) Number of months paid: 10.

[(B) Class title: instructional officer/administrative officer I.

[(C) Description of positions assigned to class title: serves under the superintendent or higher grade instructional/administrative officer as key specialist for major instructional program.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) administrator or supervisor.

[(44) Pay grade: 11.

[(A) Number of months paid: 10.

[(B) Class title: assistant principal.

[(C) Description of positions assigned to class title: serves as assistant principal on campus with 20 or more teachers.

[(D) Required preparation and education: certified as administrator or (assistant principal 1972 prog.).

[(45) Pay grade: 11.

[(A) Number of months paid: 10.

[(B) Class title: administrative officer II.

[(C) Description of positions assigned to class title: serves as assistant to superintendent or higher grade administrative officer.

[(D) Required preparation and education: same as administrative officer I plus experience in function.

[(46) Pay grade: 11.

[(A) Number of months paid: 10.

[(B) Class title: instructional/administrative officer II.

[(C) Description of positions assigned to class title: serves under the superintendent or higher grade instructional/administrative officer as key specialist for major instructional program.

[(D) Required preparation and

education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) as administrator or supervisor.

[(47) Pay grade: 12.

[(A) Number of months paid: 11.

[(B) Class title: principal.

[(C) Description of positions assigned to class title: serves as fulltime principal on campus with 19 or fewer teachers.

[(D) Required preparation and education: fully certified as administrator.

[(48) Pay grade: 12.

[(A) Number of months paid: 10.

[(B) Class title: instructional officer/administrative officer III.

[(C) Description of positions assigned to class title: serves under the superintendent or higher grade instructional/administrative officer as key specialist for major instructional program.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) as administrator or supervisor.

[(49) Pay grade: 12.

[(A) Number of months paid: 10.

[(B) Class title: administrative officer III.

[(C) Description of positions assigned to class title: directs major administrative activity, under supervision of superintendent or higher grade administrative officer.

[(D) Required preparation and education: same as administrative officer I plus minimum two years' related experience.

[(50) Pay grade: 13.

[(A) Number of months paid: 11.

[(B) Class title: principal.

[(C) Description of positions assigned to class title: serves as fulltime principal on campus with 20-49 teachers.

[(D) Required preparation and education: fully certified as administrator.

[(51) Pay grade: 13.

[(A) Number of months paid: 11.

[(B) Class title: instructional officer IV/administrative officer.

[(C) Description of positions assigned to class title: serves under superintendent or higher grade instructional/administrative officer as key specialist for major instructional program.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) as administrator or supervisor.

[(52) Pay grade: 13

[(A) Number of months paid: 12.

[(B) Class title: administrative officer IV.

[(C) Description of positions assigned to class title: serves as assistant to superintendent or higher grade administrative officer.

[(D) Required preparation and education: same as administrative officer I plus three years experience in function.

[(53) Pay grade: 14.

[(A) Number of months paid: 11.

[(B) Class title: principal.

[(C) Description of positions assigned to class title: serves as fulltime principal on campus with 50-99 teachers.

[(D) Required preparation and education: fully certified as administrator.

[(54) Pay grade: 14.

[(A) Number of months paid: 12.

[(B) Class title: principal.

[(C) Description of positions assigned to class title: serves as fulltime principal on campus with 100 or more teachers.

[(D) Required preparation and education: fully certified as administrator.

[(55) Pay grade: 14.

[(A) Number of months paid: 12.

[(B) Class title: instructional/administrative officer V.

[(C) Description of positions assigned to class title: serves under the superintendent or higher grade instructional officer to direct major instructional function.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) as administrator or supervisor.

[(56) Pay grade: 14.

[(A) Number of months paid: 12.

[(B) Class title: administrative officer V.

[(C) Description of positions assigned to class title: serves under superintendent or higher grade administrative officer in administrative capacity coordinating group of major functions in personnel, business, accounting, planning, research, etc.

[(D) Required preparation and education: same as administrative officer I plus five years' related experience.

[(57) Pay grade: 15.

[(A) Number of months paid: 12.

[(B) Class title: superintendent.

[(C) Description of positions assigned to class title: serves as superintendent in system of 3,000 or less ADA.

[(D) Required preparation and education: fully certified as superintendent.

[(58) Pay grade: 15.

[(A) Number of months paid: 12.

[(B) Class title: instructional/administrative officer VI.

[(C) Description of positions assigned to class title: serves under superintendent or higher grade instructional administrative officer as high level director for major program.

[(D) Required preparation and education: fully certified as administrator or supervisor.

[(59) Pay grade: 15.

[(A) Number of months paid: 12.

[(B) Class title: administrative officer VI.

[(C) Description of positions assigned to class title: serves under superintendent or higher grade administrative officer as high level director for major program.

signed to class title: serves under superintendent or higher grade administrative officer in administrative capacity in personnel, business, accounting, planning, research, etc.

[(D) Required preparation and education: same as administrative officer I plus five years' related experience.

[(60) Pay grade: 16.

[(A) Number of months paid: 12.

[(B) Class title: superintendent.

[(C) Description of positions assigned to class title: serves as superintendent in system of 3,001-12,500 ADA.

[(D) Required preparation and education: fully certified as superintendent.

[(61) Pay grade: 16.

[(A) Number of months paid: 12.

[(B) Class title: instructional/administrative officer VII.

[(C) Description of positions assigned to class title: serves under superintendent or higher grade instructional/administrative officer coordinating group of major functions.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) as administrator or supervisor.

[(62) Pay grade: 16.

[(A) Number of months paid: 12.

[(B) Class title: administrative officer VII.

[(C) Description of positions assigned to class title: serves under superintendent or higher grade administrative officer in administrative capacity coordinating group of major functions in personnel, business, accounting, planning, research, etc.

[(D) Required preparation and education: same as administrative officer I plus five years' related experience.

[(63) Pay grade: 17.

[(A) Number of months paid: 12.

[(B) Class title: superintendent.

[(C) Description of positions assigned to class title: serves as superintendent in system of 12,501-50,000 ADA.

[(D) Required preparation and education: fully certified as superintendent.

[(64) Pay grade: 17.

[(A) Number of months paid: 12.

[(B) Class title: instructional/administrative officer VIII.

[(C) Description of positions assigned to class title: serves as coordinator of instructional functions under the supervision of the superintendent.

[(D) Required preparation and education: fully certified (special education—fully certified with special education endorsement or certificate; vocational education—certified as vocational supervisor) as administrator or supervisor.

[(65) Pay grade: 17.

[(A) Number of months paid: 12.

[(B) Class title: administrative officer VIII.

[(C) Description of positions assigned to class title: serves under the superintendent in administrative capacity coordinating group of major functions in personnel, business, accounting, planning, research, etc.

[(D) Required preparation and education: same as administrative officer I plus seven years' related experience.

[(66) Pay grade: 18.

[(A) Number of months paid: 12.

[(B) Class title: superintendent.

[(C) Description of positions assigned to class title: serves as superintendent in system of more than 50,000 ADA.

[(D) Required preparation and education: fully certified as superintendent.

(a)[(b)] A current salary schedule, with regulations approved by the State Board of Education, is published by the Texas Education Agency in the State of Texas annual public education compensation plan.

(b)[(c)] This document shall show the positions, [pay grades,] titles, and number of annual contract months authorized by law for each position under the Texas public education compensation plan as well as new positions or months of service which have been added by the commissioner of education, with the approval of the State Board of Education.

(c)[(d)] **Professional [All] personnel, including those not assigned to positions on the minimum salary schedule, and paraprofessional personnel must be certified, licensed, or otherwise qualified according to the certification requirement and standards for each position as established by the Central Education Agency. Personnel employed as instructional/administrative officers supervising certified personnel must possess the appropriate supervisor's or administrator's certificate. [For the 1977-1978 school year the same requirements established by law for the 1976-1977 school year will apply to personnel assigned to positions in pay grades 4 and above. Any new requirements and standards for these positions will become effective with the 1978-1979 school year.]**

(d)[(e)] The job classification "administrative officer" is to be used only for those positions not requiring certification. Noncertified administrative officers are to be assigned functions which do not involve supervising or controlling curriculum or professional personnel whose assignments require certification. Personnel assignments such as tax assessors, business managers, directors of transportation, maintenance and grounds personnel, are considered to be strictly administrative. **At least a bachelor's degree from an accredited college or university is required for these positions.**

(e)[(f)] Those personnel assigned to positions in 1975-1976 under the grandfather clause will continue to be safeguarded except for those personnel who were assigned to positions deleted from or modified by Senate Bill 1 (65th Session). [Those administrative officers placed in pay grade 10 in 1975-1976 may be moved to higher pay grades designating group of major functions in personnel, business, accounting, planning, research, etc.]

nated for administrative officers without losing their safeguarded status under the grandfather clause.] All newly assigned personnel must meet the current requirements for the positions they hold.

[(g) Personnel continuing in the same job assignment who have been reclassified into a higher pay grade by law shall move into that pay grade on that step occupied by persons with equivalent years of experience which is acceptable for salary increment purposes.]

(f)(h) The only position currently authorized for a parttime principal is [in pay grade 10] on campuses with 11 or fewer classroom teachers. Fulltime principals (11 months) may be assigned to all campuses. An assistant principal ([pay grade 11,] 10 months) may be assigned only to a campus of 20 or more teachers to assist a fulltime principal who has been assigned to the same campus. Persons who were serving as parttime principals in 1970-1971 and have continued in that assignment on the same campus since that time may continue as parttime principals on a 10-month basis on any campus regardless of size. All persons who were first assigned after 1970-1971 as parttime principals on campuses with more than 11 teachers and who wish to continue to serve as fulltime principals must hold an administrator's certificate or must have been granted a temporary administrator certificate (§141.247 [(226.62.20.090)] of this title (relating to Requirements for Professional Administrator Certificates)).

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 22, 1988.

TRD-8801910 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



Subchapter F. Allocation of Operating Cost

★ 19 TAC §105.111

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.111. *Operating Cost Allotment.*

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

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Subchapter H. State Available School Fund

★ 19 TAC §105.151

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.151. *Distribution to School Districts.*

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

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Subchapter J. Local Share of Program Cost

★ 19 TAC §105.191

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.191. *Determination of Local Share.*

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

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Subchapter K. Foundation Entitlement to District

★ 19 TAC §105.211

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.211. *Determination of Allocation.*

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

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Subchapter L. Incentive Aid Payments

★ 19 TAC §105.231

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.231. *Incentive Aid Payments to Districts.*

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

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Subchapter M. State Minimum Sick Leave

★ 19 TAC §§105.251, 105.256, 105.257

(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 Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.251. *Policy.*

§105.256. *Claiming Funds.*

§105.257. *Payment for Accrued State Sick Leave on Retirement.*

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

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Subchapter N. Instructional Television Services Program Funding

★ 19 TAC §105.271

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which autho-

rizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.271. *Determination of Allocation.*

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

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Subchapter P. Categorical Program Aid

★ 19 TAC §105.311, §105.312

(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 Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.311. *Driver Education.*

§105.312. *Support for Educationally Disadvantaged.*

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

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Subchapter Q. Adjustments of Payments

★ 19 TAC §105.331

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.331. *Records and Audits.*

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 22, 1988.

TRD-8801901 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



★ 19 TAC §105.331

The new section is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.331. *Records and Audits.* The commissioner of education shall ensure prompt adjustments resulting from audit disclosures.

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 22, 1988.

TRD-8801900 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



Subchapter R. Local Cooperative Teacher Education Centers

★ 19 TAC §105.351

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.351. *Funding*

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 22, 1988.

TRD-8801899 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.



Subchapter S. Equalization Aid for Program Enrichment

★ 19 TAC §105.371

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§105.371. Determination of Allocation.

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 22, 1988.

TRD-8801898 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
April 9, 1988
For further information, please call
(512) 463-9212.

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 67. Hearings on Disputed Claims

★ 34 TAC §67.89

(Editor's note: The Employees Retirement System of Texas 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 Employees Retirement System of Texas (ERS) proposes an amendment to §67.89, concerning the presentation of contested claims to the board of trustees (trustees) of the ERS. Subsection (d) of this section is amended to extend the five-minute limitation for oral argument imposed upon each party who is presenting a contested case to the trustees. Such time limitation will be extended, at the sole discretion of the trustees, to a total time period of 10 minutes for each party.

The proposed amendment to this section is simultaneously adopted on an emergency basis to be effective immediately in order to afford each party who is presenting a contested case to the trustees the benefit of the extended time limitation for oral argument at future board of trustees meetings.

James T. Herod, deputy director for programs and 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. Herod also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to afford each party who is presenting a contested case to the trustees an extended time limitation for oral argument if the trustees so allow. Such time limitation, at the sole discretion of the trustees, will be extended from five minutes to a total time period not to exceed 10 minutes for each party. 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 James T. Herod, Deputy Director for Programs and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendment is proposed under Texas Civil Statutes, Title 110B, §25.103, which provide the trustees of the ERS with the authority to adopt rules for the administration of the ERS and for the transaction of any other business of the board of trustees.

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 23, 1988.

TRD-8801894 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption:
April 1, 1988
For further information, please call
(512) 478-6431, ext. 178.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 11. Commodity Program

Emergency Food Assistance Program

★40 TAC §11.6008

The Texas Department of Human Services (DHS) proposes an amendment to §11.6008, concerning reimbursement. The purpose of the amendment is to delete the maximum reimbursement restriction of 5.0% of the value of commodities contractors distribute.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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 governments or small businesses as a result of enforcing or administering the section.

Mr. Packard also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be reimbursement of contractors for the actual costs of distributing commodities, based on available funds. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-098, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§11.6008. Reimbursement. DHS reimburses for allowable [DHR reimburses a maximum of 5.0% of the value of commodities distributed for] actual, direct costs for storage and distribution of commodities [or the cumulative total of incurred allowable direct costs, whichever is less]. The actual reimbursement rate depends on available funds. According to the terms of the contract, DHS [DHR] will notify contractors of any changes in the reimbursement rates. Contractors must submit claims to DHS [DHR] within 60 days of the end of the month of services [service].

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 24, 1988.

TRD-8801923

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:

May 2, 1988

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



Chapter 47. Primary Home Care

Provider Contracts

★40 TAC §47.4902

The Texas Department of Human Services (DHS) proposes new §47.4902, concerning geographic boundaries, in its primary home care (PHC) chapter. The purpose of the proposed new section is to clarify the geographic boundaries within which home health agencies provide services under PHC contracts.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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 governments or small businesses as a result of enforcing or administering the section.

Mr. Packard also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that client services will be appropriately coordinated. The section will also ensure that PHC services are provided on a statewide basis. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-622, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§47.4902. Geographic Boundaries.

(a) Any home health agency that has a contract with the department must provide services in the county in which the parent agency, sub-unit, or branch office is located.

(b) A contracted home health agency may request that the department amend the agency's contract to add counties, if the following conditions exist.

(1) Additional counties served by the home health agency must be contiguous to a county already covered in the agency's contract with the department.

(2) The home health agency must

have a contract with the department for each DHS region served.

(3) The contracted home health agency must be available to provide Title XVIII and Title XIX skilled-nursing home health services in the area covered by the agency's PHC contract. The agency must assure the department, in writing, that these services are available.

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

Issued in Austin, Texas, on February 24, 1988.

TRD-8801929

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:

June 1, 1988

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



Chapter 56. Family Planning Subchapter I. Joint TDH/DHS AIDS Prevention

★40 TAC §§56.901-56.905

The Texas Department of Human Services (DHS) proposes new §§56.901-56.905, concerning activities to prevent Acquired Immunodeficiency Syndrome (AIDS) that are required by Title XIX and Title XX for contracted family planning providers, in its family planning chapter. The sections have been developed in keeping with the Texas Department of Health/Department of Human Services Texas Statewide Coordinated Family Planning Program's mission to provide comprehensive, high quality reproductive health care to persons receiving educational and medical services from clinics funded by TDH/DHS. The intent of these sections is to define different levels of AIDS prevention activities. The activities include patient and community education, patient risk screening and assessment, referral for AIDS testing and counseling, and protection of patient confidentiality.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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. Packard 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 better understanding of the facts about AIDS. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-611, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§56.901. Patient Education.

(a) Family planning providers must give all patients/clients information about safe sex behaviors and the benefits of correct condom use when explaining birth control methods.

(b) In addition to one-on-one and group education, providing factual information about AIDS through pamphlets, fact sheets, and audio-visuals in the waiting room is required.

(c) Providers must include AIDS information, when appropriate, at community education sessions.

(d) Both clinic and community education are staff-initiated activities.

§56.902. Basic AIDS Risk Screening and Assessment. If, within the context of family planning education or as the result of receiving information about correct condom use and safe sex behaviors, patients/clients raise questions or express concern about basic risk factors and their potential effect, family planning providers must respond by using written risk screening/risk assessment questionnaires or high quality interviewing and counseling techniques. If patients/clients request more than the required services, providers may refer them to other community resources that provide the requested services. Referrals must be confidential. If communities lack these resources, providers are responsible for performing only the basic risk-screening and risk-assessment tasks. Anything more is considered pre-test counseling. Basic screening and assessment are patient-initiated activities.

§56.903. Referral to Human Immunodeficiency Virus (HIV) Testing and Counseling. If patients/clients request information about HIV test sites, family planning providers must provide information and assist them in making an informed decision about the need for HIV testing. Referral is a patient-initiated activity, but provider staff are responsible for effective referrals.

§56.904. HIV Testing and Counseling. If a family planning provider maintains an HIV test site, the provider must offer confidential pre- and post-test counseling, performed by persons with specialized training, to patients/clients requesting these services.

§56.905. Protection of Confidentiality. If involved in risk screening, risk assessment, and referral to HIV sites, family planning provider staff must protect the confidentiali-

ty of the patient/client.

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 24, 1988.

TRD-8801930 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
May 1, 1988
For further information, please call
(512) 450-3765.

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Chapter 73. Civil Rights

Subchapter OO. Administrative Fraud Disqualification Hearings

★ 40 TAC §§73.4006, 73.4008,
73.4010

The Texas Department of Human Services (DHS) proposes amendments to §§73.4006, 73.4008, 73.4010, 73.4105, 73.4107, 73.4110, and 73.4111, concerning administrative fraud disqualification hearings and hearing procedures, in its civil rights chapter. The amendments clarify the hearing officer's duties and responsibilities and add a procedure for cases in which the clients fail to respond to a hearing notice.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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. Packard 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 hearing process will operate more efficiently. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-635, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§73.4006. Disqualification of Hearing Officer.

(a) (No change.)

(b) A hearing officer may be disqualified if:

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

(3) the hearing officer has a personal interest in the outcome of the hearing decision or has some other conflict of interest;

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

(c) (No change.)

§73.4008. Hearing Officer's Powers and Duties. The hearing officer:

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

(7) requires the attendance of an agency representative, if necessary and appropriate.

§73.4010. Scheduling the Hearing.

(a) (No change.)

(b) The hearing officer schedules the hearing at a reasonable time and place. He considers the household member's physical condition, location, and access to transportation. **The hearing may be held in the field office where the file is located.**

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 24, 1988.

TRD-8801925 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
May 4, 1988
For further information, please call
(512) 450-3765.

◆ ◆ ◆

Subchapter PP. Hearing Procedure

★ 40 TAC §§73.4105, 73.4107,
73.4110, 73.4111

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

§73.4105. Failure of Household Member to Appear.

(a) If the household member or his representative receives notice and [cannot be located or] fails to attend a hearing without good cause, the hearing is conducted without him. The household member has 10 calendar days from the date of the hearing to present good cause for failing to appear.

(b) (No change.)

(c) If the household member or his representative fails to return the notice and fails to sign the return receipt for the certified letter, then the hearing officer:

(1) checks the administrative disqualification record for any contacts from the household member before the hearing date;

(2) phones the client once if the client's current telephone number is listed on

the Office of the Inspector General's case report form. The purpose of the call is to determine whether the correct household member received the notice. The hearing officer must talk to the household member to confirm that the notice was received;

(3) dismisses the case, if the hearing officer is unable to determine that the household member received the notice.

