

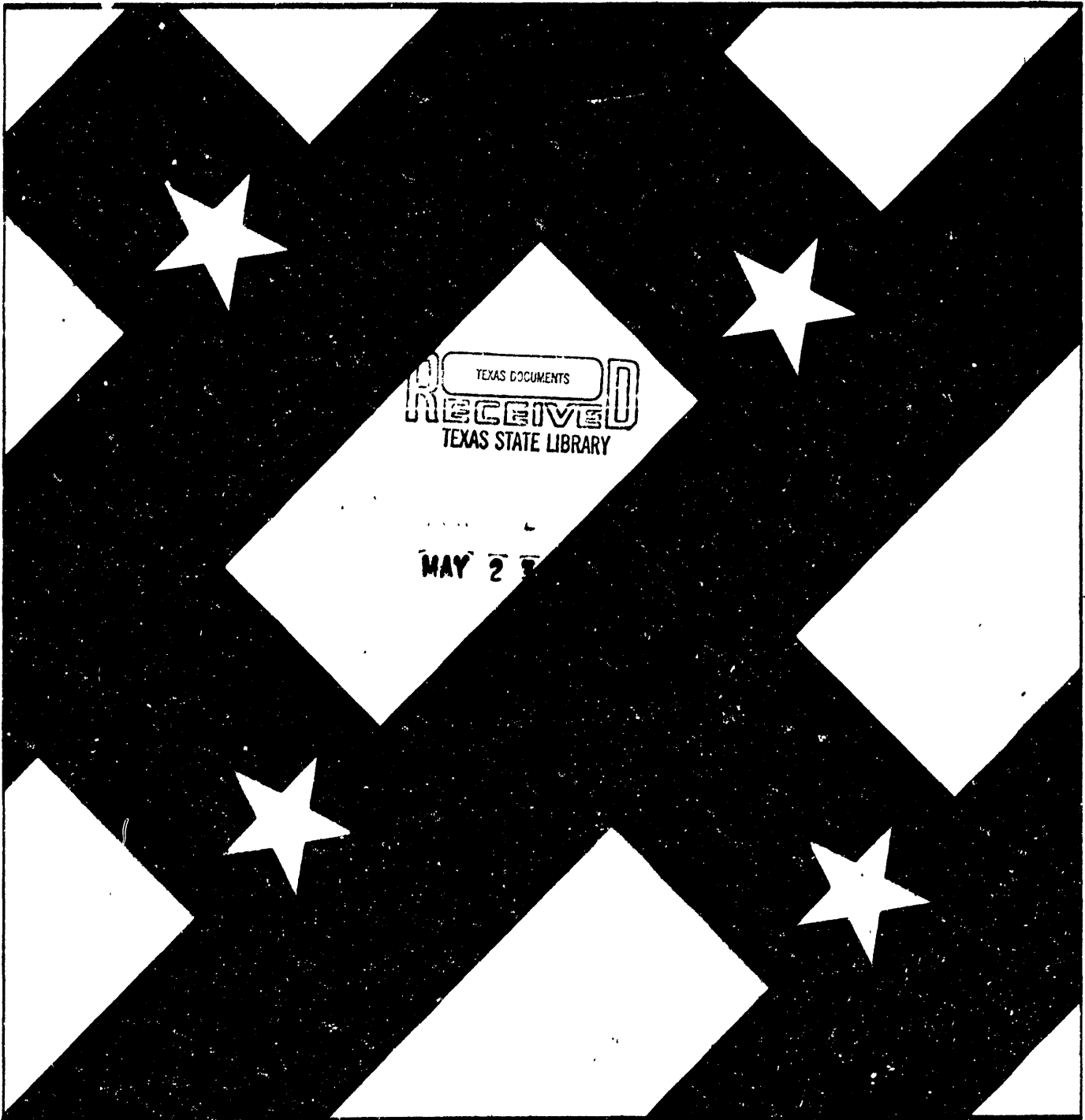
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# Texas Register

Volume 10, Number 40, May 24, 1985

Pages 1655 - 1706



### Highlights

The Employees Retirement System of Texas proposes new sections concerning the Uniform Group Insurance Program. Earliest possible date of adoption - June 24.....page 1661

The Texas Education Agency adopts an

amendment concerning the teacher career ladder. Proposed date of adoption - June 7.....page 1677

The State Board of Insurance adopts new rules concerning variable life insurance. Proposed date of adoption - June 5.....page 1683

Office of  
the Secretary  
of State

## Texas Register

The *Texas Register* (ISSN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1985 with the exception of June 25, July 9, August 30, December 3, and December 31, by the Office of the Secretary of State.

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- 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- 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 monthly, 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: "10 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 10 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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# Secretary of State

Under provisions of the Texas Election Code (Article 1.03), the secretary of state is authorized to issue opinions based on the election laws. Under provisions of Texas Civil Statutes (Article 6252-9c, §14A), the secretary of state is authorized to issue advisory opinions in response to written requests based on a real or hypothetical situation that relates to Article 6252-9c.

Questions on particular submissions should be addressed to the Office of the Secretary of State, Elections Division, P.O. Box 12887, Austin, Texas 78711, 1 (800) 252-9602 or (512) 475-3091

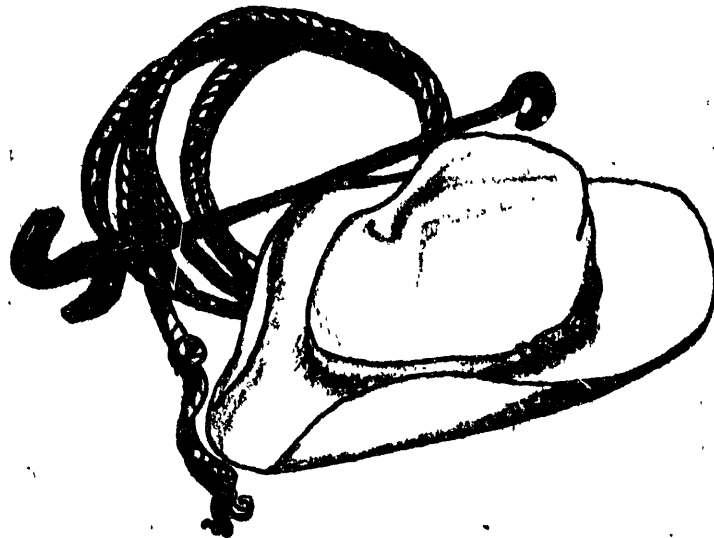
## Opinion Issued May 13

**Lobby Law Opinion 4.** Request from R. Stephen McNally, regarding the contingent fee prohibition of Texas Civil Statutes, Article 6252-9c, §11.

**Summary.** Texas Civil Statutes, Article 6252-9c, §11, does not apply to an attorney who accepts a contingent legal fee arrangement for a case and who lobbies for legislation dealing with the subject matter of the case where acceptance of the case was not with the understanding that the attorney would be expected to lobby for the passage of legislation dealing with the subject matter of the case.

TRD-854351

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# Attorney General

**Description of attorney general submissions.** Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the Register.

## Opinions

**JM-313 (RQ-513).** Request from Oscar H. Mauzy, chairman, Committee on Jurisprudence, Texas Senate, Austin, concerning the use of the bad check fund under the Code of Criminal Procedure, Article 53.08, by a district attorney, county attorney, or criminal district attorney.

**Summary of Opinion.** The county attorney, district attorney, or criminal district attorney who administers special bad check fund created pursuant to the Code of Criminal Procedure, Article 53.08, need not obtain the approval of the commissioners court prior to making expenditures from the fund. Expenditures from the special fund are not limited to the costs which are related solely to the prosecution and collection of bad

checks; they may be made for the whole prosecutor's office. Outlays from the fund are, however, limited to defraying the salaries and expenses of the prosecutor's office. Although salary increases and pre-existing, in-kind forms of compensation are authorized, no bonuses, salary supplements, or allowances may be made which operate as additional compensation to an employee after the employee's services have been rendered. An employee may, however, be reimbursed for legitimate expenses incurred in the performance of the employee's official duties. The attorney may make expenditures from the fund to pay for office equipment and supplies if they are reasonably necessary to the performance of the official duties of the prosecutor's office. Expenditures for the benefit of members of the grand jury are not authorized.

**JM-314 (RQ-547).** Request from R. K. Proconier, director, Texas Department of Corrections, Huntsville, concerning whether Texas Civil Statutes, Article 6184f, prohibits classification of an inmate as a trusty for the purpose of Texas Civil Statutes, Article 6181-1.

**Summary of Opinion.** Texas Civil Statutes, Article 6184f, does not prohibit the Texas Department of Corrections from classifying an inmate returned due to revocation of parole or mandatory supervision as a trusty for purposes of good conduct time under Texas Civil Statutes, Article 6181-1, §3(a)(3).

TRD-854372

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# Proposed Rules

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

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

## TITLE 19. EDUCATION

### Part II. Texas Education

#### Agency

#### Chapter 77. Comprehensive Instruction

#### Subchapter R. Bilingual Education and Other Special Language Programs

#### ★ 19 TAC §77.362

*(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Education Agency, 201 East 11th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Education Agency proposes the repeal of §77.362, concerning bilingual education allotments for operational expenses. The repeal of this section is proposed simultaneously with the proposal of new §77.362, concerning bilingual education allotments.

Richard Bennett, associate commissioner for finance, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Dr. Beverly J. Bardsley, policy development director, and Mr. Bennett have determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is the deletion of an obsolete rule from the Texas Administrative Code. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 201 East 11th Street, Austin, Texas 78701, (512) 475-7077. 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 rules has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §16.005, which author-

izes the State Board of Education to make rules for the administration of the Foundation School Program; and the Texas Education Code, §16.153, which provides the allocations for bilingual education and special language programs.

#### §77.362. Allotments for Operational Expenses.

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 16, 1985.

TRD-854378

W. N. Kirby  
Commissioner of  
Education

Proposed date of adoption:

July 13, 1985

For further information, please call  
(512) 475-7077.

★ ★ ★

The Texas Education Agency proposes new §77.362, concerning bilingual education allotments. This proposed new section replaces prior rules for bilingual education and special language programs allocations which are being proposed for repeal.

House Bill 72, 68th Legislature, 2nd Called Session, 1984, changed the formula for an annual allotment to districts for bilingual education and special language programs from a per pupil allocation to an amount based on the adjusted basic allotment multiplied by 0.1.

The proposed new section allows districts to use up to 15% of the funds allocated for general administrative costs, but districts may not exceed the program's actual share of general administrative costs. Subsection (c) permits districts to compensate bilingual education and English as a second language teachers for participation in continuing education programs designed to improve their skills and/or to lead to certification. Districts must request entitlements under this section on a form approved by the commissioner of education and must report expenditures by program and by campus.

Richard Bennett, associate commissioner for finance, has determined that

for the first five-year period the rule 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 rule.

Dr. Beverly J. Bardsley, policy development director, and Mr. Bennett, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is the clarification of allowable expenditures under the bilingual education program. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 201 East 11th Street, Austin, Texas 78701, (512) 475-7077. All requests for a public hearing on the 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 rules has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for the administration of the Foundation School Program and the Texas Education Code, §16.153, which provides for allocations for bilingual education and special language programs.

#### §77.362. Bilingual Education Allotment.

(a) Each school district shall be entitled to an annual allotment as specified in the Texas Education Code, §16.153. This allocation shall be based on the average daily attendance of limited English proficient students during the same eight weeks that attendance is taken for the regular program and calculated on the same four weeks selected as best for the regular program.

(b) A district may use up to 15% of these funds for general administrative costs but may not exceed the program's actual share of general administrative costs as calculated in accordance with generally accepted accounting procedures. No less than 85% of the district's entitlement shall be used for direct instructional services to students in a bilingual or special language program for purposes such as salaries for classroom teachers, teacher aides, evaluation costs,

professional development, testing, materials and supplies, instructional equipment such as cassette tape recorders and language masters, software, and transportation costs, or such other purposes determined appropriate by the commissioner.

(c) Districts may compensate bilingual education and English as a second language program teachers for participation in continuing education programs designed to increase their skills or to lead to bilingual education or English as a second language certification in accordance with the Texas Education Code, §21.459(f). These programs may be either formal training programs provided by an approved college or university, or special training programs provided by the district. Training may address one or more of the following:

(1) providing the essential elements in a bilingual education or English as a second language program;

(2) methodology for providing a bilingual education or English as a second language program; or

(3) development of proficiency in a language used in the district's bilingual education program.

(d) Districts shall request tentative entitlements for bilingual education and English as a second language funds on a form provided by the commissioner of education. A year-end report on program expenditures shall be submitted in accordance with guidelines developed by the commissioner of education.

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 16, 1985.

TRD-854379

W. N. Kirby  
Commissioner of  
Education

Proposed date of adoption:

June 13, 1985

For further information, please call

(512) 475-7077.

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 53. Finance

##### Selling Price of Departmental Printed Material

★ 31 TAC §§53.2, 53.4, 53.6, 53.8

The Texas Parks and Wildlife Commission proposed amendments to §§53.2, 53.4, and §53.6, concerning the selling price of

obsolete stamps and decals, and new §53.8, concerning license fees set by the commission. These amendments and new section are proposed to include all types of stamps and decals and license fee increases.

Jim Dickinson, finance director, has determined that for the first five-year period the rules 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 rules.

Mr. Dickinson also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is that the availability of stamps and decals and license fee increases will be known.

The anticipated economic cost to individuals who are required to comply with the rules as proposed is \$3.00 for a resident combination hunting and fishing license; \$2.00 for a resident hunting license; \$1.00 for a resident-exempt hunting license, a duplicate license, or a temporary nonresident hunting license; \$37.25 for a nonresident small game hunting license; and \$99.25 for a general nonresident hunting license.

The amendments and new section are proposed under the Texas Parks and Wildlife Code, §§11.056, 12.006, 42.012-42.014, 42.0141, 42.017, 43.012, 43.202, 43.303, 46.0051, and 50.001, which authorizes the sale of publications and the various stamps and decals and authorizes the commission to set certain license fees.

#### §53.2. Publications.

(a) Each copy of a nontechnical departmental bulletin printed at department expense and of the *Parks and Wildlife Law Book* is sold for a price computed at cost of printing, plus a [\$ .20] processing charge, [rounded to the nearest \$ .05, plus cost of] postage, and [plus] sales tax.

(b) Each copy of a nontechnical departmental bulletin printed at federal aid expense is furnished for a [\$ .20] processing fee, plus postage.

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

§53.4. *Obsolete License Plates.* The price of an obsolete license plate is \$ .70 per pair, plus a [\$ .20] processing charge, [plus the] cost of postage, and [plus] sales tax.

#### §53.6. *Obsolete Stamps and Decals.*

(a) The price of [an] obsolete stamps and decals shall be face value [white-winged dove stamp is \$ .10 apiece], plus a [\$ .20] processing charge per shipment, [plus] postage, and [plus] sales tax as determined by the executive director.

(b) Stamps and decals shall remain on sale for a maximum of two fiscal years. During the second year, stamps and decals shall be sold only by book or sheet.

(c) The executive director may maintain a maximum of 200 stamps and decals of each type and year.

(d) All other obsolete stamps and decals shall be destroyed.

#### §53.8. License Fees Set by Commission.

(a) The Texas Parks and Wildlife Commission is authorized to set the fee amount on certain licenses.

(b) Due to the increasing costs involved in administering the programs of the Parks and Wildlife Department, the commission sets the following license fee amounts effective September 1, 1985;

(1) resident combination hunting and fishing—\$15;

(2) resident hunting—\$10;

(3) resident-exempt hunting—\$6.00;

(4) duplicate hunting—\$6.00;

(5) temporary nonresident fishing—\$8.00;

(6) nonresident small game hunting—\$75; and

(7) general nonresident hunting—\$200.

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 16, 1985.

TRD-854370

Boyd Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption:

June 24, 1985

For further information, please call

(512) 479-4806.

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## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 81. Insurance

★ 34 TAC §§81.1, 81.3, 81.5, 81.7, 81.9, 81.11, 81.13-81.15, 81.17, 81.19, 81.21, 81.23

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Employees Retirement System of Texas, 18th and Brazos Streets, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)



The Employees Retirement System of Texas proposes the repeal of §§8.1, 81.3, 81.5, 81.7, 81.9, 81.11, 81.13-81.15, 81.17, 81.19, 81.21, and 81.23, concerning rules which set out the guidelines for coverages and benefits available through the Uniform Group Insurance Program. A new set of rules is being adopted which are easier to understand and which leave out many provisions rendered obsolete by changes which will take place in the insurance program on September 1, 1985.

Everard C. Davenport, general counsel, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Davenport also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is deletion of existing rules to allow for adoption of a new set of rules which is easier to understand and which deletes many revisions rendered obsolete by changes which will take place in the insurance program on September 1, 1985. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Everard C. Davenport, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711.

The repeal is proposed under the Insurance Code, Articles 3.50-2, §4A, which provides the Employees Retirement System of Texas with the authority to adopt rules consistent with this Act that provide standards for determining eligibility for participation in the program, including standards for determining disability.

- §81.1. *Definitions.*
- §81.3. *Group Insurance Advisory Committee.*
- §81.5. *Eligibility and Effective Dates of Coverages for Employees, Elective and Appointive Officers.*
- §81.7. *Eligibility and Effective Dates for Part-Time Employees.*
- §81.9. *Eligibility and Effective Dates of Coverages for Retirees and Surviving Spouses of Retirees.*
- §81.11. *Eligibility and Effective Dates of Coverages for Dependents.*
- §81.13. *Eligibility for Former Members of the Legislature.*
- §81.14. *Eligibility for Former Employees of the Legislature.*
- §81.15. *Approved Health Maintenance.*
- §81.17. *Direct Payment of Premiums.*
- §81.19. *Grievance Procedure.*
- §81.21. *Petitions for Supplemental Coverage.*
- §81.23. *Expulsion from the Uniform Group Insurance 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 May 20, 1985.

TRD-854444 Clayton T. Garrison  
Executive Director  
Employees Retirement  
System of Texas

Earliest possible date of adoption:  
June 24, 1985

For further information, please call  
(512) 476-6431, ext. 213.

★ ★ ★

★34 TAC §§81.1, 81.3, 81.5, 81.7,  
81.9, 81.11

The Employees Retirement System of Texas proposes new §§81.1, 81.3, 81.5, 81.7, 81.9, and 81.11, concerning a complete recodification of the rules relating to the Uniform Group Insurance Program. Section 81.1 provides definitions, §81.5 provides the requirements for eligibility for coverages, §81.7 provides the requirements for enrollment and participation, §81.9 provides a grievance procedure for those dissatisfied with any matter, and §81.11 provides for termination of coverage under certain circumstances.

Everard C. Davenport, general counsel, has determined that for the first five-year period the rules 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 rules.

Mr. Davenport also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is the provision of a more concise, understandable statement of the legal rights of members of the State Uniform Group Insurance Program. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Everard C. Davenport, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711.

The new sections are proposed under the Insurance Code, Article 3.50-2, §4A, which provides the Employees Retirement System of Texas with the authority to adopt rules consistent with this Act that provide standards for determining eligibility for participation in the program, including standards for determining disability.

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

**Act**—The Texas Employees Uniform Group Insurance Benefits Act, Chapter 79, Acts of the 64th Legislature, 1975, as amended (the Insurance Code, Article 3.50-2).

**Active duty**—The expenditure of time and energy in the service of the State of Texas. An employee will be considered to be on active duty on each day of a regular paid vacation or on a nonworking day, on which the employee is not disabled, if the employee was on active duty on the last preceding working day.

**Basic plan**—The program of group insurance determined by the trustee in which every full-time employee or retiree is automatically enrolled unless participation is specifically waived.

**Board or trustee**—The board of trustees of the Employees Retirement System of Texas.

**Committee or GIAC**—The Group Insurance Advisory Committee as established by the Act, §18.

**Contract year**—A contract year begins on the first day of September and ends on the last day of the following August.

**Dependent**—The spouse of an em employee or retiree and unmarried children under 25 years of age, including:

(A) the natural child of an employee/retiree;

(B) a legally adopted child (including a child living with the adopting parents during the period of probation);

(C) a stepchild whose primary place of residence is the employee/retiree's household;

(D) a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(E) a foster child or other child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and the natural parent of the child does not reside in the same household; and

(F) any such child, regardless of age, who lives with or whose care is provided by an employee or retiree on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retiree for care or support, as the trustee shall determine mentally retarded or physically incapacitated means any medically determinable physical or mental condition which prevents the child from engaging in self sustaining employment, provided that the condition commences prior to such child's attainment of age 25, the child was eligible and covered under the plan immediately prior to reaching age 25, and that satisfactory proof of such condition and dependency is submitted by the employee/

retiree within 31 days following such child's attainment of age 25. As a condition to the continued coverage of a child as a mentally retarded or physically incapacitated dependent beyond the age of 25, the insurance carrier or health maintenance organization shall have the right to require periodic certification of the child's physical or mental condition but not more frequently than annually after the two year period following the child's attainment of age 25.

**Eligible to receive an annuity—**Refers to a person who has retired from a state retirement program or the Optional Retirement Program and who is receiving a monthly annuity or who has received an annuity that has been temporarily suspended.

**Employee—**Any appointive or elective state officer or employee in the service of the State of Texas, except persons performing personal services for the State of Texas as independent contractor or employees of any university, senior or community/junior college, or any of other agency of higher education within the meaning and jurisdiction of the Texas Education Code, Chapter 61:

(A) who is retired or retires and is an annuitant as defined in the Act;

(B) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state;

(C) who, receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the state comptroller of public accounts upon the state treasurer against appropriations made by the Texas legislature from any state funds or against any trust funds held by the state treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; or

(D) who is appointed subject to confirmation of the senate as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by the Act.

