

Texas Register

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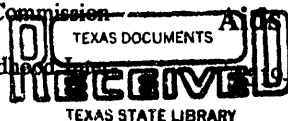
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Texas Register

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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



Texas Register Publications

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28 TAC §3.3311—1517

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31 TAC §115.171, §115.176—1540

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40 TAC §255.36—1552

40 TAC §§275.2-275.4—1553

The Governor

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

Executive Order

WPC 88-4

WHEREAS, Water is the basic natural resource essential to sustain the State's business, industrial and agricultural economy and its use significantly determines the quality of life and the quality of the environment of the State; and

WHEREAS, Increasing demands for the limited quantities of water require that long range plans be developed to meet the many water resources needs of the future; and

WHEREAS, The quality of present supplies must be protected from pollution and contamination, while the quality of some supplies must be improved if they are to be useful; and

WHEREAS, It is essential that water resource management plans be continually reviewed in order to meet changing economic, social, physical, legal, institutional, and environmental conditions; and

WHEREAS, It is in the best interest of the State to provide coordinated water resource planning, development, management, utilization and regulation at the local, regional, and State levels;

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby create and establish the GOVERNOR'S COMMITTEE ON WATER RESOURCES MANAGEMENT, hereinafter referred to as the COMMITTEE.

The COMMITTEE shall consist of five members appointed by the governor, three members appointed by the lieutenant governor at least two of whom shall be senators, and three members appointed by the speaker of the house of representatives at least two of whom shall be members of the house of representatives.

The Governor shall designate the chairman and vice chairman of the COMMITTEE.

The COMMITTEE will be charged with the following responsibilities:

The COMMITTEE shall study, evaluate, and recommend in regard to structural relationships and coordination among the Texas Water Commission, the Texas Water Development Board, the various river authorities, and other entities involved in water resources management in Texas.

The Texas Water Commission shall provide staff necessary to assist the COMMITTEE in the performance of its duties.

The COMMITTEE shall be authorized to request the assistance, where necessary in the discharge of its duties, of state agencies, departments and offices and it shall be the duty of such state agencies, departments and offices to assist the Committee when requested to do so. The COMMITTEE shall have the power to inspect the records, documents and files of every agency, department and office of the State to the extent necessary to the discharge of its duties within the area of its jurisdiction.

On or before December 1, 1988, the COMMITTEE shall submit a report to the Governor containing the findings of the committee made in the course of the Committee's investigations and any recommendations the Committee considers necessary.

The COMMITTEE shall meet at the call of the Chairman. A majority of the membership shall constitute a quorum. The chairman shall, in consultation with the Governor, establish the agenda for COMMITTEE meetings.

Members of the COMMITTEE shall serve without compensation or expenses.

This executive order shall be effective on this 17th day of March, 1988, and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas on March 23, 1988.

TRD-8803022 William P. Clements, Jr.
Governor of Texas

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Appointments Made March 22

To be a member of the **Crime Stoppers Advisory Council** for a term to expire September 1, 1989: Robert B. Aguirre, 601 Howard Street, San Antonio, Texas 78212. Mr. Aguirre will be replacing Leroy J. Wormley of Austin whose term expired.

To be a member of the **Commission on Law Enforcement Officer Standards and Education** for a term to expire August 30, 1993: John E. Clark, 613 NorthWest Loop 410, Suite 1000, San Antonio, Texas 78216. Mr. Clark will be replacing Barto Watson of Humble whose term expired.

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1991: Jack D. Ramsey, M.D., 2189 Oldham Lane, Abilene, Texas 79602. Dr. Ramsey will be replacing Dr. Gordon L. Black of El Paso whose term expired.

To be a member of the **Antiquities Committee** for a term to expire January 31, 1989: Anne E. Fox, 106 Fawn Drive, San Antonio, Texas 78231. Mrs. Fox is being reappointed.

To be a member of the **Nueces River Authority Board of Directors** for a term to expire February 1, 1993: James Ward Gorman, 4040 Broadway, Suite 615, San Antonio, Texas 78209. Mr. Gorman will be replacing William A. Beinhorn, Jr. of San Antonio whose term expired.

To be a member of the **North Texas State University Board of Regents** for a term to expire May 22, 1993: J. S. Farrington, 2001 Bryan Tower, 1900, Dallas, Texas 75201. Mr. Farrington will be replacing Wayne Stockseth of Corpus Christi whose term expired.

To be a member of the **Teachers' Professional Practices Commission** for a term to expire August 31, 1989: Michael Gary Hardin, 3208 Channing Lane, Bedford, Texas 76021. Mr. Hardin will be replacing Pete De Hoyos of Del Rio whose term expired.

To be a member of the **Interagency Council on Early Childhood Intervention Services** for a term to expire February 1, 1989: Janet D. Holliday, 110 Kennedy Avenue #1, San Antonio, Texas 78209. Mrs. Holliday will be replacing Patricia S. Bizzell of Austin whose term expired.

To be a member of the **Texas Historical Commission** for a term to expire February 1, 1991: Mary Ann Perryman, 111 La Rue Street, Athens, Texas 75751. Mrs. Perryman will be filling the unexpired term of W. Merriman Morton of El Paso who resigned.

To be a member of the **Texas Water Well Drillers Board** for a term to expire Sep-

tember 15, 1993: Jerry F. Fontaine, 700 North Sycamore, Palestine, Texas 75801. Mr. Fontaine will be replacing James L. Shawn III of Austin who resigned.

To be a member of the **Texas State Board of Plumbing Examiners** William Geoffrey Wheeler, 107 West Juan Lim, Victoria, Texas 77901. Mr. Wheeler is being reappointed.

To be a member of the **Texas Committee for the Humanities** for a term to expire December 31, 1989: Homer B. Reynolds, III, 307 South McDonald, McKinney, Texas 75069. Mr. Reynolds will be replacing Ellena Stone Huckaby of Houston whose term expired.

To be a member of the **Texas Committee for the Humanities** for a term to expire December 31, 1989: Bridget Barry, 5025 Overton Ridge Boulevard, #1728, Fort Worth, Texas 76132. Ms. Barry will be replacing Dr. Phyllis Bridges of Denton whose term expired.

Issued in Austin, Texas on January 9, 1988.

TRD-8802959

William P. Clements, Jr.
Governor of Texas

Appointments Made March 24

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 1993: Martha Williams Morriss, 2924 Pine, Texarkana, Texas 75503. Mrs. Morriss will be replacing Camilla Trammell of Houston whose term expired.

To be a member of the **Committee on Purchases of Products and Services of Blind and Severely Disabled Persons** for a term to expire January 31, 1989: Marilyn Patricia Abercrombie, Route 7, Box 517, Pine Acres, Conroe, Texas 77384. Ms. Abercrombie will be replacing Ms. Jane D. Pieper of San Antonio whose term expired.

To be a member of the **Advisory Council on Community Affairs** for a term to expire January 31, 1990: Barbara Ann Sinclair, 816 Agape Circle, Rockwall, Texas 75087. Commissioner Sinclair will be replacing Commissioner Telly Miller of Marshall whose term expired.

To be a member of the **Texas Health and Human Services Coordinating Council** for a term to expire September 1, 1989: Jerry Kane, P.O. Box 9254, Corpus Christi, Texas 78469. Mr. Kane is being reappointed.

To be a member of the **Texas Advisory Commission on Intergovernmental Relations** for a term to expire September 1, 1993: Ernest Edwin Chance, 2710 Crossvine, The Woodlands, Texas 77380. Mr. Chance will be replacing Judge Joe B. Garcia of Falfurrias whose term expired.

To be a member of the **Texas Rehabilitation Commission** for a term to expire August 31, 1993: Jerry Kane, P.O. Box 98254, Corpus Christi, Texas 78469. Mr. Kane is being reappointed.

To be a member of the **Sabine River Authority of Texas Board of Directors** for a term to expire July 6, 1993: William Y. Rice, P.O. Box 2865, Longview, Texas 75606. Mr. Rice is being reappointed.

To be a member of the **Sabine River Authority of Texas Board of Directors** for a term to expire July 6, 1993: Horace Franklin McQueen, P.O. Box 957, Tyler, Texas 75710. Mr. McQueen will be replacing Harold M. Smotherman of Tyler whose term expired.

To be a member of the **Teachers' Professional Practices Commission** for a term to expire August 31, 1989: Drusilla M. Knight, 3409 Crestlake, Corpus Christi, Texas 78415. Mrs. Knight will be replacing Kathryn White of Arlington whose term expired.

Issued in Austin, Texas on January 9, 1988.

TRD-8803033

William P. Clements, Jr.
Governor of Texas

Emergency Rules

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

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

TITLE 28. INSURANCE

Part I. State Board of Insurance

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

Subchapter T. Minimum Standards for Medicaid Supplement Policies

• 28 TAC §3.3311

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new §3.3311, for a 60-day period effective March 24, 1988. The text of new §3.3311 was originally published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4504).

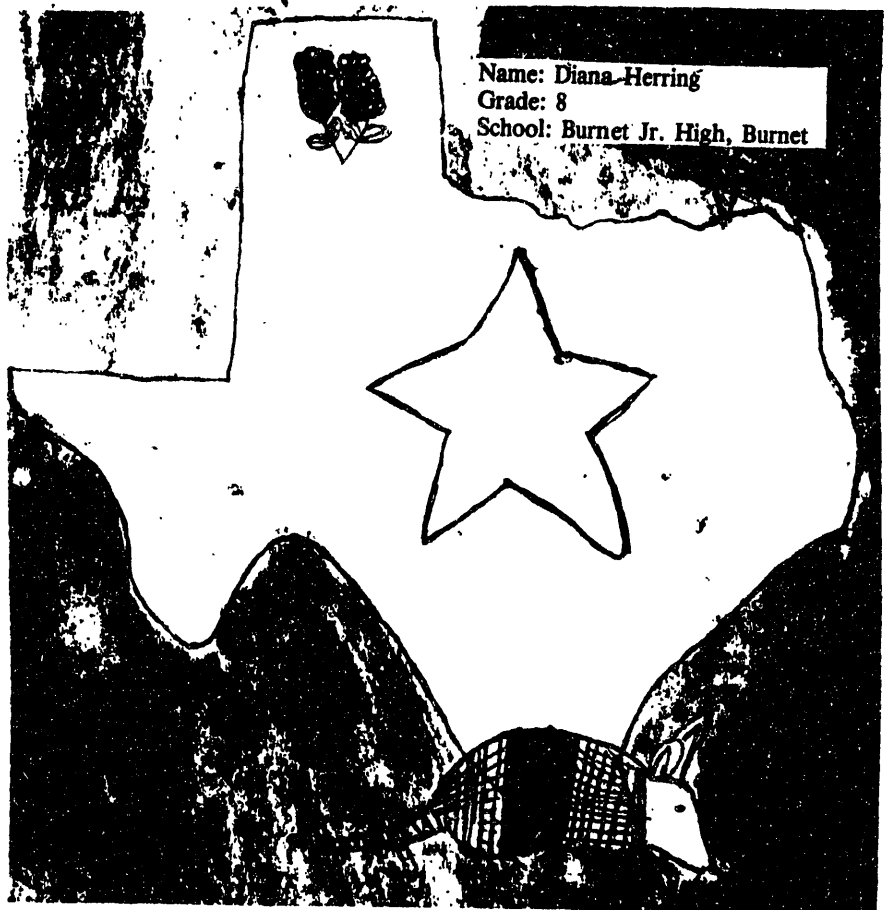
Issued in Austin, Texas on March 24, 1988.

TRD-8803013 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: March 24, 1988

Expiration date: May 23, 1988

For further information, please call: (512) 463-67327



Proposed Sections

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

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

TITLE 1.

ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

1 TAC §113.6

The State Purchasing and General Services Commission proposes an amendment to §113.6, concerning bid evaluation and award, conditions applicable to both open and market contracts. The amendment implements the provisions of the Business Corporation Act, Texas Civil Statutes, Article 2.45, which prohibits the award of a contract to a corporation that is delinquent in the payment of its franchise taxes. Under the proposal, a bid submitted by a corporation must contain a certification that the corporation is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to, such tax. A false statement concerning the corporation's Texas franchise tax status shall constitute grounds for cancellation of any resulting contract at the sole option of the state.

John R. Neel, general counsel, 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 reduction in cost of \$21,336 in 1988; \$21,794 in 1989; \$22,230 in 1990; \$22,675 in 1991; and \$23,128 in 1992. There will be no fiscal implications for local governments or small businesses.

Mr. Neel 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 administrative costs in complying with the provisions of the Business Corporation Act, Texas Civil Statutes, Article 2.45. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas, 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, which provide the

State Purchasing and General Services Commission with the authority to promulgate rules necessary for the administration and enforcement of the Act.

§113.6. Bid Evaluation and Award, Conditions Applicable to Both Open Market and Contract.

(a) (No change.)

(b) Award.

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

(7) For the purpose of complying with the Business Corporation Act, Texas Civil Statutes, Article 2.45, a bid submitted by a corporation must contain a certification that the corporation is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to, such tax. A false statement concerning the corporation's Texas franchise tax status shall constitute grounds for cancellation of any resulting contract at the sole option of the state.

(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.

Issued in Austin, Texas, on March 24, 1988.

TRD-8802997

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

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 463-446

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 109. Budgeting, Accounting, and Auditing

Subchapter D. Adoptions by Reference

• 19 TAC §109.61

The Texas Education Agency proposes an amendment to §109.61, concerning the adoption by reference of the financial accounting manual for school districts and regional education service centers, Bulletin 679. The

amended bulletin, which has been entirely reprinted, contains editorial changes for clarification. In order to continue implementation of the Public Education Information Management System (PEIMS) the bulletin continues to emphasize that all school districts are to use the codes as listed in the bulletin without deviation. Effective September 1, 1988, the bulletin requires uniformity in accounting for campus and program costs. The revised bulletin includes five new sections: Sections ACT 319-321, concerning accounting for enterprise, internal service, and similar trust funds; accounting for gifts and bequests; and accounting for fixed assets subject to depreciation; and Sections PRC 507, and 511 concerning vehicle cost record and travel vouchers.

The fiscal audit portion of the bulletin (Parts AUD and SPG) will be effective upon adoption of the amended section. The rest of the bulletin will be applicable for the 1988-1989 school year.

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

Mr. Moak and Dr. Beverly Bardsley, director for policy development, also have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that accounting procedures in school districts will more fully support the Public Education Information Management System, resulting in more accurate and timely data for policy-making and administrative purposes. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to 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*.

The amendment is proposed under the Texas Education Code, §11.26(a)(1) and (3), which directs the State Board of Education to adopt budgets for operation of the Foundation School Program and other programs and to establish procedures for budgetary control, expending, auditing, and reporting on expenditures within budgets adopted.

§109.61. Financial Accounting Manual.

(a) The rules for financial accounting are described in the official Central Education Agency bulletin, *Financial Accounting Manual*, Bulletin 679, as amended April 1988 [June 1987], which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays and Sundays, at the Central Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) (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 March 22, 1988.

TRD-8802984 W. N. Kirby
Commissioner of Education

Earliest possible date of adoption: May 2, 1988

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

TITLE 22. EXAMINING BOARD

Part VII. Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Chapter 141. Definitions and Procedures

• 22 TAC §141.37

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids proposes new §141.37, concerning reciprocal arrangements. The new section establishes procedures for reciprocal arrangements.

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

Ms. Stewart also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Wanda F. Stewart, Executive Director, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756.

The new section is proposed under Texas Civil Statutes, Article 4566, §1.04(a), which provide the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids with the authority to promulgate procedural rules and regulations.

§141.37. Reciprocal Arrangements. Any individual requesting reciprocity must demonstrate to the board that the state, territory,

or the authority under which the applicant was fitting and dispensing has requirements equal to or higher than Texas Civil Statutes, Article 4566. The board interprets Texas Civil Statutes, Article 4566, §1.08 to mean that the board shall grant reciprocity only on an individual basis after the individual has submitted documentation from the state, territory, or authority under which he or she was fitting and dispensing that clearly shows their minimum requirements are equivalent to or higher than Texas Civil Statutes, Article 4566. In reciprocal arrangements the board shall request the following:

(1) from the Office of the Attorney General, a ruling that would determine if the applicant's state, territory, or authority under which he or she dispenses is equivalent to Texas Civil Statutes, Article 4566; and

(2) from the applicant's state, territory, or authority under which he or she dispenses, all written records of the applicant and a copy of the following:

(A) the written examination;

(B) the practicum examination;

(C) the outline of the oral examination; and

(D) other information necessary for the board's determination.

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 March 23, 1988.

TRD-8802982 Wanda F. Stewart
Executive Director
Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 459-1488

Chapter 143. Consumer Information and Complaints

• 22 TAC §143.1

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids proposes an amendment to §143.1, concerning consumer information and complaints. The amendment clarifies the rule and mandates specific instructions.

Wanda F. Stewart, executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of en-

forcing or administering the section.

Ms. Stewart also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the consumer will be better informed and know exactly how much it will cost to try the hearing aid during the 30-day trial period. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Wanda F. Stewart, Executive Director, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756.

The amendment is proposed under Texas Civil Statutes, Article 4566, §1.04(a), which provide the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids with the authority to promulgate procedural rules and regulations.

§143.1. Guidelines for a 30-Day Trial Period.

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

(c) Prior to delivery to the purchaser by the licensee of any aid or aids, all charges [the per day usage charge] to which the licensee may be entitled upon the return of such aid or aids within the 30-day trial period shall be fixed by written agreement.

(d) (No change.)

(e) A person may cancel the purchase of a hearing aid during the 30-day trial period. If a person elects to cancel the purchase of a hearing aid during the trial period, the licensed hearing aid fitter and dispenser who fit the hearing aid shall refund the purchase price of the hearing aid to the person except as noted in subsection (a) of this section. The person is not entitled to a refund of any fee charged by the licensee for the fitting of the hearing aid. The person is entitled to receive the refund of the purchase price not later than the 30th day after the date on which the person returns the hearing aid to the licensee.

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 March 23, 1988.

TRD-8802963 Wanda F. Stewart
Executive Director
Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 459-1488

Part XXII. Texas State Board of Public Accountancy

Chapter 523. Continuing Professional Education

Mandatory Continuing Education Program

• 22 TAC §523.61

(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 State Board of Public Accountancy, 1033 La Posada, Suite 340, Austin or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Public Accountancy proposes the repeal of §523.61, concerning the mandatory continuing education program. The repeal of this section will allow for the adoption of a new section that will provide information and schedules for reporting times and required continuing education hours for licensees.

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

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to allow for the adoption of a new section that will insure that individuals involved in the practice of public accounting conform to the established continuing professional education reporting periods and hours. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the establishment of a mandatory continuing education program.

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 March 23, 1988.

TRD-8803005

Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 450-7042

◆ ◆ ◆
The Texas State Board of Public Accountancy proposes new §523.61, concerning the mandatory continuing education program. The new section provides information and schedules for reporting times and required continuing education hours.

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

Mr. Bradley 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 insure that individuals involved in the practice of public accounting conform to the established continuing professional education reporting periods and hours. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the establishment of a mandatory continuing education program. §523.61. *Establishment of Mandatory Continuing Education (CE) Program.*

(a) A mandatory CE program is hereby established pursuant to the Public Accountancy Act of 1979, §6(a) (Texas Civil Statutes, Article 41a-1), which provides the board with authority to adopt a system of required continuing education for licensees.

(1) All licensees are required to report CE hours accrued during the applicable reporting period as a condition for a 1983 or later license to practice public accountancy.

(2) All licensees in public practice are required to accrue and report a specified number of CE credit hours as a condition for a 1985 or later license to practice public accountancy, except that a program requiring mandatory attendance may not be put into effect until the board, by majority vote, determines that the following condition has been met: The establishment within the board organization of a CE section, headed by a qualified director and supported by adequate staff and facilities to afford a viable and positive program of review and enforcement, to the end that the program will lead to improved professional competence among persons licensed by the board.

(b) Definitions

(1) Applicable courses. Courses which conform to the board's standards, as identified in §§523.21-523.27 of this title (relating to Continuing Professional Education Standards).

(2) CE credit hours. Fifty minute contact hours which conform to the board's standards, as identified in §§523.21-523.27 of this title (relating to Continuing Professional Education Standards).

(3) CE reporting period.

(A) Current through 1991 license year: September 1 through August 31 of the following year.

(B) 1992 or later license year:

(i) The twelve months beginning with the month of the licensee's birth.

1992 LICENSE YEAR

1993 LICENSE YEAR

1994 LICENSE YEAR

Current Reporting Period	1992 LICENSE YEAR	1993 LICENSE YEAR	1994 LICENSE YEAR
October, 1989 November, 1989 December, 1989 January, 1990 February, 1990 March, 1990 April, 1990 May, 1990 June, 1990 July, 1990 August, 1990 September, 1990	September, 1990 October, 1990 November, 1990 December, 1990 January, 1991 February, 1991 March, 1991 April, 1991 May, 1991 June, 1991 July, 1991 August, 1991	October, 1990 November, 1990 December, 1990 January, 1991 February, 1991 March, 1991 April, 1991 May, 1991 June, 1991 July, 1991 August, 1991 September, 1991	September, 1991 October, 1991 November, 1991 December, 1991 January, 1992 February, 1992 March, 1992 April, 1992 May, 1992 June, 1992 July, 1992 August, 1992
1st Previous Reporting Period	1991 License Year September, 1989	1992 License Year October, 1989 November, 1989 December, 1989 January, 1990 February, 1990 March, 1990 April, 1990 May, 1990 June, 1990 July, 1990 August, 1990 September, 1990	1993 License Year October, 1990 November, 1990 December, 1990 January, 1991 February, 1991 March, 1991 April, 1991 May, 1991 June, 1991 July, 1991 August, 1991 September, 1991
2nd Previous Reporting Period	1990 License Year September, 1988	1991 License Year September, 1989	1992 License Year October, 1989 November, 1989 December, 1989 January, 1990 February, 1990 March, 1990 April, 1990 May, 1990 June, 1990 July, 1990 August, 1990 September, 1990

(ii) A licensee who does not have the required credit hours during his or her current reporting period is required to submit a supplemental report on a form furnished by the board which would verify his or her credit hour requirement during the three most recent reporting periods. Normally the three-year requirement will be 120 credit hours; however, it may be less if the individual has been licensed for less than three full years or has reentered public practice within the last three years. A transition schedule is shown.

Reporting period

If Born In:

Next Calendar Year

October	through	September
November	through	October
December	through	November
January	through	December
February	through	January
March	through	February
April	through	March
May	through	April
June	through	May
July	through	June
August	through	July
September	through	August

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 293. Water Districts

District Actions if the Commission Approves the Engineering Project and Issuance of Bonds

• 31 TAC §293.63

The Texas Water Commission (TWC) proposes an amendment to §293.63, concerning contract documents for water district projects. Performance and payment bonds are required by state statutes for every construction contract entered into by water districts. Small contractors are limited to smaller construction jobs and are unable to obtain bonds from the larger, established surety companies. The newer, smaller surety companies willing to bond the small contractors are precluded from providing performance and payment bonds because they are unable to obtain a LB rating from *Best's Key Rating Guide*, which rates surety companies that have been in business for five years or more. The proposed amendment sets out objective criteria by which such unrated surety companies in business for less than five years may qualify for waiver of the B rating requirement. The section, as amended, will allow the waiver for surety companies whose bonds are backed by the surety companies whose bonds are backed by the surety bond guarantee program of the Small Business Administration and which are listed in the United States Department of Treasury Circular 570 as being eligible to write such bonds for federal jobs. The effect of the amendment will be to enable many small contractors to obtain district construction contracts for which they would otherwise be unable to qualify.

David Crawford, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Crawford 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 a broader range of contractors will be eligible to bid on water district public construction projects, thereby decreasing the costs to the public for such projects. There is no anticipated economic cost to individuals who are required to comply with the section as proposed. No costs of any kind are imposed by the proposed amendment.

Comments on the proposal may be submitted to Royston S. Lanning, Attorney, Legal Division, Texas Water Commission, P.O. Box 13078, Austin, Texas 78711-3087. Comments shall be accepted for 30 days following this publication.

The section is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the

authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

§293.63. *Contract Documents for Water District Projects.* Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply.

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

(6) The district shall establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

(A) authorization to do business in Texas; and

(B) authorization to issue payment and performance bonds in the amount required for the contract[;] and:

(i) a rating of at least B from *Best's Key Rating Guide*; or

(ii) if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such performance and payment bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation. The district shall satisfy itself that such surety company and bonds meet such criteria.

[(C) a rating of at least B from *Best's Key Rating Guide*.]

(7) (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 March 24, 1988.

TRD-8803018

William G. Newchurch
Director
Texas Water Commission

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 463-8087

Chapter 305. Consolidated Permits

Subchapter F. Permit Characteristics and Conditions

• 31 TAC §305.125

The Texas Water Commission (TWC) proposes an amendment to §305.125, concerning standard permit conditions. In paragraph (11)(B), the standard permit condition provision concerning monitoring and reporting requirements is proposed to be amended to expressly state that the permittee shall also retain the records of all data used to complete the application for the permit for a period of at least three years from the date of the record or sample, measurement, report, application, or certification. The amendment adds language to the existing state provision to parallel the language in the federal regulation for hazardous waste permits that appears at 40 Code of Federal Regulations §27.30(j)(2).

David Crawford, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Crawford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of regulatory requirements and the closer correspondence of language in state and federal regulations describing standard permit conditions. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cynthia C. Smiley, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for 30 days following the publication date of the section.

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, and to establish and approve all general policy of the commission. The amendment is also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purpose of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically

feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers necessary or convenient to carry out its responsibilities. §305.125. *Standard Permit Conditions*. The following conditions are applicable to all permits issued within the scope of this chapter, and shall be incorporated into each permit expressly or by reference to this chapter.

(1)-(10) (No change.)

(11) Monitoring and reporting requirements are as follows.

(A) (No change.)

(B) Monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 Code of Federal Regulations §264.73(b)(9), shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period may be extended at the request of the executive director.

(C) (No change.)

(12)-(19) (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 March 23, 1988.

TRD-8802977

William G. Newchurch
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 463-8087

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

• 31 TAC §335.13

The Texas Water Commission (TWC) proposes an amendment to §335.13, concerning recordkeeping and reporting procedures applicable to generators shipping hazardous waste or Class I waste.

In amended §335.13, a new subsection (c) is proposed to be inserted to correspond to the rule promulgated by the United States Environmental Protection Agency (EPA) at 40 Code of Federal Regulations §262.42(a). New subsection (c) provides that a generator

who does not receive a copy of a manifest signed by the owner or operator of the facility designated to receive the waste shipment within 35 days of its acceptance by the initial transporter must contact the transporter and/or the designated facility to determine the status of the waste. The other subsections in §335.13 are re-designated to adjust for this new subsection. Newly designated subsection (f) is amended to reflect the insertion of subsection (c) and to provide an exemption for certain generators of small quantities of waste.

David Crawford, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Crawford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of regulatory requirements and the closer correspondence of language in state and federal regulations describing a generator's obligations regarding the tracking of manifested wastes. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cynthia C. Smiley, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for 30 days following the publication date of the section.

This section is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Water Code and other laws of this state and to establish and approve all general policy of the commission. This section is also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate regulations consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including requirements relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste.

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

(c) A generator who does not re-

ceive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class I waste.

(d) A generator must submit an exception report to the commission if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the generator for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class I waste and the results of those efforts.

(e)[(d)] The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(f)[(e)] The requirements of subsections [subsection] (c) and (d) of this section do not apply to generators generating hazardous waste or Class I waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78(e) (1) or (2) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

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 March 23, 1988.

TRD-8802978

William G. Newchurch
Director
Texas Water Commission

Earliest possible date of adoption: May 2, 1988

For further information, please call: (512) 463-8087

TITLE 34-PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

• 34 TAC §3.391

The Comptroller of Public Accounts proposes new §3.391, concerning accounting methods, to replace §3.391, concerning franchise tax-general information, that is being repealed. The new section is needed due to major changes to franchise tax enacted by the Texas legislature during the 1987 regular session. With certain specified exceptions, all corporations must report their franchise tax using generally accepted accounting principles unless the corporation's surplus is less than \$1 million as determined by the method used to compute its federal income tax, in which case the corporation may report its franchise tax using generally accepted accounting principles or the method used to compute its federal income tax. This new section clarifies which accounting methods should be used to determine the amount of franchise tax due.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Rules adopted under the Tax Code, Title 2, do not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide new information regarding their tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Debbie Angus, Supervisor of Franchise Tax Policy, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.391. Accounting Methods.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

(b) General rules. The provisions of this subsection apply to both the generally accepted accounting principles (GAAP) and federal income tax methods.