§73.4107. Recessing the Hearing.

(a) If the household member, the investigator, or the hearing officer requests to have the food stamp record at the hearing, the hearing may be recessed to obtain the record. The household member may question or refute any additional testimony or evidence after a recess.

(b) (No change.)

§73.4110. Effect of an Administrative Determination of Intentional Program Violation.

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

(d) If the hearing officer imposes a six-month disqualification for an initial violation, no further disqualifications may be imposed for violations occurring before the hearing that are later discovered. These violations may be brought to the hearing officer and, if appropriate, an intentional program violation may be found.

(e)(d) Although the hearing officer's decision regarding the intentional program violation is final, the appellant may appeal the investigator's [caseworker's] computation of the amount of overpayment.

§73.4111. Notification of Hearing Decision.

(a) (No change.)

(b) If the household member received notice and did not appear at the hearing, the hearing officer holds the notice form for 10 days to allow the individual to present good cause for failing to attend.

(c) The food stamp worker notifies the household member of the effect of the hearing officer's decision in the case on the notice of disqualification for intentional program violation form, except in dismissed cases. If the case is dismissed, the hearing officer sends copies to the food stamp worker only.

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 24, 1988.

TRD-8801926 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
May 14, 1988

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

Chapter 79. Legal Services
Subchapter M. Appeals Process

★40 TAC §79.1203

The Texas Department of Human Services (DHS) proposes amendments to §79.1203 and §79.1302, concerning the hearing officer and fair hearing proceedings, in its legal services rule chapter. The amendment to §79.1203 adds to the hearing officer's duties the responsibility for requiring the attendance at hearings of an agency representative, if necessary. The amendment to §79.1302 clarifies that a representative of the agency that took the action being appealed must explain and defend the decision or action.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Packard has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be the availability of current information about what is expected at a hearing. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-635, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§79.1203. Hearing Officer.

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

(d) Hearing officer's powers and duties. The hearing officer:

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

(7) requires the attendance of an agency representative, if necessary and appropriate.

(8)(7) may not reverse a decision based on DHS policy an appellant alleges is contrary to law or unconstitutional (the recommendation to reverse a decision must come from the Office of the General Coun-

sel); and

(9)(8) decides if actions are in compliance with current statutes, policies, or procedures.

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

Issued in Austin, Texas, on February 24, 1988.

TRD-8801927 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
May 4, 1988
For further information, please call
(512) 450-3765.

Subchapter N. Hearing Procedure

★40 TAC §79.1302

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

§79.1302. Fair Hearing Proceedings.

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

(g) [Except in Medicaid level-of-care appeals.] A [DHS] representative of the agency that took the action being appealed must explain and defend the decision or action of the program staff. Usually, the [DHS] representative participates in the fair hearing by telephone. Either the hearing officer or the appellant has the right to request that the [DHS] representative attend the hearing in person. If the appellant or the hearing officer requests a face-to-face appeal, the hearing officer promptly notifies the [DHS] representative. In level of care hearings, the representative is only present by telephone.

(h)-(j) (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 24, 1988.

TRD-8801928 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
March 30, 1988
For further information, please call
(512) 450-3765.

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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 1. Practice and Procedure

Subchapter C. Pleadings

★ 16 TAC §1.32

The Railroad Commission of Texas adopts an amendment to §1.32, without changes to the proposed text published in the December 22, 1987, issue of the *Texas Register* (12 TexReg 4816).

The amendment is adopted to provide a uniform paper size used in all Railroad Commission activities involving the handling of pleadings and briefs. Prior to adoption of this amendment, the paper size of pleadings and briefs could be up to 8½ inches by 14 inches, resulting in different paper sizes. The amendment provides that pleadings and briefs are not to exceed 8½ by 11 inches. In addition, annexed exhibits must be folded to the same size.

The Panhandle Producers and Royalty Owners Association filed comments in favor of the proposal.

The amendment is adopted pursuant to the Administrative Procedure and Texas Register Act, Article 6252-13a, §4(a)(1), which requires each state agency to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

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 22, 1988.

TRD-8801877

John Sharp
Commissioner
Railroad Commission of
Texas

Effective date: March 15, 1988
Proposal publication date: December 22, 1987
For further information, please call
(512) 463-7149.

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

★ 16 TAC §3.22

The Railroad Commission of Texas adopts the repeal of §3.22, without changes to the proposed text published in the the December 22, 1987, issue of the *Texas Register* (12 TexReg 4816).

The repeal removes restrictions on the size of tubing used on wells produced by means of artificial lifting devices. Prior to the repeal, an oil well operator could obtain exceptions to the restrictions by paying a \$50 fee, if there was no protest from potentially affected parties. In earlier rule-making proceedings, the Railroad Commission has removed tubing size restrictions with respect to flowing oil wells and has removed restrictions on the use of down-hole centrifugal pumps. Other Railroad Commission rules effectively regulate the allowable an artificially lifted well is assigned without the need for the restriction in §3.22.

This rulemaking proceeding was initiated in response to a rulemaking petition filed by the Texas Mid-Continent Oil and Gas Association. The Texas Independent Producers and Royalty Owners Association, the Panhandle Producers and Royalty Owners Association, the West Central Texas Oil and Gas Association, and the Permian Basin Petroleum Association filed comments supporting this repeal.

The repeal is adopted under the Texas Natural Resources Code, Title 3, Subtitle B, Chapter 85, §85.201 and §85.202, authorizing the Railroad Commission to make and enforce rules, and to do all things necessary, for the conservation of oil and gas and preventing waste of oil and gas in the State of Texas.

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 22, 1988.

TRD-8801876

John Sharp
Commissioner
Railroad Commission of
Texas

Effective date: March 15, 1988
Proposal publication date: December 22, 1987
For further information, please call
(512) 463-7149.

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules Rates

★ 16 TAC §23.26

The Public Utility Commission of Texas adopts new §23.26, with changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 TexReg 96).

The Public Utility Regulatory Act, §18(f), requires the Public Utility Commission of Texas to adopt new rules and procedures to allow local exchange companies to introduce new and experimental services on an expedited basis.

Local exchange companies may file applications with the commission requesting approval of new and experimental services. In most cases, such application will be subject to an administrative review by the commission staff and the Office of Public Utility Counsel. However, such applications may be docketed or subject to full evidentiary review if a commission hearings examiner determines that a hearing on the application is appropriate.

Southwestern Bell Consumers Union made comments in favor of adoption of the new section. Office of Public Utility Counsel Consumers Union made comments against adoption of the new section. Opposition to the section was largely related to provisions which provide for an administrative review of new and experimental service applications instead of a full evidentiary hearing and provisions which provide for limited waivers and modifications of requirements established in the section.

The agency disagrees with the comments made against adoption of the section. The administrative review contemplated in the section is consistent with language of the Public Utility Regulatory Act which calls for an expedited review of applications for new and experimental services.

The waiver provisions of the section are limited and provide a reasonable degree of flexibility under the section.

The new section is adopted under the Public Utility Regulatory Act, which provides the Public Utility Commission of Texas with the authority to adopt new rules and procedures to allow local exchange companies to introduce new and experimental services on an expedited basis.

§23.26. New and Experimental Services.

(a) Application. This section applies to local exchange carriers (LECs), as that term is defined by §23.61 of this title (relating to Telephone Utilities), which are subject to the rate-making jurisdiction of the commission for any service or market.

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

(1) New service means any service proposed after the effective date of this section and not offered on a tariff basis prior to January 1, 1988, and specifically excludes basic local exchange service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to January 1, 1988, and does not provide significant improvements (other than price) over, or significant additional services not available under a service offered prior to January 1, 1988, it shall not be considered a new service.

(2) Experimental service is a service which fits the definition of a new service and is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

(3) Administrative review means a process whereby an application is reviewed by the commission staff and the Office of Public Utility Counsel and ruled on by the presiding examiner without an evidentiary hearing and without an order signed by the commission.

(c) Filings requesting approval of new and experimental services. After the effective date of this section, an LEC may request approval of a new or experimental service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Telephone Division and one copy to the Office of Public Utility Counsel. Nothing in this section precludes an LEC from utilizing other provisions of this title to offer such services. Not later than 30 days prior to the proposed effective date of the new or experimental service, the LEC shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the LEC to use the procedures established in this section;

(2) a description of the proposed service and the rates, terms, and conditions under which the service is proposed to be offered;

(3) the proposed effective date of the service;

(4) a statement detailing the type of notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the LEC's notice proposal is reasonable;

(5) a copy of the text of the notice, if any;

(6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. The application shall also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs. Capital costs related to providing the service shall be separately identified in these projections. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.

(7) If the application concerns a service which will not initially be offered systemwide, the application shall separately explain for each exchange in which the service will not be offered why the LEC's facilities in that exchange do not have the technical capability to handle the service. The application shall also include an implementation plan which shall specify the LEC's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service. The LEC shall also specify in its plan what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the LEC shall specify the exchanges in which it proposes to offer the experimental service.

(8) If the application concerns an experimental service for which a range of rates is proposed, the application shall state the range of rates requested and show in detail how the upper and lower rates in that range relate to the long run incremental cost of the service.

(9) Any other information which the LEC wants considered in connection with the commission's review of its application.

(d) Modifications and waivers of requirements. In its application an LEC may request and the commission or the presiding examiner may grant for good cause the modification or waiver of requirements set forth in this section concerning systemwide rates; systemwide provision of service; the one-year, cost-related prove-in period; or long run incremental cost support. Subsequent to the introduction of an experimental service, an LEC may also apply for

modification of the period initially approved for offering the service. However, no experimental service shall be approved for more than two years, no prove-in period shall be extended beyond two years and, in lieu of incremental cost information, the LEC must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period. A waiver of the incremental cost standard shall only be granted if the presiding examiner determines that such a standard imposes an unreasonable burden on an LEC which has inadequate resources to produce the required cost information to meet that standard and if the examiner determines that an appropriate alternative cost standard is available. Any request for modification or waiver of these requirements shall include a complete statement of the LEC's arguments supporting that request. The presiding examiner shall rule on the waiver request within 15 days of the filing of the request. A copy of the examiner's ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding examiner within 15 days of the examiner's ruling.

(e) Notice. The presiding examiner may require notice to be provided to the public in addition to that proposed by the LEC. Before the effective date of the application, the LEC shall file a statement indicating the date on which all notice provided to the public was completed and proof of such notice. If public notice of the application is required, it shall include a description of the new or experimental service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on the LEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or you may call the Public Utility Commission Public Information Office at (512) 458-0223 or (512) 458-0227, or (512) 458-0221 teletypewriter for the deaf."

(f) Requirements for proposed new and experimental services. Unless waived or modified by the presiding examiner as provided under subsection (d) of this section, the following requirements shall apply to any new service approved under this section.

(1) Such new service shall be offered at the same price throughout the LEC's system.

(2) The service shall also be offered in every exchange served by the LEC, except exchanges in which the LEC's facilities do not have the technical capability to handle the service.

(3) The rates for a new service shall

be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint and/or common costs, in the second year after it is first offered. Requirements related to systemwide pricing and systemwide provision of service do not apply to a proposed experimental service.

(4) An experimental service approved under this section may be flexibly priced provided that the minimum rate in the range of rates shall be above the long run incremental cost of providing the service. The LEC may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding examiner may require. In addition, before discontinuing provision of an experimental service, the LEC shall give such notice of the discontinuation as the presiding examiner may require.

(g) Administrative review. An application considered under this section shall be reviewed administratively unless the presiding examiner, for good cause, determines at any point during the review that the application should be docketed. The operation of the proposed rate schedule may be suspended for 35 days after effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later. The application shall be examined for sufficiency. If the presiding examiner concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding examiner. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding examiner extends that date. While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the LEC. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within 10 days after receipt of the request by the LEC. No later than 20 days after the filing date of the application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding examiner written comments or recommendations concerning the application. No later than 35 days after the effective date of the application, the presiding examiner shall complete an administrative review to determine whether the LEC's application meets the following requirements.

(1) The proposed service constitutes a new service or experimental service as defined in this section.

(2) Notice was provided as required by the presiding examiner.

(3) The requirements contained in subsection (f) of this section have been met.

(4) The proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(5) Provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.

(h) Approval or denial of application. For its application to be approved, the LEC must meet all of the requirements in this section, unless such requirements are modified or waived by the presiding examiner as provided under subsection (d) of this section. If, based on the administrative review, the presiding examiner determines that all requirements not waived have been met, the LEC shall be permitted to offer the service at the rates and terms approved by the presiding examiner. If, based on the administrative review, the presiding examiner determines that one or more of the requirements not waived have not been met, the presiding examiner may dismiss or, upon prior request of the LEC, shall docket the application.

(i) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within 10 days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(j) Interim rates. For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the LEC to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of the service and the rates for the service and unless the LEC makes appropriate provisions to protect its customers from the risks of the LEC's failure to notify.

(k) Reporting requirements. If a new service is approved based on either an administrative review or a docketed pro-

ceeding, the LEC shall file with the commission tracking reports showing the actual revenues; demand and related expenses for the service; its progress on the implementation plan, if any such plan was approved by the commission; and such other information as may be required by the commission (or, in connection with an administrative review, by the presiding examiner) or requested by the commission staff. One such report shall be due nine months after the service is first offered and shall contain information for at least the first six months the service was offered. The second such report shall be filed 12 months after the service is first offered and shall contain information for at least the first nine months the service was offered. The third such report shall be filed no later than 15 months after the service is first offered and shall contain information for at least the first 12 months the service was offered. Such reporting requirements shall be waived for experimental services of one year's duration or less, but the LEC shall retain in its record such information related to revenues, demand and expenses and shall submit such information with any subsequent request to make a formerly experimental service a permanent new service.

(l) Subsequent review of the service. If a new or experimental service is approved under the procedures set forth in this section, the commission's general counsel or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.

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 19, 1988.

TRD-8801807 Phillip A. Holder
Secretary
Public Utility
Commission of Texas

Effective date: March 14, 1988
Proposal publication date: January 5, 1988
For further information, please call
(512) 458-0100.



★ 16 TAC §23.27

The Public Utility Commission of Texas adopts new §23.27, with changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 Tex-Reg 96).

The Public Utility Regulatory Act, §18(e), requires the Public Utility Commission of Texas to adopt new rules and procedures to allow local exchange companies to respond to significant competitive challenges in specific telecommunications markets.

Local exchange companies may file applications with the commission requesting that specific telecommunications markets be determined to be subject to significant competition and requesting specific forms of rate-setting flexibility appropriate to the nature of competition in the marketplace. Determinations by the commission will be made based on records from evidentiary hearings.

Most provisions of the section drew support from comments. However, provisions related to affidavit requirements for customer-specific contracts and the systemwide availability of such contracts in respect to the presence of competitors in specific submarkets drew opposition from multiple parties. Provisions related to the systemwide, long run incremental cost standard also drew opposition from a more limited number of commenters.

Texas Telephone Association, Texas Statewide Telephone Cooperative, Inc., Contel Telephone Company, General Telephone Company of the Southwest, Consumers Union, and the Office of Public Utility Counsel commented against adoption of the new section.

The commission disagrees with the comments and believes the provisions of the section appropriately balance the public interest concerns related to determinations of competitiveness in telecommunications market and has committed itself to revisiting the major issues raised by this section after a 6-month trial period.

The new section is adopted under the Public Utility Regulatory Act, §18(e), which provides the Public Utility Commission of Texas with the authority to promulgate rules to allow local exchange companies to respond to significant competitive challenges in specific telecommunications markets.

§23.27

(a) Application. This section applies to local exchange carriers (LECs), as that term is defined by §23.61 of this title (relating to Telephone Utilities), which are subject to the rate-making jurisdiction of the commission for any service or market.

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

(1) A service market which is subject to significant competition is one in which the commission determines that, while competition may not be sufficient to make the LEC non-dominant in the market, extant competition is sufficient to pose a substantial threat to the contribution that the service provides or has provided to joint and common costs or which threatens to leave the LEC with substantial stranded investment in facilities previously used to provide the service. Service markets which have not provided a contribution to joint and common costs may also be found to be subject to significant competition upon a commis-

sion determination that extant competition is sufficient to preclude such a contribution unless pricing flexibility is granted.

(2) A geographic market is any market for a service which is no smaller than a single local exchange and may include multiple exchanges up to the full inclusion of an LEC's entire system. The commission may find that the geographic market for a service is statewide for all LECs.

(3) Administrative review is a process whereby a contract is reviewed by the commission staff and the Office of Public Utility Counsel and ruled on by the presiding examiner without an evidentiary hearing and without an order signed by the commission.

(4) A customized service is a package of LEC services which is unique because of its size or configuration. Customized services may not include basic local exchange services, local measured service, message toll service, wide area telecommunications service, or switched access service.

(5) Similar services are services which have the same characteristics and are provided at or near the same point in time and under the same or similar circumstances.

(6) A service market is any tariffed service of an LEC or any submarket of customers of a tariffed service of an LEC.

(c) Filings requesting a service market to be declared subject to significant competition. After the effective date of this section, an LEC may file an application to have one or more of the following service markets declared to be subject to significant competition: packet switching service; digital private line service; central office-based PBX-type service of more than 100 stations; mobile telephone service; and paging service. No sooner than 18 months after the effective date of this section, an LEC may petition the commission to accept an application related to any other service market, except basic local exchange service including local measured service. The commission may modify or deny any such Petition. Applications to declare a service market subject to significant competition shall indicate:

(1) the LEC's intent to use the procedures described in this section;

(2) the service market which the LEC is requesting be declared subject to significant competition;

(3) the geographic market in which the LEC is requesting the service be declared subject to significant competition;

(4) the services or products competing with the LEC's service within that geographic market and in all other such markets within the LEC's system;

(5) the number, size, names and addresses of telecommunications utilities or other persons providing the same, equivalent, or substitutable services or products in that geographic market for the service and in all other such markets within the LEC's system;

(6) the extent to which the same,

equivalent, or substitutable service is available in that geographic market for the service and in all other such markets within the LEC's system;

(7) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions in that geographic market for the service and in all other such markets within the LEC's system;

(8) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions in that geographic market for the service and in all other such markets within the LEC's system;

(9) the existence of any significant barrier to the entry or exit of a provider of the service in that geographic market for the service and in all other such markets within the LEC's system;

(10) information demonstrating that extant competition in the geographic market proposed by the LEC poses a substantial threat to the contribution the service provides or threatens to strand substantial investment in the geographic market proposed by the LEC. If the service does not require substantial capital investment and has not provided a contribution in the past, the LEC shall provide information demonstrating that competition precludes such a contribution unless pricing flexibility is granted;

(11) information on the systemwide, long run incremental costs related to the service, including the specific categories of costs which are to be recovered by the rates for such service, as well as detailed documentation supporting the LEC's cost calculations including the LEC's assumptions related to those costs;

(12) if the LEC is requesting a modification of the systemwide, long run incremental cost standard, information related to the alternative cost standard, including the specific categories of costs which are to be recovered by the rates for the service as well as detailed documentation supporting the LEC's cost calculation and the LEC's assumptions related to those costs;

(13) information demonstrating that the type of pricing flexibility being requested by the LEC (rate-banding, customer-specific contracts—or both, detariffing, or some other form of flexibility) is appropriate given the extent of competition across the LEC's system. If rate-banding is proposed, the application shall state the maximum and minimum rates proposed, demonstrate that the minimum rate is above the systemwide, long run incremental cost of such service, and include all workpapers and supporting documentation relating to computations or assumptions supporting this assertion;

(14) information on whether pricing flexibility, if granted by the commission, would affect high-cost LECs to the extent that additional support for those LECs from



the universal service fund is in the public interest; and

(15) any other information the LEC wants considered in connection with the commission's review of its application.