**Employing office—**For a retiree covered by this program, the office of the Employees Retirement System in Austin, Texas, or the retiree's last employing agency; for an active employee, the employee's employing agency.

**Evidence of insurability—**Such evidence, including medical records and a physical examination, as may be required by a qualified carrier for changes in coverage or new coverage pursuant to the rules in §81.7(f) of this title (relating to Enrollment and Participation).

**Extended sick leave without pay—**The status of an employee who is certified monthly by an agency administrator to be

absent from duty as a result of a disabling condition which prevents the employee from performing the employee's usual duties who has not received a refund of retirement contributions based upon the most recent term of employment and who is expected to return to work within a specified period of time, not to exceed 12 months.

**HMO—**A health maintenance organization approved by the board of trustees to provide health care benefits to participants in the program in lieu of participation in the program's insured health benefits plan.

**Insured plan—**That plan of coverage administered and/or underwritten by a qualified carrier (other than an HMO) as defined in the Insurance Code, Article 3.50-2, §3(a)(9).

**Leave of absence without pay—**The status of an employee who is certified monthly by an agency administrator to be absent from duty for a reason other than being disabled who has not received a refund of retirement contributions based upon the most recent term of employment and who is expected to return to duty within a specified period of time, not to exceed 12 months.

**ORP—**The optional retirement program as provided in Texas Civil Statutes, Title 110B, Chapter 36.

**Pre-existing condition—**Any physical or mental condition for which an individual was seen or treated by a physician during the 90-day period immediately prior to the effective date of the participant's coverage, but does not include medical conditions resulting from congenital or birth defects.

**Program—**The Employees Uniform Group Insurance Program as established by the board.

**Retiree—**A retired employee who is eligible, under the terms of the Act, for benefits under this program.

**Salary—**The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary including longevity and hazardous duty pay, received by the employee as of the employee's first day of employment within a contract year. No other component of compensation shall be included. Nonsalaried elective and appointive officials and members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

### §81.3. Administration.

(a) Group Insurance Advisory Committee.

(1) The Group Insurance Advisory Committee, as established by the Act, §18, shall consist of 23 members who shall be active or retired employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by the chief administrative officer of those agencies or departments. One nonvoting member shall

be the executive director of the Employees Retirement System of Texas. One member shall be a classified employee of the governor's office, appointed by the governor. One member shall be a retired state employee appointed by the trustee for a three-year term. The remaining members shall be elected by and from the classified employees of the other state departments and agencies in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or department.

(2) All members of the committee shall be appointed or elected for three-year terms; provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years, and seven to serve for three years. Subsequent appointments or elections shall be for three-year terms.

(3) The Group Insurance Advisory Committee shall advise and consult with the trustee on matters concerning all insurance coverage provided under this Act. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Employees Uniform Group Insurance Program among the various state departments and agencies. The duties of each member of the Group Insurance Advisory Committee shall be to secure input from fellow employees and shall be considered additional duties required of his or her other state office or employment, and all expenses incurred by any such member in performing his or her duties as a member of the committee shall be paid out of funds made available for those purposes to the agency or department of which he or she is an employee or officer.

(4) During a term of appointment or election, vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the trustees for the balance of the vacated term. A vacancy on the Group Insurance Advisory Committee exists when any member of the committee:

(A) resigns from the committee;

(B) transfers from an agency from which the member was appointed to serve on the committee;

(C) transfers into an agency which is represented by another committee member; or

(D) ceases to be covered by the position classification plan as defined by Texas Civil Statutes, Article 6252-11.

(5) All committee meetings are to be open to the public.

(6) The executive director of the Employees Retirement System of Texas may file a notice of the committee's meeting with the secretary of state for publication in the *Texas Register*.

(7) The executive director shall be the custodian of the minutes of the commit-

tee's meetings and will have those minutes available for public inspection at the offices of the Employees Retirement System of Texas during normal working hours.

(8) Before the end of the each fiscal year, the executive director will propose to the board a schedule for an election of elective committee members.

(b) Petitions for supplemental coverage.

(1) An agency head or a group of employees or retirees may submit a written petition to the board or to the Group Insurance Advisory Committee requesting the establishment of a supplemental insurance benefits plan.

(2) The petition must include a clear and concise statement of the type and extent of coverage desired. The petition must show the relationship of the requested coverage to the existing coverages provided by the program. The proposed plan must provide coverage that is not available in the program or must be an extension of the coverage over and above that provided by the related benefit in the program. The plan must provide that employees enrolling in an approved supplemental plan must first be enrolled for the maximum related benefits provided by the program.

(3) The proposed plan must meet the requirements of the Act, including the following:

(A) the plan must be reviewed by the Group Insurance Advisory Committee;

(B) the plan must be actuarially sound;

(C) carriers for the plan must be selected by competitive bidding;

(D) the plan must satisfy the Act's minimum enrollment requirements; and

(E) the proposal must provide evidence that the proposed coverage is in the best interests of the people covered by the Act.

(4) If a proposed plan is approved for payroll deduction in any state agency, a percentage of all premiums paid are to be paid into the employees life, accident, and health insurance and benefits fund; such percentage shall be determined by the board, in its sole discretion, at the time of approval.

(c) Health maintenance organizations.

(1) A health maintenance organization (HMO) must obtain board approval to offer health benefits programs to participants in the program.

(2) An HMO seeking board approval must satisfy the following conditions.

(A) The HMO must be certified by the State of Texas and federally approved.

(B) The HMO must have been providing services in the area for which application is made for at least 12 months prior to the date the application is filed with

the Employees Retirement System of Texas. This requirement shall also apply to a request for an expansion of service area if the expansion results in the establishment of a service area requiring a separate rating structure or an extension of the HMO's service area into another area in which one or more HMOs are currently providing services to state employees and retirees.

(C) At least 25 state employees must reside in the approved HMO service area.

(D) The HMO must submit an annual application, with rates, by January 15 of each year to the Board of Trustees in the format prescribed by the Employees Retirement System of Texas. Once submitted, the rates may be modified effective November 1 of the contract year if the Board of Trustees approves the modification and the HMO gives notice of modification as required by the letter of agreement between the Employees Retirement System and the HMO under which the HMO is currently operating. A request for expansion of service area, as described in this section, shall require a separate application.

(E) The HMO must agree to the provisions contained in the letter of agreement as adopted by the board for the contract year for which application is made.

(3) Approval by the board may be limited to one group type HMO and one independent practice type HMO within a given service area.

(4) If an HMO, previously approved by the board, fails to maintain compliance with the letter of agreement, the board has the right to cancel the existing contract with that HMO upon proper notice as specified in the letter of agreement.

(5) An HMO that loses its state or federal certification will automatically become ineligible to offer its health benefits program to participants in the insurance program on the date determined by the board of trustees.

(d) Funding.

(1) Contributions. Premiums for coverage provided under the Uniform Group Insurance Program are funded from three sources: state contributions, Employees Retirement System of Texas contributions, employee and retiree contributions. The state legislature appropriates monies to fund group insurance benefits for all state employees. Monies for employees compensated from funds other than the General Appropriations Act are appropriated from the official operating budget of the respective state department. In addition, the Employees Retirement System of Texas may contribute an additional amount, as determined by the trustee, for payment of premiums for employees and retirees. An employee or retiree who applies for coverage for which the monthly premium exceeds the state's or employing agency's and the Employees Retirement System of Texas' contribution must pay the excess amount.

(2) Payment of premiums. Deductions from monthly compensation or annuities and direct payment of premiums are two methods of payments used for the employee's share of premiums.

(A) Employee deductions. An employee or retiree who applies for coverage for which the monthly premium exceeds the state or employing agency and the Employees Retirement System of Texas contributions must authorize in writing on a form prescribed by the Employees Retirement System of Texas a deduction from his monthly compensation or annuity to pay the difference. If an employee's monthly compensation is insufficient to provide for the appropriate deduction, the employee must pay premiums directly as explained in subparagraph (B)(i) of this paragraph. Failure to make the required payment of premiums will result in the cancellation of all coverages.

(B) Direct payment of premiums. Persons who are participants in the program and who are not on a payroll or who are not receiving an annuity from a state retirement system from which the appropriate premiums may be deducted must pay premiums directly to the Employees Retirement System of Texas when due unless otherwise noted.

(i) Premiums shall be paid monthly directly to the Employees Retirement System of Texas, due on the first day of the month for which the premium is due, if a person is insured while awaiting the approval or disapproval of an application for disability retirement benefits or a person's retirement annuity is temporarily suspended. An employee in a leave of absence without pay status or in an extended sick leave without pay status shall pay premiums monthly, due on the first of each month. Payment will be made through the employee's employing agency.

(ii) Premiums shall be prepaid quarterly directly to the Employees Retirement System of Texas, due on the first of the months of September, December, March, and June, if a person's annuity option has expired; a person's monthly annuity check is not sufficient to pay the monthly premium due; or if the person is eligible for the program but does not receive a monthly annuity, e.g. a former legislative employee or a former judge. If the initial insured period is less than three months, the balance of the premium for that quarter will be prepaid.

(iii) Premiums shall be paid in one lump sum directly to the Employees Retirement System of Texas for six months coverage if a person is eligible and applies for six months' continued coverage as a dependent of a deceased employee or retiree. Premiums are due within 10 working days of the date the person is notified in writing of his or her eligibility to apply.

(iv) Failure to pay premiums within 10 days of the date due will result

in the cancellation of the coverages.

#### **§81.5. Eligibility.**

(a) **Full-time employees.** A full-time employee, elected officer, or appointed officer of the State of Texas is eligible for coverage on the first day he or she begins active duty with the state. For an elected or appointed officer, the first day of active duty shall be the day he or she takes the oath of office.

(b) **Part-time employees.** A part-time employee is subject to the same eligibility rules as a full-time employee.

(c) **Retirees.** A retiree is eligible for coverage on the day he or she becomes an annuitant. A retiree must be insured in the health benefits plan before he or she is eligible to apply for any life insurance coverage. In addition, a retiree is eligible for optional life insurance coverage only if the retiree was enrolled for optional life insurance coverage on the date before becoming an annuitant. Retirees may not increase the amount of life insurance for which they have been enrolled, but may cancel life coverage at any time. Canceled life insurance coverages may never be reinstated.

(1) Persons who become insured as retirees will be ineligible for coverage as active employees as long as they remain eligible for coverage as retirees.

(2) A retiree whose extended life insurance benefits are terminated is eligible for retiree life insurance coverage on the first day of the month following the extended life insurance benefits termination date.

(d) **Dependents of employees and retirees.** The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date he or she becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before his or her dependents are eligible for that type of coverage. Newborn dependents are covered automatically on date of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance. A retiree whose life insurance coverage is continued for which the premium is waived under the provisions of an insurance contract that provides extended life insurance benefits as a result of disability may not purchase dependent life insurance coverage.

(e) **Surviving dependents.**

(1) The surviving spouse of a retiree or the surviving spouse of an active employee is eligible to continue his or her coverage in the health benefits plan in which the employee/retiree was insured on the day of death of the employee/retiree; provided, however, the deceased active employee must have met the age and service credit requirements to qualify for a retirement benefit or survivor's annuity. A surviving spouse who is also a state retiree or state

employee shall not be eligible for surviving spouse benefits as long as he or she is eligible for coverage as an employee or retiree. Participant's continuing coverage as surviving spouses are not eligible for life insurance coverages.

(2) Dependent children of a deceased employee or retiree are eligible to retain and continue coverage, except dependent life insurance, as long as the surviving spouse is eligible and continues to participate in the program. Dependent children of deceased employees or retirees will be considered as dependents of the deceased employee's or retiree's surviving spouse for purposes of the program.

(3) The surviving spouse and/or dependents of a deceased employee or retiree who are not eligible to continue coverage indefinitely in the program under the provisions of the Act or these sections may continue coverage for six months in the health benefits plan in which the dependents are enrolled on the deceased employee's or retiree's date of death by submitting an application within 10 working days following the date of notice of eligibility to continue insurance coverage. The total premium must be submitted with the application.

(f) **Retiree under ORP.** A retiring member of the ORP employed by the Coordinating Board, Texas College and University System is eligible to remain in the insurance program if he or she becomes an annuitant of the ORP and the member's age and amount of service on which the annuity is based is such that the retiree meets the age and length of service requirements used by the Teacher Retirement System for regular service retirements. A retiring member will remain eligible for coverage in the program as long as he or she would have been eligible to receive an annuity had his or her membership been in the Teacher Retirement System rather than the ORP.

(g) **Disability retirement.** An applicant for disability retirement benefits may continue only the health, term life, and dependent term life insurance coverages that were in effect as an active employee while the application is pending, except as noted in subsection (d) of this section as to extended life insurance benefits. A person who is approved for disability retirement is eligible to apply for insurance coverages as a retiree by submitting an application within 30 days from the date of the notice of approval for disability retirement benefits. A retiring member of ORP who is disabled, as established by the disability test used by the Employees Retirement System of Texas for members of the employee class, is eligible to remain in the program for the amount of time the person would be eligible for benefits had retirement coverage been under the Teacher Retirement System. All costs for determining initial or continued eligibility for insurance coverage for a disabled retiree of the ORP will be paid by the Coordinating Board, Texas College and University Sys-

tem. Coverages will become effective on the first day of the month following the date the disability retirement becomes effective. The coverages of an applicant for disability retirement benefits whose retirement application is denied will be canceled on the last day of the month following the month in which notification is mailed.

(h) **Former members of the legislature.** Upon separation from the legislature, former members of the legislature are eligible to continue the coverage held in the program if they held office on or after May 17, 1979, and they have established sufficient creditable service based on service in the Texas Legislature to be eligible for service retirement at age 60. Former members of the legislature are not eligible for disability insurance coverages. Except as provided in this section, former members of the legislature will be subject to the same eligibility rules and effective dates that apply to active members of the legislature.

(i) **Former employees of the legislature.** Upon separation from the legislature, a former employee of the legislature is eligible to continue coverages held in the program immediately prior to separation under the provisions of the Act, §13(d), if the individual was an employee of the legislature on or after August 29, 1983, as an employee of a member of either house, a member of the staff of either house, an employee of a committee of either house, or an employee of a joint committee, and the individual has established sufficient creditable service in the Employees Retirement System of Texas, based on service as an employee of the Texas Legislature, to be eligible for service retirement at age 60. A former legislative employee is eligible to continue the amount of term life insurance in force at the time of termination of legislative employment. A former legislative employee is not eligible for disability insurance coverage. Employment with ancillary agencies such as the Legislative Budget Board, Legislative Council, Legislative Reference Library, or State Auditor's Office does not meet the requirement for employment in this section. Except as provided in this section, a former legislative employee will be subject to the same eligibility rules and effective dates that apply to an active employee of the State of Texas.

#### **§81.7. Enrollment and Participation.**

(a) **Full-time employees and their dependents.**

(1) A new full-time employee will automatically be enrolled in the basic plan of health and life insurance, effective on his or her first day of active duty with the State of Texas. An employee waives basic plan coverage by electing optional coverages and/or enrolling in an approved HMO. In order to elect additional optional coverages or enroll in an HMO in lieu of the basic plan of insurance, the employee must submit an application to the Employees Retirement System of Texas through his or her employ-

ing agency on the form provided by the Employees Retirement System of Texas. An employee may decline any and all coverage in the program by submitting a written statement indicating that he or she wishes to decline.

(2) Applications for coverages to be effective on the day the employee begins active duty must be submitted to the agency insurance coordinator on or before that day. Coverages for which the application is submitted after the first day of active duty and within 30 days after that day will be effective on the first day of the month following the date of application. Applications submitted after the first 31 days will be governed by subsection (f) of this section.

(3) Coverages for dependents of an employee will be effective on the same day the employee's coverage becomes effective if an application is submitted on or before the effective date of the employee's coverage. If the application is submitted within 30 days after the employee's effective date, the dependents' coverage will be effective on the first day of the month following the date of application. New dependents' coverage will be effective on the date the person becomes a dependent if an application is submitted on or within 30 days of the date the dependent first becomes eligible. If the application is submitted more than 30 days after the employee's effective date or the date the dependent is first eligible, as the case may be, the application will be governed by the rules in subsection (f) of this section.

(4) A newborn dependent will be covered immediately and automatically from the date of birth in the health benefits plan in effect for the employee's or retiree's other dependents.

(A) If there are no other dependents covered at the time of birth, the newborn dependent will be automatically covered in the same health benefits plan in which the employee or retiree is then covered. To continue a newborn dependent's coverage for more than 30 days after the date of birth, an application for health benefits coverage must be submitted within 30 days after the date of birth if there were no other dependent children covered at the time.

(B) If there was health benefits coverage in effect for dependent children, an application to add subsequent newborn dependents must be submitted before verification of coverage for the newborn dependent will be provided to the carrier.

(5) The effective date of a newborn dependent's life insurance will be the 14th day after the date of birth unless the newborn dependent is then confined to a hospital or other institution for medical care in which case the newborn dependent's life insurance coverage will become effective on the day after the day the newborn dependent is released from the hospital or institution.

(6) The effective date for an employee's dependent's coverages will be as stated previously unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility, in which case the coverage will be effective on the day after the day the dependent is released from the hospital or institution.

(b) Part-time employees. A part-time employee is not automatically covered, but must complete an application form provided by the Employees Retirement System of Texas authorizing necessary deductions for premium payments for elected coverage. This form must be submitted to the Employees Retirement System through his or her employing agency on or before the employee's first day of active duty in order for coverage to be effective on that day. If not submitted on the first day of active duty, but within 30 days thereafter, coverage will be effective on the first day of the month following the date of application. All rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to a part-time employee.

(c) Retirees and their dependents.

(1) A retiree will automatically be covered in the health benefits plan in which the retiree was covered as an active employee immediately preceding the first day the retiree becomes an annuitant and for the maximum amount of life insurance which the retiree is permitted to retain under the insurance contract as a retiree. If the retiree was not covered as an active employee immediately prior to becoming an annuitant, the retiree will be automatically enrolled in the basic plan for retirees. A retiree's dependents will automatically continue the coverage in force at the time of retirement. Optional coverages and changes in coverages for retirees will be effective on the day the retiree becomes an annuitant if the retiree submits an application before or within 30 days after that date. A change in coverage for the dependents of retirees will be effective on the same day the retiree's coverage becomes effective if an application is submitted within 30 days of the retiree's effective date of coverage. All other enrollment rules stated in subsection (a) of this section apply to retirees.

(2) A retiree enrolled in a health benefits plan whose extended life insurance benefits are terminated will be automatically enrolled in the basic life coverage effective the first day of the month following the extended life insurance benefits termination date. The retiree also may enroll for any optional life coverages which would have been available at the time of retirement had extended benefits not been available. Application for the optional coverages to become effective on the same date as the basic life coverage must be submitted to the Employees Retirement System of Texas within 10 days from the date the Employee Retirement System of Texas notifies the retiree of

his or her eligibility. Applications received after the 10-day period will be subject to the same rules stated in subsection (f) of this section.

(d) Surviving dependents.

(1) A surviving spouse and dependents of a deceased employee who met the age and service requirements to qualify for a retirement benefit or survivor's annuity at the time of death and a surviving spouse and dependents of a retiree may continue coverage as provided in §81.5(e) of this section (relating to Eligibility). A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(d)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make quarterly payments as provided in §81.3(d)(2)(B) of this title (relating to Administration). The surviving spouse must apply to continue coverage for himself or herself and dependents within 30 days after the employee's/retiree's date of death.

(2) A deceased employee's surviving spouse and/or dependents not eligible for benefits under paragraph (1) of this subsection may continue coverage in effect for six months after the date of the employee/retiree's death. The surviving spouse or dependent must apply for continuing coverage within 10 working days after notification in writing of eligibility to make an application.

(e) Special rules for additional or alternative coverages.

(1) An employee/retiree must be insured in a health insurance plan provided by the program or enrolled in an approved HMO before the employee/retiree is eligible to apply for any of the optional coverages provided by the program. Only an employee or retiree or a former officer or employee specifically authorized to join the program may apply for optional coverages.

(2) An employee/retiree may participate in an approved HMO if he or she resides in the approved service area of the HMO and is otherwise eligible under the terms of the letter of agreement with the HMO.

(3) A participant electing optional additional coverage and/or HMO coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If premiums are not paid, all coverages will be canceled.

(f) Changes in coverages beyond the first 31 days of eligibility.

(1) An employee or retiree who wishes to add or increase coverage, add eligible dependents, or change coverage from an HMO to the insured plan more than 30 days after the initial date of eligibility may submit an application at any time to the Employees Retirement System of Texas. The application shall consist of the general purpose form provided by the

Employees Retirement System of Texas and the insurance carrier's application. Upon review of the application, the carrier may require additional information or medical examination provided at the employee's or retiree's expense. Approval of the application is contingent upon the employee or retiree providing evidence of insurability acceptable to the Employees Retirement System of Texas and the carrier. When the application has been approved by the carrier, a notice shall be sent to the Employees Retirement System of Texas. Coverage will become effective the first day of the month following the date approval is received by the Employees Retirement System of Texas, unless the applicant is an employee then in a leave without pay status, in which case it will become effective on the date the employee returns to active duty. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a notice of withdrawal in writing to the Employees Retirement System of Texas.