(1) A corporation is required to use the same accounting method in computing gross receipts as it uses in computing surplus.

(2) Regardless of any requirements or allowances under GAAP or the Internal Revenue Code, the calculation of franchise tax shall be performed in accordance with all applicable provisions of the Tax Code, Chapter 171, and related sections of this title.

(3) The financial condition as of the date required by the Tax Code, §171.153, must reflect the use of GAAP or other methods required by the Tax Code, Chapter 171, for all transactions through such date.

(4) The filing of a report using either the GAAP method or the federal income tax method shall constitute an irrevocable election of such method for the reporting period.

(5) A change will be recognized prospectively only, unless it corrects an accounting error. An accounting error results from a mathematical mistake, a mistake in the application of accounting principles, or an oversight or unintentional misuse of facts that existed on the date upon which the tax is based. Subsequent events (i.e., events or transactions occurring after the date upon which the report is based) will not be considered, even if the subsequent event provides additional evidence with respect to conditions that existed on the date upon which the tax is based.

(6) The cost method of accounting must be used for investments in other corporations. Cost must be the original valuation of the investment under GAAP, without reduction for amortization of goodwill or any other write-downs. The investor's share of the pre-acquisition earnings of an investee are excluded from the investment cost. The cost of an investee may be reduced by legally declared dividends of the investee to the extent that such dividends exceed the investee's pre-acquisition and post-acquisition earnings as determined under GAAP.

(7) Transfers of assets must be reported at the transferor's basis, as determined under the reporting method used for franchise tax, if allowed by GAAP. The transferor's basis may not, however, be reduced by unrealized, estimated, or contingent losses for the purpose of this subsection.

(c) Generally accepted accounting principles method.

(1) For purposes of this title, unless the context clearly requires otherwise, GAAP means those broad rules of accounting formally accepted by the American Institute of Certified Public Accountants (AICPA) or its designees through publication of a statement, interpretation, opinion, or research bulletin. If no such pronouncement has been published and is effective, such formal acceptance may be in the form of a written interpretation of a committee of the AICPA of its designee. In cases where

no such interpretation has been published and is effective, formal acceptance may be through accepted industry accounting practices, publications of the Securities and Exchange Commission, publications of regulatory agencies, or any other means which may be shown by the taxpayer to indicate formal acceptance.

(2) A corporation may report its franchise tax using any allowable method without regard to accounting methods used for the general ledger, financial statements, or any other financial reports. However, factual assertions made for published financial statements will be presumed to be accurate unless the corporation or the comptroller can show the assertions are incorrect.

(3) If the majority of the voting stock of a corporation is acquired through a purchase, as described under GAAP, the assets and liabilities of the acquired corporation must be revalued by the purchaser based on the purchase price using GAAP (i.e., push-down accounting must be used).

(d) Federal income tax method.

(1) If a corporation is found to be ineligible to use the federal income tax method (e.g., as a result of an audit by the comptroller or the Internal Revenue Service), the corporation will be required to report its franchise tax using the GAAP method.

(2) In determining if surplus is less than \$1 million for purposes of the Tax Code, §171.109(c) and §171.112(c), a corporation must apply the methods used in the last federal income tax return originally due before the franchise tax report is originally due, unless another method is required under a specific provision of this title or the Tax Code, Chapter 171.

(3) Income exempt for federal income tax purposes must be included in surplus and receipts based on the same method used for similar items on the federal income tax return. Expenses which are non-deductible for federal income tax purposes may be excluded from surplus, if they are allowable for franchise tax purposes, based on the same method used for similar items on the federal income tax return.

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 March 23, 1988.

TRD-8803054

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 2, 1988

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



• 34 TAC §3.403

The Comptroller of Public Accounts proposes new §3.403 concerning gross receipts: determining percent of Texas business, to replace existing §3.403 that is being repealed. The new section more clearly and extensively delineates policy in regard to the types of transactions that result in gross receipts and in Texas receipts. The new section incorporates major changes to franchise tax enacted by the Legislature, 1987. The new section refers to §3.391 concerning Methods of Accounting corporations are required to use for franchise tax purposes.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal effects on the state or local government. Rules adopted under the Tax Code, Title 2, do not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the five years the section is in effect the public benefit anticipated as a result of enforcing or administering the section will be the provision of new information regarding the individual's tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the new section may be submitted to Debbie Angus, Supervisor of Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

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

§3.403. Gross Receipts: Determining Percent of Texas Business.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

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

(1) Capital asset—Any depreciable asset, other than an investment, which is held for continued use in the production of income.

(2) Commercial domicile—The principal place from which the trade or business of the entity is directed.

(3) Investment—Any non-cash asset not a capital asset and not held as inventory or proceeds from the sale of inventory.

(4) Generally accepted accounting principles (GAAP) method of accounting—That method of accounting defined under §3.391(c) of this title (relating to Accounting Methods).

(5) Revenue—Except as otherwise specifically provided for in this section, all amounts recognized by the

corporation from whatever source, excluding items such as separately recorded reimbursements of actual expenses paid to third parties, bad debt recoveries, recovery of basis on sale or condemnation of a capital asset or investment, repayment of loan principal, amounts received for issuance of capital stock, refund of taxes (except interest thereon), equity earnings of an investee, foreign dividend gross ups allowed by the Internal Revenue Service and intercorporate tax allocations.

(c) General rule for determining gross receipts (Texas and total). A corporation filing an annual report must report gross receipts based on its activities for the 12 months ending on its last accounting period ending date in the previous calendar year or, if there is no accounting period ending in the previous calendar year, then for the 12-month period ending December 31 of the previous calendar year. When a corporation changes its accounting period ending date, gross receipts for the 12-month period ending with the new accounting period end must be used in calculating the percentage of business done in this state. See §3.412 of this title (relating to Survivors of Mergers) for information about corporations surviving mergers.

(d) Determining gross receipts. Specific rules for determining gross receipts (Texas and total) include, but are not limited to, the following.

(1) Sales of tangible personal property. Examples of transactions involving the sale of tangible personal property and which result in Texas receipts include, but are not limited to, the following:

(A) the sale of tangible personal property which is delivered in Texas to either the purchaser, a storage facility controlled by the purchaser, the transportation agent of an out-of-state purchaser, or a carrier under the control of the purchaser, with respect to the transport of the property. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or to transportation vehicles leased or owned by the purchaser. Free-on-board point, location of title passage or other conditions of the sale are not relevant to the determination of Texas gross receipts. Notwithstanding any contrary provision in this subparagraph, the sale of tangible personal property which is delivered in Texas to an independent contract carrier, common carrier, freight forwarder hired by the purchaser, or to a storage facility controlled by the purchaser, does not result in Texas gross receipts if the carrier transports or forwards the property to the purchaser outside Texas, or if the property is delivered to such storage facility due solely to a necessary in transit;

(B) the sale of tangible per-

sonal property with delivery to a common carrier outside Texas and shipment by that common carrier to a purchaser in Texas;

(C) the sale of oil or related products to an interstate pipeline company, with delivery in Texas;

(D) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser, and results in Texas gross receipts for the seller and the purchaser; and

(E) sales to which the throwback rule applies. For reports due on or after October 2, 1984, each sale of tangible personal property shipped from Texas to a purchaser in another state in which the seller is not subject to taxation (i.e., the throwback rule). This subparagraph will control if it conflicts with any other provision of this section. Another state refers to a state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States. If the corporation is doing business, has a certificate of authority, is incorporated in or required to pay tax to another state, or performs any of the activities listed in §3.406(c) of this title (relating to Foreign Corporations Doing Business in Texas: Liability for Franchise Tax) in the other state, such corporation is subject to taxation in the other state. The corporation must be subject to taxation in the other state during the accounting year upon which the tax is based.

(2) Health care supplies and food. Deductions from Texas receipts for sales of health care supplies and food exempted from sales and use tax by the Tax Code, §151.313 or §151.314(a), will be allowed only for the initial sale of items shipped from a location outside Texas directly to a purchaser in Texas. The deduction does not apply when the manufacturer ships the items from outside Texas to an outlet or storage facility in Texas and later sells them.

(3) Intercorporate expense allocations. Expense allocations by a parent corporation among one or more subsidiaries (other than allocations of income taxes for consolidated return purposes), whether recorded as management fees, administrative overhead, interest, or accounting and legal services, are gross receipts to the parent corporation regardless of whether cash is actually received from the subsidiaries, unless an agency relationship exists.

(4) Receivership. Gross receipts coming into the hands of the receiver of a corporation in receivership are gross receipts to the corporation.

(5) Regulatory agency. Temporary or bonded rate increases of a public utility corporation are gross receipts.

(6) Sales returns/allowances. Sales returns and allowances allowed by a seller are a reduction of gross receipts.

(7) State sales tax. State sales taxes collected by a seller are not gross receipts. However, discounts on sales taxes allowed a seller under the Tax Code, §151.423 or §151.424, or other similar statutes are gross receipts to the seller.

(8) Demurrage charges. Demurrage charges for the detention or storage of equipment used in the transportation of goods and merchandise in interstate commerce are Texas receipts to the extent that the detention or storage occurs within Texas.

(9) DISC/FSC. A DISC (Domestic International Sales Corporation) or a FSC (Foreign Sales Corporation) is treated the same as any other corporation doing business in Texas, except that a commission DISC or FSC may elect to use the percentage of Texas business of its parent which does business in Texas. Receipts from the sale of tangible personal property by a corporation to a DISC or FSC located in Texas are not Texas receipts if the tangible personal property flows uninterrupted from the selling corporation to a foreign purchaser outside of Texas. If a DISC or FSC assembles, packages, repackages, modifies, stores, or otherwise takes physical delivery of tangible personal property in Texas, the receipts from the sale of the tangible personal property are Texas receipts to the selling corporation.

(10) Newspapers. All revenues, including out-of-state advertisements, of a newspaper transacting its primary business activities within Texas constitute Texas receipts, except revenues from the sale of newspapers outside Texas.

(11) Radio/television. All revenues of a radio or television operation which broadcasts or transmits from stations in Texas constitute Texas receipts, even though some of the listening or viewing audiences are outside Texas, except revenues from programs filmed or otherwise developed by a station in Texas which are sold or leased to the national media for broadcasting or transmitting by the national media.

(12) Telephone company receipts. All receipts for calls of a telephone company in Texas are Texas receipts, except for receipts from interstate calls.

(13) Transactions in Texas waters. Receipts from transactions occurring in Texas waters are Texas receipts. The dividing line between Texas waters and international waters is established at 10.359 statute miles or nine nautical miles from the Texas coastline.

(14) Federal enclave. All receipts from a corporation's sales, services, leases, or other business activities transacted on a federal enclave located in Texas are Texas receipts unless otherwise excepted.

(e) Allocating gross receipts. Specific rules for allocating gross receipts (Texas and total) include, but are not limited to, the following:

(1) Capital assets and investments. Net gains and losses from sales of investments and capital assets shall be added together to determine the total receipts from such transactions. If the combination of net gains and losses results in a net loss, the corporation must report zero receipts from such transactions. If the combination of net gains and losses results in a net gain and if both Texas and out-of-state sales have occurred, a separate calculation must be made of net gains and losses on Texas sales. If the Texas net gain is greater than the net gain everywhere, the Texas net gain should be reduced to equal the net gain everywhere. Net gain on sales of intangibles held as capital assets or investments is allocated to the location of the payor. Examples of intangibles include, but are not limited to: stocks, bonds, commodities, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill and general receivable rights.

(2) Club membership fees. Club membership fees are receipts for the service of providing access to benefits and are allocated to the place where the club's employees or agents perform the service.

(3) Computer services and programs. Receipts from the sale of computer software services are allocated to the location where the services are performed. Receipts from the sale of a computer program (as the term "computer program" is defined in §3.308 of this title (relating to Computers-Hardware, Software, Services, and Sales)) are receipts from the sale of an intangible asset and are allocated to the legal domicile of the payor.

(4) Debt retirement. Gains on the retirement of a corporation's own indebtedness, such as the purchase by a corporation of its own bonds at a discount, are gross receipts and are allocated to the corporation's state of incorporation.

(5) Dividends and/or interest.

(A) Dividends and/or interest received from a corporation are allocated to the state of incorporation of the payor.

(B) Dividends and/or interest received from a national bank are allocated to Texas if the bank's principal place of business is in Texas. Dividends and/or interest received from a bank organized under the Texas Banking Code are allocated to Texas. See §3.411 of this title (relating to

Banking Corporations) for allocation of dividends and/or interest received by banking corporations.

(C) Dividends and/or interest received from the United States Treasury on United States government debt instruments are not Texas receipts, but are receipts everywhere.

(D) Dividends and/or interest received from Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), and Federal Home Loan Mortgage Corporation (FHLMC) mortgage-backed securities or certificates are allocated based on the location of the payor. When the payor cannot be determined, 15.78% of the interest or dividend will be considered a Texas receipt.

(E) Dividends and interest from any other sources are allocated to the legal domicile of the payor.

(6) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are to replace lost net profits, and are allocated based on the actual location of the business operations the interruption of which resulted in the proceeds being paid.

(B) Fire and casualty insurance proceeds in excess of the net book value of the damaged or destroyed property are gross receipts and are allocated to the location of the damaged or destroyed property.

(C) Any gain resulting from life insurance proceeds paid on the death of a corporate officer or other key personnel are gross receipts and are allocated to the corporation's commercial domicile.

(7) Leases and subleases.

(A) Receipts from the lease or sublease of real property are allocated to the location of the property.

(B) Receipts from the lease or sublease of tangible personal property are allocated to the location of the property. If the property is in Texas only part of the year, lease payments are allocated based on the number of days spent at the respective locations. If the amount of receipts due under the lease is based on mileage, then the allocation is based on the number of miles in Texas divided by the number of miles everywhere.

(C) When a lump sum is charged for property leased or subleased but

only a portion of which is in Texas, the allocation of receipts is based on the rental value of each item of property. If the rental value of each item cannot be determined, the allocation is based on the cost of each item to the lessor (or sublessor).

(D) Receipts from the lease or sublease of a vessel engaging in commerce are allocated to Texas based on the number of days engaged in commerce in Texas waters divided by the number of days engaged in commerce everywhere.

(E) If a lease, sublease, or rental of real or tangible personal property is treated as a sale under GAAP, the receipts from the transaction are allocated in the same manner as a sale. Any portion of the payments designated as interest by the contracting parties is interest receipts.

(8) Litigation awards. All litigation awards are gross receipts, except those consisting of a recovery of compensatory damages for fire or other casualty losses on property, to the extent the recovery does not exceed the net book value of the property. Litigation awards are allocated to the commercial domicile of the recipient corporation.

(9) Partnership/joint venture.

(A) Receipts reflecting the corporation's share of the net profit from a partnership or joint venture, for partnership or joint venture periods ending during the 12 months ending on the date upon which the tax is based, are allocated to the principal place of business of the partnership or joint venture. A partnership's principal place of business is the location of its day-to-day operations. Where a partnership's day-to-day operations are conducted in more than one state, then its principal place of business is its commercial domicile. If the corporation's share is a loss, there are zero receipts from the partnership or joint venture.

(B) The corporation's share of the gross receipts of a partnership or joint venture may be used as gross receipts if allowed as revenue by GAAP. The receipts must be allocated based on normal allocation rules (e.g., location of payor for dividends and interest, place where service is performed, etc.) as though the partnership did not exist and the receipts passed through it directly to the corporation. This method is not allowed for corporations using the federal income tax method.

(10) Real property. Receipts from the sale, lease, or sublease of real property are allocated to the location of the property.

(11) Receipts from use of intangible rights. A patent is used in Texas to the extent that it is utilized in production, fabri-

cation, manufacturing, or other processing in Texas. A copyright is used in Texas to the extent that printing or other publication originates in Texas. Receipts to the owner for the use of trademarks, franchises, and licenses are allocated according to the location where used.

(12) Sales and services. When a transaction involves elements of both a sale of tangible personal property and a service, and there is no documentation showing separate charges for the sale and service elements, the predominant aspect of the transaction controls how the charges are to be allocated.

(13) Service procurement. Receipts for the procurement of services are allocated to the place where the service procurement is performed.

(14) Services. Service receipts are allocated to the location where the service is performed.

(15) Stocks. Receipts from the sale of securities are allocated based on the location of the payor. When securities are sold over a stock exchange and the buyer cannot be determined, 6.5% of the net gain (or gross sales price, if the securities were inventory is a Texas receipt.

(16) Subsidies/grants. Subsidies or grants received by a corporation from a governmental agency are gross receipts, except when the funds are required to be expended dollar for dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are allocated to the location where the activity which qualified for the subsidy or grant is performed.

(17) Transportation companies. Transportation companies must report Texas receipts from transportation services by:

(A) including receipts derived from the transportation of goods or passengers in intrastate commerce; or

(B) multiplying total transportation receipts by total mileage in transporting goods and passengers picked up and delivered within Texas (in intrastate commerce) divided by total mileage everywhere.

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 May 2, 1988.

TRD-8803055

Bob Bullock
Comptroller of Public
Accounts

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

• 34 TAC §3.404

The Comptroller of Public Accounts proposes amendments to §3.404, concerning stated capital. The amendments change the definition of stated capital to reflect changes made to the Texas Business Corporation Act in House Bill 418 by the 70th Legislature, 1987. The amendments also clarify our policy concerning treasury stock and redeemable preferred stock.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Rules adopted under the Tax Code, Title 2, do not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of stated capital rules. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Debbie Angus, Supervisor of Franchise Tax Policy Section, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax. §3.404. *Stated Capital.*

(a) For franchise tax purposes stated capital has the same meaning as defined in Texas Business Corporation Act, Article 1.02. [The definition is as follows:]

[(1)] Stated capital means, at any particular time, the sum of:

[(A)] the par value of all shares of the corporation having a par value that have been issued;

[(B)] the consideration fixed by the corporation in the manner provided by the Texas Business Corporation Act, Article 2.15, [law] for all shares of the corporation without par value that have been issued, except such part of the consideration that is actually received therefore (which part must be less than all of that consideration) that the board by resolution adopted no later than 60 days after the issuance of those shares [as] may have [been] allocated to [capital] surplus [in a manner permitted by law]; and

[(C)] such amounts not included in paragraphs [subparagraphs] (1)[(A)] and (2)[(B)] of this subsection [paragraph] as have been transferred to stated capital of the corporation, whether upon the payment of [issue of shares as] a

share dividend or upon adoption by the board of directors of a resolution directing that all or part of surplus be transferred to stated capital [otherwise], minus all reductions from such sum as have been effected in a manner permitted by law.

(2) For a foreign corporation, determinations under the phrases "in a manner permitted by law" and "in the manner provided by law," are governed by the laws of the state in which the corporation is incorporated.]

(b) Treasury shares are included in stated capital until the [such time as such] shares are cancelled and restored to the status of authorized but unissued shares in accordance with the laws of the state in which a corporation is incorporated. See §3.405 of this title (relating to Surplus) for an explanation of how treasury shares affect surplus.

(c) Redeemable preferred stock is included in stated capital, unless it is debt. [If treasury shares are purchased at a premium, the amount in excess of par, or in excess of the consideration fixed by the corporation for shares without par value, reduces surplus accounts to the extent of credit balances in such accounts. If treasury shares are purchased at a discount, the amount of the discount must be included in taxable surplus. These circumstances illustrate instances in which surplus for franchise tax purposes does not agree with surplus reflected on the books of a corporation.]

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 March 23, 1988.

TRD-8803056 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 2, 1988

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

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• 34 TAC §3.405

The Comptroller of Public Accounts proposes new §3.405 concerning surplus, to replace existing §3.405, concerning surplus and undivided profits, that is being repealed. The new section is needed due to major changes to franchise tax enacted by the 70th Legislature, 1987. With certain specified exceptions, all corporations must report their franchise tax using generally accepted accounting principles unless the corporation's surplus is less than \$1 million as determined by the method used to compute its federal income tax, in which case the corporation may report its franchise tax using generally accepted accounting principles or the method used to compute its federal income tax. This new section clarifies the reporting of a corporation's surplus for franchise tax purposes.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section. Rules adopted under the Tax Code, Title 2, do not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of new information regarding individuals' tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Debbie Angus, Supervisor of Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

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

§3.405. Surplus.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

(b) Date upon which based. A corporation filing an annual report must report surplus based on its last accounting period ending date in the previous calendar year, or, if there is no accounting period ending in the previous calendar year, then as of December 31 of the previous calendar year. See §3.412 of this title (relating to Survivors of Mergers) for information about corporations surviving mergers.

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

(1) Unrealized, estimated or contingent loss or obligation—An appropriation of retained earnings for any purpose or an account established to record a loss or obligation reasonably anticipated to occur and the amount of which is subject to reasonable estimation as of the date on which the tax is based (e.g., self-insurance, warranty, litigation).

(2) Write-down of assets—Any reduction or offset of the cost of an asset through use of a valuation, allowance, reserve or contra-asset account, or through direct write-off of the asset (except a write-off to reflect the asset's permanent decline in value).

(3) Depletion—The accounting process of allocating the cost of natural resources to expense in a systematic and rational manner over the period during which the natural resources are consumed.

(4) Depreciation—The accounting process of allocating the cost of tangible

assets to expense in a systematic and rational manner over the period expected to benefit from the use of assets.

(5) Amortization—The accounting process of allocating the cost of assets (other than goodwill) to expense in a systematic and rational manner over the period expected to benefit from the use of the assets.

(6) Tax effect—Any change in cumulative federal income tax liability which results from the different accounting treatment of a transaction for financial accounting purposes than that accorded for federal income tax purposes.

(7) Investee—An enterprise which issues voting stock held by an investor.

(d) General rules of application.

(1) Accounting methods.

(A) Installment sales. In reporting sales made on an installment basis, the installment sales method of accounting is acceptable for franchise tax purposes only when GAAP (as defined in §3.391 of this title (relating to Accounting Methods)) allows its use.

(B) Partnerships/joint ventures. In reporting an investment in a partnership or joint venture, the equity method of accounting must be used.

(C) Oil and gas corporation. All oil and gas exploration and production activities must be reported according to the successful efforts or the full cost methods of accounting even if surplus is less than \$1 million as determined in accordance with the Tax Code, §171.109(c).

(D) Other. For more information on methods of accounting for franchise tax purposes, see §3.391 of this title (relating to Accounting Methods).

(2) Tax effect. The amount of any surplus adjustment must be reported net of any accompanying tax effect.

(3) Intercompany tax accounts. A liability account for income taxes owed by one member of a consolidated group to a second member of the group is excluded from the surplus of the first member only if the related receivable account is included in the surplus of the second member. Intercompany tax accounts must be reported on a consistent basis among members of the same consolidated group.

(4) S corporations. An S corporation must calculate its franchise tax in the same manner as any other corporation. For example, accumulated and other adjustment accounts, are included in surplus, as are previously taxed income, accumulated earnings and profits, and all other amounts in-

cluded in the surplus of any other corporation.

(e) Specific rules. Specific rules of application include, but are not limited to, the following.

(1) Amortization of goodwill. The amortization of goodwill resulting from acquisition of an ownership interest in a subsidiary or other investee corporation is included in surplus.

(2) Deferred investment tax credit. Deferred investment tax credit is included in surplus.

(3) Foreign currency transactions. Realized gains, unrealized gains and unrealized losses resulting from foreign currency transactions are included in surplus, while realized losses are excluded from surplus.

(4) Foreign currency translations. Unrealized gains resulting from translations of foreign currency are excluded from surplus.

(5) Income taxes payable. Amounts accrued in excess of actual liability for income taxes relating to current or prior periods (e.g., amounts accrued which relate to a period under IRS audit which has not been agreed to by the corporation) are included in surplus.

(6) Employee benefits. Liabilities for employee compensation and benefits (e.g., pensions, bonuses, vacations) are included in surplus to the extent that they are not debt.

(7) Public utility corporations. Revenue from temporary or bonded rate increases of a public utility company is included in surplus.

(8) Treasury stock. The amount paid for treasury shares is excluded from surplus only to the extent that credit balances in unrestricted equity accounts exceed accrued cumulative preferential dividends. See also §3.404 of this title (relating to Stated Capital).

(9) Write-off of assets. A direct write-off of all or a portion of the cost of an asset to reflect a permanent decline in the asset's value, the direct cause of which is a specifically identifiable event, is excluded from surplus.

(10) Redeemable preferred stock. Redeemable preferred stock is not included in surplus if it is debt.

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 March 23, 1988.

TRD-8803057

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 2, 1988

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

• 34 TAC §3.413

The Comptroller of Public Accounts proposes an amendment to §3.413, concerning franchise tax reports and payments. The amendment clarifies a policy change that initial reports no longer need to be preprinted. The amendment also clarifies policy concerning jeopardy determination, which are the result of legislation by the 70th Legislature, 1987. The amendment states that the annual tax rate of \$6.70 and minimum tax of \$150 applies to tax periods from May 1, 1988, through April 30, 1990.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Rules adopted under the Tax Code, Title 2, do not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of rules and policies concerning jeopardy determinations and initial report forms and to provide an effective date for that rate increase. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Debbie Angus, Supervisor, Franchise Tax Policy Section, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax. §3.413. *Franchise Tax Reports and Payments.*

(a) Reports and due dates.

(1) Except as provided in subsection (f) of this section, each domestic and foreign corporation subject to the franchise tax levied by the Texas Tax Code, §171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(B) Both the initial report and payment of the tax due in excess of the \$100 initial franchise tax deposit (prepayment), if any, are due no later than 89 days after the first anniversary date of the charter of a Texas corporation, or from the date of the certificate of authority or beginning of business in Texas of a foreign corporation, whichever is earlier. The initial franchise tax report and payment are for the periods beginning on the date of the charter, certificate of authority, or beginning of business in Texas and ending on April 30 following the first anniversary of the charter, certificate, or beginning of business in Texas. For example, if a Texas corporation is chartered on June 1, 1985, the payment due with the initial report will be for the tax periods from June 1, 1985, through April 30, 1987. In addition, when the first anniversary occurs during the period from October 4 through April 30, there must also be computed and paid with the initial report an additional year's tax for the franchise tax year beginning on May 1 following the first anniversary and ending on April 30 of the succeeding year. For example, if a Texas corporation is chartered on November 1, 1985, the payment due with the initial report will be for the tax periods from November 1, 1985, through April 30, 1988. The report and tax (including the additional year's tax when applicable) must be based on and computed in accordance with the corporation's financial condition as of the end of the month nearest its first anniversary. This closing date may fall within the same calendar year as the normal annual closing date to be used for the corporation's first annual franchise tax report. On occasion, the date used for the corporation's first annual report will be prior to the date used for the corporation's initial franchise tax report. For example, if a Texas corporation is chartered on June 1, 1985, and has a normal accounting year end of March 31, its initial report (due August 29, 1986) will be based on the financial condition of the corporation as of May 31, 1986. However, its first annual report (due March 15, 1987) will be based on the financial condition of the corporation as of March 31, 1986. Each of these reports covers a different tax period; no overlapping of liability or double taxation occurs. For example, in the previous example, the initial report was for the tax periods from June 1, 1985, through April 30, 1987. The first annual report was for the tax period from May 1, 1987, through April 30, 1988. [The corporation must submit its initial franchise tax report on the preprinted report form furnished by the comptroller. If this form is not received or is lost, an additional copy must be requested from the Tax Administration Division, P.O. Box 13528, Austin, Texas 78711, (512) 463-4600 or toll free from anywhere in Texas 1-800-252-5555.]

(A) (No change.)

(C)-(E) (No change.)

(2) (No change.)

(b) Penalty and interest.

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

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the U.S. Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under §111.022, of 10% of the amount of tax and interest assessed will be added.

(5)[(4)] If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.

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

(f) If a jeopardy determination is issued to a corporation for an estimated tax liability on an annual reporting period, payment of the estimated liability, plus applicable penalty and interest, shall satisfy the reporting requirements set forth in §171.202.

(g) An annual tax rate of \$6.70 per \$1,000 of net taxable capital and an annual minimum tax of \$150 applies to May 1, 1988, through April 30, 1990, of any tax period.

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 March 23, 1988.

TRD-8803058 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 2, 1988

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

Subchapter W. Amusement Machine Regulation

• 34 TAC §3.601

The Comptroller of Public Accounts proposes an amendment to §3.601, concerning definitions. The amendment clarifies the definition of amusement machines and restricts when a machine will not be considered a machine for the purchase of calculating the license fee.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed sec-

tion is 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. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be continued regulation of amusement machines in the state. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.601. Definitions.