(d) Modifications and waivers of requirements. In its application an LEC may request for good cause the modification or waiver of the systemwide, long run incremental cost requirements set forth in this section. If an LEC is requesting the approval of customer-specific contracts for service, the LEC may request the modification of the systemwide, long run incremental cost standard and the approval of a customer-specific long run incremental cost standard. The commission may grant such a request on a showing by the LEC of good cause through clear and convincing evidence that a departure from the systemwide, long run incremental cost standard is necessary to enable the LEC to respond to significant competitive challenges that overcome the public policy benefits of minimizing rate differences among geographic areas of the state so as to ensure the competitiveness of businesses in rural and small urban areas. A waiver of the systemwide, long run incremental cost standard shall only be granted if the commission determines that such standard imposes an unreasonable burden on an LEC which has inadequate resources to produce the required cost information to meet that standard and if the commission determines that an appropriate alternative cost standard is available. If the systemwide, long run incremental cost standard is waived, the LEC must provide other cost information demonstrating its proposed rates will recover the costs of the service as well as a contribution for joint and/or common costs. Any requests for modification or waiver of the systemwide, long run incremental cost support requirement shall include a complete statement of the LEC's arguments supporting that request.

(e) Determination of service markets subject to significant competition. The commission shall hold an evidentiary hearing to determine whether a service market is subject to significant competition in any geographic market and whether barriers to entry or exit exist in any geographic markets in which the service is offered by the LEC. The commission may consolidate applications filed by two or more LEC's related to similar service markets into a single evidentiary proceeding and may join any other LEC in such a proceeding but shall make separate determinations regarding whether a service market is subject to significant competition for the appropriate geographic markets of each LEC applying or joined in the proceeding. An LEC may file a request to be excluded from any such proceeding provided that such request is accompanied by an explanation of why the LEC should not be joined in the proceeding. An LEC which is excluded from such a proceeding upon its own request shall not file an application related to that service

under this section for two years after the date of the commission's approval of its request to be excluded from the proceeding. If two or more undocketed applications are pending before the commission at any time, the commission staff may recommend and the director of hearings may determine the order in which those applications are docketed based on an assessment of the public interest in those applications. In determining whether a service market is subject to significant competition in any geographic market, the commission shall hold an evidentiary hearing to consider the following:

(1) the threat posed by competition to the contribution the service provides to joint and common costs of the LEC and to the LEC's capital investment related to the service in the geographic market in question, or if the service does not require substantial investment and has not provided a contribution in the past, whether pricing flexibility will allow the service to provide such a contribution;

(2) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service, and the geographic areas served by those providers;

(3) the financial and technical resources of specific competitors relative to the financial and technical resources of the LEC in providing the service;

(4) the market share of the LEC for the service, the market share of specific competitors relative to the LEC's market share, and concentration ratios for the largest suppliers in the market;

(5) the extent to which the same, equivalent, or substitutable service is available; the ability of customers to obtain such alternative services at comparable rates, terms, and conditions; and customer perceptions and knowledge regarding the availability of such alternative services in the geographic market in question and in all other such markets in the LEC's system;

(6) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions in the geographic market in question and in all other such markets in the LEC's system;

(7) the existence of any significant legal, economic and other barriers to the entry into or exit from the geographic market in question and all other such markets for that service, the rate at which competitors are entering and leaving those geographic markets for the service, and the rate at which the market share of competitors is increasing or decreasing;

(8) evidence of cream-skimming strategies of competitors made possible by regulatory decisions or policies which have raised rates above the LEC's long run incremental costs in the market proposed by the LEC;

(9) any deterioration or diminished

growth of revenues, market share or service volumes of the LEC attributable to increasing competition for that service and how pricing flexibility, if granted, would mitigate or halt that deterioration or diminished growth;

(10) the relative ability of the LEC and of competitors to make use of scale or scope economies in providing the service;

(11) the ability of the LEC to use bottleneck facilities to discriminate against competitors, and measures needed to prevent such actions;

(12) the elasticity of demand both for all providers and for the largest providers of the service and of substitutes for the service, and the cross-elasticity of demand for the largest providers of the service and of substitutes for the service; and

(13) any other information the commission considers relevant in determining the level of competition in the market.

(f) Approval of application. The LEC shall give such notice of its application as is required by the commission. If, after notice and hearing, the commission determines in an order that the service market is subject to significant competition in a geographic market, it shall indicate in that order whether rate-banding, use of customer-specific contracts (or both), detariffing, or some other form of pricing flexibility is appropriate in those geographic markets for the service. If the commission determines that no barriers to entry or exit exist in any geographic market in which the LEC offers the service, the commission shall require that the form of pricing flexibility which it authorizes be applied in all such geographic markets of the LEC. If the commission determines that barriers to entry or exit do exist in any geographic market in which the LEC offers the service, pricing flexibility may be approved for all such geographic markets in which there are no barriers to entry or exit. If the commission authorizes pricing flexibility in only those markets in which there are no barriers to entry or exit, the commission may also require implementation plans to be filed by the LEC demonstrating its plans for removing all such barriers to entry and exit which are under the control of the LEC. When authorizing pricing flexibility, the commission shall order a form of flexibility which reflects the level and nature of competition in the LEC's systemwide market. When authorizing pricing flexibility, the commission shall also consider the impact of such flexibility on high-cost LECs and whether changes in the universal service fund are therefore in the public interest. In making all such determinations, the commission shall seek to balance the public interest in a technologically advanced telecommunications system with such concerns as preserving universal service, prohibiting anticompetitive practices, and preventing the subsidization of services subject to competition with revenues from regulated monopoly services.

(g) Changes in the universal service

fund. If the commission declares a service to be subject to significant competition and determines that pricing flexibility will affect high-cost LECs to the extent that additional support for such LECs is in the public interest, the commission shall specify in its order the manner in which the universal service fund is to be changed so as to provide additional support to high-cost LECs.

(h) Subsequent review of a service market found to be subject to significant competition. Nothing in this section shall preclude the commission from investigating the competitiveness of a service market previously found to be subject to significant competition and from revoking such designation if it finds that the service market is no longer subject to significant competition.

(i) Banded rates. If the commission in an order declares a service market to be subject to significant competition and authorizes an LEC to utilize banded rates, the commission shall establish in that order the minimum and maximum rates to be used. The minimum rate shall recover the systemwide, long run incremental cost as well as a contribution for joint and/or common costs or, if the systemwide, long run incremental cost standard was waived, such other costs as are approved by the commission. The commission shall also specify in the order the manner in which the LEC shall provide notice to the public, the Office of Public Utility Counsel, and the commission of subsequent changes in rates within the range specified by the commission. Thereafter, the LEC may make rate changes within the range upon completion of public notice and notice to the commission and the Office of Public Utility Counsel as required in the commission's order authorizing banded rates. Rates and other terms established under this provision shall not be unreasonably preferential, prejudicial or discriminatory, predatory or anticompetitive, nor subsidized by regulated monopoly services.

(j) Filings of customer-specific contracts. Use of customer-specific contracts shall not be approved for basic local exchange service including local measured service, message telecommunications service, wide area telecommunications service, and switched access service for interexchange carriers. If the commission declares a service market to be subject to significant competition and authorizes the LEC to enter into customer-specific contracts for that service, the commission shall specify in its order whether the cost standard to be applied in subsequent administrative reviews shall be systemwide or customer-specific long run incremental costs (or if the long run incremental cost standard was waived by the commission, such other cost standard as the commission finds reasonable), the appropriate minimum contribution for joint and/or common costs which shall be recovered under those contracts, and the notice requirements the LEC must meet prior to fil-

ing such contracts for approval by the commission. Thereafter, the LEC shall apply to the commission for approval of any such contracts and shall, on the filing date of such an application, provide a copy of the filing to the Office of Public Utility Counsel. In addition to service markets which the commission declares to be subject to significant competition, an LEC may also apply to the commission for approval of such contracts for the following services: central office based PBX-type service of 200 stations or more, billing and collection services, high-speed private line services of 1.544 megabits or greater, and customized services. However, at least 10 days before any application for these enumerated services may be filed by an LEC, the LEC shall file with the commission and the Office of Public Utility Counsel a notice of intent to file such an application and the expected filing date. Such notice shall also include a statement of the LEC's intent to use the expedited provisions of this section, a description of the service, and a description of the geographic market or markets in which the service is proposed to be offered. The commission shall then publish notice of the LEC's intent to file such application in the *Texas Register*. All applications for approval of customer-specific contracts shall be filed at least 30 days before the date on which the LEC proposes that the service contracted for be initiated. In addition to copies filed pursuant to other commission rules, a copy of the application shall be delivered to the Telephone Division and the Office of Public Utility Counsel. The application shall include:

(1) a statement of intent by the LEC to use the procedures established in this subsection;

(2) a description of the service to be contracted;

(3) the date on which the LEC proposes that the service contracted for be initiated;

(4) a copy of the contract;

(5) proof that the LEC has accomplished public notice as required in this section or by the commission in its order authorizing the LEC to enter into customer-specific contracts;

(6) the geographic market or markets in which the service is to be provided;

(7) detailed documentation demonstrating the relationship between the prices included in the contract and the cost standard specified in the commission's order authorizing customer-specific contracts, including the contribution for joint and/or common costs specified by the commission, and all workpapers and supporting documentation relating to computations or assumptions underlying this assertion;

(8) if the application relates to a service for which a contract has not previously been approved under this paragraph, an affidavit from the person or entity contracting for the service stating that such person or en-

tity considered acquiring the same, equivalent or substitutable services by bid or quotation from a source other than the LEC. In the case of customized services, each individual service included in the package of customized services shall be specified in the affidavit and the customer must have considered acquiring equivalent or substitutable services for each such service from sources other than the LEC. In the case of contracts which involve services enumerated in the Public Utility Regulatory Act, §18(e)(3)(B) all such subsequent contracts after the first contract shall be accompanied by an affidavit from the LEC stating that no barriers to entry or exit exist in the geographic market in which the service would be provided under the contract;

(9) any other information which, in its order authorizing the LEC to enter into customer-specific contracts, the commission may have required the LEC to file; and

(10) any other information which the LEC wants considered in connection with the administrative review of the application.

(k) Administrative review of customer-specific contracts. The presiding examiner shall examine the application for sufficiency. If the presiding examiner concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding examiner. After a sufficient application has been filed, the presiding examiner shall conduct an administrative review to determine whether the LEC's application meets the following requirements:

(1) the contracted service is a service found by the commission to be subject to significant competition under this section or specified in the Public Utility Regulatory Act, §18(e)(3)(B);

(2) the proposed rates will recover all costs associated with the cost standard specified by the commission in its order authorizing customer-specific contracts, including an appropriate contribution for joint and/or common costs;

(3) if the contract is for a service specified in the Public Utility Regulatory Act, §18(e)(3)(B), the proposed rates will recover the systemwide, long run incremental costs of providing the service, as well as an appropriate minimum contribution of 5.0%;

(4) there exists in the geographic market for the service an alternative provider capable of providing the service to the contracting person, provided that this requirement shall be considered met if a contract has previously been approved for the service in question based on an affidavit as required in §(j)(8) of this section;

(5) public notice was provided as re-

quired in this section or otherwise required by the commission;

(6) the specific contract terms are not unreasonably preferential, prejudicial or discriminatory, and similar services are not priced in an unreasonably discriminatory manner;

(7) the terms of the contract are such that the contracted service will not be subsidized directly or indirectly by regulated monopoly services or be predatory or anticompetitive;

(8) the contracted service does not include basic local exchange service, local measured service, message telecommunications service, switched access service for interexchange carriers, or wide area telecommunications service; and

(9) approval of the contract is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and the subsidization of services subject to competition with revenues from regulated monopoly services.

(l) Requests for information. During the administrative review, the commission staff and the Office of Public Utility Counsel may submit requests for information to the LEC. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within 10 days after receipt of the request by the LEC. No later than 20 days after the filing date of the application, interested persons may provide to the staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding examiner written comments or recommendations concerning the application.

(m) Approval or denial of customer-specific contracts. The application shall be approved or denied within 30 days after a complete filing is submitted by the LEC unless the presiding examiner for good cause suspends the effective date for an additional 35 days. If, based on the administrative review, the presiding examiner determines that any of the above requirements have not been met, the application shall be denied. If, based on the administrative review, the presiding examiner determines that all requirements have been met, the application shall be approved. Service under a contract approved under this subsection shall be in-

itiated no sooner than the latest of the following dates: 30 days after a complete filing under this subsection has been submitted by the LEC; the date on which the period for reviewing the application, including the suspension period, expires; or the date on which the LEC proposed in its application that the service contracted for be initiated. If an LEC claims that a contract, information related to the costs of providing service under the contract, and/or that information in a customer's affidavit that identifies the customer and the customer's address submitted pursuant to this section is proprietary or a trade secret, such information shall be treated in the same manner as is information submitted pursuant to §23.61(1)(6) of this title (relating to Telephone Utilities). If appropriate, the contract and supporting documentation may be disclosed to interested persons during the administrative review or to parties in any subsequent contested proceeding pursuant to a protective agreement. Such protective agreement shall afford the protected information an appropriate degree of protection accorded by law. If, based on the administrative review, an application filed under this subsection is denied, the LEC may request that its application be docketed and a hearing held. In that event, the commission's rules applicable to docketed proceedings shall apply to such a request, and the service contracted for shall not be initiated without the approval of the commission or the presiding examiner.

(n) Rate case review of rates established under this section. Any rate, term or condition established under this section by commission order or upon administrative review, including rates established through customer-specific contracts, may be reviewed and changed by commission order in a subsequent rate case under the Public Utility Regulatory Act, §42 and §43.

(o) Detariffing of a service. If the commission declares a service to be subject to significant competition and authorizes the LEC to detariff the service, the LEC shall maintain at the commission at all times a current price list for the service, and the commission shall retain authority to regulate the terms and conditions of the detariffed service other than rates, including the quality of the service. Further, in any subsequent rate case under the Public Utility Regulatory Act, §42 or §43, any revenues in excess of the long run incremental costs of the service may be retained above the line by the com-

mission but any losses related to such costs of the service shall not be recovered from the general body of ratepayers but shall be borne by the shareholders of the LEC.

(p) Subsequent review of the rates, terms, and conditions of a flexibly priced service under this section. The commission's general counsel, the public utility counsel, or any affected person may file with the commission a petition seeking modification of the rates, terms, and conditions under which any service which utilizes a form of pricing flexibility as authorized under this section is offered or a petition seeking the withdrawal of the service.

(q) Review of cost standard under this section. Any cost standard established by the commission in this section shall be subject to change pending the commission's deliberations in the cost standard rulemaking required by the Public Utility Regulatory Act, §18(h).

(r) Commission review of this section. A review of the provisions of this section shall be initiated by July 1, 1988 to allow LECs an opportunity to provide documentation and/or evidence related to the effect of this section on the general body of ratepayers; and the effectiveness of this section in meeting competitive challenges faced by the LECs in the systemwide market.

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 19, 1988.

TRD-8801806

Phillip A. Holder
Secretary of the
Commission

Effective date: March 14, 1988
Proposal publication date: January 5, 1988
For further information, please call
(512) 458-0100.



**TITLE 22. EXAMINING
BOARDS**
**Part XIII. Texas Board of
Licensure for Nursing
Home Administrators**
Chapter 245. Examination

★22 TAC §245.3

The Texas Board of Licensure for Nursing Home Administrators (TBLNHA) adopts an amendment to §245.3, without changes to the proposed text published in the January 15, 1988, issue of the *Texas Register* (13 TexReg 273).

Formal education requirements have been elevated to a bachelor's degree, thereby improving the quality of candidates for licensure. The board, in its deliberations, felt that this requirement was no longer necessary. Candidates must spend 26 weeks as an intern or two long semesters under a college practicum program.

The amendment eliminates proof of participation in a Texas Department of Health's survey/inspection of a nursing home as a licensure requirement.

The Texas Health Care Association feels that the experience obtained in an actual survey/inspection is a necessary learning experience for the individual to be well trained in his or her responsibilities as a nursing home administrator.

No comments were received in favor of the amendment. The Texas Health Care Association commented against the amendment.

Very few candidates are affected by this amendment, as all must have a bachelor's degree which will include as part of that degree two long semesters or a 26-week internship. It is also noted that now the youngest candidates are three to four years older and that this requirement was most important to individuals just out of high school. This change reduces a function, formerly placed upon the Health Department, of coordination with candidates after all training had been completed. The purpose for which this requirement had originally been established has been served.

The amendment is proposed under Texas Civil Statutes, Article 4442d, §8, which provide the TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary to enable the state to meet the requirements set forth in the Social Security Act, §1908, the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the board.

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 22, 1988.

TRD-8801827

Janet M. Moore
Administrative
Technician III
Texas Board of
Licensure for Nursing
Home Administrators

Effective date: March 14, 1988
Proposal publication date: January 15, 1988
For further information, please call
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◆ ◆ ◆
**TITLE 25. HEALTH
SERVICES**

**Part II. Texas Department
of Mental Health and
Mental Retardation**
**Chapter 402. Client
Assignment and Continuity
of Services**

**Subchapter B. Continuity of
Services-Mental**

★25 TAC §§402.41-402.51

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§402.41-402.51. Sections 402.42-402.44 and 402.46-402.49, are adopted with changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2779-2782). The other sections are adopted without changes and will not be republished.

The new subchapter is adopted with the repeal of the subchapter it replaces, which is Chapter 405, Subchapter DD, concerning continuity of care: Procedures for preadmission screening, community support plan development, and client program coordination.

The new subchapter incorporates by reference the key provisions governing continuity of services in the TDMHMR community standards for community mental health and mental retardation centers and community services programs of TDMHMR. Consistent with provisions of the *RAJ v. Miller* settlement agreement addendum, it places primary responsibility for planning community services for the client with the mental health authority (MHA).

In §402.42, concerning application, language was clarified to indicate that only those mental retardation authorities serving dually diagnosed clients whose primary diagnosis is a mental health diagnosis must comply with the subchapter.

In §402.43, concerning definitions, reference to a specific chapter of the TDMHMR community standards was deleted so that subsequent revisions to the standards do not render the citation inaccurate.

The definition of the term "mental health facility" was expanded to include the Harris County Psychiatric Institute, which was established in Senate Bill 257 of the 70th Legislature as a state facility.

In the same section, definitions of the terms "planning-linking activities" and "service district" were added.

In §402.44, concerning areas of responsibility, language in subsection (a) was made more concise. Language has been further clarified in subsection (g) concerning arrangements by which the MHA for a client may be other than the MHA of the county of origin, and that when such an arrangement is made, the MHA or other entity designated as responsible must comply with the provisions of the subchapter. In subsection (h), language has been added to make clear that the phrase "in the client's best interest" specifically refers to ensuring that all needed services are provided.

In §402.46(a), concerning periodic reevaluation of facility treatment, language has been added to specify that the treatment team is the treatment team at the mental health facility.

In §402.47, concerning development of community support plan, subsections have been reorganized. All elements of the community support plan have been enumerated in subsection (b). Language has been changed to indicate that the discussion with the client of the placement may be documented in the client record in locations other than the progress notes, and that documentation is the responsibility of the MHA. Language has also been added in subsection (d) to make clear that the client on furlough is the responsibility of the MHA unless an interagency agreement provides otherwise. In subsection (h), the person responsible for conducting a 30-day follow-up review of the aftercare plan has been identified as the designated continuity of services staff person from the MHA.

In §402.49, concerning a client's entry into a private treatment program, case management has been added to the examples of aftercare services that can be included in the community support plan.

Public comment on the proposal was received from Advocacy, Incorporated, Austin; Mental Health/Mental Retardation Regional Center of East Texas, Tyler; and Abilene Regional Center Mental Health Mental Retardation, Abilene.

Advocacy, Inc. commented that the reference in the definition of the term "community-based service" in §402.43, concerning definitions, was in error. The department responds that the typographical error in the Texas Civil Statutes citation has been corrected.