(2) The evidence of insurability provision applies only to those employees, retirees, or eligible dependents who:

(A) did not elect all available coverages at or within 30 days after the initial date of eligibility;

(B) declined or failed to enroll in the health insurance plan at or within 30 days after the initial date of eligibility; or

(C) enrolled in any coverage under the insured plan and later dropped or were canceled from such coverage.

(3) An employee or retiree who moves his or her place of residence into an HMO service area is eligible to apply for coverage at or within the first 30 days after the date of residence in the HMO service area. Coverage will become effective on the first of the month following the date of application.

(4) An employee or retiree (and his or her covered dependents) who is enrolled in an approved HMO and who permanently moves his or her place of residence out of an approved HMO service area will be allowed to enroll in the health insurance plan and other optional coverages held immediately prior to the date of change in residence. Coverage in the HMO will be canceled on the last day of the month in which the employee or retiree moved from the service area, and the coverages in the insured health benefits plan will become effective on the day following the day HMO coverage is canceled. The evidence of insurability rule shall not apply in these cases.

(5) Persons wishing to change from one HMO to another HMO in the same service area or change from the insured plan to an HMO will be allowed an annual opportunity to do so. Such opportunity will be scheduled prior to September 1 of each year at times announced by the Employees Retirement System of Texas. The pre-existing conditions clause and evidence of

insurability provision will not apply in these cases. Coverage in the new HMO will be effective September 1.

(g) **Pre-existing condition limitation.** For initial health insurance coverage on or after September 1, 1985, or health insurance coverage changes effective on or after September 1, 1985, the pre-existing condition exclusion shall apply to employees, retirees, and eligible dependents (including newly acquired dependents but excluding newborns) who are enrolled in the insured health benefits plan. The exclusion limits benefit payments to \$500 for a full 12 months from the effective date of coverage for a pre-existing condition, as defined in §81.1 of this title (relating to Definitions). The pre-existing condition exclusion will not apply to:

(1) an eligible newborn;

(2) a medical condition resulting from congenital or birth defects;

(3) an individual allowed to return to the insured health plan because he or she moves permanently out of an HMO service area, except that if the return to the insured plan occurs within 12 months of the initial date of eligibility under the current term of employment, the exclusion will apply for the remainder of the 12-month period for any condition for which the participant was seen or treated by a physician during the 90-day period immediately prior to the initial date of eligibility under the current term of employment;

(4) an individual who enrolls in an HMO.

(h) **Reinstatement in the program.** Unless specifically prohibited by these sections or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate coverages for himself and his dependents no greater than those that were in effect when the employee terminated by submitting an application for the coverage. The application must be submitted on the first day the employee returns to active duty, and the coverage will be effective on the day the employee returns to active duty. The pre-existing condition clause will apply. A returning employee who has selected coverages less than those in effect when terminating employment may reinstate any waived coverages by submitting the appropriate application during the 30 days following the date the employee returns to active service. The change in coverage will become effective on the first day of the month following the date of application. An application to reinstate disability insurance coverage for a returning employee must contain evidence of insurability acceptable to the insurance carrier. Disability coverage will become effective on the first of the month following the date of the carrier's approval.

(i) **Continuing coverage in special circumstances.**

(1) A terminating employee is eligible to continue coverage through the last

day of the month in which employment is terminated.

(2) An employee in an approved extended sick leave without pay status or in an approved leave of absence without pay status may continue the types and amounts of coverage in effect on the date the employee entered that status for a maximum period of 12 months. During this 12-month period, the employee may not change coverage except to add new dependents, including newborns or reduce or cancel coverage. Coverage for disability insurance, however, will be canceled on the last day of the month in which an employee enters an approved leave of absence without pay status. If canceled, disability coverage may be reinstated when the employee returns to active duty if the employee submits satisfactory evidence of insurability. The premiums for the disability coverages will be waived for those months in which the employee receives a disability payment under that coverage provided the employee was disabled and was entitled to disability payments. At the end of 12 months, coverages for the employee and his dependents shall be terminated.

(3) An applicant for disability retirement benefits may continue only the health, term life, and dependent term life insurance coverages that were in effect while he was an active employee during the time the application is pending. The employee must apply to continue the coverage on or before the requested retirement date and the appropriate premium must be paid monthly. If the application for disability retirement is approved, the employee is eligible to apply for insurance coverage as a retiree by submitting an application within 30 days from the date of the notice of approval for disability retirement benefits. Coverages will be effective on the first day of the month following the date the disability retirement became effective. If the application for disability retirement is denied, the coverages of the applicant and his dependents will be canceled on the last day of the month following the month in which the notification is mailed.

(4) A former member or employee of the legislature who is eligible to continue to participate in the program must notify the Employees Retirement System of Texas within 30 days after leaving office or employment of his or her intent to continue the coverage in effect. Premiums are due and payable quarterly directly to the Employees Retirement System of Texas on the first of the months of September, December, March, and June. Coverage will be canceled if a premium is not received within 10 days of the due date. A former member or employee of the legislature is not eligible to continue disability insurance coverage.

#### §81.9. *Grievance Procedure.*

(a) Any person participating in the insurance program who is denied payment of insurance benefits may request the in-

insurance company to reconsider the claim. Any additional documentation in support of the claim may be submitted with the request for reconsideration. If the claim is again denied, the claim accompanied by all related documents and copies of correspondence with the insurance company may be submitted by the person to the executive director of the Employees Retirement System of Texas for review. A request for review must be filed by the person in writing within 90 days from the date the insurance company formally denies the claim and mails notice of this denial and right of appeal to the person.

(b) Any person with a grievance regarding eligibility or other matters involving the program may submit a written request to the executive director to make a determination on the matter in dispute.

(c) When the executive director reviews any matter arising under this section, all of the available information will be considered. When the executive director completes the review and makes a decision, all parties involved will be notified in writing of the decision.

(d) Any person or insurance company that does not accept the executive director's decision may appeal the decision to the board. A notice of appeal to the board must be filed in writing 30 days from the date the executive director's decision is mailed.

(e) Appeals to the board will be processed under the provisions of Chapter 67 of this title (relating to Hearings and Disputed Claims) and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(f) As used in this section, the term "person" includes any duly authorized representative of such person.

(g) In computing time under this section, the day after any mailing by the insurance company or the executive director shall be counted as the first day of the time period. A document is considered to be filed with the executive director when it is received by the executive director or when it is post-marked, whichever is earlier.

#### §81.11. Termination of Coverage.

##### (a) Cancellation of coverage.

(1) An employee, retiree, or surviving spouse may cancel any coverage in effect by submitting the appropriate cancellation notice in writing to Employees Retirement System of Texas. Cancellations will be effective at midnight on the last day of the month in which the notice is signed. Coverage canceled by a surviving spouse or dependent of a deceased retiree may never be reinstated.

(2) Coverage for a dependent who marries or attains age 25 shall be canceled as of the last day of the month following the date of marriage or attainment of age 25, as the case may be.

(3) Surviving spouse coverage for a person who becomes a state employee shall be canceled as of the effective date of

coverage as an active employee. Surviving spouse coverage may be reinstated when the spouse terminates employment with the state.

(4) Coverage shall be canceled for nonpayment of premium if a premium payment is not paid within 10 days of the date payment is due. Coverage will be canceled effective the last day of the month for which timely payment was made.

(b) Termination of employment. Coverages for an employee who terminates employment and his or her dependents shall continue through the last day of the month in which employment is terminated.

(c) Expulsion from the uniform group insurance program.

(1) The board of trustees may expel any person participating in the uniform group insurance program who submits a fraudulent claim or otherwise defrauds or attempts to defraud any plan of benefits offered under the program, within the terms of the Insurance Code, Article 3.50-2, §13A.

(2) The executive director is authorized to call a hearing on behalf of the board when he has reason to believe that a person may be subject to expulsion under this section and the Insurance Code, Article 3.50-2, §13A.

(3) Any hearing called pursuant to this section shall be a contested case under Texas Civil Statutes, Article 6252-13a, and conducted in the manner prescribed by law and by Chapter 67 of this title (relating to Hearings and Disputed Claims). During such hearing, the standard of proof requiring a finding against the participant shall be the preponderance of evidence. At the time a case is assigned to a hearings examiner, no further claims will be paid until a finding has been made. When a finding has been made all eligible claims will be processed subject to any offsets for overpayments made by the carrier.

(4) Any person expelled from the uniform group insurance program may not be insured under any health benefits plan offered by the program for a period of five years from the effective date of the expulsion.

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 20, 1985.

TRD-854445

Clayton T. Garrison  
Executive Director  
Employees Retirement  
System of Texas

Earliest possible date of adoption:

June 24, 1985

For further information, please call  
(512) 476-6431, ext. 213.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Resources

#### Chapter 50. Day Activity and Health Services

##### Eligibility Requirements

The Texas Department of Human Resources proposes the repeal of §§50.1901-50.1904 and new §§50.1901-50.1903, concerning eligibility requirements in its day activity and health services (DAHS) rule chapter. The repeal and new section are proposed to clarify DAHS medical and service criteria and to simplify intake procedures.

The proposed new sections also eliminate internal department operating procedures by not requiring the completion of the client needs assessment questionnaire.

David Hawes, administrator, Office of Financial and Data Management administrator, has determined that for the first five-year period the repeal and new sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing the repeal and new sections.

Mr. Hawes also has determined that for each year of the first five years the rules and repeal are in effect the anticipated public benefit is that DAHS facilities will be able to provide more quickly services to applicants/recipients because of the elimination of some of the procedural requirements between the department and the facilities.

Comments on the proposal may be sent to Cathy Rossberg, Administrator, Policy Development Support Division—186, Texas Department of Human Resources 153-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication.

★ 40 TAC §§50.1901-50.1904

*(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Department of Human Resources, 701 West 51st Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)*

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public and medical assistance programs

§50.1901. Service Criteria.

§50.1902. Enrollment.

§50.1903. DAHS Medical Criteria.

§50.1904. Former Day Activity or Day Health Recipients.

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 20, 1985.

TRD-854439

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Resources

Earliest possible date of adoption:

June 24, 1985

For further information, please call  
(512) 450-3768.

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#### ★ 40 TAC §§50.1901-50.1903

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public and medical assistance programs.

##### §50.1901. Service Criteria.

(a) The applicant/recipient is eligible for day activity and health services (DAHS) if he:

(1) is Medicaid eligible outside an institution (Title XIX DAHS) or meets social services block grant income eligibility guidelines and resource limits;

(2) meets or exceeds the medical criteria established for DAHS;

(3) has physician's orders for DAHS.

(b) The criteria are applied in the order listed. The applicant/recipient must meet all of the criteria in subsection (a) to be eligible for DAHS.

(c) An adult protective services (APS) recipient with time-limited eligibility for up to 60 days does not have to meet the financial or medical/functional criteria for DAHS. The APS recipient does not need a physician's order to be eligible for DAHS, but he must have a physician's order to be provided any nursing procedures or medical care.

##### §50.1902. Enrollment.

(a) Verification of Medicaid eligibility. The facility staff must verify ongoing Medicaid eligibility.

(b) Referral. The facility nurse completes the level-of-care assessment form and the identifying information on the physician's orders form and sends them to the applicant's physician for review and signature. On receipt of the physician's orders, the facility nurse sends the appropriate forms to the department for determination of medical need. He also sends any additional information necessary for the department to determine the appropriateness of the service plan.

(c) Notification of approval. The department returns the appropriate forms to

the facility to notify the facility to initiate services. The facility staff must respond to the referral within 14 calendar days. If the facility is operating at capacity and cannot provide service to a recipient, the facility staff notifies the department and returns all the forms to the department.

(d) Intake initiated by the facility.

(1) An applicant or his physician may contact a facility to request an immediate placement. The facility staff must interview the applicant to determine whether he appears to be Medicaid or income eligible for block grant services. Facility staff determines Medicaid eligibility by reviewing the information on the applicant's medical care identification card.

(2) The facility nurse also must determine whether the applicant appears to have a medical need for the service based on the information he gathers on the level-of-care assessment form. If the applicant appears to meet the medical/functional need criteria, the facility nurse contacts the applicant's physician to obtain verbal orders for the service.

(3) The facility staff must notify the department when an applicant requests DAHS. The facility staff must notify the department the day the applicant contacts the facility.

(4) The applicant may be admitted to DAHS as soon as verbal physician's orders are obtained if:

(A) he appears to be Medicaid eligible or meets block grant financial eligibility criteria; and

(B) he appears to meet the medical/functional need criteria based on the information collected on the level-of-care assessment form.

(e) Effective date of placement. The facility staff may bill for services provided to an eligible recipient beginning on the date the physician orders the service. Services provided before the date of the physician's orders are not reimbursable. Payment is made only if the applicant is financially eligible, meets the medical criteria as determined by the department, and has physician's orders. The facility staff must send accurately completed forms to the department, postmarked within 15 days from the date of admission. If accurate forms are not postmarked within the 15-day time frame, the beginning date of coverage is the date the department receives the accurately completed forms.

(f) Recipient appeals. To appeal adverse decisions the recipient follows requirements in §48.3903 of this title (relating to Denial, Reduction, or Termination of Services).

(g) Reassessment. The facility staff must submit documentation of eligibility on the physician's orders and level-of-care assessment form in time to reassess medical need and the appropriateness of the service plan so that there is not a gap in the approval process.

§50.1903. DAHS Medical Criteria. To be eligible for DAHS, the applicant/recipient must have:

(1) a medical diagnosis and physician's orders requiring care or supervision by a licensed vocational nurse or a registered nurse;

(2) a related functional disability;

(3) one or more of the following personal care or restorative needs which can be stabilized, maintained, or improved by participation in DAHS.

(A) Bathing, dressing, and grooming. The applicant/recipient may need help with bathing, dressing, and routine hair and skin care.

(B) Transfer and ambulation. The applicant/recipient may need help with transferring from chair or commode or moving about.

(C) Toileting. The applicant/recipient may need help with using a bedpan, urinal, or commode; emptying a catheter or ostomy bag; or managing incontinence of bowel or bladder. The applicant may require perineal care or bowel or bladder training.

(D) Feeding. The applicant/recipient may need feeding or help with eating.

(E) Fluid intake. The applicant/recipient may need assistance in maintaining adequate fluid intake.

(F) Nutrition. The applicant/recipient may need therapeutic diet or texture modification for treatment or control of an existing condition.

(G) Medication. The applicant/recipient may require supervision or administration of ordered medications or injectables.

(H) Treatments. The applicant/recipient may require treatments that include:

(i) Catheter care. Routine or frequent care for indwelling catheter.

(ii) Weight. Measurement of weight related to monitoring a specific condition.

(iii) Ostomy care. Assistance or supervision of ostomy care based on individual needs.

(iv) Recording of vital signs. Taking and recording of vital signs to monitor an existing condition or medications being administered.

(v) Diabetic tests. Periodic testing of blood or urine for sugar/acetone content or both.

(vi) Skin care. Assistance with skin care including application of lotions, observation, assessment, or treatment of skin conditions based on physician's orders for prevention and healing decubiti, and chronic skin conditions.

(vii) Dressings—Dressings based on the physician's orders and the application of sterile dressings and elastic stockings and bandages.



**(I) Restorative nursing procedures. The applicant/recipient requires assistance with range-of-motion exercises (active or passive) or proper positioning.**

**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 20, 1985.

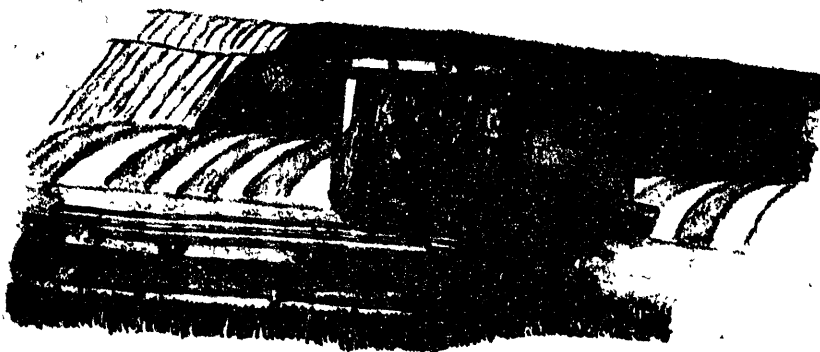
TRD-854440

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Resources

**Earliest possible date of adoption:**

**June 24, 1985**

**For further information, please call  
(512) 450-3700.**



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# Withdrawn

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board Chapter 309. Requirements for Dams and Reservoirs General Provisions

#### ★ 31 TAC §§309.1-309.4

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed repeal of §§309.1-309.4 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The notice of the proposed repeal appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5881).

TRD-854482  
Filed: May 17, 1985

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#### ★ 31 TAC §§309.1-309.5

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), proposed new §§309.1-309.5 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The proposed new sections appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5881).

TRD-854481  
Filed: May 17, 1985

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### Authority of the Department

#### ★ 31 TAC §§309.11-309.13

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed repeal of §§309.11-309.13 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The notice of the proposed repeal appeared in the Novem-

ber 16, 1984, issue of the *Texas Register* (9 TexReg 5883).

TRD-854484  
Filed: May 17, 1985

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### Design Standards for Dams

#### ★ 31 TAC §§309.11-309.19

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b) and 1 TAC §91.24(b), proposed new §§309.11-309.19 submitted by the Texas Water Development Board have been automatically withdrawn, effective May 17, 1985. The proposed new sections appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5883).

TRD-854483  
Filed: May 17, 1985

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### Commission Approval of Proposed Construction

#### ★ 31 TAC §§309.21-309.25

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed repeal of §§309.21-309.25 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The notice of the proposed repeal appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5885).

TRD-854485  
Filed: May 17, 1985

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### Construction Requirements

#### ★ 31 TAC §§309.21-309.31

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), proposed new §§309.21-309.31 submitted by the Texas Water Development Board have been automatically withdrawn, effective May 17, 1985. The proposed new sections

appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5886).

TRD-854486  
Filed: May 17, 1985

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### Inspection and Construction Requirements

#### ★ 31 TAC §§309.31-309.40

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed repeal of §§309.31-309.40 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The notice of the proposed repeal appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5888).

TRD-854487  
Filed: May 17, 1985

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### Maintenance, Operation, and Removal

#### ★ 31 TAC §309.55

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed repeal of §309.55 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The notice of the proposed repeal appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5888).

TRD-854489  
Filed: May 17, 1985

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### Removal of Dams

#### ★ 31 TAC §309.55

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), proposed new §309.55 submitted by the Tex-

as Water Development Board has been automatically withdrawn, effective May 17, 1985. The proposed new section appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5889).

TRD-854490  
Filed: May 17, 1985

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### Emergency Action

#### ★ 31 TAC §309.61

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), proposed new §309.61 submitted by the Texas Water Development Board has been automatically withdrawn, effective May 17, 1985. The proposed new section appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5889).

TRD-854491  
Filed: May 17, 1985

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### TITLE 34. PUBLIC FINANCE

#### Part IV. Employees Retirement System of Texas

#### Chapter 81. Insurance

#### ★ 34 TAC §81.19

The Employees Retirement System of Texas has withdrawn from consideration

for permanent adoption proposed emergency amendments to §81.19, concerning insurance. The text of the amended sections as proposed appeared in the May 14, 1985, issue of the *Texas Register* (10 TexReg 1529).

Issued in Austin, Texas, on May 20, 1985.

TRD-854446 Everard C. Davenport  
General Counsel  
Employees Retirement System

Filed: May 20, 1985  
For further information, please call  
(512) 476-6431, ext. 213.

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### TITLE 37. PUBLIC SAFETY AND CORRECTIONS

#### Part X. Texas Adult Probation Commission

#### Chapter 321. Standards

#### ★ 37 TAC §§321.1, 321.11, 321.12

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendments to §§321.11, 321.12, and §321.12 submitted by the Texas Adult Probation Commission have been automatically withdrawn, effective May 17, 1985. The amendments as proposed appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5891).

TRD-854492  
Filed: May 17, 1985

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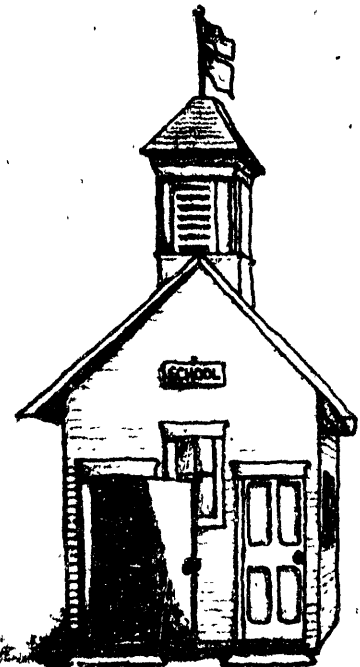
### Chapter 323. Per Capita Funding

#### ★ 37 TAC §323.1

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendments to §323.1 submitted by the Texas Water Development Board have been automatically withdrawn, effective May 17, 1985. The amendments as proposed appeared in the November 16, 1984, issue of the *Texas Register* (9 TexReg 5892).

TRD-854493  
Filed: May 17, 1985

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# Adopted Rules

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Community Affairs

#### Chapter 9. Texas Community Development Programs

##### Subchapter A. Allocation of Program Funds

#### ★ 10 TAC §9.3

The Texas Department of Community Affairs adopts amendments to §9.3, with changes to the proposed text published in the April 9, 1985, issue of the *Texas Register* (10 TexReg 1173).

The amendments govern the allocation of federal fiscal year 1985 community development block grant (CDBG) nonentitlement area funds under the economic development project fund of the Texas Community Development Program (TCDP).