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

Machine or amusement machine—In the sections published by the comptroller relating to the Coin-Operated Services Law, all machines which vend music, skill, or pleasure. The term "machine," as used in these sections, does not include service machines or machines which dispense a product. Coin-operated machines which dispense a product that require skill or pleasure to activate the dispensing of a product constitutes a machine played for skill or pleasure. A machine is subject to tax if it is coin-operated for music, skill, or pleasure, capable of independent operation and independent viewing in an independent cabinet with separate activating coin mechanisms whether displayed separately or in series, and regardless of [or] any central electrical, mechanical, or manual component, shall be considered separate machines in regard to occupation tax requirements. A machine which is no longer functional, and has been permanently taken out of service, will not be considered to be a coin-operated machine operated for music, skill, or pleasure. A machine only temporarily taken out of service is a machine subject to the annual occupation tax. A machine permanently taken out of service means a machine which is no longer functional of independent operation and [or] will be used only for parts. No longer functional means that it is no longer financially practical to operate the machine.

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 March 25, 1988.

TRD-8803059 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 2, 1988

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

• 34 TAC §3.602

The Comptroller of Public Accounts proposes an amendment to §3.602, concerning license and registration certificate renewal and occupation tax permit renewal due dates. This amendment clarifies when occupation tax is due on coin-operated machines.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be continued regulation of amusement machines in the state. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Texas Civil Statutes, Article 8807(1), which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.602. License and Registration Certificate Renewal and Occupation Tax Permit Renewal Due Dates.

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

(c) Quarterly occupation tax.

(1) Each amusement machine is subject to the occupation tax at the [first moment in] time a person [owns, controls, possesses,] exhibits, displays, or permits a machine to be exhibited or displayed in this state with the exception of annual renewals. The occupation tax for annual renewals for each machine a person [owns, controls, possesses,] exhibits, displays, or permits a machine to be exhibited or displayed in this state is due November 30 of each year.

(2) The following rate schedule will be applicable to machines purchased or obtained to [own, control, possess,] exhibit, display, or purchased or obtained to permit a machine to be exhibited or displayed in this state during any quarter of the calendar year: Tax Rate Schedule—all coin-operated machines for music, skill, or pleasure: first quarter, January 1-December 31—\$30; second quarter, April 1-December 31—\$22.50; third quarter, July 1-December 31—\$15; fourth quarter, October 1-December 31—\$7.50.

(3) (No change.)

This agency hereby certifies that the proposal

has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 25, 1988.

TRD-8803060

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 2, 1988

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. ICF-MR

Subchapter UUUU. Support Documents

• 40 TAC §27.9801

The Texas Department of Human Services (TDHS) proposes an amendment to §27.9801, concerning reimbursement methodology for intermediate care facilities for the mentally retarded (ICF-MR). The proposed amendment describes a case mix reimbursement pilot project that TDHS is conducting in six selected ICF-MR facilities in cooperation with the Texas Department of Mental Health and Mental Retardation (TDMHMR). The pilot project will last two and a half years: from January 1, 1988 - June 30, 1990. The purpose of the pilot project is to test the effectiveness of the case mix payment methodology for the Medicaid ICF-MR program.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the two-and-a-half-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. Packard also has determined that for each year the section is in effect the public benefit anticipated as a result of enforcing the section will be to tie payments more closely to the service needs of clients. 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 - 146, 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, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.

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

(g) Rate setting methodology;

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

(4) Experimental class. TDHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(A) Case mix payment pilot project. TDHS is conducting a pilot project in cooperation with the Texas Department of Mental Health and Mental Retardation (TDMHMR) from January 1, 1988 - June 30, 1990. This pilot project tests a case-mix reimbursement methodology in selected ICF-MR facilities for two and a half years. TDHS and TDMHMR will conduct phase one of the pilot in six selected facilities from January 1, 1988 - June 30, 1989;

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

(i) Project staff—TDHS or TDMHMR personnel responsible for implementing the case-mix payment pilot project;

(ii) State agencies—Either TDHS or TDMHMR or both;

(C) Selected facilities. The selected facilities for phase one of the pilot project are;

(i) Ada Wilson Hospital;

(ii) The Children's Center of Austin;

(iii) Crossroads Development Center;

(iv) Denton Development Center;

(v) Human Development Center; and;

(vi) Thomas Care Center;

(D) Required participation. Each ICF-MR facility identified in subparagraph (C) of this paragraph must participate in the pilot project as long as

the facility remains under contract with the Medicaid Program;

(i) Contract cancellation. A selected facility can not participate during any period in which its Medicaid contract is cancelled. A selected facility must participate in the pilot project upon recontracting for Medicaid. Failure of a selected facility to participate upon recontracting may result in the application of sanctions against that facility as described in §27.2505(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements);

(ii) ICF-MR facility on vendor hold. A selected facility placed on vendor hold during the pilot project must continue to participate in the pilot project. Failure of a selected facility to participate while on vendor hold may result in the application of sanctions against that facility as described in §27.2505(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements);

(iii) Change of ownership. If a selected facility's ownership changes, the new owner(s) must participate in the pilot project upon contracting with Medicaid;

(iv) Failure to comply with rules. Failure of a selected facility to comply with the rules of the pilot project stated in this paragraph may result in the application of sanctions against the selected facility as described in §27.2505(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements);

(E) Administrative payment. State agencies pay a fee of \$10 for each Initial Client Assessment Profile (CAP) that selected facilities complete from March 1, 1988 - May 1, 1988. The fee is intended to cover administrative costs incurred as a result of participation in phase one of the pilot project. If a selected facility is placed on vendor hold during the pilot project or if its Medicaid contract is cancelled, state agencies defer payment of the fee until the vendor hold is removed or the facility enters into a new Medicaid contract;

(F) Case-mix assessment of clients. Each selected facility must complete CAP forms for every Medicaid and consenting non-Medicaid client living in the facility. Selected facilities must attempt to obtain written consent to participate in the pilot project from all their non-Medicaid clients. The written consent must be signed by the client, the client's parents in the case of a minor, or the client's legal guardian. Each selected facility's CAP forms must be completed

and signed by a trained Qualified Mental Retardation Professional (QMRP) on the facility's staff. State agency project staff train all designated CAP assessors. CAP assessment forms are completed and submitted at the following times during phase one of the pilot project;

(i) Initial CAP form completions. On a schedule determined by state agency project staff, selected facilities complete CAP forms for all Medicaid and consenting non-Medicaid clients living in the facilities at the outset of phase one.;

(ii) Subsequent CAP form completions. Selected facilities also complete a CAP form for each Medicaid and consenting non-Medicaid client who is admitted to the facility for the first time or enters the Medicaid program after phase one has begun. Selected facilities must complete these assessments within 37 days of the client's admission to the facility or entry into the Medicaid program. Participating facilities submit these assessments to the ICR-MR Case Mix Project, Texas Department of Human Services, Economic Analysis Division 142-E, P.O. Box 2960, Austin, Texas 78769.;

(iii) Reassessment of clients. A selected facility may submit an off-cycle assessment for a Medicaid client or consenting non-Medicaid client if the client's condition or functioning changes to the extent that the client qualifies for a different case mix group in the case mix classification system described in clause (ii) of subparagraph (H). No more than two reassessments may be initiated by the facility for any one client during phase one of the pilot project. Reassessments must be submitted to the address specified in clause (ii) of this subparagraph. A state agency reviewer reviews each reassessment.;

(iv) Assessment limitation. CAP assessments for rate setting purposes are limited to the assessment periods described in clauses (i), (ii), and (iii) of this subparagraph.;

(G) Review of CAP forms. To evaluate the accuracy of assessments and adherence to CAP form instructions, state agency project staff conduct a 100% desk review and a reassessment of a 20% selected sample of completed CAP forms on-site. At their discretion, project staff may reassess a more extensive sample than 20%. Before final assignment of a client to a Texas Index for Level of Effort for ICF-MR (TILE-MR) category, project staff correct any errors detected in the CAP review in order to accurately represent the client's condition and functioning level.;

(H) Case mix payment

methodology. The following case mix payment methodology is implemented in all selected facilities during phase one of the pilot project.;

(i) Cost center affected. The case mix payment methodology applies only to the resident care cost center.;

(ii) Case mix classification system. Medicaid clients in selected facilities are assessed using the CAP assessment form and are classified according to the TILE-MR classification system. The TILE-MR classification system includes three age categories, which are further subdivided on the basis of functional abilities, for a total of 13 case mix groups. Each case mix group is assigned a case mix weight unique to the group. The case mix weight indicates the relative amount of staff time required to deliver direct care to clients in that group. Case mix weights for TILE-MR groups are determined through statistical and clinical analyses of client resource utilization data previously collected in a sample of Texas ICF-MR facilities.;

(iii) Case mix rate setting methods. Per diem rates are determined for each of the 13 TILE-MR groups according to the following procedures.;

(I) Average resident care price. Calculate the average resident care price by.;

(-a-) determining the statewide uniform class rate, including the supplemental reimbursement rate where eligible, associated with the level of care assigned to each client in the selected facilities at the time of the initial assessment; and;

(-b-) computing the average of the resulting client rates.;

(II) Case mix pricing factors. To determine the case mix pricing factors, standardize the case mix weight from clause (ii) of this subparagraph by dividing the case mix weight for each of the 13 TILE-MR groups by the weighted average case mix weight for the selected facilities at the time of the initial assessment.;

(III) Case mix resident care per diem rate components. Calculate the resident care per diem rate components for each of the 13 TILE-MR groups by multiplying the case mix pricing factors from subclause (II) of this clause by the average resident care price from subclause (I) of this clause.;

(IV) Total case mix payment rates. The total per diem rate for each of the 13 TILE-MR groups is the sum of the case mix resident care per diem rate component calculated in subclause (III) of this clause for each group, plus the dietary, facility, and administration per diem rate components from the statewide uniform class rate methodology.;

(V) Effective date of case mix rates. The case mix per diem rate associated with each client remains in effect until the statewide uniform class rates change or the client changes TILE-MR groups.;

(iv) Special rate adjustments. Two special rate adjustments are automatically applied to selected facilities that would receive lower revenues under case mix rates than under current individual facility rates. If a selected facility qualifies for both adjustments, the larger of the two is applied.;

(I) Historical expenditure provision (HEP). This upward rate adjustment is based on comparison of the resident care component of the case mix payment rate, the resident care current individual facility payment rate, and an estimate of the per diem historical expenditure rate in the resident care cost center for each selected facility.;

(-a-) Definition of the per diem HEP historical expenditure rate in the resident care cost center. This historical expenditure rate is a per diem rate calculated on the basis of a valid cost report in the current Medicaid ICF-MR cost report data base. The current statewide Medicaid reimbursement methodology is applied to this cost report to arrive

at a per diem cost for the resident care cost center and then to inflate that cost to the midpoint of the current statewide rate period.;

(-b-) Qualification for the HEP adjustment. To qualify for a HEP adjustment, a selected facility must have a valid cost report in the current ICR-MR cost report data base and must meet two additional conditions.:

(-c-) Amount of the HEP adjustment. The HEP adjustment bases the monthly payment to the selected facility on the current individual facility rates or the selected facility's HEP historical expenditure rate, whichever results in the lower payment.;

(-d-) Monthly determination of eligibility for and amount of the HEP adjustment. TDHS determines the eligibility for and the amount of HEP adjustments on a monthly basis. To allow time for collection of complete billing information, TDHS makes its determinations approximately 120 days after the end of the month. If a selected facility qualifies for a HEP adjustment for a particular month, TDHS includes the appropriate adjustment amount in the selected facility's payment following the determination.;

(II) Stop loss insolvency provision (SLIP). This upward rate adjustment is based on comparison of the case mix payment rate, the current individual facility payment rate, and an estimate of the per diem historical expenditure rate across all cost centers for each selected facility.

(-a-) Definition of the per diem SLIP historical expenditure rate. This historical expenditure rate is a per diem rate calculated on the basis of a valid cost report in the current Medicaid ICF-MR cost report data base. The current statewide Medicaid reimbursement methodology is applied to this cost report to arrive at a per diem total cost across all cost centers and then to inflate that cost to the midpoint of the current statewide rate period. This inflated per diem total cost serves as the per diem historical expenditure rate for the application of SLIP.;

(-b-) Qualification for the SLIP adjustment. To qualify for a SLIP adjustment, a selected facility must have a valid cost report in the current Medicaid ICF-MR cost report data base and must meet two additional conditions.:

(-c-) Amount of the SLIP adjustment. The SLIP adjustment bases the monthly payment to the selected facility on the current individual facility rates or the selected facility's SLIP historical expenditure rate, whichever results in the lower payment.;

(-d-) Monthly determination of eligibility for and amount of the SLIP adjustment. TDHS determines the eligibility for and the amount of SLIP adjustments on a monthly basis. To allow time for collection of complete billing information, TDHS makes its determinations approximately 120 days after the end of the month. If a selected facility qualifies for a SLIP adjustment for a particular month, TDHS includes the appropriate adjustment amount in the selected facility's payment following the determination.;

(III) Selected facilities without valid cost reports. A selected facility without a valid cost report in the current Medicaid ICF-MR cost report data base can not receive either a HEP or a SLIP adjustment.;

(IV) Selected facilities with management or ownership changes. A selected facility that has changed management or ownership may choose whether or not TDHS uses the previous management's or ownership's cost report, which is included in TDHS's Medicaid ICF-MR cost report data base, in determining eligibility for a HEP or a SLIP adjustment. If the new management or ownership chooses to rely on the previous management's or ownership's cost report, the selected facility may be eligible for a HEP or a SLIP adjustment. The facility is not eligible for these adjustments, however, if the new management or ownership chooses not to rely on the previous management's or ownership's cost report. A selected facility must notify TDHS in writing that the facility wants TDHS to use the previous management's or ownership's cost report. Otherwise, in determining eligibility for a HEP or a SLIP adjustment, TDHS treats the selected facility as a facility without a valid cost report in the data base. The selected facility sends its written notification to the address specified in subparagraph (F)(ii) of this paragraph. TDHS must receive the written notification

within 30 days after the effective date of this amendment for management or ownership changes completed on or before July 1, 1988, or within 30 days after management or ownership changes completed after July 1, 1988. A selected facility can not reverse its choice regarding TDHS's use of the previous management's or ownership's cost report during the pilot project.;

(v) Phase-in of case mix payment system. The case mix payment system is phased in for selected facilities over twelve months of phase one of the pilot project. The phase-in involves per diem payments based on a blending of the current individual facility rates and the total case mix payment rates. These blended current individual facility rates and case mix payment rates are considered the total case mix payment rates for the purposes of calculating HEP and SLIP adjustments during the phase-in. The schedule for the phase-in is as follows.;

(I) First quarter.
From July 1, 1988 - September 30, 1988, payments to facilities are based 75% on the current individual facility rates and 25% on the case mix rates.;

(II) Second quarter.
From October 1, 1988 - December 31, 1988, payments to facilities are based 50% on the current individual facility rates and 50% on the case mix rates. ;

(III) Third quarter.
From January 1, 1989 - March 31, 1989, payments to facilities are based 25% on the current individual facility rates and 75% on the case mix rates.;

(IV) Fourth quarter.
From April 1, 1989 - June 30, 1989, payments to the selected facilities are based 100% on the case mix rates.;

(I) Spending requirement. Selected facilities that receive a greater payment under the case mix payment methodology than they would have received under statewide uniform class rates must spend 90% of the total payment due to the facility on allowable costs. TDHS evaluates compliance with this spending requirement by comparing cost report expenditures from a selected facility's fiscal year cost report, as described in subsection (b) of this section, to payments due to the facility for Medicaid clients.

(i) Determination of required per diem spending floor. The per diem spending floor is 90% of the total payment due to the facility for Medicaid clients during the cost reporting period divided by the number of Medicaid days of service for the cost reporting period.

(ii) Determination of allowable per diem expenditure. The current statewide Medicaid reimbursement methodology is applied to the cost report to arrive at the allowable per diem expenditure.

(iii) Adjustment resulting from the spending requirement. If the allowable per diem expenditure determined in clause (ii) of this subparagraph is less than the required per diem spending floor determined in clause (i) of this subparagraph, then the difference between the allowable per diem expenditure and the required per diem spending floor is the amount of overpayment due to TDHS for each Medicaid day of service for the cost reporting period. TDHS notifies selected facilities of overpayments and arranges methods of repayment on an individual basis.

(J) Reviews of client TILE-MR assignments, special rate adjustment qualification, and noncompliance with the spending requirement. A provider who disagrees with decisions regarding assignment of a client into a particular TILE-MR category, the qualification for a special rate adjustment, or noncompliance with the care spending requirement may request a review of the decisions. Within 10 calendar days following notification of the decision, the provider must write to the address specified in subparagraph (F)(ii) of this paragraph, and request a review. At the earliest possible date for all parties concerned, state agencies arrange a review at which the provider may present information supporting his disagreement with the decisions in question. Two TDHS project staff members and one TDMHMR project staff member consider the provider's case and render a written decision within 30 days of the review.

(K) Facility information sheet. Each selected facility must complete a facility information sheet before July 1, 1988, and thereafter as required by state agency project staff.

(L) Allowable costs. The provisions defining allowable and unallowable costs in subsections (c) through (e) of this section apply to expenses incurred in the case mix pilot project. Special expenses incurred as a direct and necessary result of participation in the pilot project are also allowable.

(M) Nonapplicable paragraphs. Paragraphs (5) and (6) of this subsection regarding the provider's customary charge and the supplemental reimbursement rate do not apply to selected facilities during the case mix pilot project.

(5)-(6) (No change.)

(h) (No change.)

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

Issued in Austin, Texas, on March 28, 1988.

TRD-8803084

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

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

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Withdrawn Sections

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 5. Transportation Division

Subchapter K. Safety Requirements

16 TAC §5.171, §5.172

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed repeals of §5.171, and §5.172, submitted by the Railroad Commission of Texas, have been automatically withdrawn, effective March 28, 1988. The repeals proposed appeared in the September 25, 1987, issue of the *Texas Register* (12 TexReg 3349).

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.

TRD-8803139

Filed: March 28, 1988

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed amendments to §5.171 and §5.172, submitted by the Railroad Commission of Texas have been automatically withdrawn, effective March 28, 1988. The amendments as proposed appeared in the September 25, 1987, issue of the *Texas Register* (12 TexReg 3349).

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.

TRD-8803138

Filed: March 28, 1988

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 115. Volatile Organic Compounds

Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

• 31 TAC §§115.131-115.135

The Texas Air Control Board has withdrawn from consideration for permanent adoption a proposed amendment which appeared in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3526). The effective date of this withdrawal is March 24, 1988.

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 March 24, 1988.

TRD-8802991

Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: March 24, 1988

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

Vent Gas Control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

• 31 TAC §115.163, §115.164

The Texas Air Control Board has withdrawn from consideration for permanent adoption a proposed amendment which appeared in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3528). The effective date of this withdrawal is March 24, 1988.

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 March 24, 1988.

TRD-8802992

Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: March 24, 1988

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

• 34 TAC §3.391

The Comptroller of Public Accounts has withdrawn from consideration for permanent adoption a proposed new section which appeared in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4106). The effective date of this withdrawal is April 15, 1988.

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 March 25, 1988.

TRD-8803061

Wade Anderson
Rules Coordinator
Comptroller of Public
Accounts

Filed: March 25, 1988

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

• 34 TAC §3.403

The Comptroller of Public Accounts has withdrawn from consideration for permanent adoption a proposed new section which appeared in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4108). The effective date of this withdrawal is April 15, 1988.

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 March 25, 1988.

TRD-8803062

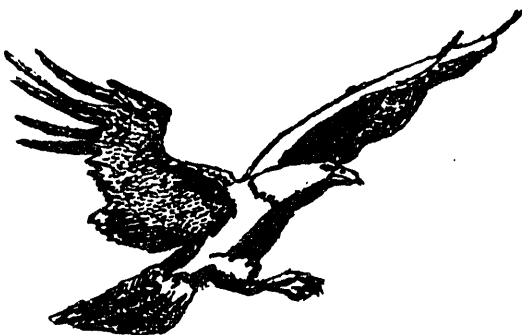
Wade Anderson
Rules Coordinator
Comptroller of Public
Accounts

Filed: March 25, 1988

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

• 34 TAC §3.404

The Comptroller of Public Accounts has withdrawn from consideration for permanent



adoption a proposed amendment which appeared in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4112). The effective date of this withdrawal is April 15, 1988.

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 March 25, 1988.

TRD-8803083

Wade Anderson
Rules Coordinator
Comptroller of Public
Accounts

Filed: March 25, 1988

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

Name: Randy Visentine

Grade: 7

School: Clear Lake Intermediate, Clear
Creek

◆ ◆ ◆
• 34 TAC §3.405

The Comptroller of Public Accounts has withdrawn from consideration for permanent adoption a proposed new section which appeared in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4112). The effective date of this withdrawal is April 15, 1988.

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.

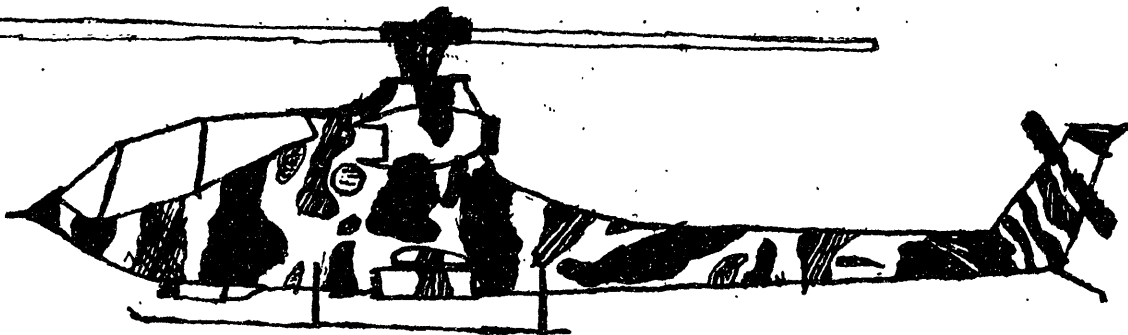
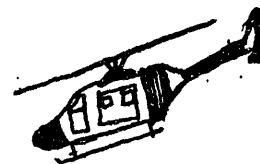
Issued in Austin, Texas on March 25, 1988.

TRD-8803084

Wade Anderson
Rules Coordinator
Comptroller of Public
Accounts

Filed: March 25, 1988

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



RANDY
VISENTINE

Adopted Sections

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

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

TITLE 4: AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 9. Agricultural and Environmental Sciences Division

Rose Grade and Regulations

• 4 TAC §§9.10, 9.12, 9.13

The Texas Department of Agriculture (TDA) adopts new §9.10 and amendments to §9.12 and §9.13. Section 9.13 is adopted with changes to the proposed text published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4506). Sections 9.10 and 9.12 are adopted without changes to the proposed text and will not be republished.

Amendments to §9.12 and §9.13 and new §9.10 are adopted in order to upgrade existing labeling and grade standards for roses sold or offered for sale in Texas. New §9.10 updates terminology used in Chapter 9 to be consistent with terminology currently used in the industry. Changes in labeling requirements of §9.12 are made in order to give TDA inspectors and consumers information on the grade and origin of roses being purchased. The language of the proposal on this section was changed to clarify that all rose bushes must have the name and address of the grower or packer affixed. Changes in grade standards are made to upgrade existing standards and to add grade and container standards for container grown roses. A new grade category has been added to allow for the grading of roses that are not Grade 2, but are not unmarketable.

New §9.10 adds definitions to be used in Chapter 9. The amendment to §9.12 requires the identification of roses as to grade, requires that all rose bushes have printed on the bush package or container the name and address of the packer or grower, and requires that nonestablished container rose stock be labeled using the word "nonestablished". Amendments to §9.13 add a minimum cane length for packaged roses, add pruning recommendations for container grown or nonestablished rose stock, upgrade grade standards for Number 11/2 and number two Grade, add a number three grade standard, and add grade and container standards for container grown roses. Definitions for cull and row run have been moved from this section to new §9.10, and the definition for the term "ungraded" has been deleted.

The public hearing in Tyler on the proposed changes to the rose regulations was well attended by individual rose producers in the Tyler area. The primary request of those at-

tending was that the regulations be made effective at a date which would give them time to come in compliance with the new requirements. All of those commenting supported this request, and the department has responded by making the final rule effective June 1, 1988.

A secondary concern presented by those attending the public hearing was that TDA's rose regulations were not consistent with new standards being considered by the American Association of Nurserymen (AAN) and that this inconsistency will lead to confusion and will be a problem for producers who sell outside of Texas. In regard to the proposed AAN changes, a recommendation was made that TDA delete the use of the term "baby roses" and change the existing category to Polyantha-low growing floribunda roses. The reason given was that the term "baby roses" is not widely used and that all baby roses will eventually be categorized as miniature roses.

Finally written comments received from a rose producer expressed concern over the use of the term "nonestablished" because it is not a term understood by the consumer and is a term which has negative connotation.

TDA agrees that the AAN standards and the rose regulations adopted for use in Texas should be consistent with one another. However, because the amendments proposed by TDA as published in the December 4 issue of the *Texas Register* did not include a proposed deletion of the baby rose category, the department does not feel that such a change is appropriate at this time. Notice of such a change must be provided to all interested parties so that they may have an opportunity to comment. TDA is considering proposing a deletion of the baby rose category in the near future.

In regard to adoption of the proposed AAN standards, it is our understanding that the standards being considered have not been adopted and will not be adopted until 1990. Because of this and because of the need for proper notice of any full adoption of AAN Standards, TDA feels it is not appropriate to adopt the proposed AAN standards at this time. However, until such time as a final version of AAN standards is adopted, the TDA will work to upgrade the Texas rose regulations in accordance with industry practice and existing AAN standards.

TDA disagrees that another term should be substituted for the term "nonestablished" is commonly used by the rose growing industry and is included in the American nursery standards and by other states that have nursery standards. TDA believes that the use of the term is necessary to be consistent with current industry practices.

The amendments and new section are pro-

posed under the Texas Agriculture Code §121.001 and §121.007, which provides the Texas Department of Agriculture with the authority to, after notice and hearing, adopt rules and prescribe procedure for the inspection, grading, and labeling of all rose plants sold or offered for sale in Texas.

§9.1. Labeling.

(a) General.

(1) Roses will be identified as to grade by labels bearing the required designation attached to each rose bush.

(2) Whenever a grade-size designation is used in labeling the rose, roses, or cuttings or shipments, it shall be minimum size and not more than 10% of the roses in any lot shall be below the size specified and shall be of the next lower grade. The rose, roses, or cuttings, or shipments thereof shall be labeled according to grade in distinctly legible bold face type, not less than 1/8", 14 point type in height.

(3) (No change.)

(b) Specific.

(1) Single rose bushes packed and sold or offered for sale must bear a designated grade on each individual package and/or container.

(2) Effective June 1, 1989, all rose bushes must have printed on the rose package or container the name and address of the packer or grower.

(3) Nonestablished container rose stock shall be designated and so labeled by the processor using the word "Nonestablished".

(4) Roses sold bare-root must be in bundles of not more than 20 to a bundle and each bundle must bear a designated grade.

(5) Roses sold row-run may be so designated by invoice.

(6) A retailer may display container or bare root roses by showing designation as to grade on outside of display bin.

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 March 28, 1988.

TRD-8803081

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Effective date: June 1, 1988

Proposal publication date: December 4, 1987
For further information, please call: (512) 463-7583

TITLE 28. INSURANCE

Part II. Industrial Accident Board

Chapter 51. The Award of the Board

• 28 TAC §51.7

The Industrial Accident Board adopts new §51.7, without changes to the proposed text published in the February 5, 1988, issue of the *Texas Register* (13 TexReg 588).

The board adopts this section, prohibiting a single attorney from representing beneficiaries with adverse claims for death benefits, because of the conflict of interest inherent in such representation.

This new section is added to the chapter regulating legal representation of claimants.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation 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 March 28, 1988.

TRD-8803079 Scott McAnally
Executive Director
Industrial Accident Board

Effective date: April 18, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 448-7962

Chapter 53. Carriers Report of Initiation and Suspension of Compensation Payments

• 28 TAC §53.22

The Industrial Accident Board adopts new §53.22, without changes to the proposed text published in the February 5, 1988, issue of the *Texas Register* (13 TexReg 589).