Advocacy, Inc. inquired as to whether the definition of mental health facility would include facilities with a contractual relationship with the department or community programs such as board and care homes. The department responds that the definition is limited exclusively to state facilities providing mental health services. The responsibilities delineated in the new subchapter rest with the mental health facility regardless of whether services are delivered directly or contracted.

Regarding §402.44(b)(1) and (b)(4), concerning areas of responsibility, Advocacy, Inc. recommended that a good faith standard not be used. The department responds that requiring a good faith effort is consistent with the terms of the RAJ v. Miller settlement agreement addendum. Concerning paragraph (b)(5), Advocacy, Inc. requested that the phrase "good faith effort" be changed to "consistent with available resources." The department responds that the proposed revision is not acceptable to the RAJ review panel.

In §404.44(g)(2), Advocacy, Inc. recommended that if an MHA contracts with a CBS for continuity of service activities, then the subchapter in full should apply to the CBS. The department concurs and language and has been revised. Advocacy further commented that the qualifications for the continuity of services staff person should be specified, recommending a certified social worker or person with an MSW. The department responds that the person must be a qualified direct service staff; further specification can seriously limit the ability of some MHAs to provide continuity of service activities to all clients in need. Advocacy, Inc. also recommended that non-MHAs referred to in subsection (i) should be required to follow the provisions of the subchapter. The department responds that the MHA retains responsibility for all areas not otherwise specified in the agreement.

Advocacy, Inc. requested that the subchapter require that the community support plan be developed within a specified number of days from the date of admission and should include a description of treatment needs and response to treatment prior to release. The document should include specific goals, objectives and timelines for completion. The department responds that it embraces the principle that discharge planning begins at admission and that the treatment plan addresses the discharge plan from the outset of service.

Advocacy, Inc. requested that in §402.48(h), the person who will perform the 30-day follow-up review be specified and that an on-site visit or call be required to accomplish the goals of this review. The department responds that language has been revised to indicate that a MHA-designated continuity of services staff person is responsible for follow-up review. It should be noted that the performance contract that MHAs enter into with the department requires that set quotas be achieved for client contacts within 24 hours, 7 days, and 15 days of the client's discharge or furlough from the MH facility.

Advocacy, Inc. recommended that §402.49, concerning a client's entry into a private treatment program, clearly indicates that although the client may be discharged to a program with a contractual relationship with the MHA or TDMHMR, the responsibility for aftercare remains with the MHA. The department refers Advocacy, Inc. to §404.44(e). After discharge, the client has the right not to enter into the community support plan activities.

Mental Health/Mental Retardation Regional Center of East Texas commented that placing responsibility for community services on the

MHA has financial implications. It commented that in conjunction with the required good faith effort to provide nonclinical support, the requirement places additional financial burden on the community system. The department responds that the required good faith effort is part of the settlement agreement addendum in RAJ v. Miller.

Abilene Regional Center Mental Health Mental Retardation commented that mental health facilities must be charged with sharing in the responsibility for planning and in giving sufficient notice of discharge in time to plan. The department responds that placing primary responsibility on the MHA does not release mental health facilities from the level of cooperation specified in the new subchapter.

Abilene Regional Center also commented that the terminology in the subchapter is confusing. The department responds that the term "community support plan" has not been altered from prior usage. The term "after care plan" has been added consistent with TDMHMR community standards, which have been in effect since 1985.

Abilene Regional Center commented that the statement that the subchapter would have no fiscal implications is erroneous and gave examples of situations that would result in additional cost. Abilene Regional Center commented that even good faith effort may have a significant cost implication. The department responds that the new subchapter reflects updating of procedure consistent with system-wide organizational changes that have been underway for several years and the settlement agreement addendum in RAJ v. Miller. The extent of additional cost, if any, is projected to be minimal given that the requirements of the new subchapter basically describe continuity of services activities that have been in effect for years. In subsequent fiscal notes, acknowledgement of possible additional costs will be made as appropriate.

Regarding §402.49, concerning a client's entry into a private treatment program, Abilene Regional Center commented that coordinating with the client and private provider should be optional. The department responds that a community support plan must be developed. After it is developed and the client is discharged, the client has no obligation to participate in suggested activities.

Abilene Regional Center requested that the department provide definitive standards for comprehensive treatment plans. The department responds that the elements of the plan are fully enumerated in the TDMHMR community standards.

These new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§402.42. Application. The provisions of this subchapter apply to all mental health facilities of the Texas Department of Mental Health and Mental Retardation, to mental health authorities, and to mental retardation authorities serving dually diagnosed clients who have a primary mental health diagnosis.

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

Aftercare plan—A plan which is developed by the mental health authority within three weeks of the client's discharge/furlough from a state facility. The aftercare plan becomes the individualized comprehensive treatment plan for the client in the community.

Community-based service (CBS)—Refers to services provided through community programs under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, by community mental health and mental retardation centers, and by independent contract providers established pursuant to Texas Civil Statutes, Article 5547-202, et seq.

Community support plan—A plan which is developed jointly by the facility and mental health authority prior to the client's discharge from a state facility to ensure that clients are linked to an appropriate service delivery system.

Continuity of services—The activities designed to ensure coordination of services to the client, particularly between services within the TDMHMR system, to include: joint discharge planning, development of a community support plan, development of an aftercare plan, implementation of the aftercare plan treatment recommendations and revisions, obtaining adequate resources to meet the client's needs, and other activities as outlined in the TDMHMR community standards.

Continuity of services staff person—A staff person specifically designated by the mental health authority to conduct continuity of services activities, e.g., caseworker, case manager, liaison worker.

Department—The Texas Department of Mental Health and Mental Retardation.

Discharge—The termination of a client's treatment by a facility or a CBS which denotes the end of active treatment by the facility or CBS.

Furlough—An authorized leave status in which the residential client is away from the facility for more than three days in anticipation of discharge, such as in trial alternate placement.

Local service area—A geographic area made up of one or more counties which serves to define and delimit the population of citizens residing in the area, including the subpopulation of mentally ill and mentally retarded citizens, and the extent of the responsibilities of the local mental health and mental retardation authorities for the area.

Mental health authority (MHA)—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally ill persons as are required to be performed at the local level by state law and by the department.

Mental health facility—All state hospitals and state centers providing mental

health services and any other agency which is now or may hereafter be a facility of the Texas Department of Mental Health and Mental Retardation. The term includes the Harris County Psychiatric Institute.

Mental retardation authority (MRA)—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally retarded persons as are required to be performed at the local level by state law and by the department.

Planning-linking activities—Those activities which facilitate communication between the client, CBS staff, facility staff, and others (as appropriate), to the end of assuring the coordination and delivery of services. Such activities may include, but are not limited to, client visits to the program/place-ment under consideration for transfer/discharge, familiarizing the client with a program, and introducing the client to program staff.

Screening—A procedure to determine appropriateness and eligibility for admission to state mental health facilities or community-based services.

Service district—County or counties for which a facility has responsibility to serve individuals residing in that area.

State facility—Any state hospital, state school, state center, or other agency which is now or may hereafter be a facility of the Texas Department of Mental Health and Mental Retardation.

TDMHMR service system—All state facilities and all community mental health and mental retardation centers.

§402.44. *Areas of Responsibility.*

(a) The department has designated mental health authorities (MHAs) within each of the local service areas as responsible for effecting continuity of services for clients of the department from their local service areas.

(b) The department shall have a contract with each MHA which requires that the MHA provide the following:

(1) good faith effort to provide those services specified in the aftercare plans of those clients being discharged or furloughed to the MHA;

(2) documentation in client records to reflect the MHA's efforts to extend services specified in the aftercare plan and to document the client's rejection if such occurs;

(3) documentation of personal or telephone contact within 10 days and the scheduling of follow-up appointments for persons referred for aftercare, and documentation of the MHA's efforts to have clients meet those appointments;

(4) a good faith effort to make available case management services to those clients who qualify according to TDMHMR criteria, with documentation of any exceptions; and

(5) a good faith effort to arrange for nonclinical support such as food, clothing, and shelter in cases in which the department's assessment indicates that long-term

hospitalization, and chronicity of mental illness, justify such action. This provision will apply only in situations in which no other resources are available.

(c) The client and/or a legal representative, the client's family as appropriate, the mental health facility, and the MHA representative shall jointly develop a community support plan prior to the client's leaving the facility.

(d) After the client has been furloughed or discharged, the MHA shall develop an aftercare plan based on the community support plan in order to sustain and further the gains made by the client during hospitalization.

(e) The MHA will ensure continuity of services activities, including the assignment of a continuity of services staff person to each client at admission to any TDMHMR service and at all times, regardless of transfer, until discharge from the TDMHMR service system.

(f) Each MHA is required to register boarding homes in its local service area and visit and inspect at least annually to ensure that the home has been inspected, is in good standing with the local health and safety authorities, and is providing the personal and financial services that are appropriate for the residents' needs.

(g) The local MHA for each client will be determined by the county of residence from which the client originates except in the following situations.

(1) In cases in which dually diagnosed clients are receiving services from both an MHA and an MRA, the local authority with responsibility for the client will be the one at which the client receives priority services. The MHA and the MRA must document the arrangement for provision of continuity of services responsibilities in the form of a written agreement for each client.

(2) The MHA may negotiate with a CBS or facility to assume responsibility for continuity of services. In such instances, a continuity of services staff person must be designated by the director of the CBS or facility accepting the responsibility. A written agreement between the two entities shall address each of the requirements of this subchapter.

(h) If a client who requires MHA aftercare services is discharged/furloughed from a facility into a private service system outside the MHA's local service area, the MHA shall coordinate with the MHA serving the receiving local service area and determine whether transfer of MHA responsibilities is in the client's best interest to ensure provision of all needed services. Provisions of §402.49 of this title (relating to Client's Entry into Private Treatment Program) are to be followed.

(i) Non-MHAs which contract with the department to provide community-based extended, transitional, or geriatric care must sign a memorandum of agreement with the local MHA outlining the responsibilities for

continuity of services and monitoring.

§402.46. *Periodic Reevaluation of Facility Treatment.*

(a) The client's treatment team at the mental health facility shall review the individual treatment plan at regular intervals in accord with relevant law and departmental standards in order to make necessary revisions in the plan and to determine whether continued mental health facility treatment is in the client's best interest. Mental health facility staff shall notify the MHA of the scheduled time for individual treatment plan reviews.

(b) The MHA will assign a continuity of services staff person, whose function will be:

(1) to assist the facility in updating information on available community resources; and

(2) to participate in and document planning-linking conferences with facility staff and the client, and to the degree appropriate and practical, with the parent/guardian, at admission to the mental health facility, treatment plan review, furlough for community/alternate placement from the facility, and discharge from the facility; and

(3) to communicate with the client and/or facility staff to ascertain the client's status and progress, share this information with appropriate MHA staff, and document status and progress in the client record maintained by the MHA.

§402.47. *Development of Community Support Plan.*

(a) It is the responsibility of the mental health facility and the MHA to develop the community support plan. Prior to the client's furlough or discharge from a mental health facility, the client or legal representative if the client is a minor or has been adjudicated incompetent, the client's family when appropriate, the facility, and the MHA representative shall jointly develop a community support plan.

(b) This plan must contain at least a discharge eligibility staffing; referral instructions; discharge summary; and copies of all pertinent current assessments. These documents contain input from the CBS staff person assigned to the client; a statement of client problems or needs; a listing of treatment goals and objectives to meet identified needs; a full description of medications prescribed and dispensed by the state facility at the time of furlough/discharge; timelines for MHA/MRA assumption of medication review and refill responsibilities; strategies based upon available community resources to achieve identified goals and objectives; specification of a safe and appropriate situation that will be available to the client upon furlough/discharge; and client and/or parent/guardian participation in and reaction to the community support plan. Such a plan is not necessary for clients on unauthorized departures from facilities.

(c) The community support plan will

identify a safe and appropriate living situation that will be available to the client upon furlough/discharge. Documentation in the client record established by the MHA will reflect the discussion of the placement with the client and indicate client reaction (acceptance or refusal) to the proposed placement.

(d) The client on furlough is the responsibility of the MHA unless there is an interagency agreement which specifies services are to be provided by the facility. Medications prescribed at the time of furlough/discharge will be fully detailed in the plan and timelines set forth for MHA assumption of medication review and refill responsibilities.

(e) Staff of the MHA shall meet with the mental health facility treatment team or the facility treatment coordinator to develop this plan. If circumstances preclude joint meetings, the facility and the MHA should achieve consensus on the plan via telephone prior to furlough or discharge. Such consensus between the facility and the MHA shall be documented in the client record by the MHA and documented in the community support plan by the facility. Such documentation shall include the names of the staff who developed the plan.

(f) The client or legal representative, as appropriate, shall sign the community support plan, or documentation of the reason for failure to sign shall be made. The plan shall include a statement that persons signing the plan understand that it and supporting documents will be sent to the MHA.

(g) The decision to furlough or discharge a client from a mental health facility is the professional responsibility of the facility treatment team. Criteria for discharge have been outlined in Chapter 405, Subchapter S of this title (relating to Admissions, Transfers, Furloughs, and Discharges—Mental Health Facilities).

§402.48. Furlough/Discharge and Development of Aftercare Plan and Services.

(a) No later than 24 hours prior to a furlough or discharge, the facility will notify the MHA by telephone or written document of:

- (1) client-identifying data, including address;
- (2) client legal status;
- (3) when and where the client will be furloughed or discharged;
- (4) pertinent medical information;
- (5) current medications;
- (6) behavioral data; and
- (7) other pertinent treatment information.

(b) The MHA, through its assigned continuity of services staff person, is responsible for implementing community-based aspects of the community support plan from the time that furlough or discharge from the facility begins.

(c) An aftercare plan must be developed by the MHA within three weeks after the client is furloughed or discharged from the facility. The aftercare plan becomes

the comprehensive treatment plan of the client and requires the participation of the client or his legal representative if the client is a minor or has been adjudicated incompetent, the client's family when appropriate, and the MHA representative.

(d) The aftercare plan will be tailored according to treatment plan standards in the TDMHMR community standards and other applicable references.

(e) Mental health and other health care services provided in the mental health facility which are needed in the community by individual clients will be included in the aftercare plan. The plan will also identify residential, vocational, educational, social, financial, and other supportive services available to enhance or sustain the capacity of the client to function in the community. Involvement of family and/or community resources as support systems will be addressed.

(f) The aftercare plan will contain the client's admission date and a description of any needs the client may have that cannot be addressed by present treatment.

(g) Should the client implicitly or explicitly refuse services, full documentation of this refusal must be made in the client record to include staff actions to overcome the refusal and client response.

(h) The designated continuity of services staff person from the MHA will conduct a 30-day follow-up review of aftercare plans. This review must include a summary of contacts, interventions implemented, and client response to problems/goals/objectives. Subsequent reviews are to follow TDMHMR community standards and other applicable standards.

§402.49. *Client's Entry into Private Treatment Program.* When a client is furloughed or discharged to a private service system such as private inpatient care, private psychiatric services, private residential facility, or private intermediate care facility (e.g., nursing, ICF/MR), the MHA and facility staff shall develop the community support plan prior to the client's entry into the private treatment program. The community support plan should also be developed with the private provider whenever practicable. After the client is discharged from the facility and enters the private treatment program, the MHA relinquishes its responsibility for aftercare services unless such services (e.g., outpatient services, psychosocial rehabilitation, case management, etc.) are required in the community support plan. If so, an aftercare plan shall be developed in accord with §402.48 of this title (relating to Furlough/Discharge and Development of Aftercare Plan and Services).

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

Issued in Austin, Texas, on February 19, 1988.

TRD-8801722

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

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Proposal publication date: August 21, 1987
For further information, please call
(512) 465-4670.

Chapter 403. Other Agencies and the Public

Subchapter C. Determination of Rates for Support, Maintenance, and Treatment of Clients

★ 25 TAC §403.76, §403.77

The Texas Department of Mental Health and Mental Retardation adopts new §403.76 and §403.77 without changes to the proposed text published in the December 8, 1987, issue of the *Texas Register* (12 TexReg 4577-4578).

The purpose of the new sections is to implement Senate Bill 257 of the 70th Legislature, which amends Texas Civil Statutes, Article 5547-202, by adding new §2.30.

This section provides that the department and community mental health and mental retardation centers may file liens to secure reimbursement for the cost of providing support, maintenance, and treatment to mentally ill and mentally retarded clients, and that clients or responsible parties must be provided a means to contest the filing of liens.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rule-making powers.

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

Issued in Austin, Texas, on February 19, 1988.

TRD-88C1723

R. Coke Mills
Vice-Chairman
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Mental Health and
Mental Retardation

Effective date: March 11, 1988
Proposal publication date: December 8, 1987
For further information, please call
(512) 465-4670.

Subchapter R. Patient Abuse in Private Psychiatric Hospitals

★ 25 TAC §§403.501-403.507

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§403.501-.507 without changes to the proposed text published in the December 8, 1987, issue of the *Texas Register* (12 TexReg 4578). The repeals are adopted contemporaneously with the adoption of new sections governing the same matters in Chapter 404, Subchapter C of this title, concerning patient abuse in private psychiatric hospitals.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on February 19, 1988.

TRD-8801720

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

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Proposal publication date: December 8, 1987

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

Subchapter T. Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers

★ 25 TAC §§403.551-403.558

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§403.551-403.558 without changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2772). Pursuant to the reorganization of TDMHMR's rules into topical chapters, the subchapter is contemporaneously adopted with the adoption of new Chapter 404, Subchapter B of this title, concerning client abuse and neglect in community mental health and mental retardation centers.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 19, 1988.

TRD-8801721

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

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Proposal publication date: December 8, 1987

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

Chapter 404. Protection of Clients and Staff

Subchapter A. Client Abuse and Neglect in TDMHMR Facilities

★ 25 TAC §§404.1-404.14

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§404.1-404.14. Sections 404.1, 404.3, 404.8, 404.12, and 404.13, are adopted with changes to the proposed text published in the December 8, 1987, issue of the *Texas Register* (12 TexReg 4759). The other sections are adopted without changes and will not be republished.

The new subchapter updates client abuse and neglect reporting procedures consistent with legislation and the settlement agreements in *RAJ v. Miller and Lelsz v. Kavanagh*. It is adopted contemporaneously with the repeal of Chapter 405, Subchapter O of this title, concerning client abuse and neglect in TDMHMR facilities.

Section 404.8, concerning client abuse committee, has been revised in subparagraph (e)(1)(C) to require a copy of the quarterly evaluation of preventive measures to be submitted to the Office of Client Services and Rights Protection.

Public comments on the new subchapter were received from Advocacy, Incorporated, Austin, and the Association for Retarded Citizens, Texas (ARC/Texas), Austin.

Regarding §404.1, concerning purpose, Advocacy, Inc. commented that the term "investigation" should be added to the statement of purpose. The department concurs and language has been revised.

Regarding §403.3, concerning definitions, the ARC/Texas commented that a definition of abuse should be added and that specific examples of staff actions that constitute abuse should be included. The department responds that the guidelines attached as Exhibit A have numerous examples of abuse and that examples of abuse are given in mandatory orientation for all employees.

Advocacy, Inc. requested that the definition of consultant include a statement that a consultant is not an employee of the TDMHMR system. The department re-

sponds that the term excludes employees and language has been clarified.

In the same section, Advocacy, Inc. recommended that the definition of exploitation include reference to the client per se in addition to referring to the client's resources. The department responds that the resources of the client include the client.

ARC/Texas requested that a definition of facility investigator be added. The department responds that a definition has been added indicating that the facility investigator is a consultant or designated staff member who conducts investigations of allegations of client abuse and neglect.

Also in §404.3, Advocacy, Inc. requested that the definition of serious physical injury be revised to include other injuries determined by the physician to be serious, and that the definition of nonserious injury be revised to be all injuries determined not to be serious. The department responds that the current definitions and procedures enable an injury not included in the definition of serious physical injury to be assessed as serious.