The amendments cover general requirements, funding cycles, and selection procedures and criteria for eligible applicants of the economic development project fund.

The TDCA received several comments from individuals concerning the amendments. The individuals making comments were neither for nor against the adoption of the amendments, but offered recommendations for changes to the amendments. The TDCA's decisions concerning incorporation of such recommendations are stated in the discussion of each comment as follows.

Regarding subsection (a), concerning general provisions, Giles Dalby, Garza County judge; Gilberto Uresti, Duval County judge; and Romeo L. Lomas, Kleberg County commissioner, requested clarification of the requirement which limits a city to locating a proposed project only within its extraterritorial jurisdiction and limits a county to locating a proposed project only within the unincorporated area of the county. The TDCA did not intend to limit cities to applying for projects only within their extraterritorial jurisdiction, and the paragraph is revised to allow a city to locate a proposed project within its corporate limits or extraterritorial jurisdiction. The TDCA does not intend to limit in any way participation by counties

in the economic development project fund. As cities are principally responsible for projects located within their corporate limits or extraterritorial jurisdiction, the TDCA believes it is appropriate to limit a county to applying for a project located within the unincorporated area of the county. The TDCA does not believe that this restriction will prevent a county from participating in the program because a county also has the option of submitting a joint application with a city or cities or submitting an application for a project located in the extraterritorial jurisdiction of a city.

Regarding subsection (d)(1)(D), concerning the selection criteria, Judge Dalby requested information on the meaning of the criterion "lag in job growth." As with all other selection criteria, the economic development project fund application package clearly addresses this selection criterion and specifies exactly how this category will be scored.

Regarding subsection (d)(1)(E), concerning the selection criteria, Judge Dalby, Judge Uresti, and Commissioner Lomas expressed concern that cities and counties will not be treated equally in the award of points based on lag in sales tax revenue and request clarification on the meaning of the criterion.

As with all other selection criteria, the economic development project fund application package clearly addresses this selection criterion and specifies exactly how this category will be scored. Please note that for a city, the TDCA will use city sales tax figures. For a county, the TDCA will use the figures for the state sales tax collected from within the county. As a city's sales tax is based on the same factors as the state sales tax, the TDCA believes it is appropriate to use city-only figures for calculations for a city.

Regarding subsection (d)(4)(B)(i), relating to the award of points for the extent to which the project uses underutilized capacity (such as developed land and existing buildings), Judge Uresti and Commissioner Lomas commented that developed lands and existing buildings are less likely to be found in the unincorporated area of a county. The TDCA believes that underutilized capacity is found both within incorporated cities and outside of them. The award of points for this

factor has two principal purposes, the first of which is to encourage the re-opening of existing facilities that are not currently being utilized. The second principal purpose is to encourage the development of vacant and underdeveloped land. As vacant and underdeveloped land is more likely to be found in the unincorporated areas of counties, the TDCA believes that cities and counties will be treated fairly on this selection criterion.

The TDCA has changes in subsection (d)(2) and subsection (d)(4)(B)(iv) for clarification.

The amendments are adopted under Texas Civil Statutes, Article 4413(201), §4A, which provide the TDCA with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the TDCA.

#### §9.3. Economic Development Project Fund.

(a) General provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. All jobs being created or maintained must primarily benefit low and moderate income persons.

(1) No assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one unit of general local government within Texas to another unit of general local government within Texas unless the relocating industrial or commercial plant or facility provides the Texas Department of Community Affairs (TDCA) with satisfactory documentation that it will move out of the State of Texas without such assistance or unless the chief elected official of the unit of general local government from which such plant or facility is relocating provides the TDCA with satisfactory documentation that such unit of general local government has no objections to the relocation.

(2) The TDCA will not consider any application for funding which would result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(3) The TDCA will only consider providing funding for an economic develop-

ment project proposed by a city that is in the city's corporate limits or extraterritorial jurisdiction and will only consider a project proposed by a county that is in the unincorporated area of the county.

(b) Funding cycle. This fund will be allocated on a quarterly basis to eligible units of general local government on a state-wide competitive basis. A local government may only submit one application for each quarter. An applicant may receive more than one contract during a program year, as long as the total amounts of the contracts do not exceed \$500,000 for that program year. Applications for funding for each quarter must be received by the Local Government Assistance Division of the TCDA by 5 p.m. on the dates specified in the most recent application package for this fund.

(c) Selection procedures. Scoring and recommended rankings of projects will be done by a five-member technical review committee with input from the regional review committees. The technical review committee will consist of program or division directors selected by the executive director of the TDCA from within the TDCA or other appropriate state agencies (e.g., the Texas Economic Development Commission). The application and selection procedures consist of the following steps.

(1) Prior to the submission deadline, each eligible jurisdiction may submit one application for funding under the economic development project fund per quarter. Copies of the applications should be provided to both the regional review committee and the TDCA/Local Government Assistance Division. An unsuccessful application from a previous quarter will only be considered for funding if it is submitted as a new application with update attachments.

(2) (No change.)

(3) Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments will become part of the application file and will be considered by the technical review committee provided such comments are received by the TDCA within 21 days after the application deadline.

(4) The technical review committee generates scores on factors related to project design. Each application will be scored on how the proposed project resolves the identified economic development need within the applicant. This information and comments provided by the regional review committees will be used by the technical review committee to generate the scores on project design. An applicant may attend technical review committee scoring meetings except during discussions of confidential financial information concerning a project proposed by another applicant.

(5) The TDCA generates scores on selection criteria related to economic dis-

tress, benefits to low- and moderate-income persons, and minority hiring. Scores on the factors in these three categories are derived either from standardized data from the Census Bureau and other state and federal sources or from information provided by the applicant.

(6) (No change.)

(7) The TDCA staff conducts technical review of the highest ranked applications. The purpose of this review is to make four threshold determinations of the feasibility of the application as follows:

(A) the financial feasibility of the project based on a credit analysis of the businesses to be assisted;

(B) firm commitments of all other public and/or private investments which were identified in the application;

(C) the ability of the applicant to operate or maintain any public facility or service assisted with Texas Community Development Program funds; and

(D) whether economic development project funds are necessary or appropriate to carry out the project proposed in the application.

(8)-(10) (No change.)

(d) Selection criteria. The following is an outline of the selection criteria to be used by the TDCA, the technical review committee, and the State Review Committee for selection of projects under the economic development project fund. Eight hundred points are available.

(1) Economic distress (Total--120 points). All economic distress factor scores are based on the population of the applicant.

(A) Percentage of persons living in poverty--24;

(B) Per capita income--24;

(C) Unemployment rate--24;

(D) Lag in job growth--24;

(E) Lag in sales tax revenue--24.

(2) Percentage of Texas Community Development Program funds that directly benefit low- and moderate-income persons (Total--200 points). This factor score is based on the direct beneficiaries of the applicant's proposed activities, as defined by the TDCA in the current application package for this fund.

(3) Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (Total--80 points). In the event less than 2.0% of the applicant's population base is composed of minority residents or the applicant does not have any permanent employees, the applicant will be assigned the average score on this factor for all applicants in its state planning region. The terms used in this paragraph are defined in the current application package.

(4) Project design (Total--400 points). The terms used in this paragraph are defined in the current application package.

(A) Resolution of need (Total--100 points).

(i) Total Texas community development program funds requested divided by the total number of jobs created and/or retained--50.

(ii) Leveraging of other public and private investment--50.

(B) Technical review committee criteria (Total--300 points).

(i) Extent to which the project uses underutilized capacity (such as developed land and existing buildings)--No more than 25.

(ii) Extent to which the local industrial base is diversified--No more than 75.

(iii) Extent to which Job Training Partnership Act funds are used--No more than 75.

(iv) Special economic development projects (No more than 50 points). Special economic development projects which involve loans or loan guarantees to for-profit businesses will receive the most favorable consideration. Public facilities projects in which economic development project funds are used for infrastructure in support of economic development projects will receive the least favorable consideration.

(v) Plan for the recapture and reuse of program income--No more than 75.

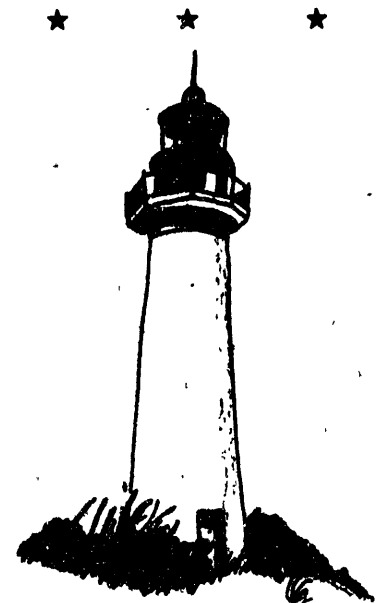
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 14, 1985.

TRD-854348

Douglas C. Brown  
General Counsel  
Texas Department of  
Community Affairs

Effective date: June 5, 1985  
Proposal publication date: April 9, 1985  
For further information, please call  
(512) 443-4100, ext. 210.



**TITLE 16. ECONOMIC  
REGULATION  
Part I. Railroad Commission  
of Texas  
Chapter 5. Transportation  
Division  
Subchapter H. Tariffs and  
Schedules**

★ 16TAC §5.136, §5.137

The Railroad Commission of Texas adopts amendments to §5.137, with changes to the proposed text published in the February 26, 1985, issue of the *Texas Register* (10 TexReg 681). Section 5.136 is adopted without changes and will not be republished.

In §5.137, the term "uncrated" is moved and repeated to define more clearly the commodities affected by this amendment.

The amendments eliminate the need to weigh certain shipments and/or eliminate some processes for determining which weights to assess for certain shipments. The elimination of these procedures will benefit the public by saving time and expense for the carriers and shippers.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 911(b), §4(a), which authorize the Railroad Commission of Texas to prescribe all rules and regulations necessary for the governance of Texas motor carriers.

§5.137. *Weighing Unnecessary.*

(a)-(g) (No change.)

(h) In lieu of weighing as required by §5.136 of this title (relating to *Weights to Be Used in Assessing Freight Charges*) shipments of the commodities described in paragraphs (1)-(6) of this subsection via household specialized motor carriers and duly authorized contract carriers, weights may be determined by accepting the shipper weight and count, and the carrier may accept the shipper's representation of weight, but the weight so supplied shall be subject to check by the carrier or authorized representative of the commission. Such commodities are listed as:

- (1) uncrated electronic equipment and component parts;
- (2) uncrated medical and hospital equipment;
- (3) uncrated scientific instruments and equipment;
- (4) for and in connection with the construction, maintenance, and dismantling of telephone lines and systems the following, viz.: telephone poles, cross-arms, brackets, cables, transformers, wires, insulators, materials, equipment, tools, instruments, and incidental supplies;

(5) new commercial and related fixtures, uncrated new furniture, uncrated motorcycles, uncrated jet skis, uncrated snowmobiles, and golf carts; and

(6) electronic business, office, or manufacturing equipment, component parts, and accessories thereto.

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 May 13, 1985.

TRD-854410

Buddy Temple,  
Jim Nugent, and  
Mack Wallace  
Commissioners  
Railroad Commission of  
Texas

Effective date: June 7, 1985  
Proposal publication date: February 26, 1985  
For further information, please call  
(512) 445-1186.



**Chapter 9. Liquefied Petroleum  
Gas Division  
Subchapter A. General  
Applicability and Requirements**

★ 16 TAC §9.3

The Railroad Commission of Texas, LP-Gas Division, adopts new §9.3, without changes to the proposed text published in the March 26, 1985, issue of the *Texas Register* (10 TexReg 1054).

The new section establishes the various categories of licensees and sets forth the activities in which each category may participate.

The new section states the limitations found in each licensing category. It identifies those activities which may be conducted by each licensee of the LP-Gas Division.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Natural Resources Code, §113.052, which requires the commission to promulgate and adopt rules and standards to govern the LP-gas industry in Texas. These categories of licensees are adopted directly from the Code and are used to assist those regulated by the LP-Gas Division.

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 May 17, 1985.

TRD-854391

Walter Earl Lille  
Special Counsel  
Railroad Commission  
of Texas

Effective date: November 1, 1985  
Proposal publication date: March 29, 1985  
For further information, please call  
(512) 475-1301.

★ ★ ★

★ 16 TAC §9.17

The Railroad Commission of Texas, LP-Gas Division, adopts an amendment to §9.17, without changes to the proposed text published in the March 29, 1985, issue of the *Texas Register* (10 TexReg 1055).

The amendment includes the fees set forth in the Texas Natural Resources Code for the registration of various kinds of LP-gas transport vehicles. Licensees now know the fees to be assessed without need for further reference.

The amendment states the fees assessed for each kind of LP-gas transport vehicle.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.052, which requires the commission to promulgate and adopt rules and standards to govern the LP-gas industry in Texas. These fees are adopted directly from the Code and are used to assist those regulated by the LP-Gas Division.

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 May 17, 1985.

TRD-854392

Walter Earl Lille  
Special Counsel  
Railroad Commission  
of Texas

Effective date: November 1, 1985  
Proposal publication date: March 29, 1985  
For further information, please call  
(512) 445-1301.

★ ★ ★

★ 16 TAC §9.29

The Railroad Commission of Texas adopts the repeal of §9.29, without changes to the proposal published in the March 29, 1985, issue of the *Texas Register* (10 TexReg 1056).

The commission is adopting new §9.3 which contains all the language previously found in §9.29. The repeal prevents repetition in the sections.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Natural Resources Code, §113.052, which requires the commission to promulgate and adopt rules and standards to govern the LP-gas industry in Texas.

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

Issued in Austin, Texas, on May 17, 1985.

TRD-854393

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Effective date: November 1, 1985  
Proposal publication date: March 29, 1985  
For further information, please call  
(512) 445-1301.

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## TITLE 19. EDUCATION Part II. Texas Education Agency

### Chapter 75. Curriculum Subchapter G. Other Provisions

#### ★ 19 TAC §75.174

The Texas Education Agency adopts new §75.174, with changes to the proposed text published in the March 22, 1985, issue of the *Texas Register* (10 TexReg 960).

In the title and throughout the text of the section the words "or compensatory" are added after the word "remedial" for clarification. In subsection (a)(3)(F), the term "individualized progress program" is substituted for "continuous progress program," since this is the terminology being considered for use in the rules concerning alternatives to social promotion. In subsection (b)(1)(B), the provisions concerning areas to be given priority attention in cases where students are having difficulty in several subject areas have been amended. Priority attention at the secondary level should be given to English language arts and mathematics. At the elementary level, priority should be given to language arts and mathematics. The word "English" has been deleted to cover bilingual education programs. In subsection (d)(1)(B), the printed text of the proposed rule used the word "applicable" rather than "available." This error is corrected in the adopted rule.

House Bill 72, 68th Legislature, 2nd Called Session, 1984, the Texas Education Code, §21.557, requires school districts to provide compensatory and remedial in-

struction for students. The districts are required to use the student performance data from the Texas Education Assessment of Minimum Skills (TEAMS) tests and other achievement tests to design and implement appropriate programs. A significant amount of state compensatory education funds is allotted to districts to assist in providing remedial instruction. By law, each district will be required to submit an annual report describing how the instructional programs are provided by campus.

The section defines remedial instruction and describes a variety of options through which it may be provided. School districts have latitude to implement those approaches that are deemed most effective. The section further provides direction to school districts regarding procedures to identify students to participate in the programs and set out specific standards for students who do not master the secondary exit level requirements in grades 11 and 12. Information regarding students who participate in remedial instruction and their performance that must be reported in the annual performance report also is specified.

The purpose of remedial instruction is to provide instruction in identified areas of deficiency and to give students additional time on task to master the essential elements for a course or subject area. Each district must have written procedures for the identification of students to participate in remedial programs. For students having difficulty with several subjects, priority should be given at the elementary level to language arts and mathematics and at the secondary level to English language arts and mathematics. A district may require students to participate in remedial programs.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Texas Education Code, §21.557, which requires each school district to provide remedial instruction in accordance with standards adopted by the State Board of Education.

#### §75.174. Remedial or Compensatory Instruction.

(a) Definition of remedial or compensatory instruction.

(1) Remedial or compensatory instruction shall be provided by all school districts in accordance with this section. The purpose of a remedial or compensatory program is to provide instruction in identified areas of deficiency and/or to provide additional time on task to enable a student to master the essential elements for a course or subject area.

(2) Remedial or compensatory instruction and reteaching should also be an integral part of regular classroom instruction whenever the teacher determines that

mastery of the essential elements has not been accomplished by the student.

(3) The remedial or compensatory program may be conducted during the regular school day as well as during other times determined by the district. The remedial or compensatory program shall include, but need not be limited to, whichever of the following provisions the district deems appropriate for the identified student:

(A) remedial or compensatory courses in Chapter 75, Subchapter C, of this title (relating to Essential Elements—Grades Seven-Eight) and Chapter 75, Subchapter D, of this title (relating to Essential Elements—Grades Nine-12)—correlated language arts I-IV, fundamentals of mathematics, consumer mathematics, pre-algebra, informal geometry, reading improvement, and English as a second language (grades 7-12);

(B) local credit courses such as study skills and other locally developed remedial or compensatory courses;

(C) tutorial programs;

(D) bilingual and English as a second language (ESL) programs that provide instruction in the essential elements by adjusting materials, pacing, and methodologies;

(E) summer school programs which provide remedial or compensatory instruction in essential elements not previously mastered;

(F) alternative education programs including alternatives to social promotion such as individualized progress programs;

(G) significantly lower student/teacher ratios in identified remedial or compensatory classes or courses; and

(H) prekindergarten and kindergarten programs for students who do not speak or comprehend the English language or who come from a family whose annual income is at or below subsistence.

(4) In establishing the student/teacher ratios and length of instructional periods for the remedial or compensatory program, the following factors shall be considered:

(A) level of student need;

(B) specific concepts or skills to be taught;

(C) grade level being served; and

(D) quality and type of remediation or compensatory design.

(5) Each district shall provide for coordination of delivery and assessment procedures between the regular teacher and any special teacher who provides the remediation in addition to the instruction in the regular classroom.

(b) Eligibility and requirements for remedial or compensatory instruction, grades 1-12.

(1) Each district shall have written procedures for the identification of students to participate in the remedial or compen-

satory program. These procedures shall include, but need not be limited to, the following.

(A) Students at the applicable grade levels who fail to master any section of the Texas educational assessment of minimum skills (TEAMS) shall receive appropriate remediation or compensatory instruction in that subject area unless an analysis of all other assessment data strongly indicates otherwise.

(B) Students in grades 1-12 who score below a district-determined level on specified sections of achievement tests; who consistently receive grades lower than 70 in language arts, mathematics, social studies, or science; or who, based on teacher analysis, have not mastered the appropriate essential elements for those subject areas shall be considered for remedial or compensatory instruction. Priority attention at the elementary level should be given to language arts and mathematics if a student is having difficulty with multiple subject areas. Priority attention at the secondary level should be given to English language arts and mathematics if a student is having difficulty with multiple subject areas.

(2) A district may provide remedial or compensatory services to any other student it determines would benefit from such services.

(3) A district may require students to participate in a remedial or compensatory program.

(c) Establishment and operation of remedial or compensatory instruction for students who do not master secondary exit-level assessment requirements, grades 11-12.

(1) Each district shall provide remedial or compensatory instruction in English language arts to students who have not performed satisfactorily on that section of the exit-level assessment instrument and in mathematics to students who have not performed satisfactorily on that section.

(2) A district may provide remedial or compensatory services to any other student it determines would benefit from such services.

(3) A district may recommend adjustments to a student's regular school schedule in order for the student to be enrolled in a remediation or compensatory program or course if the student does not make a satisfactory score on each section of the exit-level test.

(4) A district may require students to participate in remedial or compensatory programs.

(5) Each district shall develop policies for students enrolled in school which include, but need not be limited to, the following:

(A) conferences with parents of students who have not passed each section of the exit-level exam;

(B) personnel who provide remedial or compensatory instruction;

(C) amount of time allocated to the various remedial or compensatory instruction programs; and

(D) class size for remedial or compensatory instruction.

(6) The content of the remediation or compensatory program shall focus on the objectives that the student needs to master in order to pass the sections of the secondary exit-level assessment instrument as well as those mastered, as the student will be required to retake the entire section.

(d) Annual report provided by campus, grades 1-12.

(1) Each district shall submit a summary of the programs in remedial or compensatory instruction, as part of the annual performance report, as directed by the commissioner of education. Reports shall include, but need not be limited to, the following:

(A) numbers of students in various remedial or compensatory programs;

(B) subsequent performance of these students on TEAMS and other achievement tests, if available;

(C) drop-out rates of these students; and

(D) costs for providing remedial or compensatory programs.

(2) The commissioner of education shall report these data to the State Board of Education annually.

(e) Funding.

(1) State compensatory education funds shall be used for the purpose of providing remedial or compensatory programs under this section.

(2) Other state and local funds may be used for remedial or compensatory programs.

(3) Federal funds may be used for remedial or compensatory programs in accordance with law and regulation.

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 May 15, 1985.

TRD-854349

W. N. Kirby  
Commissioner of  
Education

Effective date: June 5, 1985

Proposal publication date: March 22, 1985

For further information, please call  
(512) 475-7077.

★ ★ ★



## Chapter 89. Adaptations for Special Populations

### Subchapter H. Adoptions by Reference

#### ★ 19 TAC §89.291

The Texas Education Agency (TEA) adopts an amendment to §89.291, without changes to the proposed text published in the February 5, 1985, issue of the *Texas Register* (10 TexReg 360).