This section, enabling parties to alter the frequency with which benefits are paid, is adopted because the board believes that both parties will benefit from flexibility in structuring their economic relationship.

The new section creates a procedure for parties to apply for board approval to change the frequency of payment of compensation benefits.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil

Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation 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 March 28, 1988.

TRD-8803077 Scott McAnally
Executive Director
Industrial Accident Board

Effective date: April 18, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 448-7962

Chapter 55. Lump Sum Payments

• 28 TAC §55.50

The Industrial Accident Board adopts an amendment to §55.50, without changes to the proposed text published in the February 5, 1988, issue of the *Texas Register* (13 TexReg 589).

The board adopts this amendment prohibiting one attorney from representing beneficiaries with adverse claims for death benefits because of the conflict of interest inherent in such representation.

This section lists board rules regulating legal representation of claimants, and applies them specifically to claims resolved by settlement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation 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 March 28, 1988.

TRD-8803078 Scott McAnally
Executive Director
Industrial Accident Board

Effective date: April 18, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 448-7962

Chapter 56. Structured Compromise Settlement Agreements

• 28 TAC §56.40

The Industrial Accident Board adopts an amendment to §56.40, without changes to the proposed text published in the February 5, 1988, issue of the *Texas Register* (13 TexReg 589).

The board adopts this amendment prohibiting one attorney from representing beneficiaries with adverse claims for death benefits because of the conflict of interest inherent in such representation.

This section lists board rules regulating legal representation of claimants, and applies them specifically to claims resolved by structured settlement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation 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 March 28, 1988.

TRD-8803076 Scott McAnally
Executive Director
Industrial Accident Board

Effective date: April 18, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 448-7962

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.1

The Texas Air Control Board (TACB) adopts an amendment to §101.1, with changes to the proposed text published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3525-3526).

The amendment adds new definitions for the terms "architectural coating," "automobile refinishing," and "consumer-solvent products," to properly identify facilities and products affected by concurrently adopted revisions to TACB Regulation V. Chapter 115, concerning Control of Air Pollution From Volatile Organic Compounds (VOC). The proposed changes to the definition of the phrase "miscellaneous metal parts and products coating" to include wood and plastics was withdrawn. The amendment is part of a series of revisions to satisfy requirements by the United States Environmental Protection Agency (EPA) to demonstrate attainment for ozone in the state implementation plan (SIP) revisions for Dallas and Tarrant counties.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal.

Public hearings were held October 28, 1987, in Cleburne and Rockwall, and October 29, 1987, in Arlington to receive testimony regarding the proposed revisions. Testimony was received from Devoe and Reynolds Company, National Paint and Coatings Association (NPCA), and EPA. All three commenters may be categorized as against the proposal. Devoe and Reynolds and NPCA argued that the proposed definition of architectural coating was too broad and suggested that the term "specially coatings" be separately identified or excluded. EPA suggested numerous additional definitions, primarily regarding surface coating, graphic arts, and gasoline marketing operations.

Information received as testimony suggested that architectural coatings should be categorized into several coating families and specific exclusions should be identified. The possibility of additional definitions to improve clarity or enforceability of the proposed Regulation V changes can be considered in detail with EPA during 1988. Proposed revisions to TACB Regulation V to control wood and plastics coating was withdrawn, making a definition for such coating unnecessary.

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

§101.1. Definitions. Unless specifically defined in the Act or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by Texas Civil Statutes, Article 4477-5, the following terms, when used in this part (31 TAC Part III), shall have the following meanings, unless the context clearly indicates otherwise.

Architectural coating—Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes. Excluded from this definition are paints sold in containers of one pint or less; paints used on roadways, pavement, swimming pools, and similar surfaces; and aerosol spray products.

Automobile refinishing—The recoating of individual automobiles and light-duty trucks by a commercial operation other than the manufacturer to repair, restore, or alter the exterior finish, including primer, primer surfacer, alkyd enamel, base coat, clear coat, and lacquer application.

Consumer-solvent products—Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain volatile organic compounds, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.

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 March 24, 1988.

TRD-8802990 Allen Eli Bell

Executive Director
Texas Air Control Board

Effective date: April 14, 1988

Proposal publication date: October 2, 1987

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

Chapter 115. Volatile Organic Compounds

Specified Solvent-Using Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

• 31 TAC §115.171, §115.176

The Texas Air Control Board (TACB) adopts amendments to §115.171 and §115.176 with changes to the proposed text published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3529).

The amendments to §115.171 prohibit the use, application, sale, or offering for sale of cutback asphalt and establish limits on the solvent content of asphalt emulsions used in Dallas and Tarrant counties during the period from April 16 to September 15 of each year. These restrictions do not apply to cutback asphalt stored in long-term stockpiles or used as a penetrating prime coat. The amendment to §115.176 requires affected sources in Dallas and Tarrant counties to be in compliance no later than December 31, 1988. These amendments are part of a series of additions to Chapter 115 to satisfy requirements by the United States Environmental Protection Agency (EPA) to demonstrate attainment for ozone in the state implementation plan (SIP) revisions for Dallas and Tarrant counties.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal.

Public hearings were held October 28, 1987, in Cleburne and Rockwall, and October 29, 1987, in Arlington to receive testimony regarding the proposed revisions. Testimony was received from four commenters during the comment period. The North Central Texas Council of Governments and the City of Arlington were in favor of the proposed ban on the summertime use of cutback asphalt as necessary to demonstrate attainment of the ozone standard. The City of Richardson opposed the measure, claiming it would eliminate effective road maintenance. EPA recommended extending the proposed ban to include asphalt emulsions and to require test methods and recordkeeping. EPA also requested that the TACB justify the period of time proposed for the ban on use of cutback asphalt, and specified that final compliance should be achieved by December 31, 1988, rather than December 31, 1990, as proposed.

Asphalt emulsions can readily replace cutback asphalt in most cases and, therefore, are considered to be a very cost-effective control measure. However, EPA's guidelines on cutback asphalt identify the maximum VOC solvent limits which should be allowed in these emulsions in order to ensure the expected emission reductions. These additional limits are included in §115.171 in order to ensure the availability of an acceptable alternative to cutback asphalt while maintaining the air quality benefits. An appropriate test method for determining the volatility content of asphalt emulsions is currently used by the Texas Department of Highways and Public Transportation and has been incorporated into §115.171. Recordkeeping of the use of exempted materials is impractical, considering the small quantities and the sporadic nature of their use. However, the specifications for road maintenance or construction can be determined and monitored through appropriate contracts, reports, and records of state and local agencies and private contractors. The period from April 16-September 15 was chosen to include the dates of all recorded violations of the ozone standard during 1981 through 1983. A compliance date of December 31, 1988, appears to be reasonable.

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

§115.171. Cutback Asphalt (as defined under Specified Solvent-Using Processes in the General Rules).

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

(c) After December 31, 1988, no person shall allow the use, application, sale, or offer for sale of cutback asphalt containing volatile organic compound solvents for the paving of roadways, driveways, or parking lots in Dallas and Tarrant Counties during the period from April 16-September 15 of any year, except:

(1) where long-life (longer than one month) stockpile storage is necessary; or

(2) where the asphalt is to be used solely as a penetrating prime coat.

(d) When emulsified asphalt is utilized to comply with subsection (c) of this section the maximum volatile organic compound content, as determined by ASTM Test Method D 244 or an equivalent method approved by the Executive Director, shall not exceed 12% by weight or the following limitations, whichever is more stringent:

(1) 0.5% by weight for seal coats;

(2) 3.0% by weight for chip seals when dusty or dirty aggregate is used;

(3) 8.0% by weight for mixing with open graded aggregate with less than 1.0% by weight of dust or clay-like materials adhering to the coarse aggregate fraction (1/4 inch in diameter or greater); and

(4) 12% by weight for mixing with dense graded aggregate when used to produce a mix designed to have 10% or less voids when fully compacted.

§115.176. Counties and Compliance Schedule.

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

(d) The provisions of §115.171(c)-(d) of this title (relating to Cutback Asphalt) shall apply only within Dallas and Tarrant Counties. All affected persons shall be in compliance with this section as soon as practicable, but not later than December 31, 1988.

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 March 24, 1988.

TRD-8802993

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: April 14, 1988

Proposal publication date: October 2, 1987

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

◆ ◆ ◆
**Surface Coating Processes in
Brazoria, Dallas, El Paso,
Galveston, Gregg, Harris,
Jefferson, Nueces, Orange,
Tarrant, and Victoria
Counties**

◆ ◆ ◆
**• 31 TAC §§115.191, 115.193,
115.194**

The Texas Air Control Board (TACB) adopts amendments to §§115.191, 115.193, and 115.194, are adopted with changes to the proposed text published in the October 2, 1987 issue of the *Texas Register* (12 TexReg 3529-3531).

The amendments to §115.191, concerning Emission Limitations, establish limits on the VOC content of coatings and wipe-down solvents used in automobile refinishing and coatings sold or offered for sale as architectural coatings in Dallas and Tarrant Counties. Specified cleanup equipment and procedures for automobile refinishing and test methods for determining compliance with the automobile refinishing and architectural coating limitations were also adopted. Proposed requirements for the capture and control of fugitive emissions from industrial surface coating operations and additional limitations on wood and plastics coating operations were withdrawn. Amendments to §115.193, revised applicable references to ensure consistency with adopted changes to §115.191. Amendments to §115.194, concerning Compliance Schedule and Counties, requires final compliance with automobile refinishing and architectural coating requirements by no later than December 31, 1989. These amendments are part of a series of additions to Chapter 115 to satisfy requirements by the United States Environmental Protection Agency (EPA) to demonstrate attainment for ozone in the state

implementation plan (SIP) revisions for Dallas and Tarrant Counties.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal.

Public hearings were held October 28, 1987, in Cleburne and Rockwall, and October 29, 1987, in Arlington to receive testimony regarding the proposed revisions. Testimony was received from 49 commenters representing local governments, affected industries, the United States Air Force, and EPA. All of the commenters may be categorized as against the proposal.

Thirty-one commenters addressed the proposed surface coating fugitive control requirements. Local officials, while supporting any control measure necessary to demonstrate attainment of the ozone standard, considered the surface coating fugitive rule among the least favorable options. One individual and EPA supported the proposed controls but recommended additional requirements. Industry officials opposed the proposed controls because the requirements were not cost effective, in many cases were technologically infeasible, would damage the economic competitiveness of small businesses in Dallas and Tarrant Counties, would discourage the use of low-solvent technologies, and could actually stimulate ozone formation by increasing nitrogen oxide emissions. The information provided as testimony documented the technical, economic, and administrative difficulties of imposing these requirements on surface coating operations which have already complied with existing regulations. The emission reductions from the proposed controls were not required for a demonstration of attainment.

Fifteen commenters addressed the proposed automobile refinishing control requirements. Local officials supported this control measure as necessary to demonstrate attainment. EPA questioned the enforceability of the requirements and recommended changes to characterize the affected coatings based on specific formulation criteria and as delivered to the spray equipment. EPA also specified that final compliance by December 31, 1989, was required. Industry officials opposed the proposed controls because no existing low-solvent technology for several coatings currently used in automobile refinishing was available which could provide acceptable results. However, several commenters recommended alternative control techniques and requirements. These included VOC limitations on various types of coatings currently used in automobile refinishing; VOC limitations on preparation and cleanup solvents; improved application equipment, techniques, and training; and controlled waste management programs. Information was provided indicating that a single blanket emission limitation on all coatings used in automobile refinishing was inappropriate. However, significant emission reductions can be achieved through the adoption of separate emission limitations on various coating families and other solvents used in the industry and the

enforcement of specific equipment and operation requirements. Suggested changes to describe compliant coatings as delivered to the spray equipment and to adopt approved test methods for determining coating characteristics should improve the enforceability of these control requirements. Compliance by December 31, 1989, may be reasonably expected.

Seventeen commenters addressed the proposed architectural coating control requirements. Local officials supported the proposed controls as necessary to demonstrate attainment. EPA recommended compliance strategies, including recordkeeping provisions, and specified that final compliance by December 31, 1989, was required. Industry officials opposed the proposed limitation because most products do not have low-VOC alternatives, reformulation is costly and time consuming, and controls would result in little actual emission reductions. However, they suggested that alternative limitations or exemptions should be provided for various families of coatings or specialty coatings. Information provided indicated that, while many commonly used specialty coatings can not be reasonably expected to comply with the proposed limitation, significant emission reductions can be achieved by establishing VOC limits for various families of coatings. While classification of coating families is expected to eliminate the need for specific exemptions, the definition of architectural coating should exclude paints sold in containers of one pint or less, and coatings used on roadways, pavement, and swimming pools. Aerosol products may also be excluded since they are inventoried separately from other coatings. The TACB staff is considering additional rulemaking to include a requirement for limited recordkeeping and an enforcement plan for annual investigations at a sampling of affected sales locations. Compliance by December 31, 1989, may be reasonably expected.

Seventeen commenters address the proposed wood and plastics coating control requirements. Local officials, while supporting any control measure necessary to demonstrate attainment, considered the proposed controls on wood and plastic coating to be among the least favorable of all options. EPA specified that final compliance by December 31, 1989, was required. Industry opposed the proposed limitations on wood and plastic coatings because many products require specialized coatings which could not satisfy the requirements. The information provided documented the technical, economic, and administrative difficulties of imposing controls on wood and plastic coatings without a detailed consideration of the many issues raised. The emission reductions from the proposed controls are not required for a demonstration of attainment.

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

§115.191. Emission Limitations.

(a) No person may cause, suffer, allow, or permit volatile organic compound emissions from the surface coating pro-

cesses (defined in §101.1 of this title (relating to Definitions)) affected by paragraphs (1)-(11) of this subsection to exceed the specified emission limits, which are based on daily weighted average, except for those in paragraph (8), of this subsection as detailed, for those in paragraph (10) of this subsection which are based on paneling surface area, and those in paragraph (11) of this subsection which are based on the volatile organic compound content of architectural coatings sold or offered for sale. Exempt solvent, as used in this section, shall mean any solvent consisting of compounds excluded from the definition of volatile organic compound in §101.1 of this title (relating to Definitions).

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

(8) Automobile and light-duty truck coating.

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

(D) Volatile organic compound emissions from the coatings or solvents used in automobile refinishing in Dallas and Tarrant counties based on an assumed 30% transfer efficiency from an air spray applicator or equivalent shall not exceed the following limits:

(i) 2.1 pounds per gallon (0.25 kg/liter) of coating (minus water and exempt solvent) or 3.0 pounds per gallon (0.36 kg/liter) of solids applied for primers or primer/ surfacers;

(ii) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) or 17.9 pounds per gallon (2.13 kg/liter) of solids applied for acrylic enamel coatings;

(iii) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) or 16.1 pounds per gallon (1.92 kg/liter) of solids applied for alkyd enamel coatings;

(iv) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) or 17.9 pounds per gallon (2.13 kg/liter) of solids applied for clear coatings;

(v) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) or 41.3 pounds per gallon (4.92 kg/liter) of solids applied for base coatings;

(vi) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) or 41.3 pounds per gallon (4.92 kg/liter) of solids applied for lacquers; and

(vii) 1.4 pounds per gallon (0.17 kg/liter) of wipe-down solvents.

(E) Automobile refinishing operations in Dallas and Tarrant counties shall minimize volatile organic compound

emissions during equipment cleanup by the following procedures:

(i) install and operate a system which totally encloses spray guns, cups, nozzles, bowls, and other parts during washing, rinsing, and draining procedures;

(ii) recycle all wash solvents from an enclosed reservoir which must be kept closed at all times except when being refilled with fresh solvent solution;

(iii) dispose of all waste solvents and associated cleaning materials in closed containers.

(9)-(10) (No change).

(11) Architectural coating. The volatile organic compound content of any coating sold or offered for sale as an architectural coating in Dallas and Tarrant counties shall not exceed the following limits:

(A) 0.7 pounds per gallon (0.08 kg/liter) of coating (minus water and exempt solvent) or 3.0 pounds per gallon (0.36 kg/liter) of solids for exterior flat latex paints;

(B) 0.8 pounds per gallon (0.10 kg/liter) of coating (minus water and exempt solvent) or 3.1 pounds per gallon (0.37 kg/liter) of solids for interior flat latex paints;

(C) 2.2 pounds per gallon (0.26 kg/liter) of coating (minus water and exempt solvent) or 5.0 pounds per gallon (0.60 kg/liter) of solids for nonflat or washable flat latex paints;

(D) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) or 7.6 pounds per gallon (0.90 kg/liter) of solids for interior alkyd paints;

(E) 4.0 pounds per gallon (0.48 kg/liter) of coating (minus water and exempt solvent) or 8.9 pounds per gallon (1.06 kg/liter) of solids for exterior alkyd paints;

(F) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) or 11.5 pounds per gallon (1.37 kg/liter) of solids for epoxy paints;

(G) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) or 31.6 pounds per gallon (3.76 kg/liter) for exterior stains;

(H) 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) or 100.0 pounds per gallon (11.90 kg/liter) of solids for interior stains;

(I) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) or 11.5 pounds per gallon (1.37 kg/liter) of solids for urethane coatings;

(J) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) or 11.5 pounds per gallon (1.37 kg/liter) of solids for alkyd varnishes; and

(K) 5.6 pounds per gallon (0.67 kg/liter) of coating (minus water and exempt solvent) or 23.4 pounds per gallon (2.79 kg/liter) of solids for nitrocellulose-based lacquers.

(b) Compliance with subsection (a)(8)(D) and (a)(11) of this section shall be determined by applying the following test methods, as appropriate:

(1) Test Method 24 (40 Code of Federal Regulations 60, Appendix A);

(2) ASTM Test Methods D 1186-06.01, D 1200-06.01, D 3794-06.01, D 244-83, D 323-72, D 97-66, D 2832-69, D 1644-75, and D 3960-81;

(3) procedures for certifying quantity of volatile organic compounds emitted by paint, ink, and other coatings (EPA 450/3-84-01, December, 1984); or

(4) an equivalent test method approved by the executive director.

§115.193. Exemptions.

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

(c) The following coating operations are exempt from the application of §115.191(a)(9) of this title (relating to Emission Limitations):

(1) exterior of airplanes except as required by §115.191(a)(9)(A) (v) of this title (relating to Emission Limitations);

(2) automobile refinishing except as required by §115.191(a)(8)(D) of this title (relating to Emission Limitations);

(3)-(5) (No change).

(6) any surface coating process or processes at a specific property for which the executive director has approved requirements different from those in §115.191(a)(9) of this title (relating to Emission Limitations) based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When he makes such a determination, the executive director shall specify the date or dates by which such different requirements shall be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property shall be reviewed every two years.

(d) The following coating operations are exempt from the application of §115.191(a)(10) of this title (relating to Emission Limitations):

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

(e) After December 31, 1987, in Dallas and Tarrant Counties, only those surface coating operations which when uncontrolled will emit a combined weight of volatile organic compounds of less than 100 pounds (45.4 kg) per day, except aircraft exterior prime coating controlled by §115.191(a)(9)(A), etbiv of this title (relating to Emission Limitations) and automobile refinishing controlled by §115.191(a)(8)(D) of this title (relating to Emission Limitations), shall be exempt from the provisions of §115.191 of this title (relating to Emission Limitations).
§115.194. Compliance Schedule and Counties.

(a) All affected persons within Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria counties shall be in compliance with §§115.91-115.94 of this title (relating to Surface Coating in Brazoria, Dallas, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties) except for §115.191(a)(7)(B), (a)(8)(B), and (a)(9)(A)(v) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1982, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.

(b) All affected persons within the counties listed in subsection (a) of this section shall be in compliance with §115.191(a)(7)(B) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1985, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.

(c) All affected persons within the counties listed in subsection (a) of this section shall be in compliance with §115.191(a)(8)(B) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1986, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.

(d) All affected persons within the counties listed in subsection (a) of this section shall be in compliance with §115.191(a)(9) and (a)(10) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1982, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1980.

(e) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.191(a)(9)(A)(v) of this title (relating to Emission Limitations) as soon as

practicable, but no later than December 31, 1987, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1985.

(f) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.191(a)(8)(D) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1989.

(g) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.191(a)(11) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1989.

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 March 24, 1988.

TRD-8802994

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: April 4, 1988

Proposal publication date: October 2, 1987

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

Graphic Arts (Printing) by Rotogravure and Flexographic Processes

• 31 TAC §§115.201-115.203

The Texas Air Control Board (TACB) adopts amendments to §§115.201-115.203, with changes to the proposed text published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3531-3532). The amendments concern Graphic Arts (Printing) By Rotogravure and Flexographic Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties.

The amendment to §115.201, concerning control requirements, establish the approved test methods which shall be used to determine compliance with applicable control requirements at graphic arts facilities in Dallas and Tarrant counties. The proposed change to require more stringent capture and control limitations on existing graphic arts facilities is deleted. The amendment to §115.202, concerning exemptions, lower the applicable exemption level for graphic arts facilities in Dallas and Tarrant counties from 100 tons per year to 50 tons per year. The 100 pounds per day exemption level included in the proposal is deleted. The amendment to §115.203, concerning compliance schedule and counties, require the smaller sources affected by the lower exemption level specified in §115.202 to be in compliance no later than December 31, 1989, and to submit a final control plan to the TACB by December 31, 1988. These amendments are part of a series of additions to Chapter 115 to satisfy requirements by the United States Environmental Protection Agency (EPA) to demonstrate attainment for ozone in the State Implementation Plan (SIP) revisions for Dallas and Tarrant counties.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal.

Public hearings were held October 28, 1987, in Cleburne and Rockwall, and October 29, 1987, in Arlington to receive testimony regarding the proposed revisions. Testimony was received from 14 commenters representing local governments, EPA, industry, and interested citizens. Twelve of the commenters were against the proposal, while the North Central Texas Council of Governments and the City of Richardson were in favor of the proposal as necessary to demonstrate attainment of the ozone standard.

EPA and Brandt Mannchen recommended specifying appropriate test methods to be used to determine compliance with the proposed limitations. Furthermore, EPA specified suggested recordkeeping requirements for affected sources and the examination of proposed exemption levels. EPA also specified that final compliance by December 31, 1989, was required.

Industry officials opposed increasing the control requirements on graphic arts facilities which have already expended considerable resources to comply with existing regulations and suggested adequate emission reductions could be achieved by extending existing controls to smaller sources. Several commenters also argued that the more stringent control limits proposed were not technologically practical nor cost-effective, would discourage the use of low-solvent technology, and would increase emissions of nitrogen oxides. Overwraps, Inc. recommended that limitations be based on annual rather than daily averages of the inks used at affected facilities.

The information provided documented the technical, economic, and administrative difficulties of imposing more stringent control limits on sources which have already complied with existing regulations. However, reductions may be obtained from expanding the existing control limitations to smaller sources by adopting an exemption level of 50 tons of VOC per year. This control measure would allow affected sources to utilize currently available control technology to achieve reasonable emission reductions needed for a demonstration of attainment. EPA policy has prohibited the use of annual averaging of emissions in an ozone control strategy. Adoption of approved test methods to effectively monitor the VOC content of applicable inks and to determine the VOC concentration of vent gases from incineration or carbon adsorption is considered appropriate. Since compliance with the limitations on graphic arts facilities does not require an assessment of an average concentration of VOC over a period of time, detailed recordkeeping does not appear critical. Control of sources with less than the 50 tons per year as identified by the exemption raises questions of technical practicality, cost-effectiveness, and enforceability which the TACB staff is unable to address at this time. Compliance by December 31, 1989, can be expected.

These amendments are adopted under Texas Civil Statutes, Article 4477-5, §3. 099(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.201. Control Requirements.

(a) No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility that uses solvent-containing ink unless volatile organic compound emissions are limited by one of the following.

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

(b) Compliance with subsection (a) of this section in Dallas and Tarrant counties shall be determined by applying the following test methods, as appropriate:

(1) Test Methods 1-4 (40 CFR 60, Appendix A) for determining flow rates, as necessary;

(2) Test Method 24A (40 CFR 60, Appendix A) for determining the volatile organic compound content and density of printing inks and related coatings;

(3) Test Method 25 (40 CFR 60, Appendix A) for determining the volatile organic compound concentration in a vent gas stream from an incinerator;

(4) Test Methods 25A or 25B (40-CFR 60, Appendix A) for determining the volatile organic compound concentration in a vent gas stream from a carbon adsorption unit; or

(5) equivalent test methods approved by the executive director.

§115.202. Exemptions.

(a) Any rotogravure or flexographic facility which when uncontrolled emits a combined weight of volatile organic compounds (VOC) less than 100 tons (91 metric tons) in one year (based on historical ink and VOC solvent usage) is exempt from the requirements of §115.201 of this title (relating to Control Requirements).

(b) In Dallas and Tarrant counties after December 31, 1989, only those rotogravure and flexographic printing facilities which when uncontrolled emit a combined weight of VOCs less than 50 tons in one year (based on historical ink and solvent usage) are exempt from the requirements of §115.201 of this title (relating to Control Requirements).

§115.203. Compliance Schedule and Counties.

(a) The provisions of §15.201 of this title (relating to Control Requirements) shall apply within Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria counties. All affected persons shall submit a final control plan for compliance to the Texas Air Control Board no later than December 31, 1980, and shall be in compliance as soon as practicable, but no later than December 31, 1982.

(b) All persons affected by the provisions of §115.202(b) of this title (relating to Exemptions) shall submit to the Texas Air Control Board a final control plan for compliance with the provisions of §115.201 of this title (relating to Control Requirements) no later than December 31, 1988, and shall be in compliance as soon as practicable but no later than December 31, 1989.

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 March 24, 1988.

TRD-8802995

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: April 14, 1988

Proposal publication date: October 2, 1987

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

Specified Consumer-Solvent Products

• 31 TAC §§115.291, 115.293, 111.294

The Texas Air Control Board (TACB) adopts New §§115.291, 115.293, and 115.294, with changes to the proposed text published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3532). The sections concern specified consumer-solvent products in Dallas and Tarrant Counties.

New §115.291, concerning control requirements, prohibits the sale or offering for sale in Dallas and Tarrant counties of automobile windshield washer fluids containing VOC, and incorporates the appropriate test methods for determining compliance. New §115.293, concerning exemptions, excludes wholesale or retail transactions of products used outside of Dallas and Tarrant counties, products purchased and delivered prior to December 31, 1988, and products used exclusively in new vehicles prior to initial sale. New §115.294, concerning compliance schedule and counties, requires affected sources in Dallas and Tarrant counties to be in compliance no later than December 31, 1989. These amendments are part of a series of additions to Chapter 115 to satisfy requirements by the United States Environmental Protection Agency (EPA) to demonstrate attainment for ozone in the State Implementation Plan (SIP) revisions for Dallas and Tarrant counties.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal.

Public hearings were held October 28, 1987, in Cleburne and Rockwall, and October 29, 1987, in Arlington to receive testimony regarding the proposed revisions. Testimony

was received from 30 commenters representing local governments, affected industries, trade associations, and EPA. All of the commenters may be categorized as against the proposal.

Local officials and Brandt Mannchen, while supporting any control measure necessary to demonstrate attainment of the ozone standard, considered consumer-solvent product controls among the least favorable options. EPA specified that a compliance strategy, including recordkeeping requirements, should be adopted to ensure enforcement of the controls. Furthermore, EPA specified that compliance by December 31, 1989, was required.

Industry and trade organizations opposed the proposed ban on aerosol spray products, claiming small emission reduction benefits, severe cost to manufacturers attempting to reformulate products, lost sales, lost tax revenue, and difficulties associated with the administration and enforcement of the requirements. Many commenters also argued that no alternative to hydrocarbon propellants existed for many products and presented other potential problems, including loss of tamper-resistance, damage to interstate commerce, aggravated waste container disposal, and the potentially higher and more photochemically reactive VOC emissions from alternative technologies. Information received during the comment period indicated that more investigation into the technical and economic reasonableness of a ban on aerosol products and space deodorants is needed before any regulatory controls are implemented. The emission reductions from the proposed ban on these products are not required for a demonstration of attainment.

Delta Distributors, Inc. and Texas Committee on Natural Resources opposed the proposed ban on windshield washer fluids because of the increased driving hazard potential and because the methanol and isopropanol used in the fluids is only intermediately photochemically reactive. General Motors Corporation recommended the ban be limited to aftermarket sales only to allow vehicle manufacturers to use fluids in new car preparation. Significant emission reductions can be achieved through the ban on windshield washer fluids. While the hydrocarbons in the affected fluids may be only moderately photochemically reactive, they are still considered to be VOCs subject to the ozone control strategies required by EPA. The proposed ban may require motorists to adjust their vehicle maintenance habits to include more frequent manual washing of windshields and the draining of the washer reservoir and lines during the winter to prevent freezing but should not adversely affect driving safety. Water or non-VOC fluids may still be used. The TACB recognizes the requirements of new car manufacturers which transport vehicles to other parts of the nation not affected by these sections and concurs with the recommendation to limit the aftermarket sales of windshield washer fluids only. The TACB staff is also developing a detailed enforcement plan for determining compliance of affected outlets which will include annual investigation of a statistically valid sample of all locations in Dallas and Tarrant counties. Compliance by December 31, 1989, can be expected.