ARC/Texas recommended that the category nonserious physical injury be deleted and that all physical injuries be regarded as serious. The department responds that all physical injuries are not serious injuries, although all injuries, as well as verbal abuse, are serious offenses.

Advocacy, Inc. requested that a definition of sexual activity be provided, stating that a listing of examples in Exhibit A is insufficient. ARC/Texas requested a definition for sexual abuse that would include the solicitation of sex or sexual harassment. The department responds that the examples in TDMHMR Procedures and Techniques for Investigation of Abuse and Neglect, are indicative of the types of behavior that constitute sexual activity.

Advocacy, Inc. requested that in §404.4, concerning client abuse and neglect defined, each category of abuse include examples. Additionally, numerous specific recommendations concerning examples in Exhibit A were provided. The department responds that the purpose of the subchapter is to provide the basic departmental policy concerning abuse and neglect as well as the procedures to be followed in its report, investigation, and prevention. It should be noted that in orientation, which is mandatory for all TDMHMR employees, examples of the different categories of abuse and neglect are provided in detail with opportunity for questions and discussion.

In the same section, ARC/Texas recommended that Class II abuse refer to only verbal abuse and financial or material exploitation, and that all other types of physical and sexual abuse should be designated as Class I. The department responds that the current classification system, which has been in use for several

years, has proven effective for reporting, disciplinary, and prevention purposes.

Regarding §404.7, concerning responsibilities of heads of facilities, Advocacy, Inc. recommended that the final report to parents be made in writing within five days of the conclusion of the investigation. The department responds that after the investigation is concluded, the results may not be fully formulated within five days, particularly when law enforcement and other agencies are involved. It is the department's policy, however, to notify the parents immediately when the results become known.

ARC/Texas recommended that reporting responsibilities of heads of facilities include reporting alleged incidents of abuse and neglect. The department responds that subsection (b) requires reporting alleged incidents to the client abuse committee and the parents/guardians/family, as well as to the Office of Client Services and Rights Protection. Reports are made to law enforcement agencies if the alleged abuse may involve a crime. Concerning the same matter, ARC/Texas recommended that the subchapter require law enforcement agencies to be immediately notified by the head of the facility after receiving a report of alleged Class I abuse or neglect. The department fully recognizes the desirability of immediately involving law enforcement officials when a crime may have been committed and requires heads of facilities to do so. With regard to the ARC/Texas comment that requiring immediate notification would reduce potential conflict of interest, the department responds that the current system for reporting abuse and monitoring its report is designed to ensure that all appropriate notifications are made and all necessary investigations are conducted.

Advocacy, Inc. recommended that in subparagraph (b)(1)(D) of the same section, the statement concerning client-abuse related crime specifically reference assault, sexual assault, and indecent exposure. The department responds that the intent of the statement is to require reporting of all criminal acts that are part of the Texas Penal Code.

ARC/Texas recommended that the new subchapter require criminal charges to be filed against the employee for Class I abuse. The department responds that the subchapter requires the head of the facility to file a complaint with law enforcement officials when the alleged abuse or neglect may involve a crime. After the head of the facility notifies law enforcement officials, it is the responsibility of the law enforcement officials to investigate and file criminal charges as appropriate.

In §404.8(a), concerning client abuse and neglect committee, ARC/Texas recommended that committee appointments be made by the assistant deputy commissioner to reduce conflict of interest. The

department responds that the head of the facility, rather than the assistant deputy commissioner, is in a position to know the capabilities of facility staff. It has not been this department's experience that conflict of interest has been a factor in the effective investigation of client abuse and neglect.

In §404.8(b), Advocacy, Inc. recommended that at least one member of the five-person committee be a person not employed by TDMHMR. The department responds that the PRC member is not employed by TDMHMR.

Regarding the same matter, ARC/Texas recommended that at least two nonstaff persons be members of the committee. The department responds that a five-member committee, of which one member is nonstaff, has proven effective.

ARC/Texas recommended that hiring a consultant to assist the committee be mandatory. The department responds that the nature and volume of allegations at many facilities would not justify mandating the hiring of a consultant. The effective investigation of client abuse and neglect allegations can be done by staff employed at the facility as well as by a consultant paid by the facility.

Advocacy, Inc. recommended that a statement be added requiring the person conducting the investigation as described in §404.8(e)(1)(A) to be trained in interrogation and investigation techniques. The department responds that facility investigators who are employees receive training; consultants, by definition, are required to have training and experience in conducting investigations.

Concerning the same subparagraph, ARC/Texas recommended that the report of the preliminary investigation be reviewed by a majority of the committee, including one nonstaff member, before being closed. The department responds that as required by the section, the report is reviewed by chairman and nonstaff member of the client abuse committee, as well as the head of the facility. Ten percent of all such investigations are reviewed by the client abuse committee in full. The Office of Client Services and Rights Protection reviews all such reports. Review by an additional member of the client abuse committee would not substantially contribute to the oversight function.

Concerning §404.8(e)(1)(B)(i) of the same section, ARC/Texas recommended that photographs of all injuries be taken within 24 hours. ARC/Texas also recommended that language be clarified to indicate a requirement that photographs of all injuries sustained be submitted to the Office of Client Services and Rights Protection. Regarding the time limit for taking photographs, the department responds that its requirement, as soon as possible, is preferred because a delay of up to 24 hours is in most cases unacceptable. With regard to the

numbers of photographs submitted, it is the department's intent to obtain photographs of all injuries sustained, and language to this effect has been revised.

In reference to §404.8(e)(1)(B)(ii), Advocacy, Inc. requested that the date the injury was received or reported be added to requirements. The department responds that this provision is included in the referenced section, i.e., The physician's remarks should include the injury's cause, age, and treatment, as well as the timing of the medical exam with regard to the date the injury was received. In addition, the date the injury is reported is required to be noted on the client abuse/neglect report.

Concerning the same section, ARC/Texas requested that the physician's examination address apparent and less evident injuries. The department responds that the referenced language requires the examination to include all injuries.

Concerning the same section, Advocacy, Inc. requested a requirement be added for all members of the client abuse committee to be trained before participation in an investigation, including areas of interrogation and investigative technique, the requirements of state law and this subchapter, client rights, and TDMHMR Procedures and Techniques for Investigation of Abuse and Neglect. The department responds that it has recently completed a training course for staff statewide in these areas. Periodic training of this scope will be provided as new members of the committee are added or replaced.

With regard to §404.9, concerning responsibilities of the Office of Client Services and Rights Protection, Advocacy, Inc. recommended that the office be required to make recommendations back to the facility for corrective and preventive actions. The department responds that the Office of Client Services and Rights Protection routinely performs this function and language has been added.

Concerning the same section, ARC/Texas recommended that responsibilities of the Office of Client Services and Rights Protection include training for client abuse committee members, law enforcement personnel, and medical staff. The department responds that the Office of Client Services and Rights Protection provides statewide training for client abuse committee members on a periodic basis. The responsibility for establishing a good working relationship with local law enforcement personnel must necessarily rest with the facility. The nature of training to be provided to law enforcement personnel by the Office of Client Services and Rights Protection cannot be ascertained. Licensed medical staff do not require special training to evaluate or document injuries.

In §404.12(a), concerning staff training in prevention of client abuse and/or neglect, Advocacy, Inc. recommended that facilities that employ investigators require the investigators to train staff in the reporting

and investigation procedure. The department responds that current practice includes assistance from the investigator in this function.

Advocacy, Inc. requested that the statement and prior to beginning work that involves direct client contact be added to the statement in §404.12(a)(1) requiring orientation on the subchapter. The department responds that it has required orientation for staff prior to the assumption of direct care duties for several years. Clarifying language has been added.

In paragraph (a)(2) of the same section, Advocacy, Inc. recommended that the statement be rewritten to include discussion of specific and relevant examples of each type of staff behavior that is abusive or neglectful. The department responds that the current staff development curriculum for orientation to the subchapter includes numerous examples of abuse and neglect that have been determined to be most representative of the types of activities requiring investigation.

In paragraph (b) of the same section, Advocacy, Inc. recommended requiring instruction in 'gentle teaching techniques.' The department responds that its curriculum in prevention and management of aggressive behavior is mandatory and clearly gives instruction concerning the safest, most effective, and least intrusive methods of physical and verbal intervention.

Concerning the same section, ARC/Texas suggested that during orientation, employees be admonished that any violent action resulting in injury to a person will result in termination and the filing of criminal charges. The department responds that orientation deals with the subject of client abuse and neglect in detail, with full discussion of consequences of abusive and neglectful actions, including termination and the filing of criminal charges.

In response to its request, Advocacy, Inc. has been added to the distribution list in §404.13(a), concerning distribution.

These new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.1. Purpose. The purpose of this subchapter is to identify and prohibit client abuse and neglect by employees of the Texas Department of Mental Health and Mental Retardation and to prescribe procedures for its report, investigation, and prevention.

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

Affiliate—Any school, organization, or entity associated in a working alliance with a facility (by contract).

Agent—Any individual not employed

by the facility but working under the auspices of the facility, such as volunteers, consultants, students, etc.

Child—A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

Client—Any person receiving services from the department, including those persons on furlough, on pass, or on unauthorized departure status who are still carried on the rolls of the facility.

Consultant—A person with expertise in conducting investigations, with training, experience, and demonstrated competence in the area of investigation, and who is not an employee of TDMHMR.

Department—The Texas Department of Mental Health and Mental Retardation.

Designee—A staff member immediately available who is temporarily appointed to fulfill duties and assume the responsibilities of the superintendent.

Disabled person—A person with a mental, physical, or developmental disability between 18 and 65 years of age.

Elderly person—A person 65 years of age or older.

Exploitation—The illegal or improper act or process of an employee using the resources of a client for monetary or personal benefit, profit, or gain.

Facility—Any institution, program, or service operated by the department.

Facility investigator—A consultant or designated staff member who conducts investigations of client abuse and neglect.

Furlough—Any approved leave of absence from a facility.

Head of the facility—The superintendent or director of a department facility.

Negligence—The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do something that a person of ordinary prudence would have done under the same or similar circumstances.

Nonserious physical injury—Any injury determined not to be serious by the physician who examines the client. Examples of nonserious injury include, but are not limited to, the following: superficial laceration, contusion, or abrasion.

Retaliatory action—Any action such as, but not limited to, harassment, disciplinary measures, discrimination, reprimand, reat, censure, or any other action, the purpose of which is to inflict emotional or physical harm or inconvenience to an employee or client who has reported client abuse or neglect.

Serious physical injury—An injury determined to be serious by the physician who examines the client. Examples of serious injury include, but are not limited to, the following: fracture; dislocation of any joint; internal injury; contusion larger than 2½ inches in diameter; concussion; first, second or third degree burn; or any laceration re-

quiring sutures.

§404.8. Client Abuse Committee.

(a) Appointment. The head of a facility shall appoint a multidisciplinary committee or committees to assist in the investigation of alleged incidents of client abuse and/or neglect. The committee shall be called the Client Abuse and Neglect Committee.

(b) Composition. The committee shall be comprised of five persons.

(1) Four members of the committee shall be staff persons representative of the professional staff, administrative staff, and direct care staff. One member of the committee shall also be a member of the public responsibility committee for the facility.

(2) One person shall be designated to act as chairperson of this committee and shall be required to maintain all records of investigations conducted by the committee. When the chairperson is away from the facility, one of the committee members shall be appointed acting chairperson.

(c) Terms. The term of membership shall be one year. The head of the facility may reappoint the same staff members for more than one term.

(d) Consultants. The head of the facility may retain a consultant for the purpose of assisting the committee in conducting investigations pursuant to this section.

(e) Responsibilities. It shall be the duty of the committee:

(1) to fully investigate alleged incidents of client abuse or neglect within five working days from the date the alleged incident is reported to the chairperson or acting chairperson. All investigations shall begin immediately. If the committee is unable to complete its investigation within five working days, written justification will be submitted to the head of the facility for approval or disapproval.

(A) The preliminary investigation, including witness statements and evidence gathering, may be conducted by one member designated by the committee, a consultant, or the facility investigator. If the preliminary investigation indicates that the allegation is obviously without merit, the investigation may be closed after the preliminary investigative report has been reviewed and signed by the chairperson of the committee, a public responsibility committee member, and the head of the facility. Ten percent of all preliminary investigations which are closed must be submitted for review by the chairperson to the full committee to ensure that all investigations are screened. A copy of all such preliminary investigations shall be sent to the Office of Client Services and Rights Protection.

(B) Investigative procedures outlined in Exhibit A are to be followed in all investigations. These procedures must include:

(i) photographs of all injuries as soon as possible after discovery of the injury. Photographs of all injuries sustained

shall be submitted with the investigative report sent to the Office of Client Services and Rights Protection, Central Office; and

(ii) the physician's exam and treatment of abuse-related injuries which shall be documented on the client injury report and attached to the investigative report submitted to the Office of Client Services and Rights Protection, Central Office. The physician's remarks should include the injury's cause, age, and treatment, as well as the timing of the medical exam with regard to the date the injury was received.

(C) The chairperson is responsible for monitoring the implementation of the committee's recommendations regarding preventive measures and for the evaluation of their effectiveness. A quarterly report detailing these findings will be submitted to the head of the facility, with a copy sent to the Office of Client Services and Rights Protection; and

(2) to report to the head of the facility whether it is of the opinion that there is cause to believe that client abuse or neglect has occurred in the incident investigated. Such opinion is not binding on the head of the facility.

§404.12. Staff Training in Prevention of Client Abuse and/or Neglect.

(a) This subchapter concerning client abuse shall be thoroughly and periodically explained to all employees of each facility as follows.

(1) All new employees shall receive instruction on the content of this subchapter during their orientation training and prior to beginning work that involves direct client contact. Acknowledgment of this instruction shall be certified by the employee and filed in his or her personnel file. See Exhibit D, which is herein adopted by reference and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(2) Orientation shall include not less than thorough explanation of the definitions contained in these sections, including the categories or classes of client abuse or neglect, the disciplinary consequences of client abuse or neglect, and the procedures for reporting incidents of client abuse or neglect.

(3) Within 60 days after the effective date of this subchapter, all current employees shall be oriented to the contents of this subchapter by the head of the facility or by his or her designee. Acknowledgment of this instruction shall be certified by the employee and filed in his or her personnel file. See Exhibit D, which is herein adopted by reference and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(b) Those employees in frequent contact with clients shall receive additional instruction on the prevention and therapeutic management of aggressive, combative beha-

viour or similar volatile situations as a unit of training within the employee's six months probationary period of employment. Training shall comply with training standards promulgated by the department.

(c) All supervisory personnel shall have a continuing responsibility to keep employees currently informed on rules governing client abuse or neglect and shall insure that each employee receives training on the total content of this subchapter not less than once each calendar year. Such training shall be reported to the facility office for staff development.

(d) Instructional materials, audiovisual and/or other training aids concerning this subchapter shall be approved by the Office of Training and Staff Resources, Central Office, in concurrence with central office legal services staff and central office client services and rights protection staff.

(e) A record shall be kept by the facility office for staff development on each employee receiving orientation, annual training, or additional instruction in compliance with this section, including the date training was provided and the name of the individual conducting the training.

§404.13. Distribution.

(a) The provisions of this subchapter shall be distributed to:

- (1) members of the Texas Board of Mental Health and Mental Retardation;
- (2) deputy commissioners;
- (3) directors of central office;
- (4) superintendents and directors of all department facilities;
- (5) the Texas Association for Retarded Citizens;
- (6) the Texas Association on Mental Deficiency;
- (7) the Parent Association for the Retarded of Texas;
- (8) the Texas Association for Mental Health;
- (9) the attorney general of Texas;
- (10) the Governor's Office of Youth Care Investigation;
- (11) the Texas Department of Health;
- (12) the Texas Department of Human Services;
- (13) the Texas Youth Council;
- (14) the Alliance for Mental Recovery; and
- (15) Advocacy, Inc.

(b) The head of each facility shall be responsible for duplicating and disseminating copies of this subchapter to:

- (1) appropriate staff, and
- (2) any client, employee, or other person desiring a copy.

(c) The head of each facility shall be responsible for prominently displaying copies of this subchapter at nursing stations and on bulletin boards within each facility.

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 19, 1988.

TRD-8801724

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Retardation

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Proposal publication date: December 8, 1987
For further information, please call
(512) 465-4670.

Subchapter B. Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers

★ 25 TAC §§404.41-404.50

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§404.41-404.50. Sections 404.41, 404.42, and 404.46 are adopted with changes to the proposed text published in the December 8, 1987, issue of the Texas Register (12 TexReg 4579-4581). The other sections are adopted without changes and will not be republished.

The new subchapter provides guidance to community centers in the report, investigation, and prevention of client abuse and neglect. It is adopted contemporaneously with the adoption of the repeal of the subchapter it replaces, which is Chapter 403, Subchapter T of this title, relating to client abuse and neglect in community mental health and mental retardation centers.

Public comments on the new subchapter were received from Advocacy, Incorporated, Austin; Jim Veach, Richardson; and Life Management Center, El Paso.

Regarding §404.41, concerning purpose, Advocacy, Inc. commented that the term "investigation" should be added to the statement of purpose. The department concurs and language has been revised.

Jim Veach requested that an explicit statement be added to the subchapter indicating its applicability with regard to private providers. The department responds that the subchapter applies to private providers contracting with community centers to provide services (referred to in the subchapter as affiliates and agents). Section 404.42, concerning application, has been revised accordingly.

The Life Management Center requested that client be redefined to include only those persons served in programs using state funds or required local funds matched with state funds, in programs providing core or required services, in programs serving former clients of the department's facilities, or in programs affected by litigation in which the department is a defendant. The department responds that through a memorandum of understanding with the Texas Department of Human Services and the Office of

Youth Care Investigation, Attorney General's Office, TDMHMR is responsible for receiving and processing all reports of alleged abuse and neglect of all mentally disabled persons served by community centers. This responsibility is inclusive of all center clients, not just those served in the programs identified by Life Management Center.

Concerning the same section, Advocacy, Inc. recommended that the definition of exploitation include reference to the client per se in addition to referring to the client's resources. The department responds that the resources of the client include the client.

Also in §404.43, Advocacy, Inc. requested that the definition of major physical injury be revised to include other injuries determined by the physician to be serious, and that the definition of minor physical injury be revised to be all injuries determined not to be serious. The department responds that the current definitions and procedures enable an injury not included in the definition of major physical injury to be assessed as serious.

Advocacy, Inc. requested that a definition of sexual activity be provided, stating that a listing of examples in Exhibit A is insufficient. The department responds that the examples in TDMHMR Procedures and Techniques for Investigation of Abuse and Neglect, are indicative of the types of behavior that constitute sexual activity.

Advocacy, Inc. requested that in §404.44, concerning client abuse and neglect defined, that each category of abuse include examples. Additionally, numerous specific recommendations concerning examples in Exhibit A were provided. The department responds that the purpose of the subchapter is to provide the basic departmental policy concerning abuse and neglect as well as the procedures to be followed in its report, investigation, and prevention.

Concerning the same section, the Life Management Center recommended that it be clarified that only the definitions and examples given in Exhibit A pertain to community centers. The center further suggested that if the full requirements of Exhibit A are to apply to community centers, the fiscal note for the subchapter should be amended to reflect additional costs. Exhibit A is intended to serve as a guideline for improved investigative techniques.

In §405.45(2), concerning administrative enforcement, Advocacy, Inc. recommended that the community center be required to either contract with or hire an independent investigator, or to establish a client abuse and neglect committee similar to the committee required at state facilities. The department responds that more prescriptive requirements with regard to investigatory procedures are currently under consideration.

Regarding §404.45(3)(B), Advocacy, Inc. recommended that the final report to parents be made in writing within five days of the conclusion of the investigation. The department responds that following the conclusion of an investigation, the results may not be fully formulated within five days, particularly when law enforcement and other agencies are involved. It is the department's policy, however, that parents be immediately notified when the results become known.