There are no changes in the rule adopting the plan by reference. The plan itself has been edited to reflect the codification changes of the proposed federal regulations implementing Public Law 98-511.

Sections 306(b)(2)-(3) and 426.12(f) and (i) of the plan, concerning state administration and coordination, have been amended to provide that not more than 6.0% of federal funds allocated to the state will be used for state administration, development of the state plan, oversight of implementation, and other direct and indirect costs.

Section 306(b)(12) and §426.12(d) of the plan have been edited to clarify that the TEA will continue to identify the special educational needs of adult immigrants.

This section concerns the adoption by reference of the Texas state plan for adult education. The amended plan makes the necessary technical corrections for compliance with Public Law 91-230 and subsequent amendments. The major substantive difference between the current plan and the proposed plan is in the revision of objectives for adult education programs.

The new plan places greater emphasis on basic adult literacy, through programs aimed at adults who are least educated and most in need. There is increased emphasis on individualization of instruction as well as increased emphasis on the use of volunteers in adult education programs. Staff development continues to be emphasized, with increased emphasis on individualization there as well. The plan also encourages increased cooperation between adult education programs and other community agencies.

A public hearing on the proposed Texas state plan for adult education was held on February 8, 1985. Hugh Hayes, superintendent, Texarkana Independent School District, commented in favor of the plan as proposed. Arturo McDonald, assistant superintendent, Brownsville Independent School District, urged that more funds be devoted to adult basic literacy, rather than to community education, including recreational programs.

Basic adult literacy has been emphasized in previous state plans; the new plan places increased emphasis in this area. Other testimony received at the public hearing concerned governance issues in



adult education which are not addressed in the state plan; this testimony did not address the plan itself.

The amendment is adopted under the Texas Education Code, §11.02, which provides that except for agreements entered into by state colleges or universities, the Central Education Agency shall be the sole agency of the State of Texas empowered to enter into agreements with the federal government with respect to educational undertakings; and the Texas Education Code, §11.18, which directs the Central Education Agency to develop, administer, and support a comprehensive statewide adult education program and to coordinate related federal and state programs for education and training of adults.

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 May 14, 1985.

TRD-854350  
W. N. Kirby  
Commissioner of  
Education

Effective date: June 5, 1985  
Proposal publication date: February 5, 1985  
For further information, please call  
(512) 475-7077.

★ ★ ★

## Chapter 137. Teacher Education Subchapter D. Institutional Review Process

### ★ 19 TAC §137.69

The Texas Education Agency adopts amendments to §137.69, without changes to the proposed text published in the March 22, 1985, issue of the *Texas Register* (10 TexReg 960)

This section addresses the requirements for the annual performance report of institutions approved for teacher education as mandated by House Bill 72, 68th Legislature, 2nd Called Session, 1984. Data elements identified in the "Format for Annual Performance Report for Institutions that Prepare Teachers" as recommended in July 1984 by the Select Committee on Public Education and input from representatives of colleges and universities have been combined to design a comprehensive report of information regarding teacher education that is both necessary and desirable.

Each institution approved for teacher education must file an annual performance report with the Central Education Agency. Data required in the report include the number of students admitted to the teacher education program, performance of students on the required professional

skills tests, the number of students completing the program and their performance on the required exit test, and the number of students recommended to an employing school district.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Education Code, §13.034, which requires each teacher education program to submit to the State Board of Education an annual performance report containing elements specified by law and by the board.

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

Issued in Austin, Texas, on May 17, 1985.

TRD-854415  
W. N. Kirby  
Commissioner of  
Education

Effective date: June 7, 1985  
Proposal publication date: March 22, 1985  
For further information, please call  
(512) 475-7077.

★ ★ ★

## Chapter 149. Education Personnel Development Subchapter D. Teacher Career Ladder

### ★ 19 TAC §149.71

The Texas Education Agency (TEA) adopts new §149.71, with changes to the proposed text published in the March 22, 1985, issue of the *Texas Register* (10 TexReg 970).

Subsection (c)(1)(F) and (G) are added to permit school districts to use a 1984-1985 school year performance evaluation as a criterion for placing a teacher on level two of the career ladder in 1984-1985 under certain conditions specified in the section.

In subsection (d)(3), concerning higher education course work and advanced academic training, a sentence has been added clarifying that decisions made in accordance with 1984-1985 guidelines concerning credits retained for purposes of career ladder advancement will not be invalidated by the section as adopted.

In subsection (d)(7) a sentence is added clarifying that if a master's or doctor's degree is used to qualify an individual for more rapid advancement to level two on the career ladder, applicable credit hours within the degree requirements in excess of nine semester hours made be applied toward meeting the requirements for placement on other levels of the career ladder.

In subsection (e), concerning the use of stricter performance criteria, a sentence is added specifying that criteria not related to the quality of performance shall not be used to restrict eligibility for consideration for career ladder advancement.

In subsection (e)(1), a sentence is added clarifying that local district requirements for stricter performance criteria will be considered to be approved if they are consistent with the requirements in the section.

In subsection (i)(3), concerning transfer between districts, a sentence is added specifying that a district shall not require a teacher to be employed and appraised by the district prior to placement on a particular career ladder level for more years than required by subsection (f) of the section.

In subsection (j), concerning finality of district decision, paragraph (1) is amended to delete proposed definitions of the terms "arbitrary and capricious" and "bad faith." Paragraph (2) is edited for clarity, with no substantive change.

The following errors in printing in the proposed text are corrected. In subsection ((b)(4)(D)), the term "adjustments coordinator" is changed to "adjustment coordinator." In subsection (c)(2), the parentheses are closed after §13.322. In subsection (g)(1), the word "or" is deleted between "level two" and "level three."

This section implements the provisions of House Bill 72, 68th Legislature, 2nd Called Session, 1984, concerning the assignment to the teacher career ladder.

Each eligible teacher will be assigned to a position on the career ladder. Assignment will be based on performance, experience, job-related education or advanced academic training, job assignments, and other requirements as specified in the section.

For the 1984-1985 school year, the selection of teachers to be placed on level two of the career ladder will be made by a committee or committees appointed by the school district. Each committee will include one principal, one personnel administrator or the superintendent, one other administrator, and two teachers who are eligible to be designated as level two teachers. The use of this committee system is optional after the 1984-1985 school year.

Local districts will determine, in accordance with the section, whether higher education coursework and advanced academic training are creditable for career ladder advancement. Beginning September 1, 1985, the section specifies those ways in which such coursework or training must be related to the teacher's job assignment.

If funds available for the support of the teacher career ladder are insufficient to

fund the supplements as provided in the Texas Education Code, §16.057, a district may use stricter performance criteria than those in law and in the section for placement or maintenance of teachers on the career ladder. However, criteria not related to the quality of performance may not be used to restrict eligibility for consideration. Local districts must specify their requirements for stricter performance in a written local policy.

A district's career ladder decision may be appealed to the commissioner of education only on the grounds that the decision was arbitrary and capricious or made in bad faith.

Teachers placed on career ladder levels two, three, or four are entitled to annual salary supplements as specified in law and in the section.

The Texas Association of School Boards (TASB) urged that the proposed definitions of "arbitrary and capricious" and "bad faith" be deleted from subsection (j) of the section, concerning finality of school district career ladder decisions, because the proposed definitions are contrary to legal precedent and would be misleading to school districts. The association also asked that a provision stating that career ladder decisions for the 1984-1985 school year are not subject to appeal be reinstated. Such a provision did appear in an earlier draft of the career ladder sections published in the February 5, 1985, issue of the *Texas Register* (10 TexReg 361) and was later withdrawn by the agency. The TASB stated that because, by law, 1984-1985 career ladder decisions are made by a local committee, and not by the board of trustees, they are not appealable under the Texas Education Code, §13.319.

The State Board of Education accepted the recommendation that the proposed definitions of "arbitrary and capricious" and "bad faith" be deleted from the section. The agency does not agree with the position that 1984-1985 career ladder decisions are not subject to appeal. The Texas Education Code, §13.319, concerning such appeals, is effective for the 1984-1985 school year. Texas Education Code, §13.301(a), concerning the committee process, describes the procedure by which local school district career ladder decisions are to be made for the 1984-1985 school year.

Anne Dillard of Dallas, expressed concern that as a teacher of English who holds a master's degree in guidance and counseling, her master's degree could not be counted toward career ladder placement, even though she found the training in guidance and counseling very useful to her as a teacher.

While the agency understands the concerns of teachers whose master's degrees were in areas other than academic subjects or the subjects being

taught, the intent of the legislature was an overriding factor. The section relating to the career ladder makes every effort to broaden the concept regarding appropriate degrees and still retain the spirit of the law. The degree in guidance and counseling is not considered to be appropriate; however, it is entirely possible that nine hours of the coursework may meet the requirements for higher education courses required for career ladder level two. Local districts are not prohibited from using hours within the framework of a master's degree so long as the courses meet the specific requirements in the section.

Alicia Tarias of San Antonio expressed concern that teachers who took extra preparation while pursuing their bachelor's degree could not count that preparation for career ladder advancement while teachers who took the same preparation (such as that required for a bilingual endorsement) after completion of the bachelor's degree could count it. She requested that the section be amended to allow teachers to count extra hours beyond those required for the bachelor of arts degree, even if those hours were taken before the bachelor of arts degree was granted.

This concern was noted by the board as the career ladder sections were considered. However, the board determined that it would be unreasonable to expect local school districts to ascertain which, if any, courses that appear on a transcript were a part of or an addition to the requirements for a degree. Since students frequently change their majors; enter, transfer, and re-enter programs; and matriculate under different catalogs with changes in degree plans, it would require a district to determine the catalog and the last valid degree plan in order to make the determination about courses that are eligible for career ladder decisions.

A petition for adoption of a section concerning the career ladder was received from Carolyn McCracken of Austin. The petitioner requested that the State Board of Education adopt a rule prohibiting school districts from denying career ladder advancement to a teacher based upon the number of years of service or of consecutive service with a particular district.

The section as adopted includes a statement added to subsection (e) stating that the use of stricter performance criteria by local districts may not include the use of criteria unrelated to the quality of performance. In addition, language has been added to subsection (i)(3) to state that district choosing not to recognize the performance appraisal of another district may not require years of employment and appraisal within the employing district that exceed the number established in subsection (f) of the section.

Bill Hammond of Dallas County and John T. O'Keefe of El Paso, commented in favor of allowing courses taken after the bachelor's degree, rather than only those taken after certification, to count for career ladder advancement.

Earlier proposed sections which limited eligible courses to those taken after certification were withdrawn. The section as adopted allow courses taken after the bachelor's degree to count for career ladder purposes.

Claudia Swain of Dallas expressed concern that a Ph.D. earned in May 1985 would not count for career ladder advancement for the 1984-1985 school year.

While this is correct, a Ph.D. is not needed to enter level two of the career ladder, and a master's degree earned prior to September 1 would be eligible to be counted.

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

#### §149.71. *Assignment to the Teacher Career Ladder.*

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

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

(1) Classroom teaching is defined as teaching in the regular classroom, the resource classroom, or other instructional settings (which include, but would not be limited to, those for itinerant teachers such as the home-bound, the hospitalized, or in cooperatives) where the teacher is primarily responsible for planning, delivering,

evaluating, and reporting of student learning of the essential elements as required in Chapter 75 of this title (relating to Curriculum).

(2) Classroom teaching shall include teaching in any class for which credit is awarded to students, including physical education scheduled during the regular school day.

(3) Hours are defined for purposes of this subsection as regular class periods meeting the minimum time requirements of Chapter 75 of this title (relating to Curriculum).

(4) At the option of the local school district, the following instructional-related services may be counted as classroom teaching to meet the minimum teaching requirement for career ladder purposes:

(A) up to two hours of on-the-job supervision per day for the degreed vocational cooperative education teacher;

(B) one hour per day of supervising the occupational experience for the vocational agriculture/horticulture teacher or for the extended learning experience program for the consumer and homemaking teacher;

(C) one hour per day for purposes of traveling to the various teaching sites for the itinerant teacher;

(D) up to four hours per day or 20 hours per week for the placement of students in occupational settings, on-the-job supervision, and/or travel to occupational teaching sites for the vocational adjustment coordinator who works with a minimum of three students per day or 15 students per week; or

(E) one hour per day for purposes of serving as an instructional department head/chairperson or grade level chairperson/coordinator provided that the teacher teaches a minimum of three hours per day.

(5) At the option of the local school district, a teacher who is employed for only halftime may be considered for the teacher career ladder provided that the teacher teaches a minimum of at least two hours each day.

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

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

- (A) a school nurse;
- (B) a vocational teacher, nondegreed;
- (C) an R.O.T.C. teacher, nondegreed;
- (D) a librarian;
- (E) a visiting teacher;
- (F) a psychological associate;
- (G) a physician;

(H) an occupational or physical therapist;

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

(J) any other special service assignment such as, but not limited to, counselors or educational diagnosticians and administrative/supervisory assignments such as, but not limited to, supervisors, principals, or superintendents.

(c) The selection process.

(1) For the 1984-1985 school year, a teacher may be assigned to level two if the teacher has the years of experience (without regard to experience at a particular career ladder level) and job-related education (including higher education courses and/or advanced academic training for which the teacher retains credit under the Texas Education Code, §13.322) required to enter level two.

(A) The selection of eligible teachers to be placed on level two for the 1984-1985 school year shall be made by a committee or committees appointed by the school district. The selection shall be made in accordance with criteria described in subsection (f) of this section. This committee system is mandatory only for the 1984-1985 year.

(B) Each committee appointed by the local school board shall include one principal, one central office personnel administrator or the superintendent, and one other administrator who may be a principal.

(C) The three-member committee or committees of administrators shall designate two eligible teachers as level two teachers who shall then become members of the committee or committees for purposes of review of all remaining teachers.

(D) From the group of teachers who meet the minimum criteria for eligibility as described in subsection (f) of this section, the committee or committees shall select level two teachers by using past performance as a criterion.

(E) In school districts that do not employ three administrators, the superintendent and any other administrator, if any, shall select at least one but not more than two level two teachers to serve on the selection committee. The committee shall consider all remaining teachers for placement on level two.

(F) A local district may use a 1984-1985 school year performance evaluation as a criterion for placing a teacher on level two of the career ladder in 1984-1985 if one or more of the following conditions exist:

(i) no performance evaluation was completed for the teacher by that district in 1983-1984;

(ii) a performance evaluation for the teacher for 1983-1984 was destroyed

or otherwise removed from the district by former employees; or

(iii) a performance evaluation instrument used in 1983-1984 provided no category of performance above "satisfactory" or the equivalent, and the individuals responsible for appraisals in 1983-1984 are no longer reasonably available to the district as a resource.

(G) A local district may not use current school year performance evaluations as a criterion for placing teachers on career ladder levels except for conditions as specified in subparagraph (F) of this paragraph or in accordance with the following requirements when extraordinary circumstances exist:

(i) a local district must submit to the commissioner of education a request in writing in which the extraordinary circumstances are fully disclosed; and

(ii) the commissioner of education may allow a local district to use current school year performance evaluations if the circumstances are deemed extraordinary.

(2) A teacher may enter level two in the 1985-1986 or the 1986-1987 school year if the teacher has the years of experience (without regard to experience at a particular career ladder level), the education (including higher education courses and/or advanced academic training for which the teacher retains credit under the Texas Education Code, §13.322), and the performance appraisals required to enter level two. Assignments to level two in the 1985-1986 or the 1986-1987 school year shall be made in accordance with policies established by the local school board and may be (but are not required to be) recommended to the local board by the committee process as described in the selection process in paragraph (1) of this subsection.

(3) Texas Civil Statutes, Articles 5996a and 5996d, concerning nepotism, do not apply to the selection of level two, three, and four teachers pursuant to the Texas Education Code, Chapter 13, Subchapter E, added by House Bill 72, 68th Legislature, 2nd Called Session, 1984.

(d) Higher education course work and advanced academic training.

(1) The local school district shall determine in accordance with the provisions of this subsection whether courses taken for credit at accredited institutions of higher education or work obtained through programs of advanced academic training may be applied toward requirements for level placement and maintenance on the teacher career ladder. Effective September 1, 1985, higher education course work or advanced academic training must be related to the job assignment in one of the following ways:

(A) as instruction in the subject taught, a subject for which certification is held that is one of the elementary or secondary curriculum areas identified in Chapter 75 of this title (relating to Cur-

riculum), a subject or area to be taught that has been designated by the State Board of Education or a local school district as an area or field of acute teacher shortage and for which the teacher has on file with the district a college/university plan for certification, or a teaching endorsement or delivery system approved by the State Board of Education in Chapter 137 of this title (relating to Teacher Education) such as kindergarten or other teaching endorsements and bilingual education or other delivery systems, which category must account for at least 50% of the course work or training unless specified otherwise in paragraph (2) of this subsection;

(B) as instruction for the student taught such as specialized instruction for the gifted and talented student, the handicapped student, the culturally different student, teaching-learning theories and strategies, and the evaluation and reporting of student achievement; or

(C) as instruction in specific classroom management, knowledge, skills, and applications such as discipline, individualized instruction, teacher excellence training, and the utilization of media and high technology in the classroom.

(2) A portion, the amount to be specified by the local district, of the higher education course work and/or advanced academic training must relate directly to the remediation of weaknesses or areas in need of improvement if identified in the teacher's appraisal for the preceding year or years. In the absence of needs identified through appraisal, career goals of the individual teacher and/or staff development goals of the local school district should be addressed with flexibility for emphasizing the need for depth and/or currency of both subject knowledge and teaching methods.

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

(4) Education earned during a state-required inservice day for which the teacher is salaried may not be creditable as higher education course work or advanced academic training for career ladder purposes.

(5) Higher education course work used for level placement or maintenance on the teacher career ladder must satisfy the requirements stated in paragraphs (1) and (2) of this subsection and may carry lower division, upper division, or graduate level credit. No more than one-third of the course work may be in lower division courses un-

less the work is being taken in a subject or area that has been designated by the State Board of Education or a local school district as an area or field of acute teacher shortage as specified in subsection (d)(1)(A) of this section.

(6) All higher education course work creditable toward level placement or maintenance on the teacher career ladder must be awarded by a college or university that is accredited by a recognized accrediting agency.

(7) Credits for higher education course work or advanced academic training shall be creditable no more than once toward requirements for level advancement or placement on the teacher career ladder. If a master's or doctor's degree is used to qualify an individual for more rapid advancement to level two on the teacher career ladder, applicable credit hours within the degree requirements in excess of nine semester hours may be applied toward meeting the requirements for placement on other levels of the career ladder.

(8) It is the responsibility of each teacher to provide the local school district with official transcripts for higher education course work completed and written documentation acceptable to the local school district for advanced academic training which includes, but is not limited to, the name of the work, the date, and the number of clock hours for the work completed. It is the responsibility of the local school district to maintain documentation in support of career ladder level decisions made by the local school district.

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

(1) Local districts must specify in written policy the requirements for stricter performance. Local district requirements for stricter performance that are consistent with this section shall be considered approved.

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

(A) a higher category of performance may be required for each of the years for placement on or maintenance of a career ladder level;

(B) a greater number of years with specified high performance such as "exceeding expectations" may be required for all of the years required for experience rather than just a portion; or

(C) a higher level of performance may be required within a category;

for example, performance that needs improvement in only one major area rather than some major areas could be designated as "below expectation."

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

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

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

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

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

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

(B) receive performance evaluations which reflect at least performance "exceeding expectations" during the year immediately preceding consideration for placement at level two and "satisfactory" performance during the other year or years, or performance evaluations as specified by the local district in accordance with subsection (e) of this section; and

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

(i) Option I:

(I) a baccalaureate degree;

(II) three years of classroom teaching experience; and

(III) nine semester hours of higher education course work, or 135 hours of advanced academic training (at least 45 hours of which must emphasize classroom management training if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training;

(ii) Option II:

(I) a master's degree in:

(-a-) a subject listed in Chapter 75 of this title (relating to Curriculum) as an elementary, secondary, or all-level subject to be taught;

(-b-) education (excluding degrees specifically designed for

preparation for special service positions such as administrator, counselor, supervisor, etc.) with a concentration of at least 12 semester hours in a subject or combination of subjects to be taught in the public schools; or

(-c-) an endorsement area or delivery system approved by the State Board of Education in Chapter 137 of this title (relating to Teacher Education) such as kindergarten or other endorsements and bilingual and special education delivery systems; and

(II) two years of classroom teaching experience.

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

(A) possess a level three certificate or its equivalent as approved by the State Board of Education;

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

(i) Option I:

(I) five years of classroom teaching at level two;

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

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

(ii) Option II:

(I) three years of classroom teaching at level two;

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

(III) performance evaluations during two of the three years immediately preceding consideration for placement at level three indicating "clearly outstanding" and at least "satisfactory" performance during the other year, or performance evaluations as specified by the

local district in accordance with subsection (e) of this section.

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

(A) possess a master teacher certificate;

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

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

(i) Option I:

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

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

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

(ii) Option II:

(I) two years of classroom teaching at or above level three;

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

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

(g) Maintenance or reassignment of career ladder level.

(1) A teacher shall remain at career ladder level one until full eligibility requirements for a level two, level three, or master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) have been met and the teacher has been assigned to career ladder level two. A district may not renew the contract of a teacher who fails to achieve at least

"satisfactory" performance during either of the first two years of experience at level one.

(2) A teacher shall remain at career ladder level two until full eligibility requirements for a level three or master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) and level three entry requirements have been met. A teacher shall be reassigned from career ladder level two to career ladder level one if the teacher's performance is "below expectations" during the preceding year, or fails to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(3) A teacher shall remain at career ladder level three until full eligibility requirements for a master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) and level four entry requirements have been met.