These amendments are adopted under Texas

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

§115.291. Control Requirements.

(a) No person may sell or offer for sale in Dallas and Tarrant counties automobile windshield washer fluids which contain volatile organic compounds as an active ingredient, solvent, or any other component.

(b) Compliance with subsection (a) of this section shall be determined by applying the following test methods, as appropriate:

(1) Test Method 24A (40 CFR 60, Appendix A); or

(2) equivalent test methods approved by the executive director.

§115.293. Exemptions. The following products are exempt from the provisions of §115.291 of this title (relating to Control Requirements):

(1) products purchased by and delivered to a retail outlet in Dallas and Tarrant counties prior to December 31, 1988;

(2) products sold or offered for sale to wholesale outlets for distribution and sale to consumers outside of Dallas and Tarrant counties;

(3) products sold or offered for sale to retail outlets located outside of Dallas and Tarrant counties; and

(4) windshield washer fluid used exclusively in new vehicles prior to initial sale.

§115.294. Compliance Schedule and Counties. All affected persons in Dallas and Tarrant counties shall be in compliance with the provisions of §115.291 of this title (relating to Control Requirements) as soon as practicable, but no later than December 31, 1989.

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 March 24, 1988, 1988.

TRD-8802096

Allen Eli Bell
Executive Director
Texas Air Control Board

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

• 34 TAC §3.391

The Comptroller of Public Accounts adopts the repeal of §3.391 without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4106).

This section is repealed in order that a substantially revised section, concerning accounting methods and dealing with the same subject matter, may be adopted.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

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 March 23, 1988.

TRD-8803065

Bob Bullock
Comptroller of Public
Accounts

Effective date: April 15, 1988

Proposal publication date: November 6, 1987

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

Effective date: April 15, 1988

Proposal publication date: November 6, 1987

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

• 34 TAC §3.405

The Comptroller of Public Accounts adopts the repeal of §3.405 without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4112).

This section was repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

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 March 23, 1988.

TRD-8803067

Bob Bullock
Comptroller of Public
Accounts

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Proposal publication date: November 6, 1987

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. ICF-MR

The Texas Department of Human Services (DHS) adopts the repeal of §27.1206 and new §27.3010. New §27.3010 is adopted with changes to the proposed text published in the October 16, 1987, issue of the *Texas Register* (12 TexReg 3829). The repeal of §27.1206 is adopted without changes, and will not be republished.

The repeal and new section are justified because they allow residents of intermediate-care facilities for the mentally retarded (ICF-MR), especially those residents whose families live far from the facilities, to spend longer periods of time with their families.

The repeal of §27.1206 will function by deleting ICF-MR policy that has been superceded by new §27.3010. New §27.3010 will function by specifying the conditions under which vendor payments may be made during residents' absences from facilities, and by allowing one 10-day extended therapeutic visit per year in addition to the unlimited number of three-day therapeutic visits previously allowed.

The department received 19 written com-

• 34 TAC §3.403

The Comptroller of Public Accounts adopts the repeal of §3.403 without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4108).

This section was repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Texas Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

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 March 23, 1988.

TRD-8803066

Bob Bullock
Comptroller of Public
Accounts

ments regarding the proposed changes. commenters included residents' parents; ICF-MR facility representatives; Advocacy, Inc.; the Texas Association of Private Providers (TAPP); the Association for Retarded Citizens (ARC) of Fort Worth; and the Health Care Financing Administration (HCFA). Although the majority of comments generally supported the proposed changes, several commenters suggested modifications.

One commentor, representing an ICF-MR facility, suggested one 72-hour therapeutic visit per month. The department has not incorporated this suggestion, because this concept received substantial negative comment when proposed in the April 24, 1987, issue of the *Texas Register* (12 TexReg 1386).

Two commenters suggested that more than one 10-day extended therapeutic visit be allowed during the year. Because of the potential costs to the Medicaid program and the difficulty of monitoring the adequacy of active treatment provided to residents under these circumstances, the department disagrees with this suggestion.

HCFA suggested the deletion of references that defined unauthorized departures as therapeutic visits, and commented that the text should more clearly indicate that entering into a bed-hold agreement is a voluntary transaction. The department agrees, and has changed the text accordingly.

Twelve commenters opposed including requirements that the Texas Department of Health (TDH) be notified 60 days before occasions in which all residents were to be absent from the facility at the same time, whether for therapeutic visits, extended therapeutic visits, or special-activity leave. The department agrees and has deleted this requirement, because facility-wide simultaneous absences are rare. Because the advance-notice requirement has been deleted in response to comments, the department has also deleted related references that mention decertification as a potential consequence of failure to provide advance notice.

Subchapter M. Admissions Policies

• 40 TAC §27.1206

The repeal 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 March 28, 1988.

TRD-8803085

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: May 1, 1988

Proposal publication date: October 16, 1987

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

Subchapter EE. Admissions and Release

• 40 TAC §27.3010

The new section 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.

§27.3010. Payment for Absences from the Facility.

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

(1) **Day**—A 24-hour period extending from midnight to midnight, with the first 24-hour period beginning at midnight following the resident's departure from the facility.

(2) **Extended therapeutic visit**—A resident's absence from the facility for therapeutic purposes, with the absence not exceeding 10 consecutive days.

(3) **Therapeutic visit**. A resident's absence from the facility for therapeutic purposes, with the absence not exceeding three consecutive days.

(b) In order for vendor payments to be made for ICF-MR residents who are away from the facility on therapeutic and extended therapeutic visits, the following criteria must be met:

(1) The resident's individual program plan must provide for therapeutic or extended therapeutic visits or both.

(2) Each therapeutic and extended therapeutic visit must be authorized and documented by the resident's QMRP, if not contraindicated by the resident's physician.

(3) Each resident may have an unlimited number of therapeutic visits per calendar year. If a therapeutic visit exceeds the allowed three days, the facility must submit a discharge form effective on the fourth day of absence.

(4) Each resident may have one extended therapeutic visit per calendar year. The resident, family member, or responsible party must document, in writing, the specific days selected for the extended therapeutic visit. If an extended therapeutic visit exceeds the allowed 10 days, the facility must submit a discharge form effective on the 11th day of absence.

(5) Facility staff must be available to residents during therapeutic and extended therapeutic visits, even if all the facility's residents are away at the same time.

(6) The facility must maintain a record of each therapeutic and extended therapeutic visit and ensure that these records are available for review by staff of the Texas Department of Human Services

(DHS). Facility staff must also ensure that the records include statistics concerning the number of visits for which vendor payments have not been made.

(7) During audits of facilities, DHS verifies therapeutic and extended therapeutic visits.

(c) DHS does not make vendor payments when a Title XIX resident is absent from the facility because of:

(1) hospitalization;

(2) a therapeutic visit that exceeds three consecutive days;

(3) an extended therapeutic visit that exceeds 10 consecutive days; or

(4) an unauthorized departure.

(d) The resident or responsible party may voluntarily enter into a written agreement with the facility to hold a bed during the resident's temporary absence from the facility. Each time this bed-hold arrangement is made, the written agreement must be signed and dated by the facility administrator or QMRP and by the resident or responsible party. The facility may charge the resident an amount not to exceed DHS' daily vendor rate according to the resident's classification at the time he leaves the facility.

(1) The facility must document each bed-hold charge in the resident's financial record at the time the bed-hold service is provided, and must specify that it is a bed-hold charge.

(2) If a bed-hold charge is made against the resident's personal-funds account managed by the facility, the facility must comply with §27.4803 of this title (relating to Protection of Funds).

(3) During audits of facilities, DHS audit staff verify bed-hold charges.

(e) When a resident is absent from the facility for special activities including, but not limited to, Special Olympics and camping trips, DHS makes vendor payments if:

(1) the need for the special activity is documented in the resident's individual program plan (IPP) with designation of IPP training provided;

(2) sufficient facility personnel are present at the special activity to meet the direct-care staff requirements outlined in §27.3213 of this title (relating to Resident Living Staff); and

(3) the facility incurs usual costs for caring for the resident, including, but not limited to, costs for meals, lodging, staff, supervision, and medication administration; and provides the indicated active-treatment program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Austin, Texas, on March 28, 1988.

TRD-8803086

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: May 1, 1988

Proposal publication date: October 16, 1988

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

Chapter 30. Medicaid Hospice Program

Subchapter A. Requirements

• 40 TAC §§30.101, 30.103, 30.105

The Texas Department of Human Services (DHS) adopts new §§30.101, 30.103, and 30.105, without changes to the proposed text published in the February 23, 1988, issue of the *Texas Register* (13 TexReg 912).|

The new sections will make hospice care available to Medicaid-eligible persons who have terminal illnesses.|

The new sections will function by providing requirements for administration, coverage, and eligibility in the Medicaid Hospice Program.|

Although no comments were received regarding adoption of the new sections, the proposed text of §30.105 contained a publication error. As published, §30.105 omitted subsection (d), which reads: "Recipients may cancel their election at any time." The subsection is included in the adoption.|

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

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 March 28, 1988.

TRD-8803083

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: May 1, 1988

Proposal publication date: February 23, 1988

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

Chapter 48. Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) adopts amendments to §§48.1201, 48.2919, 48.2928, and 48.3903 and the repeal of §§48.5907, 48.8902, and 48.9803, concerning definitions, eligibility, case management, contracting for CCAD services, minimum standards, and support documents respectively. The amendment to §48.2928 is adopted with changes to the proposed text

published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4353). The amendments to §§48.1201, 48.2919, and 48.3903, and the repeal of §§48.5907, 48.8902, and 48.9803 are adopted without changes to the proposed text, and will not be republished.|

The amendments and repeals are justified to consolidate into one chapter all requirements for providers delivering emergency response services, thereby giving providers a clearer understanding of the requirements.|

The amendments and repeals will function by deleting some definitions, revising others, and adding requirements for client eligibility in the Emergency Response Services (ERS) Program. The amendments and repeals will also add conditions that result in emergency response services being terminated and will delete information about ERS claims payment, minimum standards for ERS providers, and ERS claims payment, minimum standards for ERS providers, and ERS reimbursement methodology. This information will be consolidated in the new ERS rule chapter that the department is simultaneously adopting.|

During the public comment period, the department received comments from one agency: Granny and Gramps.|

The commenter stated that too much emphasis was placed on allowing a responder to conduct a forced entry into a client's home. The commenter was concerned about liability issues and recommended that the department add a definition of the term "emergency" to its rules in its ERS chapter. The department agrees with the comment and has changed the text in §48.2928(4) to indicate an activated alarm call rather than an emergency alarm call. By definition, an activated alarm call is an alert that an emergency has occurred and that the client needs immediate assistance. The term "activated alarm call" is defined in §52.101 in the department's ERS rule chapter. The forced entry acknowledgment requirement was placed in the rules at the request of current provider agencies to reduce their liability if they forcefully enter the client's home.|

Definitions

• 40 TAC §48.1201

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 March 28, 1988.

TRD-8803087

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: April 29, 1988

Proposal publication date: November 20, 1987

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

Eligibility

• 40 TAC §48.2919, §48.2928

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

§48.2928. Emergency Response Services. A client must score at least 18 on the client needs assessment questionnaire and meet the requirements in paragraphs (1)-(5) of this section to be eligible for emergency response services. Individuals receiving emergency response services on July 1, 1986, continue to be eligible for services as long as they score at least nine on the client needs assessment questionnaire. If services are terminated for these grandfathered clients, they must meet an eligibility score of at least 18 to requalify for services.|

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

(4) Be willing to sign a release statement that allows the responder to make a forced entry into the client's home if he is asked to respond to an activated alarm call and has no other means of entering the home to respond.|

(5) Live in a place other than a skilled institution, personal care home, foster care setting, or any other setting where 24-hour supervision is 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 March 28, 1988.

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Marlin W. Johnston
Commissioner
Texas Department of
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For further information, please call: (512)
450-3765.

Case Management

• 40 TAC §48.3903

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.

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Contracting for CCAD Services

• 40 TAC §48.5907

The repeal 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.

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Minimum Standards

• 40 TAC §48.8902

The repeal 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.

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Support Documents

• 40 TAC §48.9803

The repeal 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.

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Chapter 52. Emergency Response Services

Definitions

• 40 TAC §52.101

The Texas Department of Human Services (DHS) adopts new §§52.101, 52.201-52.204, 52.301, 52.401-52.403, 52.501-52.503, and 52.601-52.603, concerning emergency response services (ERS). Sections 52.101, 52.401, 52.501-52.503, and 52.603 are adopted with changes to the proposed text published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4353). Sections 52.101, 52.201-52.204, 52.301, 52.402, 52.403, 52.601, and 52.602 are adopted without changes to the proposed text and will not be republished.†

The new sections are justified to more clearly outline ERS program requirements and to give providers a better understanding of those requirements.†

The new sections will function by explaining program requirements for ERS and by clarifying service delivery expectations. The department is simultaneously amending and repealing information in its community care for aged and disabled chapter so that it may be consolidated with information in this chapter.†

The department received comments from one agency during the public comment period: Granny and Gramps. The commenter recommended that §52.501(d)(3) be changed to state that the department will consider installation fees, one-time fees, or special fees in determining rates. The department has made no changes to the text based on this comment. Section 52.501(d)(1)-(3) refers to provider agency private pay rates and explains how these rates are considered in determining the contract-specific unit rate that the department reimburses. Paragraph (3) of this subsection allows a provider agency the flexibility to consider fees in determining its own private pay rate; this rate is then compared to the departmentally set rate to determine which rate the department reimburses. If the commenter's intent was to recommend changes to the reimbursement methodology used to establish the unit rate ceilings, the department disagrees with the recommendation.†

The requirements in §52.502 adequately meet the department's minimum service delivery expectations.†

The department made a minor editorial change to §52.101 by deleting the hyphen from the term "Medicaid eligible;" to §52.502(c) by adding the word "agency" to the text; to §52.503(c)(5) by changing the word "bills" to "billed;" to §52.401(d) by adding the words "or before" to the text; and to §52.501(d)(1) by replacing the word "clients" with the word "persons."†

In §52.603, the department deleted subsections (b)-(c) and (f)-(i). Subsections (b), (c), (f), (g), and (h) are procedures and should not have been included in the proposed section. Subsection (i) duplicates the requirements in §79.1605 of the department's Legal Services chapter. The remaining subsections have been redesignated to reflect the deletions.†

In proposed §52.603(j), the department changed the word "report" to "report(s)."†

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

§52.101. Definitions of Program Terms.

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

Abuse—The willful infliction of injury; unreasonable confinement; intimidation; or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation of goods or services necessary to avoid physical harm, mental anguish, or mental illness.†

Activated alarm call—A signal transmitted from the client's home unit to the response center indicating that the client needs immediate assistance.†

Adult—A person age 18 or older.†

Aged or elderly person—A person age 65 or older.†

Assignee—A legal entity that plans to take over a current emergency response contract through a legal assignment of the contract from another legal entity.†

Assignor—A legal entity that plans to assign its current emergency response contract to another legal entity through a legal assignment of the contract.†

Call button—An electronic device that, when pressed, triggers an alarm to the response center to alert the provider agency that the client needs immediate assistance. The device may be held in the hand, worn around the neck, hung on a garment, or kept within the client's reach.†

Client—A person who the caseworker determines is eligible for emergency response services.†

Contractor—The provider agency.†

Days—All are calendar days, not workdays, unless otherwise noted in the text.†

Department—The Texas Department of Human Services.†

Disabled person—A person who, because of physical, mental, or developmental impairment, is limited in his capacity to adequately perform one or more essential activities of daily living. Activities of daily living include, but are not limited to, personal and health care, mobility, communication, and money management.†

Exploitation—The illegal or improper act or process of a caretaker or others using the resources of an adult for monetary or personal benefit, profit, or gain.†

Fraud—A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for services to which a person is not entitled.†

Income eligible—An adult, who is not an SSI or AFDC client, but who has income and resources equal to or less than the eligibility level established by the department.]

Installer—A volunteer, subcontractor, or an employee of the provider agency who connects the emergency response equipment in the client's home.]

Institution—A nursing home, state school, or state hospital.]

Local—The geographic area to be served by the provider agency, within the radius of a local telephone call to the largest city or town covered by the emergency response contract.]

Long distance—The geographic area to be served by the provider agency, outside the local call area of the largest city or town covered by the emergency response contract.]

Medicaid eligible—A person eligible for Medicaid as an SSI or AFDC client or eligible for medical assistance only while living in the community.]

Monitor—A volunteer, subcontractor, or an employee of the provider agency who monitors services 24 hours a day, seven days a week and ensures that alarm calls are responded to immediately.]

Neglect—The failure to provide for one's self the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide the goods or services.]

Provider agency—The legal entity that has a contract with the department to deliver emergency response services to eligible clients.]

Responder—Any person(s) who responds to an emergency call activated by a client. Responders may include a relative, neighbor, volunteer, or staff of a sheriff's department, police department, emergency medical service, or fire department.]

Response center—The site where the emergency response base station equipment is located and monitored.]

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.

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Contracting for Emergency Response Sections

• 40 TAC §§52.201-52.204

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

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.

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Provider Agency Staff Requirements

• 40 TAC §52.301

The new section 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.

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Service Delivery Requirements

• 40 TAC §§52.401-52.403

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

§52.401. Initiation of Services.

(a) The provider agency must begin services within 14 days from the date on the approval for CCAD services - referral response form unless the referral is verbal. For verbal referrals, the provider agency must begin services on the date verbally negotiated with the caseworker.]

(b) If operating at the full capacity designated in the contract, the provider agency returns the referral packet to the caseworker.]

(c) If the client is not in the home during the first 14 days from the date on the approval for CCAD services - referral response form, the provider agency begins services as soon as possible after the client returns home.]

(d) If services do not begin on the date verbally negotiated, the coordinator telephones the caseworker on or before the day services were scheduled to begin and explains why services were not begun.]

(e) If the caseworker and the coordinator disagree about the appropriateness of a referral or about service delivery issues involving the client, supervisory staff of the two agencies resolve the differences. The CCAD program director is responsible for resolving differences among caseworker and provider agency staff. If they disagree about the appropriateness of a referral, the coordinator may request that the caseworker approve a delay in beginning services. The request to delay service initiation is documented on the case information form.]

(f) The provider agency must secure two responders for each client on or before the date services begin, unless the provider agency is able to document that the client has no available responders and that only one resource is available that can respond to emergencies.]

(g) To initiate services, the provider agency must conduct a home visit. During the home visit, the installer:

(1) installs and makes an initial test of the emergency response equipment;]

(2) explains to the client how to use the equipment;]

(3) provides a written copy and explanation to the client of the complaint procedures; and]

(4) has the client sign a statement that allows the responder to enter the client's home, by force if necessary, in an emergency. The installer may not install the equipment if the client refuses to sign the home entry release statement. In this case, the installer must inform the coordinator. The coordinator contacts the caseworker within two DHS workdays of the home visit and explains the client's refusal to sign the required release statement.]

(h) The provider agency completes the client's card file after the home visit. The client's card file must include:]

(1) the client's name, telephone number, address, and medical condition(s);]

(2) the client's attending physician's name and telephone number;]

(3) the responders' names and telephone numbers; and]

(4) any other useful information.]

(i) The provider agency must notify the caseworker of the status of all referrals within 21 days from the referral date.]

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.

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Claims

• 40 TAC §§52.501-52.503

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

§52.501. Billing and Claims Payment.

(a) The Texas Board of Human Services sets the unit rate ceilings for local and long distance service delivery based on data obtained from the cost report that each provider agency submits to the department. The department establishes the methodology for setting the reimbursement unit rate ceilings and establishes allowable and unallowable costs and cost report requirements.

(b) The department reimburses the provider agency according to the rate(s) specified in the contract for each unit of service to each client for whom the provider agency has received an approval for CCAD services - referral response form authorizing the provider agency to provide emergency response services.

(c) The long distance rate may apply if the client lives outside the local call area of the largest city or town within the geographic area to be served by the provider agency.

(d) The department pays the contract-specific unit rate not to exceed departmentally set rates.

(1) If the provider agency serves private-pay persons according to department standards, the contract-specific unit rate cannot exceed the average private-pay rate.

(2) Department staff calculate the private-pay rate by totaling the rates charged to private-pay persons receiving services and dividing the total by the number of private-pay persons. The resultant figure is the maximum unit rate for the entire contract period.

(3) The department does not pay separate installation fees, one-time fees, or special fees. These fees, however, can be considered in determining the private-pay monthly rate by amortizing them over a 12-month period.

(e) The department reimburses the cost of the required emergency response equipment through the contract-specific unit rate. This equipment includes the call but-

ton, the home communicator unit that relays emergency signals, jacks, and adapters. The cost of equipment at the response center is not reimbursable.

(f) The department may negotiate a single unit rate that combines local and long distance service delivery. The single rate must not exceed the established ceilings. The rate should be approximately proportional to:

(1) the projected number of local and long distance clients; and

(2) the number of departmentally purchased home units under five years old and other home unit equipment.

(g) The unit of service for emergency response services is one calendar month. The provider agency is eligible for payment for a full month of service if the client receives services for any part of the month.

(h) The provider agency must not charge or take other recourse against the client, family members, or persons acting on the client's behalf for any claim the department denied or reduced because the provider agency failed to meet department rules, policies, or procedures.

(i) The provider agency is not entitled to payment if:

(1) services are not authorized on the approval for CCAD services - referral response form;

(2) the monthly systems check for each client is not conducted according to department rules and procedures; or

(3) services are delivered after the client's service delivery authorization date has expired or was terminated.

(j) The department may withhold a provider agency's vendor payments for reasons including, but not limited to, the following:

(1) failure to comply with the terms of the contract;

(2) failure to comply with rules in the provider manual; or

(3) termination of the contract (voluntary or involuntary).

(k) If the contract is terminated, the department places a vendor hold on one or more of the provider agency's contracts with the department. The vendor hold is not released until:

(1) a close-out audit is conducted and resolved; or

(2) an irrevocable letter of credit in a format approved by the department is submitted to release all or a portion of vendor payments on hold.

§52.502. Reimbursement Methodology for Emergency Response Services.

(a) Cost reporting.

(1) Content of cost report. Each provider agency must submit financial and statistical information at least annually in a cost report prescribed by the department.

(2) Cost report due date. The provider agency must submit the cost report no later than 90 days after receiving the cost report forms. An extension of the due date may be granted for good cause (when conditions are outside the provider agency's control). The provider agency must submit a written request to extend the due date.

(3) Reporting period. The provider agency must prepare the cost report to reflect its activities during the previous fiscal year. At the department's discretion, cost reports may be required for other periods.

(4) Failure to file an acceptable cost report. Failure to file a cost report according to all applicable rules and instructions may result in the department withholding all provider agency payments until the provider agency submits an acceptable report.

(5) Accounting requirements. The provider agency must ensure that financial and statistical data submitted in cost reports are based upon the accrual method of accounting, except for governmental institutions operated on the cash method of accounting. The treatment given any financial or statistical item must reflect the application of the generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants.

(6) Financial audits. Desk audits and on-site audits are performed periodically on all provider agencies participating in the program. The frequency and nature of the audits are determined by the department but are not less than that required by federal regulations relating to the administration of the program. Failure to allow the department to perform an audit in sufficient detail to verify reported information may result in the provider agency payments being withheld.

(7) Recordkeeping requirements. Records must be maintained according to the requirements in §69.202 of this title (relating to Contractors' Records).

(8) Failure to maintain records. A provider agency that is not maintaining adequate records to support the financial and statistical information reported in cost reports has 90 days to bring recordkeeping into compliance. Failure to correct deficiencies within 90 days from the date the provider agency is notified of deficiency may result in the contract being cancelled.

(b) Reimbursement rate ceiling determination.

(1) The reimbursement rate ceiling is determined on a per-month basis for local and long distance service. The ceiling

applies to all provider agencies uniformly, regardless of geographic location or other factors.;

(2) The reimbursement rate ceiling is determined by the analysis of financial and statistical data submitted by provider agencies on cost reports and a market survey analysis of emergency response equipment suppliers.;

(3) The median cost of home unit equipment, as determined from the market survey of emergency response equipment suppliers, is used for rate ceiling determination. The median cost depreciated over a five-year period is factored into the per-month rate ceiling. Interest expenses incurred to purchase the home unit equipment are an allowed cost and are considered in the rate ceiling determination.;

(4) The rate ceiling determination process recasts reported expense data in a consistent manner to determine per-month allowed costs. Reported expenses are combined into eight cost areas:;

(A) salaries and fringe benefits;;

(B) travel;;

(C) telephone;;

(D) building;;

(E) maintenance;;

(F) training;;

(G) administration; and;

(H) home unit equipment.;

(5) Allowable expenses are projected from the provider agency's reporting period to the next ensuing rate period. Economic inflators or adjusters determined reasonable and appropriate by the department are used to calculate a prospective expense.;

(6) The Texas Board of Human Services is responsible for approving the reimbursement rate ceiling.;

(7) The reimbursement rate ceiling may not exceed the intermediate care facility (ICF) reimbursement rate set by the Texas Board of Human Services.;

(c) Contract-specific unit rate. The actual rates for each contract are determined through the procurement process with department staff and the provider agency.;

(1) Provider agencies that are currently providing services with department-owned equipment that was purchased on a cost reimbursement basis receive the unit rate less the equipment reimbursement until the department's five-

year disposition rights on the purchased equipment expire. Services provided with department-owned equipment after the five-year limitation expires may be reimbursed at a rate that includes the equipment reimbursement.;

(2) The contract-specific unit rate for each type of service includes reimbursement for salaries and fringe benefits, travel, telephone, building, maintenance, training, administration, and home unit equipment expenses.;

(3) The equipment reimbursed under the unit rate becomes the provider agency's property.;

(4) The contract-specific unit rate the department pays the provider agency is the full cost for emergency response services. The provider agency must not bill the client for any additional charges.;

(d) Factors affecting allowable costs. To be allowable under this program, the provider agency must ensure that costs are:;

(1) necessary and reasonable for the proper and efficient administration of a program to deliver services for which the department has contracted;;

(2) authorized or not prohibited under state or local laws or regulations;;

(3) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations on types or amounts of cost items;;

(4) consistent with policies, regulations, and procedures that apply uniformly to both the Emergency Response Services Program and other activities of the organization of which the provider agency is part;;

(5) subject to consistent treatment using generally accepted accounting principles appropriate to the circumstances;;

(6) not allocable to or included as a cost of any other program in either the current or a prior period; and;

(7) the net of all applicable credits.;

(e) Definition of reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed the cost that would be incurred by an ordinarily prudent person conducting competitive business. In determining the reasonableness of a given cost, the department considers the following:;

(1) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the business or its performance under the contract;;

(2) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, fe-

deral and state laws and regulations, and contract terms and specifications; and;

(3) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, or members, and the fulfillment of the purpose for which the business was organized.;

(f) Unallowable costs. Unallowable costs are expenses the provider agencies incurred that are not directly or indirectly related to providing contracted services according to applicable laws, rules, and standards. The following list of expenses is not inclusive, but rather a guide to the various unallowable costs frequently seen in cost reports:;

(1) advertising expenses, except advertising for employee recruitment and advertising to meet statutory or regulatory requirements;;

(2) allowances for bad debts or other uncommon accounts;;

(3) business expenses from business operations not related to providing services for which the department has contracted;;

(4) contributions to political activities or to charity;;

(5) discounts for administrative reasons; courtesy, cash, trade, and quantity discounts; rebates; or other discounts;;

(6) dues and membership fees;;

(7) entertainment expenses, except for entertainment that is reported as an employee benefit;;

(8) expenses incurred for services not related to providing services contracted for by the department;;

(9) expenses for purchasing goods and services from revenues received from restricted or unrestricted gifts, donations, endowments, and trusts;

(10) expenses that are not the provider agency's legal obligation;;

(11) expenses of donated items, including depreciation and amortization of the value of the donations;;

(12) fees for corporation or association board of directors, partnership, or corporation filing fees;;

(13) fines and other penalties for violating statutes or ordinances and penalties for late payment of taxes, utilities, mortgages, and other similar penalties;;

(14) fund-raising, promotion expenses, and public relations expenses;;

(15) insurance expenses for life insurance premiums if the beneficiary is the provider agency, and for insurance on assets not related to delivering services for which the department has contracted;;

(16) interest expense on loans for assets not related to delivering of services for which the department has contracted (interest expenses must be reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds);;

(17) personal compensation to persons not providing services contributory to delivering services for which the department has contracted;;

(18) personal expenses not related to delivering services for which the department has contracted;;

(19) expenses for purchasing services, facilities, or supplies from related organizations or parties that exceed the lower of the cost to the related party or organization or the price of comparable services, facilities, or supplies purchased in an arm's length transaction;;

(20) rental or lease expense on any item not related to delivering services for which the department has contracted;;

(21) tax expenses for federal, state, or local income tax, and any tax levied on assets not related to delivering services for which the department has contracted; and;

(22) transportation expenses for vehicles not generally suited to functions related to delivering services for which the department has contracted. Mileage can be included at a cost per mile not to exceed the current reimbursement rate set by the legislature for state employee travel. Mileage is allowable if documentation is adequate and if the expense incurred was related to delivering services for which the department has contracted.;

§52. 503. Documentation Errors.;

(a) Documentation errors may result in claims for services being disallowed. The documentation errors that may cause monetary exceptions are financial errors. Financial errors result in exceptions applied to the total amount paid for the unit of service.;

(b) The department develops a statistical projection, based on the number or value of financial errors found in the audit or review sample, to determine the number or value of financial errors to be found in the total cases or claims for which the provider agency has been paid during the audit period.;

(c) In the absence of acceptable secondary documentation, financial errors include, but are not limited to, the following.;

(1) The provider agency bills the department at an incorrect unit rate for a particular client or contract. The department applies the error to the difference between the authorized unit rate(s) and the incorrect unit rate(s) for the month(s) claimed.;

(2) The provider agency bills the department and fails to conduct a monthly systems check according to department rules. The department applies the error to the unit of service claim for the month(s) during which the monthly systems check is not conducted according to department rules.;

(3) The provider agency bills the department for the month in which the home unit is removed from the client's home but fails to test the home unit at the time it is removed, or fails to document the reason(s) why the home unit cannot be tested. The department applies the error to the unit of service claimed for the month during which the home unit is removed from the client's home.;

(4) The provider agency bills the department for services beyond the service authorization period. The department applies the error to the total number of units claimed that are beyond the service authorization period.;

(5) The provider agency billed the department for equipment costs, but the home unit(s) cannot be located. The department applies the error to the total number of home units that cannot be located. The department considers equipment replacement costs in determining the total cost of the error. The total cost of this error is not extrapolated to all of the cases or claims for which the provider agency has been paid during the audit period.;

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

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Marlin W. Johnston
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Reviews and Audits of Provider Agency Records

• 40 TAC §§52.601-52.603

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

§52.603. Audits.;

(a) Desk audits and on-site audits are performed according to the time frames in §52.502 of this title (relating to Reimbursement Methodology for Emergency Response Services).;

(b) Provider agency staff must

promptly provide requested records to expedite the audit and assure the provider agency sufficient opportunity to prove its claim for reimbursement.;

(c) After the audit, department staff conduct an exit review with the provider agency to discuss the audit findings.;

(d) The provider agency must reimburse the department for any improper payments reflected in the department's audit report(s). If the provider agency and the department agree to resolve the audit exception by implementing an installment payment plan, the provider agency must adhere to the payment schedule. If the provider agency fails to submit the correct payment amount in the specified time, the department may withhold the provider's vendor payments or deduct the entire outstanding balance from the provider agency's claim(s).;

(e) The department reimburses the provider agency for any underpayments reflected in the audit report(s). The department may withhold the reimbursement of an underpayment if the provider agency has an outstanding audit exception(s).;

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.