Concerning the same subparagraph, the Life Management Center commented that the requirement for automatic reporting of abuse allegations to the guardians or family may violate the client's right to confidentiality, and suggests the use of a release form substantiating the client's consent to such notification. The department concurs that notification should be made consistent with laws and rules governing confidentiality.

The Life Management Center requested that §404.45(3)(C)(i), the requirement for supporting documentation to be submitted with the client abuse/neglect report be deleted. The department responds that its role is to provide oversight and monitoring of the client abuse and neglect investigatory process at centers and that supporting documentation is necessary to perform that function.

The Life Management Center recommended that the language in §404.45(4) be modified to be less prescriptive with regard to center personnel policies, i.e., by deleting subparagraphs (A)-(C). The department responds that the specification of basic criteria by which to assess an incident of abuse or neglect for purposes of taking disciplinary action is not prescribing personnel policy.

With regard to §404.46, concerning responsibilities of the Office of Client Services and Rights Protection, Advocacy, Inc. recommended that the office be required to make recommendations back to the facility for corrective and preventive actions. The department responds that language has been added.

The Life Management Center commented that in §404.46(c), the department seemed to imply there could be disagreement between the Office of Client Services and Rights Protection and the center. The department cannot ascertain the reference.

With regard to §404.47, concerning appeals process, the Life Management Center commented that a more appropriate appeals process would involve the public responsibility committee (PRC) and that clients should be notified of this recourse. The department responds that in rules governing public responsibility committees contained in Chapter 403, Subchapter P of this title, centers are required to notify clients of the existence of the PRC as a means of recourse. The reference to

appeals mechanisms other than the PRC in no way precludes PRC involvement.

Advocacy, Inc. requested that the statement and prior to beginning work that involves direct client contact be added to the statement in §404.48(a), concerning training in prevention of client abuse and/or neglect. The department responds that the subchapter requires instruction prior to direct client contact when possible.

These new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.41. Purpose. The purpose of these sections is to identify and prohibit client abuse and neglect by employees, affiliates, and agents of community mental health and mental retardation centers, and to prescribe principles for its report, investigation, and prevention.

§404.42. Application. These sections apply to all community mental health and mental retardation centers and their agents and affiliates.

§404.46. Responsibilities of the Office of Client Services and Rights Protection. The Office of Client Services and Rights Protection shall:

- (1) monitor statistical trends in abuse and neglect;
- (2) review all abuse and neglect investigations and make recommendations to the center for corrective and preventive actions;
- (3) determine closure on all investigations;
- (4) report all allegations of child abuse to the Office of Youth Care Investigation in the attorney general's office;
- (5) report all allegations of abuse involving adult clients to the Texas Department of Human Services (DHS); and
- (6) make appropriate reports of abuse regarding registered nurses or medical doctors to the respective boards of examiners.

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 19, 1988.

TRD-8801725

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

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

Subchapter C. Patient Abuse in Private Psychiatric Hospitals

★25 TAC §§404.81-404.87

Texas Department of Mental Health Mental Retardation (TDMHMR) adopts new §§404.81-404.87. Section 404.81 and §404.85 are adopted with changes to the proposed text published in the December 8, 1987, issue of the Texas Register (12 TexReg 4581-4583). The other sections are adopted without changes and will not be republished.

The new sections are adopted contemporaneously with the repeal of the sections they replace, which are contained in Chapter 403, Subchapter R, relating to patient abuse in private psychiatric hospitals.

In §404.85(6)(A), concerning responsibilities of administrators, the time limit for submitting a written report of the investigation has been changed from five calendar days to five working days, consistent with departmental procedure for other entities required to submit abuse reports.

Public comments on the new subchapter were received from Advocacy, Incorporated, Austin.

Regarding §404.81, concerning purpose, Advocacy, Inc. commented that the term investigation should be added to the statement of purpose. The department concurs and language has been revised.

§404.83, concerning definitions, Advocacy, Inc. recommended that the definition of exploitation include reference to the patient per se in addition to referring to the patient's resources. The department responds that the resources of a patient include the patient.

Also in §404.83, Advocacy, Inc. requested that the definition of major physical injury be revised to include other injuries determined by the physician to be serious, and that the definition of minor physical injury be revised to be all injuries determined not to be serious. The department responds that the current definitions and procedures enable an injury not included in the definition of major physical injury to be assessed as serious.

Advocacy, Inc. requested that a definition of sexual activity be provided and that the listing of examples in TDMHMR Procedures and Techniques for Investigation of Abuse and Neglect be expanded. The department responds that TDMHMR Procedures and Techniques for Investigation of Abuse and Neglect does not apply to private psychiatric hospitals.

Advocacy, Inc. requested that in §404.84, concerning patient abuse and neglect defined, that each category of abuse include examples. The department responds that the purpose of the subchapter is to provide the basic departmental policy concerning abuse and neglect as well as the procedures to be followed in its report, in-

vestigation, and prevention. Full elucidation of forms of abuse and neglect in the subchapter is not feasible or necessary.

In §404.85(3), concerning responsibilities of administrators, Advocacy, Inc. recommended that in all contracts with private psychiatric hospitals, the department should make provision for the exercise of certain oversight and reporting functions by the Office of Client Services and Rights Protection. The department responds that it does not enter into contracts with private psychiatric hospitals. As the state licensing authority, however, it has statutory authority to perform many of the cited functions and statutory responsibility to perform others.

In §405.85(6), Advocacy, Inc. recommended that the private psychiatric hospital be required to either contract with or hire an independent investigator, or to establish a client abuse and neglect committee similar to the committee required at state facilities. The department responds that more prescriptive requirements with regard to investigatory procedures are currently under consideration.

Advocacy, Inc. requested that instruction on the content of the new subchapter be required for employees prior to beginning work that involves direct client contact. The department responds that the subchapter requires this instruction to occur prior to direct client contact when possible.

These new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.81. Purpose. The purpose of this subchapter is to identify and prohibit patient abuse and neglect by employees, affiliates, and agents of private psychiatric hospitals and to prescribe principles for its report, investigation, and prevention.

§404.85. Responsibilities of Administrators. Patient abuse or neglect by hospital employees, employees of affiliates, and agents is prohibited and shall be grounds for disciplinary action. The hospital shall be responsible for establishing a mechanism for reporting and investigating alleged cases of patient abuse and neglect and initiating appropriate disciplinary action in confirmed cases of patient abuse and neglect. This mechanism shall include at a minimum:

(1) delineation of the responsibility of each employee, affiliate, or agent who has cause to believe that a patient has been or may be adversely affected by abuse or neglect to promptly report such cases as required by the Texas Family Code, §34.01 and §34.02; and the Texas Human Resources Code, §48.036 to the Department of Human Services and to the administrator or his or her designee;

(2) procedures for the administrator or his or her designee to promptly and ob-

jectively investigate each alleged case of patient abuse or neglect;

(3) provisions for reporting alleged or suspected cases of patient abuse or neglect in accordance with any appropriate laws, as follows.

(A) All allegations of abuse or neglect must be reported to the Office of Client Services and Rights Protection. If the hospital is licensed by the Texas Department of Human Services to provide services to children, the allegation must also be reported to the Department of Human Services pursuant to the Texas Family Code, §34.01. The Office of Client Services and Rights Protection shall be notified by telephone, (512) 465-4545, within 48 hours of receiving an allegation, or at 8 a.m. on the first succeeding work day for reports received on weekends and holidays. This office may then conduct an investigation which may include the following elements when warranted:

(i) a visit to the hospital;

(ii) interviews with the administrator, other staff, the alleged perpetrator, and victim; and

(iii) review of documentation, such as photographs of injuries, medical reports, patient records, and hospital investigative reports.

(B) Criminal acts must be reported to law enforcement agencies. The administrator shall report alleged or suspected patient abuse-related crime to local law enforcement agencies;

(4) procedures for implementing prompt, proper, and sufficient disciplinary action when a charge of patient abuse or neglect is confirmed. Confirmation of the allegation will be based on a review of the hospital's investigation and/or the findings of the investigation conducted by the Office of Client Services and Rights Protection.

(A) Disciplinary action shall be based on criteria including, but not limited to:

(i) the seriousness of the patient abuse or neglect;

(ii) the circumstances surrounding the event; and

(iii) the employee's record.

(B) When the administrator determines that patient abuse or neglect has occurred, he or she shall take immediate disciplinary action;

(5) procedures to be followed if it is determined that a patient is responsible for abuse of another patient; and

(6) provisions for preparation of a written report of findings and action taken.

(A) The hospital's investigation shall be completed including the written report within five working days of receiving an allegation, two copies of which shall be made available to the Office of Client Services and Rights Protection immediately. The report of investigation and action taken shall be maintained by the hospital for a period of five years. (See Exhibit A, which is adopted by reference and may be obtained

from the Texas Department of Mental Health and Mental Retardation, Client Services and Rights Protection, P.O. Box 12668, Austin, Texas 78711.)

(B) Final reports of suspected child abuse and neglect shall also be reported on Form 1B, Office of Youth Care Investigations, Final Report of Suspected Child Abuse and Neglect in a Child Care Facility and sent to the Office of Client Services and Rights Protection. (See Exhibit B, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, Office of Client Services and Rights Protection, P.O. Box 12668, Austin, Texas 78711.)

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 19, 1988.

TRD-8801726

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 11, 1988

Proposal publication date: December 8, 1987
For further information, please call
(512) 465-4670.



Chapter 405. Client (Patient) Care

Subchapter O. Client Abuse and Neglect in TDMHMR Facilities

★ 25 TAC §§405.361-405.372

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§405.361-372 without changes to the proposed text published in the December 8, 1987, issue of the *Texas Register* (12 TexReg 4883), concerning client abuse and neglect in TDMHMR facilities. The repeals are adopted contemporaneously with the emergency adoption and the adoption of new sections governing the same matters in Chapter 404, Subchapter A of this title, concerning client abuse and neglect in TDMHMR facilities.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on February 19, 1988.

TRD-8801718

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: March, 1988

Proposal publication date: December 8, 1987
For further information, please call
(512) 465-4670.



Subchapter DD. Continuity of Care: Procedures for Preadmission Screening, Community Support Plan Development, and Client Program Coordination

★ 25 TAC §§405.751-05.763

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§405.751-405.763, without changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2793). The repeals are adopted contemporaneously with the adoption of new sections governing the same matters, contained in Chapter 402, Subchapter B of this title (concerning Continuity of Services-Mental Health).

There were no public comments concerning adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on February 19, 1988.

TRD-8801719

R. Coke Mills
Vice-Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: April 15, 1988

Proposal publication date: August 21, 1987
For further information, please call
(512) 465-4670.



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XIV. Texas Board of Irrigators

Chapter 425. Certification of Registration and Seal Certification of Registration

★ 31 TAC §425.19

The Texas Board of Irrigators adopts an amendment to §425.19, without changes to the proposed text published in the December 11, 1987, issue of the *Texas Register* (12 TexReg 4628).

The amendment reflects an increase in the licensed irrigators' fee from \$75 to \$85, effective December 1, 1987, in order to comply with Rider 4 of the appropriations bill for the Board of Irrigators for the fiscal years 1988 and 1989.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Licensed Irrigators Act, Article 8751, Texas Civil Statutes, §7, which provides the board with the authority to adopt, prescribe, promulgate, and enforce all rules reasonably necessary to effectuate the provisions 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 February 24, 1988.

TRD-8801919

Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: March 16, 1988

Proposal publication date: December 11, 1987
For further information, please call
(512) 463-8087.



TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 71. Creditable Service

★ 34 TAC §71.1

The Employees Retirement System of Texas adopts an amendment to §71.1, with out changes to the proposed text published in the January 1, 1988, issue of the *Texas Register* (13 TexReg 46).

Amended §71.1 affords members of the employee class, who establish contributory service on or before December 31, 1988, an opportunity to establish one year of service credit for any fiscal year prior to September 1, 1958, in which a member of the employee class has six or more months of contributory service, other than military service. Additionally, members who have contributory service prior to September 1, 1958, for which they currently receive no service credit are to begin receiving credit for such service. Also, members who have a one-month waiting period are entitled to establish and to receive credit for such a waiting period.

Subsection (a) of this section specifies that, if contributory service is established

on or before December 31, 1988, one year of service credit shall be granted for any fiscal year prior to September 1, 1958, in which a member of the employee class has six or more months of contributory service, other than military service credit. The effect of the amendment is to end, as of January 1, 1989, the practice of granting a full year of credit for those fiscal years prior to September 1, 1958, in which a member has six or more months of contributory service, other than military service. Thus, eligible members have until December 31, 1988, to take advantage of the six-months rule.

Subsection (b) provides that, except as provided in subsection (a) of this section, each full or partial month of contributory service performed shall count as 1/12 of a year of creditable service. Thus, a full or partial month of contributory service counts as 1/12 of a year of creditable service in the employee class regardless of when the service was performed.

Additionally, new subsection (e) states that waiting periods are considered membership service not previously established. The effect of this new subsection is to allow the purchase by a member of the one-month waiting period that was required from September 1, 1958, to August 31, 1973, and that has not previously been purchasable.

Amendments to this section were simultaneously adopted on an emergency basis during the proposal state to be effective January 1, 1988, in order to allow eligible members of the employee class to establish service credit pursuant to amended subsections (a), (b), and (e) of this section and to establish, when applicable, such service credit within the prescribed period of time.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Title 110B, §23.002, which provide the board of trustees of the Employees Retirement System of Texas with the authority to determine, by rule, how much service in any year is equivalent to one year of creditable service; but in no case, may all of a person's service in one year be creditable as more than one year of service.

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 23, 1988.

TRD-8801893

Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: March 15, 1988

Proposal publication date: January 1, 1988

For further information, please call
(512) 476-6431, ext. 178.

Chapter 73. Benefits

★34 TAC §73.15

The Employees Retirement System of Texas (ERS) adopts an amendment to §73.15, without changes to the proposed text published in the January 1, 1988, issue of the *Texas Register* (13 TexReg 47).

The amendment to this section provides up-to-date information concerning how the ERS computes retirement benefits under the state's proportionate retirement program. Additionally, the deletion of a date on the referenced document which is adopted by reference in this section and entitled "Computation of Proportional Retirement Benefits" eliminates the necessity of amending the section each time the document is revised. Should a person request the document, the ERS will furnish him or her with the most recent revision of that document.

Subsection (d) of this section refers to and incorporates by reference into the section a document entitled "Computation of Proportional Retirement Benefits." Amended subsection (d) deletes the date of that referenced document which specifies how proportionate retirement benefits are calculated by the ERS.

The document was last revised in October 1986, and has again been revised as a result of the adoption of a new §73.27, published as an adopted section in the January 1, 1988, issue of the *Texas Register* (13 TexReg 56) by the Board of Trustees of ERS at its scheduled December 23, 1987, meeting which increases the percentage value of an employee class member's first 10 years of service from 1.5% to 1.8% for each year of service for retirees with effective retirement dates of January 31, 1988, and later. The adopted new section, as mandated through House Bill 21, 70th Legislature, 1987 (Texas Civil Statutes, Title 110B, §24.105(a), became effective January 13, 1988, and affects the computation of proportionate retirements as shown in the revised referenced document, "Computation of Proportional Retirement Benefits," in subsection (d).

Amendments to subsection (d) of this section were simultaneously adopted on an emergency basis during the proposal stage to be effective January 1, 1988, in order to process proportionate retirements in compliance with adopted new §73.27.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Title 110B, §13.401(a), which provide the Board of Trustees of ERS with the authority to adopt rules if finds necessary to implement the proportionate retirement program provided by this chapter.

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 23, 1988.

TRD-8801892

Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: March 15, 1988

Proposal publication date: January 1, 1988

For further information, please call
(512) 476-6431, ext. 178.

Part X. Texas Public Finance Authority Chapter 221. Distribution of Bond Proceeds

★34 TAC §§221.1-221.4

The Texas Public Finance Authority (the authority) adopts new §§221.1-221.4, with changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 TexReg 113).

The new sections are necessary in order to establish general guidelines, criteria, and procedures for the distribution of bond proceeds in compliance with legislation passed in the 70th Legislature, 1987.

The new sections provide for bond proceeds to be deposited with the state treasurer and made available to a qualified agency and with authority in accordance with Texas Civil Statutes, Article 601d-1.

Changes were made to the proposed text in response to public comment received from Jim Thomassen, assistant attorney general and general counsel to the authority in concurrence with Tom Luckinger, bond counsel to the authority, and the staff of the authority. No other comments were received regarding the adoption of the sections.

In §221.1, the definition of Bond Review Board has been changed by deleting the word "board" and inserting "bond." Subparagraph (c) in the definition of cost of issuance has been changed by inserting the words "to the extent provided by law" at the end of the sentence. Subparagraph (G) in the definition of project costs has been changed by deleting the words "including the fees and expenses of any paying agent, transfer agent, or similar expenses for the bonds" and replacing them with "to the extent provided by law." To qualify the executive director's responsibility, §221.2 has been changed by inserting the words "use his or her best efforts to" after the word "shall." Subsection (b) of §221.3 has been changed by deleting the word "submit" and replacing with "have submitted." Subsection (d) of §221.4 has been changed by inserting the words "and project costs" before the words "are paid" in the last sentence and deleting "and the qualified agency requesting such financing shall use such funds to pay project costs or for payment

of the authority's authorized administrative expenses. "Subsection (e) of §221.4 has been changed by inserting the words "but the authority may inspect projects at reasonable times upon reasonable notice to the qualified agency" at the end of the last sentence. Subsection (g) of §221.4 has been changed by deleting the semicolon after the words "qualified agency" and inserting the word "and;" deleting the semicolon and the words "the qualified agency requesting such financing from the authority abandons a project; or, unless other arrangements are made in the financing documents, the qualified agency requesting such financing from the authority fails to complete same within five years from the date hereof;" deleting the words "in any such event" between the words "then" and "the qualified agency;" and inserting the words "and if permitted by law" after the words "by formal resolution."

The new sections are adopted pursuant to the 70th Legislature, 1987, Chapter 696, §4(c), (Texas Civil Statutes, Article 601d-1), which directs the authority to establish by rule guidelines, criteria, and procedures for distribution of bond proceeds.

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

Act—Texas Civil Statutes, Article 601d-1, as amended.

Authority—The Texas Public Finance Authority, together with any successor to its duties and functions.

Board—The governing body of the authority.

Bond Review Board—The Bond Review Board as created by the Act.

Bonds—General obligation bonds issued by the authority pursuant to the constitutional provision and the Act.

Code—The Internal Revenue Code of 1986.

Comptroller—The Comptroller of Public Accounts of the State of Texas, or any successor thereto.

Constitutional provision—The Texas Constitution, Article III, §49-h.

Costs of issuance—The costs of issuance of any issue of bonds, including, but not limited to:

(A) financing charges, including insuring principal and interest payment on the bonds, or obtaining other credit enhancement for the bonds;

(B) professional fees and expenses, including architectural, engineering, surveying, and legal services;

(C) administrative expenses of the authority to the extent provided by law;

(D) the authority's or the paying agent/registrar's charges and expenses in connection with issuance of the bonds;

(E) rating agency fees;

(F) bond printing expenses; and

(G) such other expenses as may be necessary or incident to issuing and

marketing of the bonds.

Executive director—The executive director, or other authorized agent of the authority empowered by the board to perform the duties of the executive director.

Financing documents—Those documents approved by the board relating to the issuance of bonds, including, but not limited to, bond resolutions, financing agreements, funds management agreements, and official statements.

General Appropriations Act—Senate Bill Number 1, Acts of the 70th Legislature, Second Called Session, 1987, and any future act appropriating money for the operation of state government.

Interest and sinking fund—Generally, the fund created in financing documents to contain money for the payment of debt service on the bonds.

Project—Any facility specified by the legislature for financing under the constitutional provision and which consists of acquiring, constructing, or equipping new facilities or major repair or renovation of existing facilities, corrections institutions, including youth corrections institutions, and mental retardation institutions.