(A) A teacher shall be reassigned from career ladder level three to career ladder level two if the teacher demonstrates less than "exceeding expectations" performance at level three for two consecutive years, or fails to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(B) A teacher shall be reassigned from career ladder level three to career ladder level one if the teacher demonstrates performance which is "below expectations" during the preceding year, or fails to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(4) A teacher shall remain at career ladder level four unless the requirements stated in this subsection are no longer satisfied.

(A) A teacher shall be required:

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

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

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

(B) A teacher shall be reassigned from career ladder level four to career ladder level three if the teacher does not meet the requirements stated in this paragraph,

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

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

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

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

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

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

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

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

(i) Transfer between districts.

(1) A teacher is entitled to transfer a career ladder level assignment between districts.

(2) A teacher may waive entitlement to a particular career ladder level assignment when changing employment from one district to another.

(3) The employing district may recognize the performance appraisal of a district previously employing the teacher in determining a career ladder level assignment. Employing districts which choose not to recognize the performance evaluation of another district may establish by local policy a procedure for placing the teacher on the career ladder at a level not to exceed that previously held by the teacher in another district without regard to experience at a particular career ladder level. A district shall not require a teacher to be employed and appraised by that district prior to placement on a particular career ladder level for more years than required by subsection (f) of this section.

(j) Finality of district decision.

(1) A decision of the district concerning a teacher's placement on the career ladder may be appealed only on the following grounds:

(A) that the decision was arbitrary and capricious; or

(B) that the decision was made in bad faith.

(2) Before a career ladder decision may be appealed to the commissioner of education, a hearing concerning the decision must be held by the local board of trustees.

(k) Property right of teacher.

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

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

(l) Career ladder salary supplement. The career ladder salary supplement shall be paid during the school year at a time and in a manner to be determined by the local school district in accordance with law and this section.

(1) Each teacher placed on level two, three, or four of a career ladder is entitled to the following annual supplement in addition to the minimum salary set by law:

(A) Level 2—\$2,000;

(B) Level 3—\$4,000; and

(C) Level 4—\$6,000.

(2) If the district pays more than the state minimum salary prescribed by law, the teacher is entitled to the career ladder supplement in addition to the amount otherwise paid by the district for the teacher's step.

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

(A) reduce the supplements to not less than the following:

(i) Level 2—\$1,500;

(ii) Level 3—\$3,000;

(iii) Level 4—\$4,500;

(B) provide for stricter performance criteria than that provided in law as a basis for career ladder level assignments in accordance with subsection (e) of this section; or

(C) take action under both subparagraphs (A) and (B) of this paragraph.

(4) In the event that funds designated as the allotment for career ladder salary supplements are deemed insufficient for placement and/or maintenance of all teachers meeting the state-mandated minimum criteria for selection and/or maintenance on the teacher career ladder, the local district may fund additional career ladder salary supplements from local or other funds permitted by law and State Board of Education rules effective with the 1985-1986 school year, provided that the following requirements have been met:

(A) that funds available for any legal purpose in accordance with the Texas

Education Code, §16.158, have been fully exhausted in the payment of teacher career ladder salary supplements; and

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

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

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

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

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

This agency hereby certifies that the 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 May 16, 1985.

TRD-854414

W. N. Kirby  
Commissioner of  
Education

Effective date: June 7, 1985

Proposal publication date: March 22, 1985

For further information, please call  
(512) 475-7077.

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### ★ 19 TAC §149.81

The Texas Education Agency (TEA) adopts new §149.81, with changes to the proposed text published in the March 22, 1985, issue of the *Texas Register* (10 TexReg 971).

An editorial change is made in subsection (c)(1). The word "either" is replaced by the phrase "one of the following." There are no other changes from the text as proposed.

This section implements the provisions of House Bill 72, 68th Legislature, 2nd

Called Session, 1984, concerning advanced academic training in relation to career ladder advancement.

The purpose of advanced academic training is to improve classroom instruction. Such training must be in addition to required inservice education. The section addresses general provisions, program topics, qualifications of providers, minimum length, record maintenance, and program approval. The section allows school districts, colleges, universities, education service centers, professional organizations, and the Central Education Agency to offer advanced academic training if the proposed workshops or classes are approved by the Central Education Agency. The section allows private firms to offer advanced academic training if the program is sponsored by one of the types of entities previously listed and is approved by the agency. The section requires all providers of advanced academic training to submit their programs to the Central Education Agency. The programs will be reviewed for approval within 30 days. All approved programs will be monitored at least once every three years. Programs must be at least six hours long, excluding lunch and breaks.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §13.315, which requires that advanced academic training, which is creditable for career ladder purposes, must be accredited by the State Board of Education.

#### §149.81. Advanced Academic Training.

(a) General provisions. Advanced academic training is staff development based upon diagnosed needs or professional goals. Priority shall be given to strengthening needs identified through the appraisal process. The purpose of advanced academic training is to improve classroom instruction. Such training shall be in addition to the required inservice education and must be highly structured to meet the requirements of the Texas Education Code, §13.315. Activities such as developing curriculum guides, peer observation, or travel will not qualify for advanced academic training. A teacher must have prior district approval for any training to be considered for advanced academic training.

(b) Program topics. The workshops or classes must address specific objectives and relate to one of the following:

(1) course or subject taught;

(2) subject for which certification is held that is one of the elementary or secondary curriculum areas identified in Chapter 75 of this title (relating to Curriculum);

(3) a subject or area to be taught that has been designated by the State Board of Education, or the local district, as an area or field of acute teacher shortage for which

the teacher has on file with the district a college or university plan for certification;

(4) a teaching endorsement or delivery system approved by the State Board of Education;

(5) specialized instruction for the gifted and talented student, the handicapped student, or the culturally different student;

(6) teaching-learning theories and strategies;

(7) evaluation and reporting of student achievement;

(8) classroom management;

(9) individualized instruction;

(10) utilization of media and high technology in the classroom; and

(11) other professional development activities if identified by the district and if they meet the requirements of §149.71(d) of this title (relating to Assignment to the Teacher Career Ladder).

(c) Sponsors and presenters.

(1) Workshops or classes must be sponsored by one of the following: the school district, a college or university, an education service center, a professional organization, or the Central Education Agency. A program by a private firm must be sponsored by one of the entities in this subsection.

(2) Each presenter must have documented expertise in the topic of the workshop or class.

(3) If the presenter is a teacher, advanced academic training credit shall be earned by the presenter in the amount of the time for the first complete program presentation plus an equal amount of time for preparation.

(d) Minimum length of program. The minimum length of a program for which credit may be given for advanced academic training is six clock hours, excluding lunch, breaks, or travel time. Six clock hours shall earn six hours of advanced academic training credit. The minimum six hour program and programs of other lengths may be delivered in multiple sessions on different days.

(e) Records. The sponsor of the program must provide participants with a record of completion in a format prescribed by the commissioner of education. This record must be maintained by the district to document clock hour credits of advanced academic training.

(f) Program approval.

(1) Each program must be submitted to the Central Education Agency for approval. This submission shall be on forms provided by the agency.

(2) The agency will review and approve each program based upon criteria in this section.

(3) Within 30 days the program will be approved or returned. Providers of approved programs will receive documentation indicating the approved status.

(4) Approved programs will be reviewed by the Central Education Agency at least every three years with compliance

audits scheduled at any time. All programs will maintain approved status unless notified by the agency.

(5) The program sponsor shall verify the approved qualifications of the presenter.

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 May 17, 1985.

TRD-854416

W. N. Kirby  
Commissioner of  
Education

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For further information, please call  
(512) 475-7077.

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## TITLE 28. INSURANCE

### Part I. State Board of Insurance

*(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct title and part.)*

#### Variable Life

#### Variable Life Insurance

★059.03.76.001-.011

The State Board of Insurance adopts new Rules 059.03.76.003, .004, .006, and .007, with changes to the proposed text published in the March 5, 1985, issue of the *Texas Register* (10 TexReg 781). New Rules 059.03.76.001, .002, .005, and .008-.011 are adopted without changes and will not be republished.

These are rules for variable life insurance products. They replace Rules 059.10.01.001-.011, which the board intends to repeal. The new rules are adopted pursuant to the Insurance Code, Article 3.75, §8. Article 3.75 was enacted by Senate Bill 1131, 68th Legislature, 1983. In addition to enacting Article 3.75, Senate Bill 1131 repeals the Insurance Code, Articles 3.39, Part III; 3.72; and 3.73. Article 3.39, Part III, and 3.72 apply to variable annuities; Article 3.73 applies to variable life insurance. Article 3.75 was enacted to regulate life insurance and annuity products which vary according to the investment experience of a separate account. These rules are supplementary to Article 3.75. They replace rules heretofore adopted under Article 3.73. These rules permit a new type of variable life contract which

is called flexible premium variable life insurance.

American General Life Insurance Company, American National Insurance Company, Fidelity Union Life Insurance Company, Southwestern Life Insurance Company, and USAA Life Insurance Company (referred to as the companies), commented on the proposed rules in a joint comment. The companies are concerned that the proposed rules could provide possible retaliatory problems for Texas domestic insurers unless Rule 059.03.76.001 is amended to allow the commissioner, at his or her discretion, to consider compliance with a law or regulation of another state as compliance with these rules if such other law or regulation provides a degree of protection to the public and to policyholders substantially similar to these rules. The board disagrees with this comment. It believes that all Texas policyholders should be governed by and receive the benefit of Texas law.

The companies suggested adding the phrase "having complied with the provisions of Article 3.75, Insurance Code, relating to" to Rule 059.03.76.003(1)(B) to allow for certain modifications respecting hearings requirements in the statutes authorizing separate accounts and variable contracts. The board agrees, and the rule is changed to include the phrase.

The companies suggested adding the phrase "or in the absence of an assumed investment rate, a rate not to exceed" and deleting the word "otherwise" in the last sentence of Rule 059.03.76.04(1)(A)(i) to be consistent with an earlier sentence in a clause of Rule .004. The board agrees, and the rule is changed accordingly.

The companies suggested that the phrase "permitted and/or" be added to Rule 059.03.76.004(2)(A) and Rule 059.03.76.006(7)(C) so that an insurer's ability to provide individual variable life contracts on a guaranteed-issue basis be not restricted. The board disagrees with this comment. It believes that the maximum mortality charge should not exceed a mortality rate for the attained age of the insured in a table specified for the calculation of cash surrender values in the Insurance Code, Article 3.44a, unless the contract is issued on a substandard basis. To make this clear, the board deems it necessary to add a new sentence to the end of the cited provisions.

The companies suggested that Rule 059.03.76.003(4)(B)(i) be amended to add the phrase "to the extent permitted by law" to a requirement that current gross investment rates be illustrated if hypothetical investment returns are included to accommodate Securities and Exchange Commission and National Association of Securities Dealers requirements on illustrations of investment returns. The board agrees, and the rules are changed accordingly. In addition, the board has determined that this change requires the

addition of the word "federal" before "law" in the quoted languages so as to make it clear that advertising requirements for Texas contracts is not subject to the law of other states.

The companies suggested that the citation 15 United States Code §77, *et seq.*, in proposed Rules 059.03.76.003(2)(H) and 059.03.76.007 be changed to read 15 United States Code, §77a, *et seq.* The board agrees, and the rules are changed accordingly.

The companies suggested that Rule 059.03.76.003(4)(B)(ii) be revised to add the phrase "if guarantees are included in the contract" to make it clear that this rule only applies to variable life contracts which have specified guarantees. The board agrees, and the rule is changed accordingly.

The companies suggested that Rule 059.03.76.003(4)(B)(iv) be revised to require that it be stated that a contract "may" terminate due to insufficient premiums or investment experience, in lieu of a requirement to show when a contract will terminate. This change is to avoid an unintended requirement that every possible date when a contract might terminate for the reasons stated be shown. The board agrees, and the rules are changed accordingly.

The companies suggested that the phrase "including any contract fees or other charges and the amounts allocated to any separate accounts under the contract" be deleted from a requirement in Rule 059.03.76.004(3)(A)(v) permitting a return of the contract within 10 days of receipt because of concern that the phrase could require adjustment of the premiums returned based on gains or losses in the separate account. The board agrees, and the rules are changed accordingly.

The companies suggested that the phrase "does not provide for a guarantee of death benefit coverage, but does" be added to Rule 059.03.76.004(3)(U). The companies are concerned that the proposed rule, without the phrase, could be applied to contracts with guaranteed death benefits. The board agrees, and the rule is changed accordingly.

The companies suggested that Rule 059.03.76.004(5)(A) be changed by replacing the words "an application" with the words "a request" to accommodate the flexible premium life contracts which allow for increases or decreases in the death benefits without submission of an application or proof of insurability for an increase. The board agrees that this change is necessary; however, to achieve consistency with these rules on incontestability, the board has determined to use the words "an application or request."

The staff also commented on the rules. The staff suggested amending Rule 059.03.76.004(5) to read "provisions" instead

of "provision" and to change the conjunction "or" to read "and/or" so that one or more of the provisions listed in that rule may be included in a variable life insurance contract. The board agrees, and the rules are changed accordingly.

The new rules are adopted under the Insurance Code, Article 3.75, §8, which authorizes the State Board of Insurance to establish such rules, regulations, or limitations regarding variable life insurance products as may be appropriate for the adoption and implementation of Article 3.75.

**.003. Qualifications of Insurer to Issue Variable Life Insurance.** The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having the authority to issue variable life insurance in this state.

(1) Licensing and approval to do business in this state. An insurer shall not deliver or issue for delivery in this state any variable life insurance contracts unless:

(A) the insurer is licensed or organized to do a life insurance business in this state; and

(B) after having complied with the provisions of the Insurance Code, Article 3.75, relating to notice and hearing, the commissioner has authorized, either as part of the insurer's original certificate of authority or by charter amendment, the insurer to issue, deliver, and use variable life contracts, and only after he or she has considered among other things the following:

(i) whether the plan of operation for the issuance of variable life contracts is sound;

(ii) whether the general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life business of the insurer in this state; and

(iii) whether the present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such contracts is not likely to render its operation hazardous to the public or its contractholders in this state. The commissioner shall consider, among other things:

(I) the history of operation and financial condition of the insurer;

(II) the qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

(III) the applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life contracts. The state of entry of



an alien insurer shall be deemed its state of domicile for this purpose; and

(IV) if the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

(2) Filing for approval to do business in this state. Before any insurer may deliver or issue for delivery any variable life contract in this state, it must file with the State Board of Insurance the following information, and any other information specifically requested, for the consideration of the commissioner, on making the determination required by paragraph (1)(B) of this rule:

(A) copies of and a general description of the variable life contracts it intends to issue;

(B) a general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of contracts and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distributive services to the insurer;

(C) with respect to any separate account maintained by an insurer for any variable life contract, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

(D) a description of any investment advisory services contemplated as required by Rule 059.03.76.006 of this title (relating to Separate Accounts);

(E) a copy of the statutes and regulations of the state of domicile of a foreign or alien insurer under which it is authorized to issue variable life contracts;

(F) biographical data not previously filed with the commissioner with respect to officers and directors of the insurer on the appropriate biographical form used in Texas;

(G) a statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the contract; and

(H) the provisions of subparagraphs (A)-(G) of this paragraph shall be deemed to have been satisfied to the extent that the information required by the commissioner is provided in form identical to the insurer's registration statement filed under 15 United States Code §77a, *et seq.*

(3) Standards of suitability. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. Such standards

of suitability shall specify that no recommendation shall be made to an applicant to purchase a variable life contract and that no variable life contract shall be issued in the absence of reasonable grounds to believe that the purchase of such contract is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the agent making the recommendation.

(4) Use of sales material. An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state unless it complies with Rules 059.50.04.001-.021 and .041 of this title (relating to Rules on Certain Trade Practices, Insurance Advertising, and Insurance Solicitation and Required Filing Respecting Advertising and Solicitation Material of Individual Retirement Annuity Products).

(A) All variable life insurance sales material, advertising material, and descriptive material shall be filed with the commissioner prior to any distribution to prospective applicants. Revised versions of such materials containing changes from versions on file with the commissioner shall be filed with the commissioner. A failure to object to such material by the commissioner shall not be construed as acceptance.

(B) An insurer issuing flexible premium variable life contracts shall provide, to all prospective purchasers, an illustration of cash surrender values prior to or at the time of delivery of the contract. Any illustration of cash surrender values delivered to an applicant or prospective applicant pursuant to this subsection shall:

(i) include a hypothetical gross investment return of 0.0%, and when other hypothetical gross investment returns are included, the current gross investment return must, to the extent permitted by federal law, be included;

(ii) give equal prominence to both guaranteed and nonguaranteed aspects of the contract if guarantees are included in the contract;

(iii) prominently display, by way of written statement, the hypothetical nature of the illustration as it relates to investment returns;

(iv) prominently state that a contract may terminate due to insufficient premiums and/or poor investment performance; and

(v) prominently show, by way of written statement, that excessive loans or withdrawals may cause the contract to lapse due to insufficient cash surrender value and, at the option of the insurer, prominently display the effects of loans or withdrawals on contract values.

(5) Requirements applicable to contractual services. Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services furnish the commissioner with any information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations, and any other applicable law or regulations.

(6) Reports to the commissioner. Any insurer authorized to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by these rules or any other applicable laws or rules:

(A) an annual statement of the business of its separate account or accounts in such forms as may be prescribed by the National Association of Insurance Commissioners;

(B) prior to use in this state, any information furnished to applicants as provided for in Rule 059.03.76.007 of this title (relating to Information Furnished to Applicants);

(C) prior to use in this state, the form of any of the reports to contractholders as provided for in Rule 059.03.76.009 of this title (relating to Reports to Contractholders); and

(D) such additional information concerning its variable life insurance operations or its separate accounts as the commissioner shall deem necessary.

(7) Treatment of material reported under paragraph (6). Receipt of the material specified in paragraph (6) of this rule does not imply approval or acceptance of the material. The commissioner shall require the redistribution of any previously distributed material which is found to be false, misleading, deceptive, or inaccurate in any material respect.

(8) Authority of the commissioner to disapprove. Any material required to be filed with the commissioner, or approved by him or her, shall be subject to disapproval if at any time it is found by him or her not to comply with the standards established by these rules.

.004. *Insurance Contract and Filing Requirements.* The commissioner shall not approve any variable life insurance form filed pursuant to these rules unless it conforms to the requirement of applicable law.

(1) Filing of variable life contracts. All variable life contracts, and all riders, endorsements, applications, and other documents which are to be attached to and made a part of the contract and which relate to the variable nature of the contract, shall be

filed with the commissioner and approved or exempted, as applicable, by him or her prior to delivery or issuance for delivery in this state.

(A) Each variable life contract, rider, endorsement, and application shall be filed in accordance with Rules 059.03.43 .001-.008 of this title (relating to Preparation and Submission of Individual Life Insurance and Annuity Forms). A flexible premium variable life contract submission shall be accompanied by the following:

(i) a mathematical demonstration comparing the specimen contract's cash surrender values, assuming the contract's assumed investment rate, if any, or in the absence of an assumed investment rate, on a rate not to exceed the maximum interest rate allowed by the Insurance Code, Article 3.44a, to the minimum cash surrender value described in paragraph (2)(F) of this rule. The specimen contract should be for the minimum initial face amount permitted to be issued to a male age 35. The demonstration should not assume changes in face amount which are optional to the contractholder. The maturity date and the premium paying period should be the maximum permitted by the contract. The premium for each year should be the greater of the minimum premium permitted for that year or the premium that will allow the contract to mature at the maturity date assuming guaranteed charges and the assumed investment rate, if any, or, in the absence of an assumed investment rate, a rate not to exceed the maximum interest rate permitted by the Insurance Code, Article 3.44a.

(ii) an actuarial description which sets forth maximum expense charges, loads and surrender charges, applicable to the contract at issue and upon a change in basic coverage, for all ages, bands, and classes of risk, shall be provided in conjunction with the contract.

(B) The commissioner may approve variable life contracts and related forms with provisions the commissioner deems to be not less favorable to the contractholder and the beneficiary than those required by these rules.

(2) **Mandatory contract benefit and design requirements.** Variable life contracts delivered or issued for delivery in this state shall comply with the following minimum requirements.

(A) Mortality and expense risks shall be borne by the insurer. The expense charges shall be subject to the maximums stated in the contract. The charge for mortality shall be stated in the contract and shall not exceed a mortality rate for the attained age of the insured in a table specified for the calculation of cash surrender values in the Insurance Code, Article 3.44a. Provided, for insurance issued on a substandard basis, the charge for mortality may be the mortality rate for the attained age of the insured in such other table as may be specified

by the company and approved by the State Board of Insurance.

(B) For scheduled premium contracts, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the contract so long as premiums are duly paid (subject to paragraph (4) of this rule).

(C) The contract shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life contract is actuarially sound.

(D) Each variable life contract shall be credited with the full amount of the net investment return applied to the benefit base.

(E) Any changes in variable death benefits of each variable life contract shall be determined at least annually.

(F) The cash surrender value of each variable life contract shall be determined at least monthly. The method of computation of cash surrender values and other nonforfeiture benefits, as described in the contract and in a statement filed with the commissioner in this state in which the contract is delivered, or issued for delivery, shall be in accordance with recognized actuarial procedures that recognize the variable nature of the contract. The method of computation must be such that if the net investment return credited to the contract at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the contract, then the resulting cash surrender values and other nonforfeiture benefits must be at least equal to the minimum values required by the Insurance Code, Article 3.44a, for a general account contract with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Insurance Code, Article 3.44a. If the contract does not contain an assumed investment rate, this demonstration shall be based on a rate not to exceed the maximum interest rate permitted under the Insurance Code, Article 3.44a. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include for example, but are not limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the contract at all times from the date of issue had been equal to the assumed investment rate.