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Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Area Agency Designation

• 40 TAC §255.36

The Texas Department on Aging adopts an amendment to §255.36, with changes to the proposed text published in the January 8, 1988, issue of the *Texas Register* (13 TexReg 191).

This section is being amended to eliminate the requirement for area agency on aging advisory councils to conform to the requirement to publish notice of meetings in the *Texas Register* in conformance with the Open Meetings Act.

Amendment of this section corrects a requirement which has no basis in the Texas Administrative Code.

Comments were received from the Texas Association of Regional Councils, who recom-

mended that the words "and open to the public" be included in the section to promote and enhance public participation at advisory council meetings. The Texas Department on Aging agrees with this recommendation and has made the appropriate change to the section.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§255.36. Operating an Area Agency on Aging.

(a) (No change.)

(b) Area Agency Activities. AAAs will administer the provisions of the Older Americans Act as it relates to Title III program regions in accordance with the approved area plan, and state and federal fiscal and programmatic rules, regulations, and statutes.

(1)-(10) (No change.)

(11) Advisory councils may meet monthly, but shall meet at least bi-monthly. Business meetings shall be publicized and open to the public. Records of actions taken at all meetings shall be available to the public for review.

(c) (No change.)

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

Issued in Austin, Texas, on March 24, 1988.

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O. P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Effective date: April 14, 1988

Proposal publication date: January 1, 1988

For further information, please call: (512) 444-2727

Chapter 275. Implementation of the Omnibus Hunger Act of 1985

Statutes and Regulations

• 40 TAC §§275.2-275.4

The Texas Department on Aging adopts amendments to §§275.2-275.4, without changes to the proposed text published in the January 15, 1988, issue of the *Texas Register* (13 TexReg 293).

This section updates application procedures for area agencies on aging to secure funding for home delivered meals under the Omnibus Hunger Act of 1985.

This section will provide current instructions for area agencies on aging wishing to apply for Omnibus Hunger Act funds.

Comments were received from the Tarrant County Area Agency on Aging who posed questions regarding start date, reallocated

de-obligated funds and wording in §275.3(1).

The Texas Department on Aging agrees with the comments provided and offers the following comments in response to the questions posed by the Tarrant County Area Agency on Aging.

In the case of new programs, Omnibus Hunger Act programs do not have to start the same day that the notification of grant award is received. The department understands the requirement for the grantee to allocate through a similar RFP process. Where programs are established, the award will constitute continuation funding and should require only contract renewal in most instances.

The final award referred to §275.2(5) includes all Omnibus funds allocated to the grantee (including those funds de-obligated from other grantees). All funds awarded must be expended by August 31 of each year of the biennium.

Another comment was received regarding §275.3(1), that the word "two" was left out of the sentence "less than 1/4 of their allocation during the first two quarters." The omission was an error as published, rather than as submitted by the agency, and does not constitute a change from the submitted proposal.

The amendments are adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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 March 24, 1988.

TRD-8802989

O. P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Effective date: April 14, 1988

Proposal publication date: January 15, 1988

For further information, please call: (512) 444-2727

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the billeting board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Adult Probation Commission

The Texas Adult Probation Commission will meet in the Embassy Suites, 4250 Ridgemont Drive, Abilene. Dates, times, rooms, and agendas follow.

Thursday, April 7, 1988, 1 p.m. The Audit Review Committee will hear fiscal audit reports; consider initial review for the following counties: Anderson, Angelina, Bastrop, Comanche, Deaf Smith, Erath, Gregg, Harris, Hood, Hopkins, Lamar, McCulloch, Midland, Orange, Tarrant, Tom Green, and Van Zandt; consider final review for the following counties: Baylor, Bell, Caldwell, Cass, Dallas, Deaf Smith, Duval, Ector, Falls, Galveston, Hale, Jefferson, Jim Wells, Johnson, Kaufman, Lubbock, Matagorda, Montgomery, Moore, Polk, Potter, Scurry, Uvalde, Webb, and Wichita.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: March 25, 1988, 4:16 p.m.

TRD-8803051

Thursday, April 7, 1988, 1 p.m. The Program Committee will meet in the Cancun Room to consider decision items concerning ISP funding plant for fiscal year 1988; consider supplemental funding for Howard County and Midland County; consider deobligations for surveillance probation in Harris County and Taylor County and restitution center for Bastrop County and San Patricio County, grant adjustments concerning specialized caseloads for San Patricio County; restitution centers concerning Cass, El Paso, Jefferson (I and II), and Midland Counties; consider Montgomery County, Tarrant County, Taylor County, court residential treatment center for Harris County, and waivers.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: March 25, 1988, 4:16 p.m.

TRD-8803050

Thursday, April 7, 1988, 3 p.m. The Planning and Development Committee will meet in the Cancun Room to hold an open forum on fiscal year 1990-1991 budget request.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: March 25, 1988, 4:16 p.m.

TRD-8803049

Friday, April 8, 1988, 9 a.m. The commission will introduce guests; consider resolution; approve minutes of the previous meeting; hear financial report; consider information and discussion; hear certification update report; consider video; hear comparison of special provisions probationers and prison inmate report; consider supplemental funding for various counties, deobligations, surveillance probation for various counties, restitution center for various counties, grant adjustments, specialized caseloads for San Patricio County, restitution centers for various counties, court residential treatment center for Harris County, and waivers; hear data services report, fiscal services report, and ARC report; consider request for approval to purchase from judicial district adult probation fund; hear executive division report; consider adoption of standards, videos, administrative business, and date and site of next meeting.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: March 25, 1988, 4:16 p.m.

TRD-8803048

Texas Commission on the Arts

Friday, April 1, 1988, 9 a.m. The Theatre Public Hearing of the Texas Commission on the Arts will meet in Ballroom A, 99 San Jacinto Boulevard, Four Seasons Hotel, Austin. According to the agenda, the commission will take recommendations from a discipline perspective on modifications to the existing state arts plan. Any interested

parties may attend and will be given five minutes to present their concerns to the commission. While the purpose is primarily to take testimony on theatre modifications, anyone may comment on any portion of the state arts plan. Copies of the state arts plan are available through the commission offices and will be available at the hearing.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 24, 1988, 12:14 p.m.

TRD-8803011

Thursday, April 7, 1988. The Texas Commission on the Arts will meet in the Paul Poag Theatre, 746 South Main, Del Rio. Times and agendas follow.

8 a.m. The State Arts Plan Task Force will hold a public hearing and consider items.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 24, 1988, 12:14 p.m.

TRD-8803010

9 a.m. The Program Sub-Committee for Arts Congress will approve minutes of the March 11, 1988, meeting; consider description of selection process for potential keynote speakers; review program of work for publicist, work for writers, draft of Art-Congress budget, and planning schedule; consider other business; and summarize recommendation to forward to commission.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 24, 1988, 12:14 p.m.

TRD-8803009

Thursday, April 7, 1988, 10 a.m. The Awards Committee for the Arts Congress will approve minutes of the March 8, 1988, meeting; review description of award categories and draft of nomination form; hear report on process to commission award item; discuss award luncheon program and potential title of award; review draft of budget; consider other business; and summarize recommendations forward to commission.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 24, 1988, 12:14 p.m.

TRD-8803008

Thursday, April 7, 1988, 11 a.m. The Minority Involvement Committee will approve minutes of the November 22, 1987, meeting and consider items.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 24, 1988, 12:14 p.m.

TRD-8803007

Thursday, April 7, 1988, 1 p.m. The commission will introduce new commissioner and guests; hold public hearing; consent agenda; consider items and information. The commission will also meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, 2(g) to consider the appointments, employment, evaluation, duties, or dismissal of a public officer or employee, if needed.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 24, 1988, 12:14 p.m.

TRD-8803006

Texas Commission for the Blind

Wednesday, March 30, 1988, 5 p.m. The Waco District Office of the Texas Commission for the Blind met in emergency session at 415 Lake Air Drive, Waco. According to the agenda summary, the district offered concerned citizens the chance to comment 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 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. The emergency status was necessary because statewide notices have been distributed statewide, therefore we were unable to notify all persons for rescheduling meeting.

Contact: Ted York or Betty Huffman, Austin, Texas, (512) 459-2611 or (817) 772-9284.

Filed: March 25, 1988, 8:37 a.m.

TRD-8803029

Department of Commerce

Friday, April 8, 1988, 9:30 a.m. The Texas Literacy Council of the Department of Commerce will meet in Room 106, John H. Reagan Building, Austin. According to the agenda summary, the council will ap-

prove minutes of the previous meeting; consider update on computer data base system and 1-800 number and subcommittee meetings; hear subcommittee reports; and consider date for next meeting.

Contact: Martha Alworth, 8317 Cross Park, Austin, Texas, (512) 834-6291.

Filed: March 29, 1988, 9:03 a.m.

TRD-8803149

Credit Union Department

Thursday, April 7, 1988, 3:15 p.m. The Credit Union Commission of the Credit Union Department will meet in Room 301, George R. Brown Convention Center, Houston. According to the agenda, the commission will hear public input for future consideration; approve minutes of the January 29, 1988, meeting; hear reports from Credit Union Assistance Committee, Commissioner Evaluation Committee, and communications; consider final adoption of \$91.701 concerning loans, \$91.802 concerning other investments, proposed change of \$97.114 concerning fees, \$91.209 concerning filing fee, \$91.203 concerning charter fee, and \$91.401 concerning fixed assets; appoint deputy credit union commissioner; and consider new charter and resolutions for consideration.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752, (512) 837-9236.

Filed: March 29, 1988, 9:34 a.m.

TRD-8803150

Advisory Commission on State Emergency Communications

Wednesday, April 6, 1988. The Advisory Commission on State Emergency Communications will meet in Room 102, John H. Reagan Building, 105 West 15th Street, Austin. Times and agendas follow.

8:30 a.m. The Executive Committee will review the agenda for the meeting of the full commission later in the morning. The committee is composed of the chairpersons of the four standing committees and the chairman of the commission.

Contact: Mary A. Boyd, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: March 28, 1988, 4:34 p.m.

TRD-8803146

9 a.m. The commission will approve minutes of the previous meeting; hear committee reports from the Public Information Committee, Administrative Committee, Finance Committee, and Regional Plan Committee; consider adoption of an emergency rule relating to the definition of local ex-

change access line or equivalent local exchange access line as provided by Texas Civil Statutes, Article 1432f, §6; consider final adoption of new rule proposals regarding §§255.1-255.3 related to the 9-1-1 equalization surcharge, adoption of emergency rules concerning transfer and deposit of 9-1-1 surcharge funds, and adoption of rules related to the definition of a state agency for purposes of billing the 9-1-1 fees and surcharges; hear public comments; discuss new business; and consider future meetings.

Contact: Mary A. Boyd, P.O. Box 13206, Austin, Texas, (512) 463-1812.

Filed: March 28, 1988, 4:34 p.m.

TRD-8803145

Texas Employment Commission

Tuesday, April 5, 1988, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting; hear public comment; discuss employee leasing; consider institute for human services and agenda items for next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 28, 1988, 3:57 p.m.

TRD-8803129

State Finance Commission

Friday, March 25, 1988, 2 p.m. The State Finance Commission submitted an emergency revised agenda for a meeting held at the State Banking Department, 2601 North Lamar Boulevard, Austin. According to the agenda, the commission approved minutes of the December 11, 1987, meeting; heard reports from the Consumer Credit Department, Savings and Loan Department, and Banking Department; reviewed departmental operations; considered auditor or examination activity; considered charter, license, and change of control activity; considered administrative enforcement activity, personnel staffing and turnover activity, and revenue and expenditure summaries; heard state auditor's report; and considered legislative proposals and update. The commission also met in executive session to consider personnel matters including appointment of savings and loan commissioner, pending litigation, and supervisory actions. The emergency status was necessary because supervisory actions to be taken by the Savings and Loan Department necessitate the appointment of savings and loan commissioner.

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 179-1200.

Filed: March 25, 1988, 9:50 a.m.

TRD-8803021

Governor's Office

Tuesday, March 29, 1988, noon. The Select Committee on Education/Executive Committee of the Governor's Office met in emergency session in the Lieutenant Governor's Room, State Capitol, Austin. According to the agenda, the committee discussed and approved consultants to Select Committee on Education. The emergency status was necessary because the committee must meet before April 6 full committee meeting.

Contact: Margaret La Montagne, Sam Houston Building, (512) 463-1834.

Filed: March 28, 1988, 11:43 a.m.

TRD-8803108

Health and Human Services Coordinating Council

Wednesday, March 30, 1988, 3 p.m. The Health and Human Services Coordinating Council will meet in Room T-610, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes of the December 17, 1987, meeting; hear Restructuring Committee report, Immigration Committee report, and Youth Committee report; consider update on medicaid initiatives; hear report on advisory groups to the council and report of the executive director; and consider old and new business.

Contact: Patricia O. Thomas, 311-A East 14th Street, Austin, Texas, (512) 463-2195.

Filed: March 24, 1988, 2:47 p.m.

TRD-8803003

Texas Heroes Monument Commission

Wednesday, April 6, 1988, 2 p.m. The Texas Heroes Monument Commission will meet in Suite 3600, Texas Commerce Bank Tower, 600 Milam, Houston. According to the agenda summary, the commission will hear the secretary's report and treasurer's report; consider action to be taken; hold discussion; and consider date and site of next meeting.

Contact: Cindy Sullivan, 51 Colony Park Circle, Galveston, Texas 77551, (409) 744-5632.

Filed: March 29, 1988, 9:24 a.m.

TRD-8803159

State Department of Highways and Public Transportation

March 29, 1988, 10 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation submitted an emergency revised agenda for a meeting held in Room 101, 101-A, and Auditorium, First Floor, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. According to the agenda summary, the commission considered amendments to §§1.21, 1.23, 1.26, 1.41, 1.43, 1.46, 1.48, 1.56 1.59, 1.60, 1.62, and 1.63 relating to contested case procedure; new §1.68 relating to Contract Claim Committee, and repeal of §9.5 relating to contractors review committee. The emergency status was necessary due to action required to prevent premature expiration of emergency rules to protect public interest and due process rights of contested case parties.

Contact: Lois Jean Turner, Dewitt C. Greer State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas, (512) 463-8616.

Filed: March 28, 1988, 1:27 p.m.

TRD-8803109

Texas Housing Agency

Thursday, March 31, 1988, 7 a.m. The Finance and Audit Committee of the Texas Housing Agency submitted an emergency revised agenda for a meeting held in the Holiday Inn Crown Plaza, Galleria, 2222 West Loop South, Houston. According to the agenda summary, the committee met in executive session to discuss pending litigation relating to THA and trustee relationship, staff evaluations, and organizational structure. The emergency status was necessary because the new item is needed to provide decent, safe, and sanitary housing for Texans of low and moderate income and to consider possible litigation.

Contact: Patricia F. Broline, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: March 28, 1988, 4:38 p.m.

TRD-8803140

University of Houston System/Board of Regents

Wednesday, March 30, 1988, 1:45 p.m. The Executive Committee of the University of Houston System/Board of Regents met in the Fifth Floor Conference Room, Enterprise Bank Building, 4600 Gulf Freeway, Houston. According to the agenda, the committee will approve minutes of the previous

meeting and consider Schematics-Houston Science Center addition.

Contact: Micheal T. Johnson, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: March 25, 1988, 10:32 a.m.

TRD-8803039

Texas Department of Human Services

Tuesday and Wednesday, April 5 and 6, 1988, 1 p.m. The Advisory Committee for Child Care Administrators and Facilities of the Texas Department of Human Services will meet in Conference Room 4W, Fourth Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the committee will hear the commissioner's report; consider registered family home initiatives, member communication projects on public information, indicator checklist pilot project, federal child care legislation regarding ABC Bill, and week of the young child observance; and hear administrators' licensing survey and levels of care report.

Contact: Doug Sanders, P.O. Box 2960, Austin, Texas, (512) 450-3253.

Filed: March 24, 1988, 1:52 p.m.

TRD-8803002

State Board of Insurance

The State Board of Insurance will meet in 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Friday, April 1, 1988, 9 a.m. The board will meet in Room 414, to consider extension of emergency effectiveness of §15.28 and §15.101, proposed revision of rules under 28 TAC Chapter 27, subchapter B; consider extension of emergency effectiveness of board order 51919 and permanent adoption of amendatory endorsement JUA-73; consider board orders on several different matters; consider personnel matters concerning Fire Marshal, Chief Clerk, Statistical and Rate Development, and Research and Information Services; consider litigation matters concerning Fire Marshal; consider letter to Better Business Bureau, letter to workers' compensation insurers, survey form regarding AIDS, personnel and litigation matters concerning the commissioner, final action on 28 TAC §§7.1601-7.1621, and emergency action and proposed action on 28 TAC Chapter 15; discuss liability coverage and rates for trailers towed by vehicles; and consider final action on amendment to 28 TAC §9.1 published 12 TexReg 3524.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 24, 1988, 4:01 p.m.

TRD-883017

Monday, April 4, 1988, 9 a.m. The board will meet in Room 414, to consider appeal from commissioner's order creating state of conservatorship and motion for stay and appeal from order of the commissioner of insurance upholding a directive of the supervisor of an insurance company and motion to stay.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 24, 1988, 4:02 p.m.

TRD-8803016

Tuesday, April 5, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9856-Whether disciplinary action should be taken against Thomas M. Hearn, Dallas/Gatesville/Waco, who holds a group I, legal reserve life insurance agent's license (L0251369).

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-8803107

Tuesday, April 5, 1988, 10 a.m. The board will meet in Room 414, to consider final action on 28 TAC §§3.3311, 5.4601-5.4603, and 23.5; consider board orders on several matters; consider personnel matters concerning Fire Marshal, Statistical and Rate Development, Research and Information Services, and Commissioner; consider litigation matters concerning Fire Marshal and Commissioner; consider petition to mandate compliance with Insurance Code, Article 21.52; and consider appointment of advisory committees concerning no-cash value life insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 3:33 p.m.

TRD-8803128

Tuesday, April 5, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9859-Application of William Gene Potter, Houston, for a group I, legal reserve life insurance agent's license to be issued by the board.

Contact: Earl A. Corbitt, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-8803101

Wednesday, April 6, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9852-Application of Leonard Eugene Pressley,

Sr., Lubbock, for a group I, legal reserve life insurance agent's license to be issued by the board.

Contact: Earl A. Corbitt, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-8803103

Wednesday, April 6, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9875-Application of Western Casualty Life Insurance Company, Fort Worth, to acquire control of Mission National Life Insurance Company, Houston, pursuant to Texas Insurance Code, Article 21.49-1, §§5 and 6(b)(1).

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-8803102

Thursday, April 7, 1988, 2 p.m. The board will meet in Room 414, to consider possible approval of investments by the Texas Catastrophe Property Insurance Association in a trust for short-term U.S. Government Securities.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 24, 1988, 4:02 p.m.

TRD-8803015

Thursday, April 7, 1988, 3 p.m. The board will meet in Room 414, to consider request by Pre-Paid Legal Casualty, Inc., for approval of a rate filing by an insurer issuing prepaid legal services contracts.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 24, 1988, 4:02 p.m.

TRD-8803014

Friday, April 8, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9853-Application of Harold Eugene Thomas, Perryton, for a group II, life, health, and accident insurance agent's license.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-8803104

Friday, April 8, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9862-Application of William R. Vance, Bryan, to acquire control of General Security Life Insurance Company, Bryan.

Contact: Earl A. Corbitt, 1110 San Jacinto

Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-8803105

Monday, April 11, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9866-Whether disciplinary action should be taken against Mason Wilkins Fields, San Antonio, who holds a local recording agent's license and a group II, health and accident insurance agent's license issued by the board.

Contact: Earl A. Corbitt, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:31 a.m.

TRD-8803100

Monday, April 11, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9851-Whether disciplinary action should be taken against Gilbert Lazo, Jr., Fort Worth, who holds a group I, legal reserve life insurance agent's license issued by the board.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 28, 1988, 9:30 a.m.

TRD-88-3106

Texas Board of Land Surveying

Wednesday and Thursday, April 13 and 14, 1988, 9 a.m. and 8 a.m., respectively. The Texas Board of Land Surveying will hold its second regular meeting in the Marriott Hotel, 6121 IH-35 North, Austin. According to the agenda, the board will administer and conduct the examinations and any other business to come before the board.

Contact: Betty J. Pope, 7703 North Lamar Boulevard, Suite 304, Austin, Texas 78752, (512) 452-9427.

Filed: March 29, 1988, 9:27 a.m.

TRD-8803155

Board for Lease of State-Owned Lands

The Board for Lease of State-Owned Lands will meet in Room 833, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, and agendas follow.

Tuesday, April 5, 1988, 1 p.m. The Board for Lease of Texas Department of Corrections will approve minutes of the previous meeting and consider and approve of bids received for the April 5, 1988, lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

Filed: March 28, 1988, 4:06 p.m.

TRD-8803132

Tuesday, April 5, 1988, 2 p.m. The Board for Lease of Texas Parks and Wildlife Lands will approve minutes of the previous meeting and consider and approve bids received for the April 5, 1988 lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016

Filed: March 28, 1988, 4:06 p.m.

TRD-8803134

Texas Medical Disclosure Panel

Saturday, April 9, 1988, 9:30 a.m. The Texas Medical Disclosure Panel will meet in Room G-1077, 1100 West 49th Street, Austin. According to the agenda summary, the panel will confirm new members; elect officers; review comments on proposed rules concerning obstetric/gynecological procedures; review comments on proposed rules concerning blood administration; and consider therapeutic radiologic procedures, and neuroleptic medications.

Contact: Carroll W. Gregory, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: March 28, 1988, 9:34 a.m.

TRD-8803099

Texas National Research Laboratory Commission

Monday, April 4, 1988, 1:30 p.m. The Texas National Research Laboratory Commission will meet in the Big Boardroom, D/FW Airport Administration Building, 3200 East Airfield Drive, D/FW Airport. According to the agenda, the commission will approve minutes of the March 7, 1988, meeting; hear the chairman's report (Mr. Meyerson), executive director's report (Dr. Bingle), commission special reports, counselor's reports, contractor reports, and project manager's report (Mr. Stafford); and consider old and new business.

Contact: Susan K. Tonetti, 10100 Burnet Road, Austin, Texas 78758.

Filed: March 25, 1988, 9:08 a.m.

TRD-8803019

Texas Board of Licensure for Nursing Home Administrators

Wednesday, April 13, 1988, 10 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet in Suite 310, Commission for the Blind Administrative Building, 4800 North Lamar Boulevard, Austin. According to the agenda, the board will introduce new members; approve minutes of the January 20, 1988, meeting; hear suitability report and Evaluation Committee report; consider personal appearances; hear Texas Department of Health report, Texas Department of Human Services report, executive director's report, and chair's report.

Contact: Janet M. Moore, 4800 North Lamar Boulevard, Suite 355, Austin, Texas 78756, (512) 458-1955.

Filed: March 25, 1988, 2:41 p.m.

TRD-8803045

Board of Pardons and Paroles

Monday-Friday, April 4-8, 1988, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: March 25, 1988, 10:20 a.m.

TRD-8803031

Tuesday, April 5, 1988, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will approve minutes of the March 1, 1988, meeting; consider budget; hear Tentative Parole Committee report; consider extension of program PPT/EM and Senate Bill 341 concerning provision-contracting with probation departments; hear salaries/exempt personnel report and board policy committee report; consider DU II case cons., personnel manual revisions, and revision of victim notice; hear executive director's report and public input/comments.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: March 28, 1988, 4:33 p.m.

TRD-8803137

Tuesday, April 5, 1988, 1:30 p.m. The

Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: March 25, 1988, 10:20 p.m.

TRD-8803032

Texas State Board of Public Accountancy

The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Tuesday, April 5, 1988, 9 a.m. The board will review complaints 82-05-01L and 84-08-59L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0941.

Filed: March 28, 1988, 3:23 p.m.

TRD-8803124

Wednesday, April 6, 1988, 9 a.m. The board will review complaints 86-12-06L, 86-12-08L, 87-01-12L, 87-07-57L, and 87-07-63L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0941.

Filed: March 28, 1988, 3:23 p.m.

TRD-8803123

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, April 4, 1988, 10 a.m. The Hearings Division will consider Docket 8015-Application of Texas Utilities Electric Company to amend its certificate for Comanche Peak Generating Station.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 24, 1988, 2:46 p.m.

TRD-8803001

Monday, April 4, 1988, 1:30 p.m. The Hearings Division will consider Docket 7330-Inquiry into intralata wats competition on multi-jurisdictional wats access lines.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 24, 1988, 2:43 p.m.

TRD-8803000

Wednesday, April 6, 1988, 2 p.m. The Hearings Division will consider Docket 8037-Complaint of Bruce Penny against Southwestern Bell Telephone Company.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 25, 1988, 3:52 p.m.