Project costs—To the extent authorized by the Code, the Income Tax Regulations promulgated pursuant to the Code, the constitutional provision, and the Act, all costs incurred by the authority, or any qualified agency requesting financing of a project with respect to the acquisition, construction, or equipment of new facilities, or for major repair or renovation of existing facilities, as the case may be, including, but not limited to, the costs of:

(A) the acquisition of all land, rights-of-way, property rights, easements, and interests;

(B) all furnishings, machinery, and equipment;

(C) necessary contingency funds;

(D) architectural, engineering, and legal services;

(E) plans, specifications, surveys, and estimates of cost and revenue, including a master plan;

(F) contracts necessary or incident to determining the feasibility and practicability of a project;

(G) administrative expenses of the authority which are necessary and related to a project to the extent provided by law; and

(H) such other contracts as may be necessary or incident to the carrying out or start-up of any project, including the refunding of refinancing of any outstanding obligations, mortgages, or advances issued, made, or given by any person for any of the aforementioned costs.

Project fund—The fund created in financing documents to contain bond proceeds for payment of project costs.

Qualified agency—Any agency of the State of Texas designated by the legislature which has control or responsibility of faci-

lities to be financed pursuant to the constitutional provision.

TDC—The Texas Department of Corrections, together with any successor to its duties and functions.

Texas Public Finance Authority Act—Texas Civil Statutes, Article 601d, as amended.

Treasurer—The State Treasurer of the State of Texas, or any successor thereto.

§221.2. Guidelines. In accordance with the Act, the executive director shall use his or her best efforts to assure in distributing proceeds from issues of bonds that:

(1) the proceeds shall be made available to a qualified agency and the authority for the payment of project costs of a project and the payment of costs of issuance related thereto; or the proceeds shall be used to refinance an existing obligation issued for a purpose described by the Act; or the proceeds shall be used to refund revenue bonds issued under the Act;

(2) the proceeds necessary to be deposited to the interest and sinking fund shall be so deposited; and

(3) any expenditure or investment of proceeds shall be made in compliance with the constitution of this state, the Act, other laws of this state, rules of the board, and legislative appropriations.

§221.3. Criteria.

(a) The proceeds shall not be distributed to finance any project or cost related thereto, unless:

(1) the qualified agency requesting such financing has made arrangements with the executive director and agreed to necessary financing documents as may be appropriate in the judgement of the executive director and consistent with these sections;

(2) the board has, by resolution, order, or ordinance, approved the related financing documents;

(3) the bond issuance and the projects have been reviewed and approved by the Bond Review Board, or any other agency required to review such bond proceedings or approve projects as authorized by law; and

(4) the project has been specifically authorized by the Act, the General Appropriations Act, or the Texas Public Finance Authority Act.

(b) In the event proceeds are to be used to finance a project of the TDC, the TDC must have submitted to the Bond Review Board a master plan for correctional facilities prior to disbursement of bond proceeds.

(c) The authority assumes no responsibility in connection with the eligibility of any specific project for financing nor with respect to the need for such project or that any project will comply with any legal requirement, except to review legislation authorizing the project, the approval process with respect to the project, including Bond Review Board approvals, and provide a pro-

per description of the project in bond offering documents if required.

§221.4. Procedure.

(a) Unless otherwise indicated herein, proceeds of bonds shall be distributed pursuant to the terms of the financing documents.

(b) Upon the closing of each series of bonds, the purchasers thereof shall pay the proceeds thereof in immediately available funds to the treasurer.

(c) The executive director shall certify to the comptroller and to the qualified agency requesting such financing that the funds are available and have been deposited with the treasurer for the purpose of financing the related project.

(d) The executive director shall certify to the treasurer the specific amounts to be transferred from the project fund to the interest and sinking fund. The executive director shall then instruct the treasurer from time to time to pay the costs of issuance in such amounts as specified by the executive director from the project fund. The proceeds shall be invested by the treasurer with the concurrence of the authority until such time as the costs of issuance and project costs are paid.

(e) The qualified agency requesting financing from the authority shall make or cause to be made payment of project costs from the project fund in accordance with the contracts therefor and shall provide a written monthly report to the authority of the activity on each project. The authority will not assume any responsibility for the actual acquisition, construction, equipment, repair, or renovation of any project or the operation or maintenance thereof, but the authority may inspect projects at reasonable times upon reasonable notice to the qualified agency.

(f) No payments from the project fund may be made for any purpose other than paying costs of issuance and project costs, depositing amounts to any rebate fund for the benefit of the federal government in compliance with the Code, or deposit to the interest and sinking fund of amounts remaining after payment of project costs.

(g) If any proceeds of the bonds remain in the project fund after the completion of a project and depositing amounts to any rebate fund for the benefit of the federal government in compliance with the Code, except the amounts specified by the qualified agency requesting such financing from the authority to be retained for any amount of any project costs not then due and payable or the liability for payment of which is being contested or disputed by the qualified agency and all labor, services, materials, and supplies used in the project have been fully paid and all costs and expenses incurred in connection therewith have been paid, then the qualified agency requesting such financing from the authority shall cause such proceeds to be transferred from the project fund to the interest and sinking fund; provided, however, that if the Legislature has autho-

rized additional projects of the same nature the project theretofore financed during such time period, the board may, by formal resolution and if permitted by law, authorize the use of such amounts for such additional projects.

(h) If the bonds are intended by the board to bear interest which is not includable in gross income of the recipient pursuant to the Code, the use of proceeds of the bonds shall be restricted in such manner and to such extent, as may be necessary, to obtain and retain such tax exemption, including restrictions so that the bonds will not constitute arbitrage bonds under the Code, §148, and, to the extent applicable, the Code, §149(d) (relating to advance refundings), unless otherwise prescribed by law. The requirements of this section are subject to, and shall be interpreted in accordance with the Code, §148.

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 17, 1988.

TRD-8801822

Ann Moriarty
Program Specialist II
Texas Public Finance
Authority

Effective date: March 14, 1988
Proposal publication date: January 5, 1988
For further information, please call
(512) 463-5544.

◆ ◆ ◆

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter F. Physician Services

★40 TAC §29.502

The Texas Department of Human Services (DHS) adopts an amendment to §29.502 without changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 TexReg 113).

The justification for the amendment is to clarify Title XIX coverage of physician services. Unless otherwise specified by the department or its designee, the physician must have examined the patient, made a diagnosis, and established a plan of care. For services to be covered in a teaching setting, the attending physician must provide personal and identifiable direction to interns and residents who are participating in the care of his patient.

The amendment will function by providing clearer agency rules concerning coverage

of physicians' services under the Medicaid Program.

No comments were received regarding adoption of the amendment.

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

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 23, 1988.

TRD-8801924

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: March 16, 1988
Proposal publication date: January 5, 1988
For further information, please call
(512) 450-3765.

◆ ◆ ◆

Subchapter L. General Administration

★40 TAC §29.1101

The Texas Department of Human Services (DHS) adopts an amendment to §29.1101 without changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 TexReg 114).

The justification for the amendment is to specify that each provider must provide covered Medicaid services to eligible Medicaid recipients in the same manner and to the same extent and quality that the services are provided to other patients. These requirements are contained in the provider agreement to participate in the Texas Medical Assistance Program.

The amendment will function by tracking the requirements in the provider agreement.

No comments were received regarding adoption of the amendment.

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

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 24, 1988.

TRD-8801931

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: March 21, 1988
Proposal publication date: January 5, 1988
For further information, please call
(512) 450-3765.

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department on Aging

Thursday, March 10, 1988, 10 a.m. The Texas Board on Aging of the Texas Department on Aging, will meet in the City of Houston City Council Chambers, 901 Bagby, Second Floor, Houston. According to the agenda summary, the board will approve minutes of the previous meeting; hear report on state citizens advisory council meeting of February 1, 1988; consider appointments/reappointments of Citizens Advisory Council members, longterm care demonstrations projects, Long-Term Care Coordinating Council for the Elderly, and ombudsman program; approval of the Permian Basin Area Agency on Aging's Area Plan; and consider fiscal matters.

Contact: O.P. (Bob) Bobbitt, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 23, 1988, 10:44 p.m.
TRD-8801878



Texas Commission for the Blind

Thursday, March 10, 1988, 7 p.m. The Corpus Christi District Office of the Texas Commission for the Blind will meet at La Quinta Hotel, 601 North Water, Corpus Christi. According to the agenda summary, the commission will hear comments on the state plan for vocational rehabilitation services in Texas during 1988. Such public meetings are called for in a requirement contained in the Rehabilitation Act amendments of 1986, which stipulates state agencies must hold public meetings throughout the state to allow comment on the plan. Those who are unable to attend may send comments to the Public Information Office of the Texas Commission for the Blind, 4800 North Lamar Boulevard, Suite 320, Austin, Texas 78756. For information on additional dates for public forums, call 1-800-252-5204. Outside of Texas, call (512) 459-2612. The Corpus Christi District Office is 410 Soth Padre Island Drive, Suite 103, Corpus Christi, Texas 78405, (512) 289-1128.

Contact: Ron Marlow, Corpus Christi, Texas, (512) 289-1128; Arnold Vera, Harlingen, Texas (512) 423-9411; Betty Huffman, Austin, Texas, (512) 459-2611.

Filed: February 23, 1988, 1:45 p.m.
TRD-8801886



Texas Department of Commerce

Tuesday, March 8, 1988, 10 a.m. The Board of Directors for the Texas Department of Commerce will meet in Room 103, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the board will discuss action on appointment of advisory committee for small business, appointment of Border Advisory Committee, and recommendation of Tourism Advisory Committee and presentation by GSD&M; act on approval of meeting location for April 12, 1988, meeting; discuss proposed method for selection of bond counsel and financial advisors; present Pacific Rim visit by business development; present Maquiladora Supplier Issue; and view presentation on small business division programs, presentation on marketing and media division programs, and a presentation on finance division programs. The board also will meet in executive session to discuss personnel matters.

Contact: Mary Lane, 816 Congress Avenue, Austin, Texas 78701, (512) 472-5059.

Filed: February 25, 1988, 9:50 a.m.
TRD-8801974

Thursday, March 10, 1988, 5 p.m. The Texas Literacy Council of the Texas Department of Commerce will meet in the Senate Chamber, State Capitol, Austin. According to the agenda, the council hear welcome remarks, approve minutes, update data base system, view other state agency presentations, accept public comment, hear reports by individual council members, and set the date for the next meeting.

Contact: Martha Alworth, 8317 Cross Park Drive, Austin, Texas, (512) 834-6291.

Filed: February 25, 1988, 9:48 a.m.
TRD-8801971

Thursday-Friday, March 10-11, 1988, 8 a.m. The State Job Training Coordinating Council of the Texas Department of Commerce will meet at the Four Seasons Hotel, 98 San Jacinto Boulevard, Austin. According to the agenda, the council will cover four sequentially scheduled meetings on Thursday: oversight; worker readjustment/older worker; planning; and coordination/economic development, to consider policies for programs under the JTPA. On Friday, the general session will convene to hear committee reports and recommendations, with action taken on the following items: Title IIA performance standards; Governor's Coordination and Special Services Plan, Model III; and the State Plan for Carl Perkins Vocational Education Act.

Contact: Brenda Lovett, 8317 Cross Park Drive, Austin, Texas 78754, (512) 834-6314.

Filed: February 25, 1988, 9:49 a.m.
TRD-8801973



Texas State Board of Dental Examiners

Wednesday-Saturday, March 23-26, 1988, 8 a.m. The board will meet in Sandalwood A & B Meeting Rooms, 1200 Louisiana Street, Houston. According to the agenda, the board will conduct disciplinary hearings; discuss proposed amendments to Anesthesia rules; hear a report for the Anesthesia Advisory Committee; approve anesthesia applications; discuss biannual certification of CPR, examination information and examiners manual, and decide on reinstatement request of Dr. J. E. Stubblefield; discuss with Dental Laboratory Certification Council on proposed rules for dental laboratories; discuss rule amendment to provide for unprofessional conduct, pursuant to Article 4548(1); consider dental assistant educators on dental assistant duties; discuss direct supervision of dental hygienists; adopt emergency rules to comply with Senate Bill

1439; discuss request of Dr. Preston Car-nahan for removal of license suspension and request of Dr. Pedro Perez to take dental exam for a fourth time; discuss requests for appointment to the Dental Hygiene Advisory committee. The board also will meet in executive session to discuss litigation, miscellaneous matters, including appearances by members of the public and profession.

Contact: William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

Filed: February 24, 1988, 2:03 p.m.
TRD-8801954



Texas Employment Commission

Thursday, March 3, 1988, 8:30 p.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda, the commission will consider prior meeting notes; hear public comment; view a presentation by Fred Stansell, Institute for Human Services; consider Farmworker H-2A Program; approve engineer for mechanical retrofit of the headquarters building; and discuss date and agenda items for next commission meeting. The commission also will meet in executive session to discuss Hughes Drilling Fluids v. John H. Bodessa, and any actions resulting from the session.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: February 24, 1988, 3:40 p.m.
TRD-8801962



Texas Historical Records Advisory Board

Thursday, March 3, 1988, 2 p.m. The Texas Historical Records Advisory Board will meet in Texas Room 6, Hyatt Regency Hotel, 208 Barton Springs Road, Austin. According to the agenda, the board will review and discuss two grant proposals, and arrive at final recommendations on funding for submission to the National Historical Publications and Records Commission.

Contact: Chris LaPlante, 12th and San Jacinto Streets, Austin, Texas, (512) 463-5467.

Filed: February 24, 1988, 8:34 p.m.
TRD-8801917



Texas Department of Human Services

Thursday-Friday, March 3-4, 1988, 1 p.m. The Family Violence Advisory Committee of the Texas Department of Human Services will meet Classroom 1, Second Floor, 701

West 51st Street, West Tower, Austin. According to the agenda, the committee will review minutes, hear announcements, and discuss subcommittee meetings; hear reports; and consider old and new business.

Contact: James C. Marquart, P.O. Box 2960, Austin, Texas 78769, (512) 450-3365.

Filed: February 24, 1988, 9:16 a.m.
TRD-8801921



Texas Municipal Retirement System

Saturday, March 12, 1988, 9 a.m. The Board of Trustees for Texas Municipal Retirement System will meet at 1200 North IH-35, Austin. According to the agenda, the board will consider and approve minutes of the December 11, 1987, meeting; receive, review, and approve service retirements, disability retirements, and supplemental death benefits payments; consider extended supplemental death benefits; review and act on financial statements; hear a report by actuary, legal counsel, and the director; and consider any other business to come before the board.

Contact: Jimmie L. Mormon, (512) 476-7577.

Filed: February 25, 1988, 8:51 a.m.
TRD-8801965



Special Committee on Organization of State Agencies

Thursday, March 3, 1988, 8:30 a.m. The Subcommittee on General Government Services for the Special Committee on Organization of State Agencies will review information previously received concerning the organizational structures and operations of the state agencies which are under the subcommittee's responsibility for study; discuss and consider preliminary findings, which may include alternative organizational structures, as well as data requirements for further study and future meeting schedules; and receive and consider staff reports and other additional information from the agencies under review.

Contact: Susan Hadley, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: February 23, 1988, 4:06 p.m.
TRD-8801915



Texas State Board of Examiners of Psychologists

Wednesday-Saturday, March 2-5, 1988, 8:30 a.m. The Texas State Board of Examiners of Psychologists will meet at Woodfin Suites Hotel, 7685 Northcross Drive, Austin. According to the agenda, the board will con-

sider minutes, opinion letters, proposed rules, interviews, hearings, complaints, supervision guidelines, budget, legislative matters, applications, reports, and jurisprudence and professional exams.

Contact: Patti Bizzell, 1300 East Anderson Lane, Suite C-270, Austin, Texas 78752.

Filed: February 23, 1988, 3:38 p.m.
TRD-8801896



Texas State Board of Public Accountancy

A Panel Hearing for the Texas State Board of Public Accountancy will be held in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Tuesday, March 1, 1988, 9 a.m. The panel will review complaints 83-08-04L and 84-07-08L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: February 23, 1988, 10:47 a.m.
TRD-8801882

Wednesday, March 2, 1988, 9 a.m. The panel will review complaints 87-07-10L and 84-04-09L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: February 23, 1988, 10:50 a.m.
TRD-8801879

Tuesday, March 8, 1988, 9 a.m. The panel will review complaints 83-12-16L and 84-09-17L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: February 23, 1988, 10:47 a.m.
TRD-8801881

Wednesday, March 9, 1988, 9 a.m. The panel will review complaints 86-10-15L, 87-02-01L, and 87-02-05L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: February 23, 1988, 10:49 a.m.
TRD-8801880



Texas Public Finance Authority

Thursday, March 3, 1988, 10 a.m. The Texas Public Finance Authority will meet in emergency session at 104 Reagan Building, 105 West 15th Street, Austin. According to the agenda, the authority will approve minutes; consider matters relating to bond issue closing of general obligation bonds, Series 1988A; consider contracts for bond counsel

and financial advisory; and set the date and time of the next meeting. The emergency status is necessary because the general obligations bonds, Series 1988A need to be closed on schedule.

Contact: Ann Moriarty, 201 East 14th Street, Room 907, Sam Houston Building, Austin, Texas 78701, (512) 463-5544.

Filed: February 24, 1988, 3:59 p.m.
TRD-8801963



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.

Monday, March 7, 1988, 10 a.m. The Hearings Division will consider Dockets 7460 and 7172—Application of El Paso Electric Company for authorization to change rates and application of El Paso Electric Company for review of the sale and leaseback of Palo Verde Nuclear Generating Station Unit 2.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 23, 1988, 3:01 p.m.
TRD-8801887

Monday, March 7, 1988, 10 a.m., The Hearings Division will consider Docket 7991—Application of Sam Rayburn G&T Electric Cooperative, Inc. for authority to change rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 24, 1988, 2 p.m.
TRD-8801953



Texas Rehabilitation Commission

Friday, March 4, 1988. The Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet in the Trinity Room, Waller Creek Plaza Hotel, 500 North IH-35, Austin. Times and agendas follow.

9 a.m. The Nominating Committee will consider nominations for council vice-chairman and for consumer member-at-large to Executive Committee.

Contact: Roger A. Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: February 24, 1988, 2:07 p.m.
TRD-8801957

9:30 a.m. The Quarterly Council meeting will approve minutes of the previous meeting; hear the chairman's report, executive director's report, Joint Planning and

Advocacy Task Force report, Advocacy and Public Information Committee report, Executive Committee report, and public comments.

Contact: Roger A. Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: February 24, 1988, 2:06 p.m.
TRD-8801956



Teacher Retirement System of Texas

Tuesday, March 8, 1988, noon. The Medical Board of the Teacher Retirement System of Texas will meet in the boardroom, 1001 Trinity, Austin. According to the agenda, the board will discuss the files of members who are currently applying for disability retirement and files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: February 25, 1988, 9:44 a.m.
TRD-8801970



The University of Texas at Austin

Monday, February 29, 1988, 3 p.m. The Intercollegiate Athletics for Women of the University of Texas at Austin, met in Room 606, Belmont Hall, U.T. Campus, 21st and San Jacinto Streets, Austin. According to the agenda, intercollegiate athletics approved minutes of the previous meeting for January 25, 1988; heard announcements and information reports; and considered old and new business. They also met in executive session.

Contact: Donna A. Lopiano, Belmont 606, U.T. Campus, Austin, Texas 78705, (512) 471-7693.

Filed: February 24, 1988, 3:12 p.m.
TRD-8801960



Texas Veterans Commission

Friday, March 18, 1988, 10:30 a.m. The Texas Veterans Commission will meet in the Central Ballroom, Sheraton Plaza Hotel, 1721 West Central Texas Expressway, Killeen. According to the agenda, the commission will consider reports on activities of the commission and make decisions relative to general administrative matters pertaining to Texas' veterans' programs.