(3) **Mandatory contract provisions.** Every variable life contract filed for approval in this state shall contain at least the following.

(A) The cover page or pages corresponding to the cover page of each contract shall contain:

(i) a prominent statement in either contrasting color or in boldface type that the amount or duration of death benefit may be variable or fixed under specified conditions;

(ii) a prominent statement in either contrasting color or in boldface type that cash surrender values may increase or decrease in accordance with the experience of the separate account, subject to any specified minimum guarantees;

(iii) a statement describing any minimum death benefit required pursuant to paragraph (2)(B) of this rule;

(iv) the method, or a reference to the contract provision which describes the method, for determining the amount of insurance payable at death;

(v) a captioned provision that the contractholder may return the variable life contract within 10 days of receipt of the contract by the contractholder, and receive a refund equal to the premiums paid;

(vi) such other items as are currently required for fixed benefit life contracts and which are not inconsistent with these rules.

(B) A grace period in accordance with this subparagraph.

(i) For scheduled premium contracts, a provision for a grace period of not less than 31 days from the premium due date which shall provide that when the premium is paid within the grace period, cash surrender values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

(ii) For flexible premium contracts, a provision for a grace period beginning on the contract processing day when the total charges authorized by the contract that are necessary to keep the contract in force until the next contract processing day exceed the amounts available under the contract to pay such charges in accordance with the terms of the contract. Such grace period shall end on a date not less than the later of the date 61 days after the contract processing day when the grace period begins; or the date which is 31 days after the mailing date of the report to contractholders required by Rule 059.03.76.009(3) of this title (relating to Report to Contractholders). The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the contract processing days occur monthly, the insurer may require payment of an amount equal to the greater of:

(1) not more than three times the charges which were due on the contract processing day on which the amounts available under the contract were insufficient to pay all charges authorized by the contract that are necessary to keep such contract in force until the next contract processing day, or

(II) the amount necessary to keep such contract in force for a period of three calendar months from the contract processing day on which the amounts available under the contract were insufficient to pay all charges authorized by the contract.

(C) For scheduled premium contracts, a provision that the contract will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(i) all overdue premiums at an interest rate not exceeding the contract loan interest rate in effect for the period during and after the lapse of the contract, and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding the contract loan interest rate in effect for the period during and after the lapse of the contract; or

(ii) 110% of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding the contract loan interest rate in effect for the period during and after the lapse of the contract.

(D) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the contract.

(E) A provision designating the separate account to be used and stating that:

(i) the assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life contracts supported by the separate account; and

(ii) the assets of such separate account shall be valued at least as often as any contract benefits vary but at least monthly.

(F) A provision specifying what documents constitute the entire insurance contract.

(G) A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his or her behalf, shall be considered as representations and not warranties.

(H) An identification of the owner of the insurance contract.

(I) A provision setting forth conditions or requirements as to the designation, or change of designation, of a benefi-

ciary and a provision for disbursement of benefits in the absence of a beneficiary designation.

(J) A statement of any conditions or requirements concerning the assignment of the contract.

(K) A description of any adjustments in benefits under the contract to be made in the event of misstatement of age or sex of the insured.

(L) A provision that the contract shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the contract's death benefits subsequent to the contract issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase.

(M) A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state.

(N) A provision that the payment of variable death benefits in excess of any minimum death benefits, cash surrender values, contracts loans, or partial withdrawals (except when used to pay the premiums) or partial surrenders may be deferred:

(i) for up to two months for death benefit payments or six months for all other payments from the date of request therefor, if such payments are based on contract values which do not depend on the investment performances of the separate accounts; or

(ii) for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

(O) If settlement options are provided; at least one such option shall be provided on a fixed basis only.

(P) A detailed and complete definition for the basis for computing the contract value and the cash surrender value of the contract: For flexible premium variable life contracts, the definition shall include the following:

(i) the guaranteed maximum expense charges and loads;

(ii) any limitation on the crediting of additional interest. Interest credits shall not remain conditional for a period longer than 12 months;

(iii) any assumed investment rate or rates;

(iv) the guaranteed maximum mortality charges;

(v) any other guaranteed charges;

(vi) any surrender or partial withdrawal charges.

(Q) Premiums or charges for incidental insurance benefits shall be stated separately.

(R) Any other contract provisions required by these rules.

(S) Such other items as are currently required for fixed benefit life insurance contracts and are not inconsistent with these rules.

(T) A provision for nonforfeiture insurance benefits. The insurer may establish either a reasonable minimum cash surrender value amount, or a reasonable death benefit which may be purchased under any nonforfeiture option, below which any nonforfeiture option will not be available.

(U) If a flexible premium contract does not provide for a guarantee of death benefit coverage, but does provide for a "maturity date," "end date," or similar date, then the contract shall also contain a statement, in close proximity to that date, that it is possible that the coverage may not continue to the maturity date even if scheduled premiums are paid in a timely manner.

(4) Contract loan provision. Every variable life contract, other than term insurance contracts and pure endowment contracts, delivered or issued for delivery in this state shall contain provisions which are not less favorable to the contractholder than the following.

(A) A provision for contract loans after the contract has been in force for one full year which provides the following:

(i) at least 75% of the contract's cash surrender value may be borrowed;

(ii) the amount borrowed shall bear interest at a rate not to exceed that permitted by the Insurance Code, Article 3.44c;

(iii) any indebtedness shall be deducted from the proceeds payable on death;

(iv) any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

(B) For scheduled premium contracts, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the contract if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice. For flexible premium contracts, whenever the total charges authorized by the contract that are necessary to keep the contract in force until the next following contract processing day exceed the amounts available under the contract to pay such charges, a report must be sent to the contractholder containing the information spe-

cified by Rule 059.03.76.009(3) of this title (relating to Reports to Contractholders).

(C) The contract may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the contractholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% of the corresponding increase in cash surrender value and by furnishing such evidence of insurability as the insurer may require.

(D) The contract may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision.

(E) No contract loan provision is required if the contract is under extended insurance nonforfeiture option.

(F) The contract loan provisions shall be constructed so that variable life insurance contractholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

(G) Amounts paid to the contractholders upon the exercise of any contract loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for contract loans from the general account.

(5) Other contract provisions. The following provision may in substance be included in a variable life contract or related form delivered or issued for delivery in this state:

(A) an exclusion for suicide within two years of the issue date of the contract; provided, however, that to the extent of the increased death benefits only, the contract may provide an exclusion for suicide within two years of any increase in death benefits which result from an application or request of the owner subsequent to the contract issue date;

(B) incidental insurance benefits may be offered on a fixed or variable basis;

(C) contracts issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such contracts may offer the following dividend options:

(i) the amount of the dividend may be credited against premium payments;

(ii) the amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(iii) the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(iv) the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(v) the amount of the dividend may be deposited as a variable deposit in the separate account or separate accounts;

(D) a provision allowing the contractholder to elect in writing in the application for the contract or thereafter an automatic premium loan on a basis not less favorable than that required of contract loans under paragraph (4) of this rule, except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed;

(E) a provision allowing the contractholder to make partial withdrawals; and/or

(F) any other contract provision approved by the commissioner.

**.006. Separate Accounts.** The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer.

(1) Establishment of separate accounts. Any domestic life insurance company issuing variable life contracts shall establish one or more separate accounts pursuant to the Insurance Code, Article 3.75.

(A) If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the commissioner shall have authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

(B) In connection with the handling of separate account assets, such insurer shall not without prior written approval of the commissioner, employ in any material manner any person who:

(i) within the last 10 years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of 18 United States Code §§1341, 1342, or 1343, as amended; or

(ii) within the last 10 years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(iii) within the last 10 years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state laws involving fraud, deceit, or knowing misrepresentation.

(C) All persons with access to the cash, securities, or other assets allocated to or held by the separate account shall be under bond in the amount of not less than \$100,000.

(2) Amounts in the separate account. The insurer shall maintain in each separate account assets with a value at least

equal to the greater of the valuation reserves for the variable portion of the variable life insurance contracts or the benefit base for such contracts.

(3) Investments by the separate account.

(A) No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(i) in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and

(ii) such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

(B) The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under contracts funded by the account.

(4) Limitations on ownership.

(A) A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these rules, would exceed 10% of the value of the assets of the separate account. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or contractholders in this state, the commissioner may in writing waive this limitation.

(B) No separate account shall purchase or otherwise acquire the voting securities of any issuer if, as a result of such acquisition, the insurer and its separate accounts in the aggregate will own more than 10% of the total issued and outstanding voting securities of such issuer. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or the contractholders in this state, the commissioner may in writing waive this limitation.

(C) The percentage limitations specified in subparagraph (A) of this paragraph shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to 15 United States Code §§80b-1—80b-21, as amended, or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of

paragraph (3) of this rule and other applicable portions of this regulation.

(5) **Valuation of separate account assets.** Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

(6) **Separate account investment policy.** The investment policy of a separate account operated by a domestic insurer filed under Rule 059.03.76.003(2)(C) of this title (relating to Qualification of Insurer to Issue Variable Life Insurance) shall not be changed without first filing such change with the commissioner.

(A) Any change filed pursuant to this paragraph shall be effective 60 days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such 60-day period of his or her disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this paragraph.

(B) The commissioner may disapprove the change if he or she determines that the change would be detrimental to the interests of the contractholders participating in such separate accounts.

(7) **Charges against separate account.** The insurer must disclose in writing, prior to or contemporaneously with delivery of the contract, all charges that may be made against the separate account, including, but not limited to, the following:

(A) taxes or reserves for taxes attributable to investment gains and income of the separate account;

(B) actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

(C) actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities. The tabular costs of insurance shall not exceed the mortality rate for the attained age of the insured in the table specified for the calculation of cash surrender values in the Insurance Code, Article 3.44a. Provided, for insurance issued on a substandard basis, the charge for mortality may be the mortality rate for the attained age of the insured in such other table as may be specified by the company and approved by the State Board of Insurance;

(D) charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

(E) a charge, at a rate specified in the contract, for mortality and expense guarantees;

(F) any amounts in excess of those required to be held in the separate accounts;

(G) charges for incidental insurance benefits.

(8) **Standards of conduct.** Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct shall be binding on the insurer and those to whom it refers. A code of ethics meeting the requirements of 15 United States Code §80a-17, as amended, and applicable rules and regulations thereunder shall satisfy the provisions of this paragraph.

(9) **Conflicts of interest.** Rules under any provision of the Insurance Code or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

(10) **Investment advisory services to a separate account.** An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance contracts unless:

(A) the person providing such advice is registered as an investment advisor under 15 United States Code §§80b-1—80b-21, as amended;

(B) the person providing such advice is an investment manager under 29 United States Code §1001, *et seq*, as amended, with respect to the assets of each employee benefit plan allocated to the separate account; or

(C) the insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed adviser:

(i) the name and form of organization, and its principal place of business;

(ii) the names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, of such individual;

(iii) a written standard of conduct complying in substance with the requirements of paragraph (8) of this rule which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

(iv) a statement provided by the proposed adviser as to whether the advisor or any person associated therewith:

(I) has been convicted within 10 years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation

of funds or securities, or involving the violation of 18 United States Code §§1341, 1342, or 1343, as amended;

(II) has been permanently or temporarily enjoined by an order, judgment, or decree of any court of competent jurisdiction from acting as an investment advisor, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(III) has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under such laws; or

(IV) has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

(D) such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than 60 days' written notice to the investment advisor. The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he or she deems continued operation thereunder to be hazardous to the public or the insurer's contractholders.

**.007. Information Furnished to Applicants.** An insurer delivering or issuing for delivery in this state any variable life insurance contracts shall deliver to the applicant for such contract, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of this rule shall be deemed to have been satisfied to the extent that a disclosure containing information required by this rule is delivered, either in the form of a prospectus included in the requirements of 15 United States Code §77a, *et seq*, which was declared effective by the Securities and Exchange Commission; or all information and reports required by 29 United States Code §1001 *et seq*, if the policies are exempted from the registration requirements of 15 United States Code §77a, *et seq*;

(1) a summary explanation in non-technical terms, of the principal features of the contract, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by Rule 059.03.76.004(3)(A)(v) and (3)(F) of

this title (relating to Insurance Contract and Filing Requirements).

(2) a statement of the investment policy of the separate account, including:

(A) a description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

(B) any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted.

(3) a statement of the net investment return of the separate account for each of the least 10 years or such lesser period as the separate account has been in existence;

(4) a statement of the charges levied against the separate account during the previous year;

(5) a summary of the method to be used in valuing assets held by the separate account;

(6) a summary of the federal income tax aspects of the contract applicable to the insured, the contractholder, and the beneficiary;

(7) illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investments experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

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 May 15, 1985.

TRD-854344

James W. Norman  
Chief Clerk  
State Board of  
Insurance

Effective date: June 5, 1985

Proposal publication date: March 5, 1985

For further information, please call  
(512) 475-2950.

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**TITLE 31. NATURAL  
RESOURCES AND  
CONSERVATION  
Part II. Texas Parks and  
Wildlife Department  
Chapter 57. Fisheries  
Final Destination**

★31 TAC §57.391

The Texas Parks and Wildlife Commission adopts the repeal of §57.391, without changes to the proposed text published in the March 19, 1985, issue of the *Texas Register* (10 TexReg 919). Section 57.391

was repealed because it has been incorporated as a definition into §85.6 of the statewide hunting and fishing proclamation.

The repeal reduces duplication of text and broadens the application to both saltwater and freshwater.

The repeal of the final destination rule allows the rule to be incorporated into the statewide hunting and fishing proclamation, where it logically should reside, and allows the definition to be applied also to freshwater.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Parks and Wildlife Code, Chapter 66, which provides the Texas Parks and Wildlife Commission with the authority to provide an administrative definition to inform the public of its meaning and allow for its enforcement.

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

Issued in Austin, Texas, on May 16, 1985.

TRD-854368

Boyd M. Johnson  
Legal Counselor  
Texas Parks and Wildlife  
Department

Effective date: September 1, 1985

Proposal publication date: March 19, 1985

For further information, please call  
(512) 479-4805 or 1-800-792-1112.

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# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published

**Posting of open meeting notices.** All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

## Texas Commission on the Arts

**Friday, May 24, 1985, 9 a.m.** The Executive Committee of the Texas Commission on the Arts will meet in the commission offices, fifth floor, 920 Colorado Street, Austin. According to the agenda, the committee will conduct a general discussion.

**Contact:** A. Patrice Walker, P.O. Box 13406, Austin, Texas 78711, (512) 475-6593.

**Filed:** May 16, 1985, 3:18 p.m.  
TRD-854374

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## State Banking Board

**Thursday, May 16, 1985, 3:30 p.m.** The State Banking Board met in emergency session via conference call originating at 2601 North Lamar Boulevard, Austin. According to the agenda, the board considered an application for a charter for a state bank to purchase some of the assets and assume some of the liabilities of a failed bank. The applicant, if there was one, was chosen by the Board of Directors of the FDIC. The emergency status was necessary because failure of the bank would disrupt banking services in the community.

**Contact:** William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

**Filed:** May 16, 1985, 12:34 p.m.  
TRD-854366

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## State Board of Barber Examiners

**Tuesday, June 4, 1985, 8 a.m.** The State Board of Barber Examiners will meet in Suite C-275, 1300 East Anderson Lane, Austin. According to the agenda, the board will consider the previous meeting minutes, interview out-of-state applicants, sign a teacher certificate, and hear letters and

reports by the executive director. The board also will meet in executive session.

**Contact:** Jo King McCrorey, 1300 East Anderson Lane, Suite C-275, Austin, Texas 78752, (512) 835-2040.

**Filed:** May 20, 1985, 1:55 p.m.  
TRD-854475

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## State Board of Canvassers

**Friday, May 24, 1985, 10 a.m.** The State Board of Canvassers of the Office of the Secretary of State will meet in Room 127, State Capitol, Austin. According to the agenda, the board will canvass the returns of the second special election in State Senate District 6 held on May 18, 1985.

**Contact:** Melinda Nickless, Sam Houston Building, Room 915, 201 East 14th Street, Austin, Texas 78711, (512) 475-3091.

**Filed:** May 16, 1985, 4:30 p.m.  
TRD-854380

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## Interagency Council on Early Childhood Intervention

**Wednesday, May 29, 1985, 9:30 a.m.** The Interagency Council on Early Childhood Intervention will meet in the conference room, first floor, Texas Department of Health, 1101 East Anderson Lane, Austin. According to the agenda summary, the council will approve the minutes; review and approve the proposed interagency budget for the Texas Employees Association and Mental Health Mental Retardation; review the proposed fiscal year 1986 budget; approve the proposed fiscal year 1986 early childhood intervention contract formats; hear the ad-

visory committee report; review the research and evaluation efforts and review and approve a maintenance of effort policy paper; and discuss pending litigation.

**Contact:** Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

**Filed:** May 17, 1985, 3:43 p.m.  
TRD-854437

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## Texas Economic Development Commission

**Monday, May 20, 1985, 2 p.m.** The Texas Small Business Industrial Development Corporation of the Texas Economic Development Commission met in emergency session in Room 221, 410 East Fifth Street, Austin. According to the agenda, the corporation conducted a public hearing on its proposed issuance of a revenue bond in an amount not to exceed \$750,000 to finance the cost of the acquisition of approximately 1.108 acres of land and the construction thereon of an orthopedic devices manufacturing facility, consisting of approximately 18,716 square feet, together with certain equipment and facilities functionally related and subordinate to the project. The project is to be owned by Jones and Mauldin Real Estate Partnership, Ltd., and leased to G & M Soft Goods, Inc., and 3-D Orthopedic, Inc; and will be located at 10520 Olympic Drive, Dallas. The corporation also conducted a public hearing on its proposed issuance of a revenue bond in an amount not to exceed \$750,000 to finance the cost of the acquisition of approximately 1.10 acres of land and the construction of an office/warehouse facility and facility for the prefabrication of mechanical piping and equipment and facilities functionally related and subordinate to the project. The project will be owned by Norman Reitmeyer and Sam Trussel (joint venture) and be leased to North American Construction Corporation; and be located at 15 University Oak Drive, San Antonio. The emergency status

was necessary to comply with IRS regulations (TEFRA hearing).

**Contact:** John H. Kirkley, 410 East Fifth Street, Austin, Texas, (512) 472-5059.

**Filed:** May 20, 1985, 11:52 a.m.  
TRD-854456, 854457

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### Texas Education Agency

**Monday, June 3, 1985, 9 a.m.** The Teacher Appraisal Advisory Committee of the Texas Education Agency (TEA) will meet in Room 101-E, TEA North Building, 1200 East Anderson Lane, Austin. According to the agenda, the committee will consider an update on the development of the teacher appraisal system and the job-relatedness survey, discuss the procedures used in other statewide appraisal systems, and discuss the procedural options for the teacher appraisal system.

**Contact:** Susan Barnes, 201 East 11th Street, Austin, Texas 78701, (512) 834-4242.

**Filed:** May 16, 1985, 4:21 p.m.  
TRD-854377

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### Employees Retirement System of Texas

**Thursday, May 23, 1985, 9 a.m.** The Board of Trustees of the Employees Retirement System of Texas made emergency additions to the agenda of a meeting held at 18th and Brazos Streets, Austin. The additions concerned the board's consideration and action on the adoption of an emergency amendment to 34 TAC §81.19, relating to appeals in cases pertaining to insurance; and consideration and action on the adoption of an emergency amendment to 34 TAC §67.1, relating to appeals in cases pertaining to matters other than insurance. The emergency status was necessary because a current misunderstanding by appellants of the appeals procedures and their difficulty in meeting existing timeliness requirements made these clarifications and extensions of time limits essential to the protection of the legal rights of state officer, employees, and retirees.

**Contact:** Clayton T. Garrison, 18th and Brazos Street, Austin, Texas 78701, (512) 476-6431.

**Filed:** May 17, 1985, 9:13 a.m.  
TRD-854384

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### Texas Employment Commission

**Tuesday, May 28, 1985, 8:30 a.m.** The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the commission will consider the previous meeting minutes, consider the internal procedures of commission appeals, consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 22, and set the date of the next meeting.

**Contact:** Courtenay Browning, TEC Building, Room 608, 15th Street and Congress Avenue, Austin, Texas 78778, (512) 463-2226.

**Filed:** May 20, 1985, 2:01 p.m.  
TRD-854459

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### Texas Housing Agency

**Tuesday, May 21, 1985, 2 p.m.** The Programs and Legislation Committee of the Texas Housing Agency (THA) made an emergency addition to the agenda of a meeting held in the THA Conference Room, Suite 700, 411 West 13th Street, Austin. The addition concerned the committee's consideration and possible action on the review and evaluation of the public purpose effort of the amended Multifamily Program rules. The emergency status was necessary to assess the public purpose criteria and performance of the agency's Multifamily Program.

**Contact:** Earline Jewett, P.O. Box 13941, Austin, Texas 78711.

**Filed:** May 16, 1985, 4:47 p.m.  
TRD-854383

**Wednesday, May 22, 1985, 8:30 a.m.** The Finance and Audit Committee of the Texas Housing Agency (THA) met in emergency session in the THA Conference Room, Suite 700, 411 West 13th Street, Austin. According to the agenda, the committee considered and possibly acted on a pending contract with the financial advisor. The emergency status was necessary to ensure the appropriate level of financial advisory services and fees for the agency's bond issues.