TRD-8803074

Friday, April 8, 1988, 10 a.m. The Hearings Division will consider Docket 8031-Petition of Guadalupe-Blanco River Authority for authority to implement new contract rate.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 28, 1988, 2:47 p.m.

TRD-8803116

Railroad Commission of Texas

Monday, March 28, 1988, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas submitted emergency revised agendas for meetings in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The division considered whether to use state funds to plug a leaking well: A. M. Howsley; J.A. Carnes lease; Well 1; Unknown field; Jones County. The emergency status was necessary because the well is leaking saltwater to the surface of the ground at the rate of approximately 25 barrels per day, causing an imminent threat to the public's health and safety.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: March 25, 1988, 11:28 a.m.

TRD-8803041

The division considered whether to use state funds to plug a leaking well: R. O. Wood Drilling; Polk County School Land Lease; Well 1; Throckmorton County. The emergency status was necessary because the well is leaking approximately one to two barrels of saltwater per day into a branch of the Hog Creek, and is an imminent threat to the public's health and safety.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: March 25, 1988, 11:27 a.m.

TRD-8803042

Texas Rehabilitation Commission

Wednesday, April 6, 1988, 9:30 a.m. The Executive Committee meeting of the Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet in Room 302, 118 East Riverside Drive, Austin. According to the agenda, the committee will approve summary report; review UAP applications and council budget; and hear the chairman and executive director reports.

Contact: Roger Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: March 25, 1988, 8:35 a.m.

TRD-8803030

Texas Savings and Loan Department

Wednesday, April 6, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Horizon Savings Association, Austin, Travis County, for a loan office at 11200 Westheimer, Suite 606, Houston, Harris County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: March 25, 1988, 11:02 a.m.

TRD-8803040

School Land Board

Tuesday, April 5, 1988, 10 a.m. The School Land Board will meet in Rooms 118 and 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of the previous meeting; consider bids received for the lease sale of April 5, 1988; consider pooling applications; consider royalty reduction request by Corpus Christi Oil and Gas, State Leases M-83908 and M-88046; consider royalty reduction request, CGC Oil and Gas, Inc., State Lease M-24967; consider coastal public lands, commercial lease applications, and easement applications and lease applications.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

Filed: March 28, 1988

TRD-88-3135

Texas Senate

Friday, April 8, 1988, 9 a.m. The Joint Special Interim Committee on High School Dropouts will meet in the DISD School Board Auditorium, 3700 Ross Avenue. According to the agenda summary, the senate will hear speakers and forum for public comment.

Contact: Machree Gibson, P.O. Box 12068, Austin, Texas, (512) 463-0114.

Filed: March 28, 1988, 3:59 p.m.

TRD-8803130

Select Committee on Tax Equity

Wednesday, April 6, 1988, 10 a.m. The Select Committee on Tax Equity will meet in the Baha Room, Embassy Suites, 4250 Ridgemont Drive, Abilene. According to the agenda, the committee will hear public testimony on state and local tax issues.

Contact: Billy Hamilton, Reagan Building, Room 304h-5, Austin, Texas 78711, (512) 463-1238.

Filed: March 28, 1988, 3:15 p.m.

TRD-8803127

Wednesday, April 6, 1988, 3 p.m. The Select Committee on Tax Equity will meet in the Texas Tech Medical School Auditorium, 1400 Wallace Boulevard, Amarillo. According to the agenda, the committee will take public testimony on state and local tax issues.

Contact: Billy Hamilton, Reagan Building, Room 304h-5, Austin, Texas 78711, (512) 463-1238.

Filed: March 28, 1988, 3:15 p.m.

TRD-8803126

Thursday, April 7, 1988, 9 a.m. The Select Committee on Tax Equity will meet in the Tomas Rivera Conference Center Student Union, Third Floor, University of Texas at El Paso, University Drive, El Paso. According to the agenda, the committee will take public testimony on state and local tax issues.

Contact: Billy Hamilton, Reagan Building, Room 304h-5, Austin, Texas 78711, (512) 463-1238.

Filed: March 28, 1988, 3:15 p.m.

TRD-8803125

Texas A&M University System

Wednesday, March 30, 1988, 11 a.m. The Board of Regents of Texas A&M University will meet in Suite 3050, InterFirst Plaza Building, 1100 Louisiana, Houston. According to the agenda, the board will re-

ceive a report regarding the current status of negotiations for natural gas purchasing and take appropriate action. The board will receive a report with respect to the purchase, exchange, lease, or value of real property.

Contact: Bill Presnal, Texas A&M University System, College Station, Texas 77840, (409) 845-9600.

Filed: March 25, 1988, 3:42 p.m.

TRD-8803047

Wednesday, March 30, 1988, 11:30 a.m. The Board of Regents will meet in Suite 3050, Interfirst Plaza Building, 1100 Louisiana, Houston. According to the agenda, the board will receive a report regarding the current status of negotiations for natural gas purchasing and take appropriate action. The board will receive a report with respect to the purchase, exchange, lease, or value of real property.

Contact: Bill Presnal, Texas A&M University System, College Station, Texas 77840, (409) 845-9600.

Filed: March 25, 1988, 12:53 p.m.

TRD-8803043

Texas Southern University

Friday, April 8, 1988, 9:30 a.m. The Board of Regents of Texas Southern University will meet in Room 203, Sterling Student Life Center, 3100 Cleburne Avenue, Texas Southern University, Houston. According to the agenda, the board will approve minutes of the previous meeting; consider matters relating to financial reporting systems and budgets; hear fiscal reports from the administration; consider investments, information items, construction change orders, payment to architects contractors and engineers, and authorization and ratification of contracts and awards; review of on going construction and current contractual relations; consider personnel action; and hear report on progress of academic activities and programs. The board will also meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Texas Southern University, Houston, Texas 77004, (713) 529-8911.

Filed: March 24, 1988, 1:56 p.m.

TRD-8802998

Texas Woman's University

Wednesday, March 30, 1988. The Board of Regents of Texas Woman's University will meet in the Administration and Conference Tower, Denton. Times, rooms, and agendas follow.

9 a.m. The Fund Raising/Public Relations Committee will meet on the 14th Floor, to consider approval of minutes of the December 2, 1987, meeting and hear report of the chair.

Contact: Shirley S. Chater, Texas Woman's University, Denton, Texas 76204, (817) 898-3201.

Filed: March 25, 1988, 10:33 a.m.

TRD-8803038

9:30 a.m. The Student Affairs Committee will meet on the 14th Floor, to approve minutes of the December 2, 1987 meeting; hear report on alcohol policy and report on food service operation; consider modifications in the student meal plan; hear report on compliance with Senate Bill 24 regarding hazing; consider student drug policy guidelines, renovation of six suites in Reagan-Houston Hall to six one-bedroom apartments, and university policy for the student newspaper of Texas Woman's University; hear report of the chair.

Contact: Shirley S. Chater, Texas Woman's University, Denton, Texas 76204, (817) 898-3201.

Filed: March 25, 1988, 10:33 a.m.

TRD-8803037

10 a.m. The Academic Affairs Committee will approve minutes of the December 2, 1987; approve small class report for the 1988 spring semester; hear presentation of strategic planning process; approve university policy for the student newspaper of Texas Woman's University and changes in the TWU facility handbook; and hear report of the chair.

Contact: Shirley S. Chater, Texas Woman's University, Denton, Texas 76204, (817) 898-3201.

Filed: March 25, 1988, 10:33 a.m.

TRD-8803036

11 a.m. The Finance Committee will meet on the 14th Floor, to approve minutes of the December 2, 1987, meeting; consider personnel additions and changes, gifts and grants, agreements and contracts, sale of surplus property, insurance coverage, certificate of substantial completion, change orders, signature authorization for checks, and new bank account authorization; and hear report of the chair.

Contact: Shirley S. Chater, Texas Woman's University, Denton, Texas 76204, (817) 898-3201.

Filed: March 25, 1988, 10:33 a.m.

TRD-8803035

1:30 p.m. The board will meet on the 16th Floor to approve minutes of the December 2, 1987, meeting; consider personnel additions and changes, gifts and grants, agreements and contracts, sale of surplus property, insurance coverage, certificate of substantial completion, change orders, signature authorization for checks, and new bank account authorization; hear report from Finance Committee and Fund Raising/Public Relations Committee; consider modifications in student meal plan,

student drug policy guidelines, apartment renovation in Reagan-Houston Hall, and newspaper policy; hear report from Student Affairs Committee and Small Class Report of Spring 1988; consider changes in TWU faculty handbook; hear report from Academic Affairs Committee and report from the president.

Contact: Shirley S. Chater, Texas Woman's University, Denton, Texas 76204, (817) 898-3201.

Filed: March 25, 1988, 10:33 a.m.

TRD-8803034

Texas Veterans Memorial Committee/Texas State Korean and Vietnam

Thursday, March 31, 1988, 10 a.m. The Texas Veterans Memorial Committee/Board of Directors Fund of the Texas Veterans Memorial Committee/Texas State Korean and Vietnam met in emergency session in Room 106, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the committee summarized February meeting; heard financial report and presentation of model of memorial design; and held general discussion. The emergency status was necessary because committee coordinator's office received the agenda late.

Contact: CJ, Representative Callazo's Office, State Capitol, Austin, (512) 463-0494.

Filed: March 24, 1988, 11:50 a.m.

TRD-8802987

Board of Vocational Nurse Examiners

Monday-Wednesday, April 25-27, 1988, 8 a.m. dally. The Board of Vocational Nurse Examiners will meet in the Trinity Room, Howard Johnson Plaza Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the board will hold administrative hearings; consider agreed orders/informal conferences; approve minutes of the previous meeting; hear executive director's report on administration to include conferences attended and update on agency operations; hear education report concerning program matters, program actions, and other education division matters; consider unfinished business (peer assistance update), new business (rule changes of \$231.41 concerning fees and \$235.18 concerning handicapped candidate); discuss H.C.R. 36; hear meeting reports and program performance report; and consider request to present organization concerns.

Contact: Joyce A. Hammer, 1300 East Anderson Lane, Building C, Suite 285, Austin, Texas 78752, (512) 835-2071.

Filed: March 29, 1988, 9:28 a.m.

TRD-8803151

Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Wednesday, April 6, 1988, 10 a.m. The commission will meet in Room 118, to hear presentation of employee of the month award; consider water district bond issue, use of surplus funds, amendments and transfers of certificates of convenience and necessity, proposed water quality permits, amendments and renewals, amendment to production area authorization, amendment to solid waste permit, renewal of waste disposal well permit, proposed hazardous waste permit, water right application amendments and proposed temporary water use permits, water right application to combine adjudications, proposed resolution regarding hazardous waste clean up, adoption of Chapter 285, subchapter F-Y concerning private sewage facilities, adoption of the repeal of §§305.501-305.506 and new §§305.501-305.506 concerning the waste treatment inspection fee program and authorization to enter into contract.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 25, 1988, 4:15 p.m.

TRD-8803068

Thursday, April 7, 1988, 10 a.m. The commission will consider the executive director's report on agency administration, policy, budget, procedures, and personnel matters.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 28, 1988, 4:35 p.m.

TRD-8803144

Wednesday, April 27, 1988, 10 a.m. The Office of Hearings Examiner will meet in the Classroom, Rolling Hills Water Treatment Plant, 2500 Southeast Loop 820, Fort Worth. According to the agenda summary, the office will consider application of A&D Construction Company, P.O. Box 219, Burleson, Texas 76028 for Proposed Permit 13405-01 to authorize disposal of treated domestic wastewater effluent by irrigation at a volume not to exceed an average flow of 26,000 gallons per day. The treatment facility is to be an activated sludge plant operated in the extended aeration mode and will serve the Mandalay subdivision.

Contact: John Vay, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 25, 1988, 4:13 p.m.

TRD-8803072

Tuesday, May 17, 1988, 10 a.m. The Office of Hearings Examiner will meet in the Port Lavaca City Council Room, 202 North Virginia, Port Lavaca. According to the agenda summary, the office will consider application of Union Carbide Corporation-Seadrift Plant, P.O. Box 186, Port Lavaca, Texas 77979 for Proposed Permit HW-50190-000 to continue to operate an existing hazardous waste industrial solid waste storage, processing, and disposal facility, to expand it, and to implement a post-closure care plant for a part of the facility which has been closed. Union Carbide has also applied for a compliance plan under which it will take corrective action to remediate contaminated groundwater at the facility, further monitor groundwater for possible contamination, conduct investigations, and develop additional corrective action programs for contaminated groundwater.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 25, 1988, 4:13 p.m.

TRD-8803073

Tuesday, May 17, 1988, 10 a.m. The Office of Hearings Examiner will meet in the Conference Room, Administrative Building, Eastside Purification Plant, at the cross roads of Long Creek and Larkin, Sunnyvale. According to the agenda summary, the office will consider application of City of Dallas, 1500 Marilla, Room 4A North, Dallas, Texas, 75201 for an amendment to Permit 10060-03 to authorize an increase in the discharge of backwash water from a volume not to exceed an average flow of 15,000,000 gallons per day at the East Side Water Treatment Plant. The amendment would also revise the parameters for total suspended solids from 35 mg/l to 25 mg/l.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 28, 1988, 4:09 p.m.

TRD-8803148

Tuesday, May 17, 1988, 2 p.m. The Office of Hearings Examiner will meet in the City Council Chambers, El Paso City Hall, at the corner of Santa Fe and Missouri Streets, El Paso. According to the agenda summary, the office will consider application of Chevron U.S.A., Inc., 6501 Trowbridge, P.O. Box 20002, El Paso, Texas 79998 for Proposed Permit HW-50159-000 to authorize the continued operation of a Class I hazardous/industrial solid waste processing and disposal facility associated with its El Paso Refinery. The permit will specify conditions to conduct a land treatment demonstration and operating parameters for an existing land treatment unit. The wastes managed at this facility are Class I industrial solid wastes including hazardous wastes generated as a result of petroleum refining activities at the El Paso Refinery.

Contact: Steve Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 28, 1988, 4:10 p.m.

TRD-8803147

Wednesday, May 18, 1988, 10 a.m. The Office of Hearings Examiner will meet in the Basement, El Paso City Hall, Santa Fe and Missouri Streets, El Paso. According to the agenda summary, the office will consider application of Hillcrest Dairy, Inc. also known as Horizon Dairy, 1055 North Rio Vista Road, El Paso, Texas 79922 for Proposed Permit 02878 to authorize disposal by evaporation of waste and wastewater generated by a dairy operations consisting of 300 milking head that are confined and fed in approximately 3.0 acres of open lots. Liquid manure is collected in two lined storage ponds operated in parallel with a total surface area of 2.2 acres and volume of 7.9 acre-feet. A third lined ponds catches overflow from the first two ponds. Solid residue is removed from the ponds periodically and stockpiled. No discharge of pollutants into waters of the state is authorized by this permit.

Contact: Alex Schmandt, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 25, 1988, 4:14 p.m.

Wednesday, May 18, 1988, 10 a.m. The Office of Hearings Examiner will meet in the Basement, El Paso City Hall, Santa Fe and Missouri Streets, El Paso. According to the agenda summary, the office will consider application of El Paso Water Utilities Public Service Board, P.O. Box 511, El Paso, Texas 79961 for an amendment to Permit 10408-08 which currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 20,000,000 gallons per day from the Socorro Sewage Treatment Plant. The amendment would authorize an interim discharge at a volume not to exceed an average flow of 30,000,000 gallons per day and add monitoring requirements for Total Suspended Solids.

Contact: Alex Schmandt, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 25, 1988, 4:14 p.m.

TRD-8803070

Tuesday, May 10, 1988, 10 a.m. The Office of Hearings Examiner will meet in the Auditorium, MBank, 910 Travis, Houston. According to the agenda summary, the office will consider application of City of Houston, Utility Operations, P.O. Box 61409, Houston, Texas 77208 for an amendment to Permit 10495-95 to authorize an increase in the flow of treated domestic wastewater effluent from a volume not to exceed an average flow of 2,400,000 gallons per day to a volume not to exceed an average flow of 6,000,000 gallons per day at its water control and improvement district 111 sewage treatment plant.

Contact: Mary Speirer Miller, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 25, 1988, 4:13 p.m.

TRD-8803071

Regional Meetings

Meetings Filed March 24, 1988

The Central Plains MHMR Center, Board of Trustees, met at 208 South Columbia, Plainview, on March 31, 1988, at 6:30 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

The Fisher County Appraisal District, Board of Directors, will meet in the Tax Office, Roby, on April 11, 1988, at 7:30 p.m. Information may be obtained from Teddy Kral, P.O. Box 516, Roby, Texas 79543, (915) 766-2733.

The Gregg Appraisal District, Board of Directors, met at 2010 Gilmer, Longview, on March 25, 1988, at 9:30 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Lamb County Appraisal District, Appraisal Review Board, met in the Board Meeting Room, 330 Phelps Avenue, Littlefield, on March 31, 1988, at 7 p.m. Information may be obtained from Murlene J. Godfrey, 330 Phelps Avenue, Littlefield, Texas, (806) 385-6474.

The Leon County Central Appraisal District, Board of Directors, met in the District Office, Centerville, on March 28, 1988, at 7 p.m. Information may be obtained from Robert Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

TRD-8802981

Meetings Filed March 25, 1988

The Bastrop County Appraisal District, Appraisal Review Board, met at 1200 Cedar Street, Bastrop, on March 30, 1988, at 7 p.m. Information may be obtained from Lorraine Perry, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925.

The Education Service Center, Region IV, Board of Directors, will meet in the Boardroom, 7145 West Tidwell, Houston, on April 12, 1988, at 6 p.m. Information may be obtained from Tom Pate, 7145 West Tidwell, Houston, Texas 77092, (713) 462-7708.

The Golden Crescent Regional Planning Commission, Board of Directors, met at the Gardener's Retreat, Highway 90A, Shiner, on March 30, 1988, at 4:30 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Harris County Appraisal District, Board of Directors, met on the Eighth Floor, 2800 North Loop West, Houston, on March 28, 1988, at 10 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291.

The Lavaca County Central Appraisal District, Board of Directors, will meet at 113 North Main, Hallettsville, on April 11, 1988, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Nueces-Jim Wells-Kleberg Soil and Water Conservation District, Board of Directors, will meet at Cotten's BBQ, Highway 77, Robstown, on April 19, 1988, at 7 p.m. Information may be obtained from Carol Freeman, P.O. Box 142, Alice, Texas 78333.

The Parmer County Appraisal District, Board of Directors, will meet at 305 Third Street, Bovina, on April 14, 1988, at 8 p.m. Information may be obtained from Ronald E. Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405.

The Tyler County Appraisal District, Appraisal Review Board, met at 103 Pecan, Woodville, on March 31, 1988, at 9 a.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75799, (409) 283-3736.

TRD-8803028

Meetings Filed March 28, 1988

The Austin Transportation Study, Policy Advisory Committee, will meet in Room 2.102, Joe C. Thompson Conference Center, University of Texas, Austin, on April 5, 1988, at 6 p.m. Information may be obtained from Joseph P. Gieselman.

The Brown County Appraisal District, Board of Directors, will meet at 403 Fisk Avenue, Brownwood, on April 4, 1988, at 7 p.m. Information may be obtained from Bob Young, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Education Service Center, Region XVII, Board of Directors, will meet in the Boardroom, 4000 22nd Place, Lubbock, on April 5, 1988, at 10 a.m. Information may be obtained from Weldon E. Day, 4000 22nd Place, Lubbock, Texas 79410, (806) 792-4000.

The Education Service Center, Region XVIII, Board of Directors, will meet at 2811 LaForce Boulevard, Midland, on April 7, 1987, at 5 p.m. Information may be obtained from Vernon Stokes, P.O. Box 6020, Midland, Texas 79711, (915) 563-2380.

The Heart of Texas Council of Governments, Executive Committee, met in the Conference Room, 320 Franklin Avenue,

Waco, on March 31, 1988, at 10 a.m. Information may be obtained from Mary McDow, 320 Franklin Avenue, Waco, Texas 76701-2297.

The Hood County Appraisal District, Board of Directors, will meet at 1902 West Pearl, on April 12, 1988, at 7:30 p.m. Information may be obtained from Harold Chestnut, 1902 West Pearl, Granbury, Texas 76048, (817) 573-2471.

The Sabline Valley Regional MHMR Center, Board of Trustees, will meet in Suite B-1, Developmental Disabilities Services Division, 450 East Loop 281, Longview, on April 11, 1988, at 7 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 758-2471.

The Texas Panhandle Mental Authority, Board of Trustees, met in the Kilgore Building, 1200 Wallace, Amarillo, on March 31, 1988, at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Upshur County Appraisal District, Board of Directors, will meet at Warren and Trinity Streets, Gilmer, on April 11, 1988, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

The Wheeler County Appraisal District, Board of Directors, will meet at the County Courthouse Square, Wheeler, on April 4, 1988, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.

TRD-8803082

Meetings Filed March 29, 1988

The Brazos River Authority, Lake Management Committee, will meet in Lake Supervisor's Office, Possum Kingdom Lake, on April 6, 1988, at 10 a.m. Information may be obtained from Mike Bukala, 4400 Cobbs Drive, Waco, Texas, (817) 776-1441.

TRD-8803141

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a trust company to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the commissioner.

On March 22, 1988, the banking commissioner received an application to acquire control of The Trust Company of Texas, Dallas, by American Trustcorp, Inc., Tulsa, Oklahoma.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

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

TRD-8803044 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 25, 1988, 2:24 p.m.

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

Texas Education Agency Public Hearings

The Texas Education Agency will conduct a series of four public hearings concerning changes in the Education Consolidation and Improvement Act of 1981 state application for 1988-1989.

The Governor's Advisory Committee on Chapter 2 has recommended a change in the formula for distribution of funds to local school districts to include gifted and talented students identified by the district. Proposed discretionary programs include: Involving Principals in the School Accreditation Process, Attracting and Retaining Quality Candidates in Teacher Education, Public Education Information Management System, Unified Improvement in Local Education Practices (Through State Agency Staff Development), Development of Capacity to Automate Standard Application System Process-Departmental Task Force on Utilization of PEIMS and Other Data, Education Service Center Funding for Targeted Campuses and Purposes, including Basic Skills Inservice, Secondary Models for Increasing Graduation Rates and Activities for Parent Provided Educational Assistance, Comprehensive System for Statewide Staff Development and Technical Assistance in Gifted Education, Texas Learning Technology Group Physical Science, and Technology Project and State Administration and Technical Assistance.

Public hearings will be held as follows (listed is the date, location, and time): April 11, 1988, Region XVIII, Education Service Center, La Force Boulevard, Midland, 9 a.m.-noon; April 13, 1988, Region IV, Education Service Cen-

ter, 7200 West Tidwell, Houston, 6:30 p.m.-9 p.m.; April 16, 1988, Region X, Education Service Center, 400 East Spring Valley Road, Richardson, 9 a.m.-noon; April 18, 1988, Region XIII, Education Service Center, 5701 Springdale Road, Austin, 9 a.m.-noon.

Interested parties are invited to testify and/or submit written comments concerning the proposed changes. All written comments are due to the Texas Education Agency by April 18, 1988.

Anyone wishing to register to testify or receive additional information, should contact Rosalind Eathorne, Chapter 2 Coordinator, Division of Discretionary Funding and Grants Administration, Texas Education Agency, William B. Travis Building, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269, prior to 5 p.m., Friday, April 7, 1988. A typed copy of the oral testimony will be required.

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

TRD-8802986 W. N. Kirby
Commissioner of Education

Filed: March 24, 1988, 11:18 a.m.

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

Request for Public Comments

The Adult Education Act (Public Law 91-230, as amended) requires a state to develop a plan every three years as one prerequisite to receiving its adult education federal grant. Texas is currently operating under its approved state plan for adult education for fiscal years 1986-1988.

The Adult Education Act authorizes appropriations through fiscal year 1988. Reauthorization proposals and amendments have not been acted upon by the conference committee of the Congress. Therefore, federal regulations are not expected to be issued soon enough to allow states sufficient time to submit a new plan by June 30, 1988. To avoid any interruption in services to educationally disadvantaged adults, the United States Department of Education has authorized states to request a one-year extension of their 1986-1988 plans. This extension is in line with the United States Senate's action to provide a transition rule so that states with approved state plans for the period of July 1, 1985, through June 30, 1988, can have those plans extended for one more year through June 30, 1989.

The United States Department of Education has also asked that the state plan be amended to include the provision of educational opportunities for homeless adults as required by the 1987 enactment of the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77.

Public comments are requested regarding the proposed amendments and the one-year extension of the state plan for adult education for fiscal years 1986-1988. Current goals and objectives will continue through fiscal year 1989 in serving adults, including the homeless. The Committee for Finance and Programs of the State Board of Education

will consider these items on April 8, 1988. Final action by the State Board of Education is scheduled for April 9, 1988. Written comments should be returned by April 5, 1988, to the Division of Adult Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Copies of the plan and the proposed amendment are available from Dr. Pavlos Roussos, Division of Adult Education/Employment and Training, Funding, and Compliance, (512) 463-9294.

Issued in Austin, Texas, on March 24, 1988.

TRD-8802985 W. N. Kirby
Commissioner of Education

Filed: March 24, 1988, 11:18 a.m.

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

Texas Employment Commission Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Employment Commission is requesting proposals for consulting services.

Description of Services. The agency invites individual(s) to offer their services to provide technical assistance for a period not to exceed three months (Phase I of the project) to analyze certain issues in the Texas Unemployment Insurance (UI) program. The primary issue to be analyzed during this phase of the contract will be the impact of UI on the costs of doing business in Texas. Questions which are to be analyzed during this phase of the contract will be the impact of UI on the costs of doing business in Texas. Questions which are to be addressed include whether unemployment insurance costs are depressing business startups, whether the current new employer tax rate of 2.7% is a reasonable cost given current economic conditions, and whether the current assignment of tax rates on acquisitions or mergers is reasonable or are there alternatives that could provide a more favorable environment to encourage the saving of failing businesses.

Phase II of the contract will address issues which pertain to reforming or modifying the UI system to support economic development. This phase of the project is for a period not to exceed three months. The issues to be examined relate to how UI tax incentives might be created that would encourage the hiring of individuals drawing UI benefits and how TEC programs such as unemployment insurance and employment services might be utilized to support the economic development initiatives of the newly created Department of Commerce.

Skill requirements for the project are at least five years experience in providing economic analysis and consulting services, and experience and knowledge of issues relating to state tax policy, economic development, and industrial/labor relations. The approximate number of days required for Phase I is 60 working days and for Phase II, 60 working days.

Contact Person. Information regarding requests for proposal may be obtained by calling or writing Stuart Greenfield, TEC Building, Room 646A, 101 East 15th Street, Austin, Texas 78778, (512) 463-2233.

Closing Date. Proposals are due by 1 p.m. on May 2, 1988, at the above address.

Evaluation and Selection. Evaluation and selection will be based on the following: the company's objectivity, background, and experience in working with state agencies on economic development issues; the timeliness of the

proposed work; the knowledge, experience, skills, expertise, and demonstrated competence of the individuals proposed to deliver the services in the two phases; and projected cost. When other considerations are equal, preference will be given to consultants whose principal place of business is within Texas or who have an office in Texas.

Issued in Austin, Texas, on March 24, 1988.

TRD-8802988 C. Ed Davis
Special Counsel
Texas Employment Commission

Filed: March 24, 1988

For further information, please call (512) 463-2291.

Texas Department of Health Correction of Error

The Texas State Board of Examiners of Dietitians submitted proposed sections which contained errors as published by the office of the Texas Register in the March 18, 1988, issue of the *Texas Register* (13 TexReg 1299).

In §711.2 paragraph (0)(7) should read: "

(7) The following standing committees shall be appointed by the newly elected chairman each odd-numbered year to serve a term of two years."

Subparagraph (c)(2)(H) should read:

(H) Examination fee-The fee designated by the commission at the time of the examination or reexamination [Returned check fee-\$15];

In §711.5, clause (d)(3)(A)(ii) should read:

(ii) a baccalaureate degree in a discipline appropriate to the area of program specialization, and have had at least five years full-time experience or 10,000 clock hours of experience as a licensed or registered dietitian.

In §711.14, paragraph (d)(4) should read:

(4) The executive secretary, on behalf of the board, shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

The first sentence of clause (e)(1)(B)(ii) should read: "The committee, with the concurrence of the board chairman, may ask the attorney general, district attorney, or county attorney to take appropriate legal action against the violator."

The second sentence of paragraph (g)(3) should read: "The notice shall state the basis for the proposed action."