Contact: Doug Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

Filed: February 23, 1988, 1:52 p.m.
TRD-8801884



Texas Water Commission

Wednesday, February 24, 1988, 2 p.m. The Texas Water Commission met in emergency session in Room 118, SFA Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission discussed authorization to discharge partially-treated wastewater into or adjacent to waters in the state. The plant site is located in Plainview, Hale County. The emergency status was necessary because the applicant has requested emergency consideration in order to avoid severe property damage to downstream landowners.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: February 24, 1988, 10:51 a.m.
TRD-8801933

Wednesday, March 16, 1988, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 512, SFA Building, 1700 North Congress Avenue, Austin. According to the agenda, the examiner will conduct a public hearing on an application by Bexar-Medina-Atascosa counties WICID 1, and Prodek, Inc., for an amendment to certificate of adjudication 19-2130, pursuant to §11.121 of the Texas Water Code.

Contact: Alex Schmandt, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 24, 1988, 9:19 a.m.
TRD-8801920



Texas Water Development Board

Thursday, February 25, 1988, 9:30 a.m. The Texas Water Development Board met for an emergency agenda revision in Trinity Central Room, 200 Main Street, Ft. Worth. According to the agenda, the board revised agenda item 12 to consider authorizing the executive administrator to enter into an interagency cooperation contract with the Governor's Office of Budget and Planning. The emergency status was necessary because the board had to act immediately to assure continued progress on its programs. The possibility of coordination with the Governor's office as contemplated by the proposal only recently came to the board's attention.

Contact: M. Reginald Arnold, III, P.O. Box 13231, Austin, Texas, (512) 463-7047.

Filed: February 24, 1988, 2:28 p.m.
TRD-8801959



Regional Agencies Meetings Filed February 23

The Bastrop County Appraisal District, Board of Directors, will meet in the Appraisal District, 1200 Cedar Street, Bastrop,

on March 1, 1988, at 6 p.m. Information may be obtained from Lorraine Perry, (512) 321-3925.

The Deep East Texas Private Industry Council, Executive Committee, met in emergency session at 118 South First Street, Lufkin, on February 24, 1988, at 2 p.m. Information may be obtained from W. Floyd Clark, P.O. Box 700, Coldsprings, Texas 77331, (409) 653-4654.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on February 29, 1988, at 10 a.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Panhandle Ground Water Conservation District 3, Board of Directors, met at the Water District Office, 300 South Omohundro, White Deer, on February 29, 1988, at 7:30 p.m. Information may be obtained from Gary L. Walker, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

The South Plains Association of Governments, Regional Review Committee, met at SPAG offices, 1323 58th Street, Lubbock, on February 26, 1988, at 9 a.m. Information may be obtained from Jerry D. Castevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452, (806) 762-8721.

TRD-8801885

Meetings Filed February 24

The Blanco County Appraisal District, Appraisal Review Board, will meet in the Blanco County Courthouse Annex, Johnson City, on March 11, 1988, at 3 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Education Service Center, Region XI, Board of Directors, will meet at 3001 North Freeway, Fort Worth, on March 15, 1988, at noon. Information may be obtained from R.P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311, ext. 102.

The Tyler County Appraisal District, Board of Directors, will meet at 103 Pecan, Woodville, on March 1, 1988, at 4 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

The Wood County Appraisal District, Appraisal Review Board, will meet in the Conference Room, 217 North Main, Quitman, on March 4, 1988, at 9 a.m. Information may be obtained from W. Carson Wages, P.O. Box 951, Quitman, Texas 75783.

TRD-8801918



Meetings Filed February 25

The Central Texas MHMR Center, Board of Directors, met at 408 Mulberry Drive, Brownwood, on February 29, 1988, at 4:30 p.m. Information may be obtained from Nelda Andrews, P.O. Box 250, Brownwood, Texas 76801, (915) 646-9574.

The High Plains Underground Water Conservation District 1, Board of Directors, will meet at 2930 Avenue Q, Lubbock, on March 8, 1988, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Hockley County Appraisal District, Board of Directors, will meet at 1103-C Houston Street, Levelland, on March 14, 1988, at 7 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Lampasas County Appraisal District, Board of Directors, will meet at 109 East Fifth, Lampasas, on March 2, 1988, at 2 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76650, (512) 556-8058.

TRD-8801969



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.

State Banking Board Notice of Hearings

The hearing officer of the State Banking Board will conduct a hearing on Thursday, March 31, 1988, at 9 a.m., at 2601 North Lamar, Austin, on the change of domicile application for Heights Bank, Harker Heights.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on February 23, 1988.

TRD-8801922 William F. Aldridge
Director, Corporate Activities
Texas Department of Banking

Filed: February 24, 1988
For further information, please call (512) 479-1200.



The hearing officer of the State Banking Board will conduct a hearing on Thursday, March 24, 1988, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for The Trust Company of Texas, Dallas.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, State Banking Department, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on February 19, 1988.

TRD-8801823 William F. Aldridge
Director of Corporate Activities
State Banking Department

Filed: February 22, 1988
For further information, please call (512) 479-1200.



Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On February 9, 1988, the banking commissioner received an application to acquire control of the Northwest Bank, Roanoke, by Sam Lee, Roanoke.

On February 19, 1988, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on February 19, 1988.

TRD-8801825 William F. Aldridge
Director, Corporate Activities
Texas Department of Banking

Filed: February 22, 1988
For further information, please call (512) 479-1200.



Comptroller of Public Accounts Gasoline and Alcohol Mixture Determination of Credits Allowable for April, May, and June 1988

Pursuant to the Tax Code, §153.123, the Comptroller of Public Accounts is required to publish the credit against the gasoline tax allowable for the first sale or use of gasoline and alcohol mixture blended from products produced in a state allowing a reciprocal credit for Texas-produced products.

The Comptroller of Public Accounts has determined that \$0.04 per gallon credit for the first sale or use of gasoline and alcohol mixture blended with alcohol produced in Texas from Texas products will be available for the months of April, May, and June 1988.

The maximum credit allowed to be claimed for the first sale or use in April, May, and June 1988, of a gasoline and alcohol mixture blended from alcohol produced outside Texas and not from Texas-produced products will be \$0.01 per gallon if from one of the following states: Alaska, North Dakota, Nebraska, South Dakota, Alabama, Washington, Tennessee, Ohio, Kentucky, Illinois, Nevada, Florida, and Iowa.

No credit will be allowed for mixtures containing alcohol produced outside the United States, or those states which do not allow credit or exemptions for Texas-produced alcohol.

Inquiries should be directed to Tax Policy Division, Comptroller of Public Accounts, Austin, Texas 78774 (512) 463-4600, or toll free anywhere in Texas at 1-800-252-5555.

Issued in Austin, Texas, on February 22, 1988.

TRD-8801883 Bob Bullock
Comptroller of Public Accounts

Filed: February 23, 1988
For further information, please call (512) 463-4004.



Texas Housing Agency Amended Request for Proposals

The Texas Housing Agency (THA) is amending its request for proposals regarding the state housing study which was published in the February 16, 1988, issue of the *Texas Register* (13 TexReg 852).

THA plans to undertake a state housing study, the first phase of which must be completed by September 1, 1988, and the second phase of which should be completed by September 1, 1989.

The deadline for proposals has been extended. Proposals must be received in the agency office by 5 p.m. on March 21, 1988. The Personnel and Planning Committee of the agency will select the most suitable proposal and might request oral presentations. The contract will be awarded no sooner than March 21, 1988. For further information, contact Dan McNeil, executive administrator, or Katerina Dittmore, administrative assistant, at (512) 474-2974.

Issued in Austin, Texas, on February 23, 1988.

TRD-8801916 Dan A. McNeil
Executive Administrator
Texas Housing Agency

Filed: February 23, 1988
For further information, please call (512) 474-2974.



Texas Department of Human Services Request for Proposals

The Texas Department of Human Services (DHS) is requesting proposals for community based treatment services in the department's Region 11.

Description. Specific activities to be performed are psychological/developmental testing, psychological/psychiatric evaluation, counseling/therapy, and court testimony.

Contract Limitations. The contract period will be from September 1, 1988-August 31, 1989. The total amount of the contracts awarded will be contingent on the region's allocation of contract funds.

Evaluation and Selection. Procedures to be used to evaluate offerors will include accessibility of services to clients, client flow/time frames, unique and innovative aspects of program, provider contribution, staff qualifications, examples of work, and cost. Final selection will be made by the regional director for protective services for families and children and will be based on the submitted qualifications and staff recommendations. The department will award contracts based on the evaluation of the previously listed criteria.

Contact Person. For additional information, contact Finley L. Morton, Contract Manager, Children's Protective Services, Texas Department of Human Services 175-1, P.O. Box 16071, Houston, Texas 77222, (713) 696-7386.

Closing Date. The closing date for receiving proposals is 4 p.m., May 6, 1988.

Issued in Austin, Texas, on February 23, 1988.

TRD-8801872 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Filed: February 23, 1988
For further information, please call (512) 450-3766.

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 February 8-19, 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) 463-905.

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 February 19, 1988

Central Power and Light Company, San Benito; steam electric station; approximately ½ mile west of Resaca de Los Fresnos and on the north side of La Palma Boulevard in the City of San Benito, Cameron County; 01256; amendment

Soltex Polymer Corporation, Deer Park; plant which manufactures polyolefin and inorganic chemicals; at 1230 Battleground Road (State Highway 134) in the City of Deer Park, Harris County; 00554; amendment

Harris County Utility District Number 16, Houston; wastewater treatment facilities; approximately one mile north of the intersection of Hardy Road and Farrell Road, and 2,000 feet west of Hardy Road in Harris County; 12614-01; renewal

Sunny Fresh Foods, Inc., Luling; egg farm; northeast of the City of Luling, approximately 2.5 miles northeast of the intersection of FM Roads 1322 and 1386 in Caldwell County; 02923; new

Bevil Oaks Municipal Utility District, Bevil Oaks; wastewater treatment facilities; in the northeast corner of the Town of Bevil Oaks, approximately 200 feet south of Pine Island Bayou in Jefferson County; 11551-01; renewal

City of Santa Anna; surface water treatment facilities; in the vicinity of Lakes Sealy and San Tana, approximately 3.5 miles northeast of the City of Santa Anna in Coleman County; 10274-02; renewal

City of Haskell; wastewater treatment facilities; approximately one mile south and ¼ mile east of the intersection of United States Highways 380 and 277 in Haskell County; 10728-01; renewal

City of Woodville; wastewater treatment facilities; approximately 1,000 feet east of United States Highway 69 and 3,000 feet south of United States Highway 190 in Tyler County; 10322-01; renewal

Tom McKenna, Houston; sewage treatment plant; at 6421 Herman Road, approximately 1½ miles south of Greens Bayou and one mile east of Highway 59 in Harris County; 12626-01; renewal

Harris County Municipal Utility District Number 175, Houston; wastewater treatment plant; along the east side of State Highway 6, at a point approximately 4,000 feet south of Buffalo Bayou in Harris County; 12357-03; renewal

City of Marion; wastewater treatment facilities; approximately 1,400 feet west of FM Road 465 and 1,800 feet south of FM Road 78 in the City of Marion, Guadalupe County; 10048-01; renewal

Chambco, Inc., doing business as Brazos Construction Materials, Simonton; sand and gravel plant; adjacent to the Brazos River at River Mile 137.5 and approximately 3.5 miles northwest of the Town of Simonton, Fort Bend County; 02624; renewal

Cameron Iron Works United States of America, Inc., Houston; wastewater plant; at the intersection of Katy Road (IH 10) and Silber Road and approximately ¼ mile west of the intersection of IH 10 and West Loop 610 in the City of Houston, Harris County; 00357; renewal

Bell County Water Control and Improvement District Number 1, Killeen; wastewater treatment plant; approximately .2 mile south of the intersection of FM Road 2410 and United States Highway 190, and adjacent to and west of FM Road 2410 in the City of Killeen in Bell County; 10351-02; renewal

City of Bogata; wastewater treatment plant; southeast of the City of Bogata, approximately 3,100 feet southwest of United States Highway 271 and 5,000 feet east of State Highway 37 in Red River County; 10065-01; renewal

Harris County Municipal Utility District Number 104, Houston; sewage treatment plant; approximately 5,500 feet west of IH 45 and 3,500 feet south of Louetta Road on the north bank of Cypress Creek in Harris County; 11925-01; renewal

J.K.M. Cattle Trailer Washout, Inc., Dumas; cattle trailer washing operation; approximately five miles north of the City of Dumas on United States Highway 287 and State Highway FM Road 119 in Moore County; 02985; new

Phillips 66 Company, Borger Refinery and NGL Process Center, Borger; storage, processing, and disposal facility; on a 2,500 acre tract of land approximately two miles north of the City of Borger, along State Highway Spur 119, in Hutchinson County; HW-50078-000; new

Encycle/Texas, Inc., Corpus Christi; storage facility; on an 86-acre tract of land adjacent to the southern bank of the Tule Lake Channel of Nueces Bay approximately ½ mile north of the intersection of State Highway 37 and South Padre Island Drive, in Nueces County, Corpus Christi; HW-50221-001; new

City of Sherman; sewage treatment plant; south of the Dorchester Road Bridge over Post Oak Creek, on the south side of Post Oak Creek, southwest of the City of Sherman, Grayson County; 10329-01; amendment

Folsom Investments, Inc., Houston; wastewater treatment facilities; approximately 3,500 feet southeast of the intersection of Addicks Fairbanks Road and Tanner Road in Harris County; 13420-01; new

Houston Lighting and Power Company, Baytown; steam electric station; between Cedar Bayou and Trinity Bay, approximately one mile east of the City of Baytown, Chambers County; 01241; renewal

City of Fort Worth; wastewater treatment plant; southeast of the confluence of the West Fork Trinity River with Village Creek in Fort Worth, Tarrant County; 10494-13; amendment

Elva Weiman and Mabel Weiman, Houston; wastewater treatment facilities; adjacent to Horsepen Bayou, approximately 1,500 feet south of Spencer Road (FM Road 529) and east of Horsepen Bayou in Harris County; 12310-01; amendment

Houston Lighting and Power Company, Houston; steam electric station; adjacent to and south of United States Highway 90 and east of Greens Bayou, northeast of the City of Houston, Harris County; 01031; renewal

City of Copperas Cove; wastewater treatment facility; north of the City of Copperas Cove, at a point approximately 1.8 miles north of the intersection of FM Road 116 and FM Road 1113 in Coryell County; 10045-05; amendment

San Jacinto River Authority, Conroe; wastewater treatment facilities; approximately 3½ miles south of the intersection of FM Road 1488 and IH 45 and approximately 2,000 feet northwest of the confluence of Bear Branch with Panther Branch in Montgomery County; 12597-01; renewal

Hoechst Celanese Chemical Group, Inc., LaPorte; chemical manufacturing plant; on a 1,000-acre site in the Bayport Industrial Park, approximately three miles southwest of LaPorte, in Harris County, on the west side of Galveston Bay; HW-50201-000; new

City of Baytown; wastewater treatment plant; at the crossing of IH 10 and Spring Fully, due south of IH 10 and on the east side of Spring Fully within the City of Baytown in Harris County; 10395-08; renewal

City of Lubbock, Lubbock Power and Light; steam electric station; on city property at Holly Avenue, bounded by United States Highway 84, at a point approximately one mile southeast of the City of Lubbock, Lubbock County; 01895; renewal

Stone Hedge Utility Company, Inc., Conroe; wastewater treatment plant; northeast of Conroe, approximately one mile northeast of the intersection of State Highway 105 and Loop 366 in Montgomery County; 11710-01; new

Interstate Southwest Forge Company, Navasota; iron and steel forge facility; approximately three miles south of the City of Navasota, adjacent to and on the west side of the Texas and New Orleans Railroad right-of-way and with an entrance roadway off State Highway 508, approximately one mile south of the intersection of State Highway 508 and FM Road 379 in Grimes County; 02563; renewal

Michael Butler, Houston; wastewater treatment plant; on the north bank of Keegans Bayou, approximately 500 feet west of the intersection of Keegans Bayou and South Wilcrest Road, Harris County; 12577-01; new

Harris County Municipal Utility District Number 8, Houston; wastewater treatment facilities; at 555 Normandy Street in Harris County; 11727-01; renewal

West Cedar Creek Municipal Utility District, Seven Points; wastewater treatment plant; on the west side of State Highway 274, approximately 2,200 feet north of the State Highway 274 bridge crossing over the Cedar Reservoir Spillway in Henderson County; 11839-01; renewal

City of Goodlow, Kerens; wastewater treatment facilities; approximately two miles south of the intersection of State Highway 31 and State Highway 309, on the west side of State Highway 309, in Navarro County; 12616-01; renewal

Rex-Hide Industries, Inc., Tyler; custom rubber extrusion plant; at 705 South Lyons Street in the City of Tyler, Smith County; 01452; amendment

The North American Coal Corporation, Trinity Lignite Mine; Malakoff; lignite mine; on an irregular tract of land, approximately five miles in length and two miles in width, generally west of FM Road 90, east of Cedar Creek, south of State Highway 31 and within approximately one mile of the City of Malakoff, Henderson County; 02606; renewal

Edward T. Mica, Flatonia; laying hen operation; between State Highway 95 and FM Road 154, approximately one mile north, northwest of the intersection of State Highway 95 and FM Road 154 and approximately three miles north of the City of Flatonia in Fayette County; 02965; new

City of Freeport; wastewater treatment plant; in the City of Freeport at 123 Slaughter Road, north of State Highway 36 in Brazoria County; 10882-02; renewal

Harris County Municipal Utility District Number 191, Houston; wastewater treatment facilities; approximately 2,000 feet south of FM Road 1960 and 2,000 feet west of Cutten Road in Harris County; 12556-01; renewal

City of Freeport; wastewater treatment plant; immediately south of State Highway 288, on the east bank of the Brazos River Diversion Canal in Brazoria County; 10882-01; renewal

Harris County Municipal Utility District Number 175, Houston; wastewater treatment plant; along the west side of State Highway 6 at a point approximately 400 feet north of Buffalo Bayou in Harris County; 12357-02; renewal

City of Marshall; wastewater treatment plant; southeast of the City of Marshall, approximately 1,800 feet southeast of the intersection of IH 20 and Five Notch Road in Harrison County; 10583-02; renewal

City of Gladewater; wastewater treatment facilities; approximately 600 feet east of Roden Lane, approximately one mile south of the intersection of United States Highways 271 and 80 in Gregg County; 10433-02; renewal

BP Chemicals America, Inc., Port Lavaca; chemical manufacturing plant in association with a solid waste management facility; on a 2,300-acre tract of land adjacent to Highway 185, approximately four miles north of the intersection of Highway 185 and Highway 35, and approximately 15 miles west of Port Lavaca in Calhoun County; HW-50143-000; amendment

Issued in Austin, Texas, on February 19, 1988.

TRD-8801820 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: February 22, 1988

For further information, please call (512) 463-7906.



Public Hearing

A representative of the Texas Water Commission will hold a hearing for public comment on the commission's Edwards Aquifer rules, which affect Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties. The hearing will be held on Tuesday, March 15, 1988, beginning at 10 a.m. at the New Braunfels Civic Center, Meeting Room "B", 380 South Seguin Avenue, New Braunfels. Written comments on the rules may be submitted prior to the hearing date to Tom Bohl, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on February 23, 1988.

TRD-8801807 William G. Newchurch
Director, Legal Division
Texas Water Commission

Filed: February 23, 1988

For further information, please call (512) 463-8087.

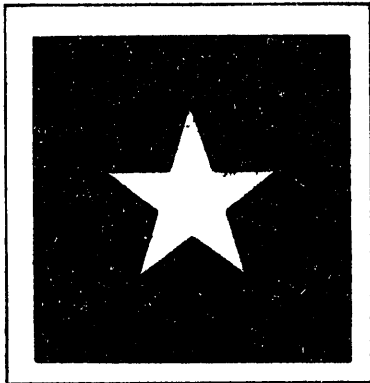


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