Intent to Revoke an In Vitro Testing General License Acknowledgement

The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of In Vitro General License Acknowledgement G01399, issued to Immunobody, because the agency determined that the licensee is no longer located at 7039 Country View, P.O. Box 380856, San Antonio, Texas 78280. The licensee has not notified the agency of a change of address and no forwarding address is available.

All attempts by the agency to contact the licensee by

telephone, by mail, and by inspection have been unsuccessful. Therefore, the Texas Department of Health, Bureau of Radiation Control, recommends that the general license acknowledgement be revoked immediately.

In accordance with *Texas Regulations for Control of Radiation* 13.8, this notice affords the opportunity for a hearing to show cause why the general license acknowledgement should not be revoked. A written request for a hearing must be received within 30 days from the date of publication of this notice to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a hearing be timely filed, the general license acknowledgement will be revoked at the end of the 30-day period of notice.

Issued in Austin, Texas, on March 24, 1988.

TRD-8803026

Robert A. MacLean
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: March 25, 1988, 8:46 a.m.

For further information, please call (512) 458-7236.

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Corpus Christi	Radiology Associates	L04169	Corpus Christi	0	03/08/88
Fort Worth	Rosedale Radiology	L04131	Fort Worth	0	03/03/88
Houston	Dowser Consulting	L04165	Houston	0	03/07/88
Lubbock	Southwest Clinical Laboratories, Inc.	L04144	Lubbock	0	03/11/88
Throughout Texas	Strain Brothers, Inc.	L04163	San Angelo	0	02/24/88

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Austin	St. David's Community Hospital	L00740	Austin	41	02/12/88
Baytown	Exxon Research and Engineering Company	L01132	Baytown	32	02/26/88
Beaumont	North Star Steel Texas	L02122	Beaumont	12	02/12/88
Beaumont	Mobil Chemical Company	L02316	Beaumont	14	02/29/88
Bruni	Westinghouse Electric Corporation	L02537	Bruni	20	03/09/88
Caldwell	Burleson County Hospital	L03260	Caldwell	6	02/29/88
Cisco	E. L. Graham Hospital	L03310	Cisco	5	03/11/88
Conroe	Medical Center Hospital	L01769	Conroe	19	02/24/88
Dallas	St. Paul Southwest Imaging Center	L04093	Dallas	1	02/29/88
Dallas	Humana Hospital Medical City Dallas	L01976	Dallas	49	03/04/88
Dallas	Baylor University Medical Center	L01290	Dallas	19	03/04/88
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	48	03/11/88
Denton	Flow Regional Medical Center, Inc.	L02350	Denton	12	02/26/88
Dinero	Everest Exploration, Inc.	L03068	Corpus Christi	11	03/09/88
El Paso	MPI Professional Service Centers, Inc.	L03954	El Paso	8	02/23/88
El Paso	Sierra Medical Center	L02365	El Paso	17	03/04/88
El Paso	Medi-Physics, Inc.	L03966	El Paso	2	03/14/88
Evadale	Temple-Eastex, Inc.	L01095	Silsbee	29	02/17/88
Fort Worth	Chun Han Tseng, M.D.	L02667	Fort Worth	5	02/26/88
Fort Worth	Mineral Logging Systems, Inc.	L02994	Fort Worth	4	03/08/88
Fort Worth	Lafarge Corporation	L01698	Fort Worth	13	03/08/88
Freeport	Rhone-Poulenc, Inc.	L02807	Freeport	13	03/01/88
Galveston	The University of Texas Medical Branch	L01299	Galveston	26	02/26/88

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Garland	NDRC Laboratories, Inc.	L02811	Garland	6	02/11/88
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	11	02/23/88

	Specialized Radiology Center, Inc.	L03427	Houston	8	02/26/88
Houston	The Methodist Hospital	L00457	Houston	52	02/29/88
Houston	West Houston Surgicare Corporation	L03768	Houston	3	03/04/88
Houston	Methodist Hospital	L00972	Houston	15	02/25/88
Houston	Positron Corporation	L03806	Houston	7	02/25/88
Houston	Smith International	L02362	Houston	10	03/08/88
Levelland	South Park Medical Center, Levelland	L02925	Levelland	6	02/11/88
Longview	John R. Loftis, M.D.	L01310	Longview	6	03/04/88
Lubbock	Texas Tech University	L01869	Lubbock	41	03/11/88
Lufkin	Memorial Hospital Kurth Radiation Center	L01346	Lufkin	36	03/11/88
Mansfield	Jet Research Center Inc.	L03877	Arlington	1	03/08/88
Marlin	Torbett, Hutchings, Smith Hospital	L03447	Marlin	1	02/29/88
Missouri City	Fort Bend Community Hospital	L03457	Missouri City	5	03/04/88
Orange	Inland-Orange, Inc.	L01029	Orange	29	03/08/88
Pasadena	Phillips Petroleum Company	L00230	Pasadena	44	02/18/88
Port Arthur	Cancer Center of Port Arthur	L04035	Port Arthur	3	03/11/88
San Antonio	San Antonio State Chest Hospital	L02218	San Antonio	11	03/01/88
San Antonio	Mission Contractors, Inc.	L02808	San Antonio	2	03/01/88
San Antonio	The U.T. Health Science Center at San Antonio	L01279	San Antonio	39	03/09/88
Temple	Scott and White Memorial Hospital	L00331	Temple	36	03/11/88
Throughout Texas	Tru-Tag Systems, Inc.	L03783	Corpus Christi	7	02/18/88
Throughout Texas	Texas Department of Health	L01155	Austin	28	02/22/88
Throughout Texas	City of El Paso	L03922	El Paso	1	02/19/88
Throughout Texas	Collin County Courthouse	L04019	McKinney	1	02/19/88
Throughout Texas	Pro-Log	L01828	Denver City	9	02/22/88
Throughout Texas	ACS Commercial Testing	L03752	Tyler	3	02/19/88
Throughout Texas	D. L. Ray, Inc.	L04010	Richardson	3	02/22/88
Throughout Texas	Exploration Logging of U.S.A. Inc.	L03258	Houston	6	02/19/88
Throughout Texas	City of San Antonio	L03762	San Antonio	1	02/11/88
Throughout Texas	Winn Engineering & Testing, Inc.	L04142	Longview	1	02/11/88
Throughout Texas	Western Atlas International, Inc.	L00446	Houston	88	02/11/88
Throughout Texas	Warrington, Inc.	L03074	Austin	12	02/19/88
Throughout Texas	Pro-Technics II, Inc.	L03835	Houston	8	02/16/88
Throughout Texas	Elias Brothers, Inc.	L03579	El Paso	2	02/11/88
Throughout Texas	Frank Malek & Associates	L03943	Montgomery	4	02/12/88
Throughout Texas	Non-Destructive Testing Company	L01008	Grand Prairie	35	02/25/88
Throughout Texas	E.I. DuPont de Nemours & Company	L00005	Orange	53	02/26/88
Throughout Texas	Cotton's Inspection of Houston, Inc.	L03797	Houston	2	02/29/88
Throughout Texas	High Plains Underground Water Conservation Dis. #1	L02598	Lubbock	10	02/26/88
Throughout Texas	Zack Burkett Company	L04102	Graham	1	02/26/88
Throughout Texas	Pledger, Schulze and Associates Consulting Engineers	L03733	Brenham	3	02/26/88
Throughout Texas	National Scientific Balloon Facility	L02009	Palestine	10	02/25/88
Throughout Texas	The Dow Chemical Company	L00451	Freeport	43	02/26/88
Throughout Texas	Schlumberger Well Services	L00109	Houston	29	02/29/88
Throughout Texas	Downing Brothers, Inc.	L03822	Waco	2	02/26/88
Throughout Texas	Texas Air Control Board	L01715	Austin	24	03/08/88
Throughout Texas	Amarillo Testing and Engineering, Inc.	L02658	Amarillo	10	03/08/88
Throughout Texas	Geoscience Engineering & Testing Inc.	L04157	Houston	1	03/08/88
Throughout Texas	ATE, Inc.	L01765	Austin	18	03/08/88
Throughout Texas	MRA/Materials Engineers, Inc.	L03018	Houston	7	03/08/88

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	Gearhart Industries, Inc.	L02113	Fort Worth	53	03/04/88
Throughout Texas	Schlumberger Well Services	L01833	Houston	62	03/04/88
Throughout Texas	Houston Lighting and Power	L02063	Houston	34	03/09/88
Throughout Texas	Harding-Lawson Associates	L01970	Houston	13	03/08/88
Throughout Texas	The Housing Authority of the City of El Paso	L04115	El Paso	1	02/19/88

Waco	Texas State Technical Institute	L01926	Waco	21	02/29/88
Waco	Baylor University	L01136	Waco	13	03/01/88
Wichita Falls	Colorado Fayette Medical Center	L03470	Weimar	3	03/01/88
Wichita Falls	Wichita General Hospital	L00350	Wichita Falls	33	03/09/88

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Action
Baytown	Chevron Chemical Company	L00962	Baytown	21	02/22/88
Bonham	Northeast Medical Center	L03331	Bonham	5	03/03/88
Butler	Elgin-Butler Brick Company	L03299	Elgin	5	02/29/88
Corpus Christi	Humana Corpus Christi	L02816	Corpus Christi	15	03/11/88
Dallas	U.T. Southwestern Medical Center at Dallas	L00777	Dallas	16	03/01/88
Dallas	International Clinical Laboratories, Inc.	L00900	Dallas	12	03/03/88
Eagle Lake	Eagle Lake Community Hospital	L03408	Eagle Lake	3	03/11/88
Eastland	Eastland Memorial Hospital	L03222	Eastland	8	02/26/88
El Paso	Diagnostic Radiology, P.A.	L03395	El Paso	7	02/26/88
El Paso	Providence Memorial Hospital	L02353	El Paso	24	02/26/88
Georgetown	Southwestern University	L00372	Georgetown	10	03/11/88
Groesbeck	South Limestone Hospital	L03426	Groesbeck	2	03/09/88
Hamlin	Hamlin Memorial Hospital	L03418	Hamlin	3	03/04/88
Harlingen	Valley Eye Center, P.A.	L02639	Harlingen	3	03/03/88
Iowa Park	W. R. Grace and Company	L02770	Iowa Park	9	02/12/88
Longview	Mary U. Andrews, M.D.	L01946	Longview	5	03/04/88
Lubbock	Methodist Hospital	L00483	Lubbock	52	03/04/88
Midlothian	Texas Industries, Inc.	L01421	Dallas	22	02/12/88
Pasadena	Simpson Pasadena Paper Company	L00906	Pasadena	24	03/08/88
Port Arthur	St. Mary Hospital of Port Arthur	L01212	Port Arthur	35	03/04/88
Port Arthur	Park Place Hospital	L01707	Port Arthur	18	03/11/88
San Antonio	Humana Hospital San Antonio	L02266	San Antonio	17	03/03/88
San Antonio	J. L. Mims, M.D.	L01250	San Antonio	11	03/01/88
Tahoka	Lynn County Hospital District	L03383	Tahoka	5	03/03/88
Teague	Teague General Hospital	L03425	Teague	1	03/04/88
Throughout Texas	City of San Antonio	L00926	San Antonio	18	02/22/88

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
El Paso	Cabot Mining, Inc.	L03945	El Paso	1	02/11/88
Rosebud	Rosebud Community Hospital	L03380	Rosebud	3	03/04/88
Throughout Texas	Perfmaster Wireline Company	L03892	Midland	3	03/07/88
Throughout Texas	Robert E. McKee, Inc.	L03488	Dallas	3	03/09/88

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amendment #	Action
Dallas	Associated Laboratories, Inc.	L01133	Dallas	0	02/19/88
Throughout Texas	R/A Services, Inc.	L03010	Odessa	0	02/25/88

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lackner, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the persons considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on March 24, 1988.

TRD-8803024 Robert A. MacLean
Deputy Commissioner for Professional
Services Professional
Texas Department of Health

Filed: March 25, 1988

For further information, please call (512) 835-7000.

Rescission of Orders

Notice is given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: order of revocation issued December 7, 1987, to Granbury Medical Associates, 900 Whitehead Drive, Granbury, Texas 76048, holder of Certificate of Registration R14138.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m.-5 p.m. (except holidays).

Issued in Austin, Texas, on March 24, 1988.

TRD-8803027 Robert A. MacLean
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: March 25, 1988, 8:46 a.m.

For further information, please call (512) 835-7000.

Notice is given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: order of revocation issued January 15, 1988, to Geoscience Engineering and Testing, Incorporated, 3898 North Freeway, Suite E, Houston, Texas 77022, holder of Certificate of Registration L04157.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m.-5 p.m. (except holidays).

Issued in Austin, Texas, on March 24, 1988.

TRD-8803023 Robert A. MacLean
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: March 25, 1988, 8:46 a.m.

For further information, please call (512) 835-7000.

Notice is given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: order of revocation issued February 22, 1988, to Thomas W. Roberts, 4029 Burke, #4313, Pasadena, Texas 77504, holder of Certificate of Registration R14134.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m.-5 p.m. (except holidays).

Issued in Austin, Texas, on March 24, 1988.

TRD-8803025 Robert A. MacLean
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: March 25, 1988, 8:46 a.m.

For further information, please call (512) 835-7000.

Texas Department of Human Services Consultant Proposal Request

The Texas Department of Human Services (DHS), Region 05, is requesting proposals for nine service contracts to provide preparation for independent living services to clients, ages 14-18, under the department's Families and Children Program description. For purposes of this request only, Region 05's 19 counties will be grouped in eight geographic service areas. Eight training contracts will be awarded. An estimated 10-15 clients per contract, ages 14-18, will be served. One cost-reimbursement contract to serve all 19 counties will also be awarded to provide services that include allowances, school tuitions/expenses, vocational training, vocational tests, and special youth conferences. Proposals must include a plan to provide advance payments for these services. Full reimbursement of funds disbursed will be made plus an administrative fee of up to 5.0% of funds expended. Clients served will be 16

to 18 years of age. Those past their 13th birthday will be served if they are expected to complete an educational program by their 19th birthday. An estimated 80 clients will be served. Offerors may submit proposals for one training contract and/or the 19 county cost-reimbursement contract.

Limitations. The contract period will be September 1, 1988-August 31, 1989, and renewable on a yearly basis through August 31, 1992. The September 1, 1988-August 31, 1989 period will have approximately \$41,000 for the eight training contracts and \$195,000 for the single 19-county cost reimbursement contract. Renewal contract allocations will be contingent on DHS Region 05's annual allocation set by the Legislative Budget Board. After services are provided, payment will be made on a monthly basis through submittal of Form 4116 (DHS Purchase Request Voucher), Form 2014 (Purchased Service Expenditure Report), and Form 2016 (Purchased Service Delivery Report).

Evaluation and Selection. Individuals (sole proprietors or incorporated individuals), public agencies and private corporations (profit and nonprofit) are eligible to submit proposals. Offerors for a training contract must be located in one of the counties in the service area for which the proposal is being submitted and be able to provide transportation from other counties listed in the service area.

Contact. For a copy of the request for proposal instructions, call or write Don Campbell, 631 106th Street, P.O. Box 5128, Arlington, Texas 76011; (817) 640-5090. Proposal packages will be available on Thursday, April 15, 1988.

Closing Date. The closing date for receiving proposals is 4 p.m., Monday, May 9, 1988. Proposals may be submitted by certified mail or in person to Don Campbell at 631 106th Street, P.O. Box 5128, Arlington, Texas 76011, Family and Children Division.

Issued in Austin, Texas, on March 24, 1988.

TRD-8802983 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: March 24, 1988

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

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration:

1. Application for incorporation of the United States Fidelity Life Insurance Company of San Antonio, a domestic life insurance company. The home office is to be in San Antonio.
2. Application for a name change by Federated Reinsurance Corporation, a foreign casualty company. The home office is in New York, New York. The proposed new name is Nem Re-Insurance Corporation.
3. Application for admission to do business in Texas of Jackson National Life Insurance Company, a foreign life insurance company. The home office is to be in Lansing, Michigan.
4. Application for admission to do business in Texas of Valley Insurance Company, a foreign casualty insurance company. The home office is to be in San

Francisco, California.

5. Application for a name change by Sentry Indemnity Company, a foreign casualty company. The home office is in Madison, Wisconsin. The proposed new name is Connie Lee Insurance Company.

6. Application for admission to do business in Texas of the Falcon Reinsurance Company, a foreign casualty company. The home office is in Baltimore, Maryland.

7. Application for incorporation of the P. Miller and Associates Computer Service, Inc., a domestic third party administrator. The home office is in Dallas.

8. Application for admission to do business in Texas of Healthcare Benefits Service Company, Inc., a foreign third party administrator. The home office is in Bridgewater, New Jersey.

9. Application for admission to do business in Texas of William P. Northey Company, a foreign third party administrator. The home office is in Schaumburg, Illinois.

10. Application for incorporation of the Logic Management Services, Inc., a domestic third party administrator. The home office is in Dallas.

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

TRD-8803012 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: March 24, 1988

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

Texas Department of Mental Health and Mental Retardation Consultant Contract Award

This award of consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11C.

The Central Office of the Texas Department of Mental Health and Mental Retardation filed a request for proposals in the January 22, 1988, issue of the *Texas Register* (13 TexReg 425). The consultant is to provide the following services: a management and systems analysis to include an evaluation and assessment of department and state school policies and procedures to determine any conflicts or incompatibilities with ACDD standards; on-site consultant to state schools to provide advice and recommendation concerning status of compliance with ACDD standards; conduct surveys of state school to determine ACDD accreditation; provide educational workshops, inservices and training to the administrators and staff of state schools concerning the ACDD standards.

The Central Office of the Texas Department of Mental Health and Mental Retardation has contracted with the Accreditation Council on services for people with developmental disabilities (ACDD) located at their central office at 120 Boylston Street, Suite 202, Boston, Massachusetts 02116, to provide the previously described services. The contract was entered into on March 15, 1988, and will be in effect until February 28, 1989.

The total value of the contract is approximately \$200,000 to \$300,000 during the first 12 months, depending upon the status of each facility's compliance with ACDD standards and the timing of the accreditation surveys.

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

Filed: March 23, 1988

For further information, please call (512) 465-4591.

Texas State Board of Pharmacy Correction of Error

The Texas State Board of Pharmacy submitted an adopted amendment which contained errors as published by the office of the Texas Register in the March 18, 1988, issue of the *Texas Register* (13 TexReg 1327).

In the preamble to Chapter 291, the first sentence should read: "The Texas State Board of Pharmacy adopts amendments to §§291.51-291.54."

In §291.51, the definition to Nuclear Pharmacy should read: "Nuclear Pharmacy-A pharmacy that has been issued a Class B pharmacy license by the board, which receives, prepares, possesses, uses, transfers, owns, acquires, or distributes radioactive material (drugs and devices) under authorization of a Texas radioactive material license as provided in Texas Regulations for Control of Radiation, Part 41, Texas Department of Health."

In §291.53, subparagraph (a)(3)(A) should read:

"(A) a licensed practitioner or his or her designated agent for administration to his or her patient, provided no person may receive, possess, use, transfer, own, acquire, or dispose of radioactive drugs except as authorized in a specific or a general license as provided in Texas Regulations for Control of Radiation, Part 41, Texas Department of Health, or the Act;"

Texas Rehabilitation Commission Amended Request for Proposals

A request for proposal submitted by the Texas Rehabilitation Commission contained an incorrect address as published in the February 23, 1988, issue of the *Texas Register* (13 TexReg 937).

Organizations or individuals wishing to submit a proposal must submit this proposal to one of the six regional offices of the commission. The correct address for Region IV is Jim Muhlhauser, Houston Regional Office, 3600 South Gessner, Suite 220, Houston, Texas 77063-5130.

Issued in Austin, Texas, on March 25, 1988.

TRD-8803046 Charles Schiesser
Assistant Commissioner
Texas Rehabilitation Commission

Filed: March 25, 1988, 3:24 p.m.

For further information, please call (512) 445-8124.

Request for Proposals

Roger A. Webb, executive director of the Texas Planning Council for Developmental Disabilities, has announced the availability of developmental disabilities funds to be awarded through the Texas Rehabilitation Commission.

Background. Public Law 100-146, the Developmental Disabilities Act, requires the Texas Planning Council to carry out various planning activities, including analysis of services provided through state and federal programs, needs of unserved and underserved populations, consumer satisfaction, and program outcomes. The Act requires the Texas Planning Council to prepare report on its findings and recommendations for the governor and the legislature, and also for the secretary of the Department of Health and Human Services by January 1990. Proposals for two studies are requested.

Project A.—Policy Analysis Study: Eligibility and Effectiveness of Services. The Act requires the Texas Planning Council to conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all state agencies (including agencies which provide public assistance) which impact or which potentially impact on the ability of persons with developmental disabilities to achieve the goals of independence, productivity, and integration into the community, including persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

This project will include an examination of eligibility criteria, extent and scope, and effectiveness of service programs in Texas in promoting the independence, productivity, and integration of people with developmental disabilities. The project will also include the compilation of information and trends in consumer concerns documented by the Texas protection and advocacy system under its programs.

The Developmental Disabilities Program will provide the grantee with the methodology to be used in the policy analysis study.

Project B.—Consumer Satisfaction Survey. The Act requires the Texas Planning Council to conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from federal and state funds by, each of the state agencies (including agencies providing public assistance) responsible for performing the functions for, and providing services to, all persons with developmental disabilities in the state. Such review and analysis shall be based upon a survey of a representative sample of persons with developmental disabilities receiving services from each such agency and their families, if appropriate. This project will complete a consumer satisfaction survey of people with developmental disabilities and their families. The project will include surveyor training, face-to-face interviews with a sample of individuals, analysis of results, and a final report.

The Developmental Disabilities Program will provide the grantee with a national model for the survey methodology, copies of the core survey instrument, surveyor training, and analysis of core survey results. The Developmental Disabilities Program and grantee will jointly develop any additional questions to the survey and analysis of those results.

Contract Limitations. Any applicant may apply for one or both projects. The period of funding for each project will be from July 1, 1988-February 28, 1989. The total amount of the grant for Project A is estimated to be not more than \$50,000. The total amount of the contract for Project B is estimated to be not more than \$30,000. **Evaluation and Selection.** Proposals will be reviewed by a committee and evaluated on the basis of the content of the proposal (narrative, methodology, budget, qualification of the applicant) and submission of a bibliography or

resume or prior work performed related to the activity area to be funded.

Application Process. For further information about the request for proposals and an application kit, contact David Henderson, Texas Planning Council for Developmental Disabilities, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Deadline. The closing date for receiving proposals is May 16, 1988.

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

TRD-8802999 Charles W. Schiesser
Assistant Commissioner
Texas Rehabilitation Commission

Filed: March 24, 1988, 1:53 p.m.

For further information, please call (512) 445-8124.

Texas Water Commission Consultant Proposal Requests

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Water Commission, (TWC) announces that it wishes to retain the services of a consultant to perform a remedial investigation and feasibility study of a gasoline contaminated site in San Marcos.

The project will be conducted by the TWC through cooperative agreement with the United States Environmental Protection Agency (EPA) in accordance with Superfund Amendments and Reauthorization Act (SARA) of 1986, amending Subtitle I of the Resource Conservation and Recovery Act (RCRA), and Subtitle 26 of the Texas Water Code.

Objectives. The objectives of this project are to complete a remedial investigation and feasibility study at the site to determine the source of the contamination, the extent of contamination, and to provide recommendations for remedial action designs.

The consultant will be responsible for all services and equipment necessary to complete the project.

RFP Procurement. Consultants interested in submitting proposals for this project must obtain a request for proposals (RFP) from the TWC. A copy of the RFP may be obtained in one of three ways: by certified mail to Karen Frizlen, UST Section, Contracts Unit, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8569; by private express mail service with a prepaid self-addressed envelope; or in person with a signed letter of receipt at Room 542, Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

Procedure for Selecting Consultant. A detailed evaluation process will be conducted, using criteria such as, but not limited to, demonstrated technical experience, financial stability, available facilities and equipment, and the proposed technical approach; the competence, related experience, and availability of personnel to be assigned to the project; the consultant's safety, chain of custody, and quality assurance/quality control plans; and a separate accompanying cost proposal.

Upon selection of a candidate by the commission, negotiation will be conducted by the TWC staff with the selected consultant. If a fair and reasonable cost cannot be negotiated, that candidate will be bypassed and the second ranked proposer shall be picked for negotiation proceedings.

Submittal Information. Four copies of the proposal must be received at the following address before 5 p.m., local

prevailing time, on May 1, 1988: Danny Lien, Texas Water Commission, Underground Storage Tank Section, Stephen F. Austin Building, Room 244A, 1700 North Congress Avenue, Austin, Texas 78711.

Proposals submitted in response to this request must address the scope of work outlined in the RFP. Any additions, alterations, or options to this scope of work must be clearly identified in the proposal.

Information submitted by an offeror in variance with the RFP instructions will not be evaluated. All contracting procedures shall be conducted in accordance with all applicable state and federal rules.

Budget. The maximum budget allowable for the project will be consistent with the scope of work and cooperative agreement.

Issued in Austin, Texas, on March 25, 1988.

TRD-8803053 William G. Newchurch
Legal Division
Texas Water Commission

Filed: March 25, 1988, 4:33 p.m.

For further information, please call (512) 463-8569.

The Texas Water Commission (TWC) is requesting a proposal for consultant services in accordance with Texas Civil Statutes, Article 6252-11C.

Description. This is a proposal request for a management study of field operations activities of the TWC. The primary objectives of the study are to evaluate and optimize effectiveness and efficiency of the agency's existing district office structure. The study will also focus on determining appropriate district office locations and district boundaries with respect to existing and future workloads, including the Watermaster Program. The study should not exceed three months duration and should include at a minimum the following: and evaluation of the location of present district offices in terms of travel times and accessibility to meet present and future program needs; an evaluation of the present configuration of district boundaries in light of present and future program needs, including the Watermaster Program; a review and analysis of the cost effectiveness of use of state-owned motor vehicles versus private vehicles for field work; an evaluation of central office management policies and procedures with respect to the field offices; a review and analysis of the information processing, office systems, and telecommunications needs of the field offices; a review and analysis of the division's emergency response program.

In performing this study, the successful consultant will be expected to interview appropriate central office staff and all district office managers at the district office locations. The successful consultant will provide TWC with written monthly status reports of activities accomplished and findings. A written final report shall be prepared which addresses the areas listed previously with specific recommendations. The consultants submitting proposals should, at a minimum, outline a proposal to accomplish the study, a schedule of personnel to be assigned to the project, and a timetable for project completion.

Contact. Prospective bidders may contact Carole V. Batterton, Director of Field Operations Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7749.

Closing Date. Two copies of the proposal should be delivered to Room 617 of the Stephen F. Austin Building, 1700 North Congress Avenue, prior to 5 p.m. on the 20th

calendar day following the date of publication of this announcement. Late proposals will not be considered.

Evaluation Criteria. Proposals will be reviewed by an agency evaluation team. Selection will be based on the adequacy of proposals with respect to the items specified previously. The criteria used to analyze the adequacy of the proposals will include, but will not be limited to, demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services. When other considerations are equal, a preference will be given to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state. Proposals will also be evaluated in light of the experience of bidder in consultant work with state governments organizations. The agency reserves the right to contact any bidder to obtain explanations regarding its proposal, to use for comparison or clarification purposes any materials from any proposal or other relevant sources, and to make an award for all or part of the requirements stated.

Budget Limitations. The budget limitation is \$20,000.

Issued in Austin, Texas, on March 25, 1988.

TRD-8803052 William G. Newchurch
Legal Division
Texas Water Commission

Filed: March 25, 1988, 4:33 p.m.

For further information, please call (512) 463-7749.

Enforcement Orders

Pursuant to the Texas Water Code which states that if the commission finds that violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Socorro Independent School District-Bauman Elementary on March 22, 1988, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting William W. Thompson, III, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8802974 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 23, 1988, 4:09 p.m.

For further information, please call (512) 463-7906.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Chillicothe on March 22, 1988, assessing stipulated penalties, suspended pending compliance.

Information concerning any aspect of this order may be obtained by contacting Robin Shaver, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas

78711-3087, (512) 463-8069.

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

TRD-8802972 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 23, 1988

For further information, please call (512) 463-8069.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Commodore Financial Services on March 22, 1988, assessing \$6,580 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andy Barrett, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8802973 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 23, 1988

For further information, please call (512) 463-8069.



Name: Scott Bruno

Grade: 7

School: Clear Lake Intermediate, Clear Creek