**Contact:** Earline Jewett, P.O. Box 13941, Austin, Texas 78711.

**Filed:** May 16, 1985, 4:48 p.m.  
TRD-854382

**Wednesday, May 22, 1985, 10 a.m.** The Board of Directors of the Texas Housing Agency (THA) made emergency additions to the agenda of a meeting held in the THA Conference Room, Suite 700, 411 West 13th Street, Austin. The additions concerned the board's consideration and possible action on the Finance and Audit Committee's rec-

ommendations with regard to the pending financial advisor contract; and consideration and possible action on the Programs and Legislation Committee's recommendations with regard to review and evaluation of public purpose effect of amended Multifamily Program rules. The emergency status was necessary to ensure the appropriate level of financial advisory services and fees for the agency's bond issues and to assess the public purpose criteria and performance of the agency's Multifamily Program.

**Contact:** Earline Jewett, P.O. Box 13941, Austin, Texas 78711.

**Filed:** May 16, 1985, 4:48 p.m.  
TRD-854381

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### State Board of Insurance

**Friday, May 17, 1985, 10 a.m.** The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board considered an oil and gas lease property rate adjustment for Inland Marine Insurance Company and St. Paul Insurance Company, pursuant to the Insurance Code, Article 5.53. The emergency status was necessary because the board needed to properly consider the filing before it becomes effective by operation of law for the entire industry.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

**Filed:** May 16, 1985, 4:16 p.m.  
TRD-854376

**Tuesday, May 28, 1985, 9 a.m.** In Room 353, Docket 8065—whether disciplinary action should be taken against Abel Cuellar Escobedo, Plano, holder of a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854389

**Tuesday, May 28, 1985, 9 a.m.** In Room 342, Docket 8083—application for original charter of Progressive Bankers Life Insurance Company, Wichita Falls.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854417



**Tuesday, May 28, 1985, 10 a.m.** The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider the commissioner's report concerning personnel and litigation; the fire marshal's report on personnel; a discussion of the Administrative Code; proposed new Rules 059.03.28.201-.205, concerning new annuity mortality tables for use in determining reserve liabilities for group and individual annuities and pure endowment contracts, final action on amendments to Rules 059.21.21.122, 059.05.53.102, and 059.05.03.001; and board orders on different matters as itemized on the complete agenda.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

**Filed:** May 20, 1985, 3:46 p.m.  
TRD-854463

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings at 1110 San Jacinto Street, Austin. Days, times, rooms, and dockets follow.

**Tuesday, May 28, 1985, 3 p.m.** In Room 342, Docket 8004—whether disciplinary action should be taken against MOA Insurance Agency, Inc., Dallas, holder of a surplus lines agent's license issued by the State Board of Insurance.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854418

**Tuesday, May 28, 1985, 4 p.m.** In Room 342, Docket 8024—application of Robert Larry Gardner, Plano, for a local recording agent's license.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4354.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854419

**Wednesday, May 29, 1985, 9 a.m.** In Room 342, Docket 8068—application for amendment to the articles of incorporation of Colonial Empire Life Insurance Company, Texarkana.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854420

**Wednesday, May 29, 1985, 9 a.m.** The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will hold a public hearing to consider an appeal by Flag-Redfern Oil Company of application of experience modifier.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

**Filed:** May 20, 1985, 3:47 p.m.  
TRD-854464

**Wednesday, May 29, 1985, 2 p.m.** The State Board of Insurance will meet in Room 105, John H. Reagan Building, 15th Street and Congress Avenue, Austin. According to the agenda, the commission will consider whether the policy provisions dealing with cancellation and non-renewal that currently are included in the policies on dwellings and governmental units should be made to apply to policies covering commercial risks.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786.

**Filed:** May 21, 1985, 9:09 a.m.  
TRD-854488

**Wednesday, May 29, 1985, 2 p.m.** The State Board of Insurance rescheduled a meeting to be held in Room 105, John H. Reagan Building, 15th Street and Congress Avenue, Austin. According to the agenda, the board will hold a public hearing to consider proposed Rules 059.05.26.103-.104, published in the January 18, 1985, issue of the *Texas Register* (10 TexReg 200). The rules, in large part, deal with the situation of rate-regulated insurers under the Insurance Code, Chapter 5, Subchapter C, circumventing or avoiding the effects of mandatory rating laws through the use of, control of, or any sort of arrangement with non-rate-regulated insurers such as lloyds and reciprocal exchanges.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

**Filed:** May 16, 1985, 10:43 a.m.  
TRD-854359

**Thursday, May 30, 1985, 9 a.m.** The State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the board will conduct a public hearing in Docket 8099—application of Lundberg-Pool and Company, Inc., Dallas, to acquire control of Secured Insurance Corporation, Inc., Hye.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854421

**Thursday, May 30, 1985, 10 a.m.** The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the commission will petition by the Texas automobile insurance plan for approval of a restated set of rules of the automobile insurance plan for the State of Texas. The petition by the insurance services office for the approval of rules, rates, and form for false pretense coverage in connection with an equipment dealers floater policy. Final action on agenda Item 19-84 was presented at the July 26, 1984, annual fire hearing.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

**Filed:** May 20, 1985, 3:47 p.m.  
TRD-854462

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings at 1110 San Jacinto Street, Austin. Days, times, rooms, and dockets follow.

**Thursday, May 30, 1985, 3 p.m.** In Room 342, Docket 8005—whether disciplinary action should be taken against Robert S. Dodd, doing business as Petrobanque Insurance Services, Dallas, holder of a surplus lines agent's license issued by the State Board of Insurance.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854422

**Friday, May 31, 1985, 3 p.m.** In Room 342, Docket 8006—whether disciplinary action should be taken against T. E. Moor and Company, doing business as Southeast Surplus Underwriters Agency, Beaumont, holder of a surplus lines agent's license issued by the State Board of Insurance.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:22 p.m.  
TRD-854423

**Tuesday, June 4, 1985, 9 a.m.** In Room 342, Docket 7985—whether disciplinary action should be taken against Robert Dalke Bryant, Dallas, holder of a Group I, legal reserve life insurance agent's license and a Group II, health and accident insurance agent's license issued by the State Board of Insurance.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

**Filed:** May 17, 1985, 2:24 p.m.  
TRD-854424

**Tuesday, June 4, 1985, 3 p.m.** In Room 342, Docket 8007—whether disciplinary action should be taken against Dexter General Agency, Inc., Dallas, holder of a surplus lines agent's license issued by the State Board of Insurance.

**Contact:** Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

**Filed:** May 17, 1985, 2:24 p.m.  
TRD-854425

**Wednesday, June 5, 1985, 9 a.m.** In Room 353, Docket 8089—whether the application of Jerry Allen Peterson for a Group I, legal reserve life insurance agent's license should be approved.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

**Filed:** May 17, 1985, 2:24 p.m.  
TRD-854426

**Wednesday, June 5, 1985, 1:30 p.m.** In Room 353, Docket 8095—proposed plan of merger of Guaranteed Equity Life Insurance Company, Phoenix, Arizona, into

Western National Life Insurance Company, Amarillo.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: May 17, 1985, 2:24 p.m.  
TRD-854427

Thursday, June 6, 1985, 1:30 p.m. In Room 342, Docket 8087—whether application of Dean Robert Thomas for a Group II, insurance agent's license should be approved.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

Filed: May 17, 1985, 2:25 p.m.  
TRD-854428

Friday, June 7, 1985, 9 a.m. In Room 342, Docket 8067—application of Bankers Protective Financial Corporation, Waco, to acquire control of Bankers Protective Life Insurance Company, Dallas.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076.

Filed: May 17, 1985, 2:25 p.m.  
TRD-854429

Monday, June 10, 1985, 9 a.m. In Room 342, Docket 8066—whether Texas Fidelity Life Insurance Company, Nocona, has complied with Commissioner's Order 85-1290, dated April 11, 1985.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: May 17, 1985, 2:25  
TRD-854430

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### North Texas State University

Tuesday, May 21, 1985, 11:30 a.m. The Board of Regents of the Texas College of Osteopathic Medicine (TCOM) of North Texas State University (NTSU) made an emergency addition to the agenda of a meeting held in the boardroom, NTSU campus, Denton. The addition concerned a faculty development leave for the TCOM. The emergency status was necessary because of the unanticipated opportunity for professional growth.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

Filed: May 20, 1985, 1:32 p.m.  
TRD-854458

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### Pan American University

Tuesday, June 4, 1985. Committees of the Board of Regents of Pan American University (PAU) will meet in the boardroom, Ad-

ministration Building, Pan American University, Edinburg. Times, committees, and agendas follow.

1 p.m. The Buildings and Grounds Committee will consider the Health and Physical Education Building bid acceptance, the utility plant expansion of the chiller and water tower, the utility plant selection of an architect, the renovation of the Nursing Education Building, the funds for the PAU-B Residence, and informational items.

1:15 p.m. The Finance Committee will consider budget changes, the vending machines/soft drinks contract, the vending machines/candies contract, and the student service fees.

1:30 p.m. The Academic Affairs Committee will meet in executive session to consider the employment of new faculty, the employment of faculty and administrators for 1985-1986, a request for a leave of absence, a request for adjunct professor status, a request for professor emeritus status, tenure recommendations, promotion recommendations, a student academic appeal, a student government appeal, and contemplated litigation.

1:45 p.m. The Development Committee will consider gifts and donations from Radio Shack, Houston Endowment, Inc., and McAllen State Bank; and consider information items.

2 p.m. The Board of Regents will hear reports from the Buildings and Grounds Committee, the Finance Committee, the Academic Affairs Committee, the Development Committee, and the Committee of the Whole; consider the president's informational items; and set the date of the next meeting.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: May 20, 1985, 1:55 p.m.  
TRD-854476-854480

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### Board of Pardons and Paroles

Tuesday, May 28, 1985. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. Times and agendas follow.

9:30 a.m. The board will consider and act on a review of the minutes, a house request for proposal, hearing committee recommendations, an early release to mandatory supervision policy, a review of pre-parole transfer policy, revocation policies, a legislative update, an executive director report, the proposed agency reorganization, a letter for the attorney general regarding the Texas Code of Criminal Criminal Procedure, Article 4212, §§3f(a), (2), and 15(b).

1:30 p.m. The board will meet to consider parole matters requiring full board action, executive clemency recommendations and related action (other than out of country conditional pardons), including full pardons/restoration of civil rights of citizenship, emergency medical reprieves, commutation of sentence, and other reprieves, remissions and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: May 17, 1985, 10:31 a.m.  
TRD-854385, 854386

Tuesday-Friday, May 28-31, 1985, 1:30 p.m. daily. Tuesday-Thursday and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel 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: May 17, 1985, 10:32 a.m.  
TRD-854387

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### Texas Parks and Wildlife Department

Thursday, June 6, 1985, 10 a.m. The Parks Division of the Texas Parks and Wildlife Department will meet in Room A-1, 4200 Smith School Road, Austin. According to the agenda, the division will conduct a hearing pursuant to the Parks and Wildlife Code, Chapter 26, to receive comments regarding a spoil easement request by the Texas State Department of Highways and Public Transportation, as an agent for the state, and a member of the Intracoastal Waterway Advisory Commission, covering approximately 300 acres of land at the Bryan Beach State Park Site, Brazoria County, to be used by the U.S. Corps of Engineers.

Contact: Loyd Booth, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4909.

Filed: May 16, 1985, 2:14 p.m.  
TRD-854369

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### Polygraph Examiners Board

Thursday and Friday, June 13 and 14, 1985, 9 a.m. daily. The Polygraph Examiners

**Board will meet at the Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin. According to the agenda, the board will conduct and grade licensing examinations, review applications for internship/§12, and consider and act upon any other polygraph-related business which may come before the board.**

**Contact:** Candy Moore, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

**Filed:** May 17, 1985, 3:43 p.m.  
TRD-854438

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### **Texas State Board of Public Accountancy**

**Thursday-Saturday, May 30-June 1, 1985, 8:30 a.m. daily.** The Texas State Board of Public Accountancy will meet on Thursday and Friday in Suite 340, 1033 La Posada, and on Saturday at the Erwin Special Events Center, 1700 Red River, Austin. According to the agenda summary, the board will hear committee reports, conduct informal conferences, introduce new board members, and conduct other board business on Thursday and Friday, and conduct a swearing-in ceremony for new certified public accountants on Saturday.

**Contact:** Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

**Filed:** May 21, 1985, 8:51 a.m.  
TRD-854497

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### **Public Utility Commission of Texas**

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

**Thursday, May 30, 1985, 10 a.m.** A prehearing conference in Docket 6295—complaint of Russell Whitehouse against Guadalupe Valley Electric Cooperative, Inc..

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 20, 1985, 2:49 p.m.  
TRD-854474

**Friday, May 31, 1985, 10 a.m.** A prehearing conference in Docket 6163—application

of the City of Hewitt to purchase Hewitt Water Company.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 17, 1985, 1:51 p.m.  
TRD-854431

Addition to the previous agenda:

A prehearing conference in Docket 6289—application of Faust Properties, Inc., for a rate increase in Harris County.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 20, 1985, 4:25 p.m.  
TRD-854466

**Friday, May 31, 1985, 1:30 p.m.** A rescheduled prehearing conference in Docket 5742—application of the City of Cibolo for a certificate of convenience and necessity within Guadalupe County and Comal County. The meeting originally was scheduled for Friday, May 24, 1985.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 17, 1985, 1:51 p.m.  
TRD-854432

**Monday, June 10, 1985, 10 a.m.** A prehearing conference in Docket 6290—application of Domestic Utility Company, Inc., for authority to change water rates.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 17, 1985, 2:53 p.m.  
TRD-854434

**Tuesday, June 11, 1985, 10 a.m.** A prehearing conference in Docket 6227—inquiry of the commission into rates charged and services provided by Faust Properties, Inc.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 17, 1985, 1:51 p.m.  
TRD-854433

**Monday, June 24, 1985, 9 a.m.** A hearing on the merits in Docket 5884—petition of Texas Industrial Energy Consumers against Central Power and Light Company; and Docket 6281—petition of Texas Industrial Energy Consumers against Central Power and Light Company regarding standby and maintenance tariffs.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 16, 1985, 2:43 p.m.  
TRD-854373

**Monday, July 1, 1985, 1:30 p.m.** A hearing on the merits in Docket 6008—com-

plaint of South Grayson Water Supply Corporation against the City of Anna.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 20, 1985, 4:25 p.m.  
TRD-854465

**Friday, July 26, 1985, 10 a.m.** A hearing on the merits in Docket 6255—application of Continental Telephone Company of Texas to regularize the base rate area and establish special rate areas within the Burton, Negley, and Roane Exchanges and to freeze party-line services to existing customers within the special rate areas.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 17, 1985, 2:53 p.m.  
TRD-854435

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### **State Purchasing and General Services Commission**

**Tuesday, May 28, 1985, 9 a.m.** The State Purchasing and General Services Commission will meet in Room 916, L.B.J. Building, 111 East 17th Street, Austin. According to the agenda, the commission will consider the appointment of an executive director; hear a status report on the Capitol complex Centrex billing; review inacted legislation which affects the commission; determine the use of property at 14th and Trinity Streets; consider a revision in 1 TAC §113.9(2)(B), regarding manufacturer's price list for discount-from-list types of term contracts; review the status of the Amdahl V7 and Model 204 data base system; consider options to relieve the overloaded condition of the dual computer system; and set the date and time for the next meeting. The commission also will meet in executive session.

**Contact:** James H. Quick, P.O. Box 13047, Austin, Texas 78711, (512) 463-3448 or STS 255-3448.

**Filed:** May 20, 1985, 4:37 a.m.  
TRD-854467

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### **Railroad Commission of Texas**

**Monday, May 20, 1985, 9 a.m.** Divisions of the Railroad Commission of Texas made additions to the agenda for a meeting held in Room 309, 1124 IH 35 South, Austin. Divisions and additions follow.

Consideration of Gas Utilities Division Docket 5422—statement of intent filed by

United Texas Transmission Company to change rates charged to Union 76 Division, Union Oil Company of California. The emergency status was necessary because the item was properly posted for conference on May 13, 1985, and was passed.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-0461.

Filed: May 17, 1985, 11:33 a.m.  
TRD-854412

Consideration of an Oil and Gas Division item concerning whether to use state funds to plug the Homaby Bay Petroleum Corporation, Falcon Gas Unit 2, Well 1 (097990), Falcon (Wilcox Lobo 9000) field, Zapata County. The well is approximately 10,000 feet in depth, and the estimated cost to plug is \$22,000. The emergency status was necessary because the well was leaking gas and could harm the public's health, safety, and welfare.

Contact: Willis C. Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1301.

Filed: May 17, 1985, 11:33 a.m.  
TRD-854413

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### Texas Rehabilitation Commission

Wednesday, May 29, 1985, 1:30 p.m. The Planning Committee of the Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission (TRC) will meet via conference call originating in Room 163, 118 East Riverside Drive, Austin. According to the agenda, the committee will discuss the fiscal year 1986 funding activities, the state plan, and long-range planning activities.

Contact: Joellen F. Simmons, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: May 20, 1985, 11:22 a.m.  
TRD-854454

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### State Securities Board

Wednesday, June 5, 1985, 1 p.m. The securities commissioner of the State Securities Board rescheduled a meeting to be held at 1800 San Jacinto Street, Austin. According to the agenda summary, the commissioner will conduct a public hearing to consider whether a cease and desist order should be issued prohibiting the sale of securities issued by Dunn Petroleum, Inc., Michael Dundee, Stephen Tashman, and Arcnie Tashman, and offered through Atlantex Associates and Ernest Frederick Lockamy.

The meeting originally was scheduled for May 21, 1985, as published at 10 TexReg 1590.

Contact: A. J. Ellisor, 1800 San Jacinto Street, Austin, Texas 78701, (512) 474-2233.

Filed: May 21, 1985, 8:51 a.m.  
TRD-854496

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### Texas Surplus Property Agency

Thursday, May 30, 1985, 9:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet Room 270, May Owen District Center, Tarrant County Junior College, 1500 Houston Street, Fort Worth. Items on the agenda include the approval of the last board meeting, a preliminary discussion of fiscal year 1986 budget, capital expenditures for fiscal year 1985, and an executive director's report.

Contact: Marvin J. Titzman, Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: May 20, 1985, 1:53 p.m.  
TRD-854468

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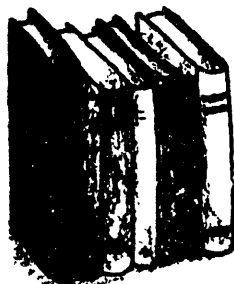
### Board for Lease of University Lands

Monday, May 20, 1985, 10 a.m. The Board for Lease of University Lands made an emergency addition to the agenda of a meeting held in the Regents' Conference Room, 201 West Seventh Street, Austin. The addition concerned the adoption of amendments to the rules and regulations concerning the sale of oil and gas leases by sealed bids. The emergency status was necessary because adoption of the amendments was necessary to authorize procedures for sealed bid sales of oil and gas leases at the next public lease sale.

Contact: Linward Shivers, 202 West Seventh Street, Austin, Texas, (512) 499-4462.

Filed: May 17, 1985, 11:25 a.m.  
TRD-854390

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### Texas Water Commission

Wednesday, May 29, 1985, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider water district bond issues, a release from escrow, the use of surplus funds, the filing and setting of hearing dates for district creations, water quality proposed permits, amendments and renewals, water use applications and amendments, a certificate of adjudication, and filing and setting of the hearing dates.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: May 17, 1985, 3:25 p.m.  
TRD-854436

Monday, June 3, 1985, 1:30 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application by the City Water Board of San Antonio, P.O. Box 2449, 1001 East Market Street, San Antonio, Texas 78298, to the Texas Department of Water Resources for a temporary order to authorize the periodic discharge of well water from three clusters of monitor wells as part of an Edwards Aquifer bad water line experiment to be jointly conducted by the City Water Board of San Antonio, the Edwards Underground Water District, The United States Geological Survey, and the Texas Department of Water Resources. The monitor wells are to be located at the south end of Da Foste Park (Site A), at Willow Springs Golf Course at Coliseum Road and Houston Street (Site B), and at Willow Springs Golf Course at the midpoint of the west boundary along Coliseum Road (Site C), all in the City of San Antonio, Bexar County.

Contact: John Vay, P.O. Box 13087, Austin, Texas 78711, (512) 463-8087.

Filed: May 20, 1985, 1:54 p.m.  
TRD-854460

Thursday, June 27, 1985, 9:30 a.m. The Texas Water Commission will meet in the city council chambers, 102 West Walker, League City. According to the agenda summary, the commission will consider an amended application by the Transitional Learning Community at Galveston, 1528 Postoffice, Galveston, Texas 77550, to the Texas Department of Water Resources for proposed Permit 02747, to authorize the discharge and/or recycling and/or irrigation of treated process and domestic wastewater effluent at a volume not to exceed an average flow of 120,000 gallons per day from a facility which treats wastewater from a commercial laundry. During the months of April-October, the applicant is to dispose of or recycle the 120,000 gallons per day average by irrigation on three five-acre

fields. During this period, water collected in the recycle pond by the subsurface drainage system may be recycled to the irrigation fields or to the laundry but may not be discharged into or adjacent to waters in the State of Texas except during periods of inclement weather in which the irrigation fields are rendered inoperative.

**Contact:** Kevin McCalla, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** May 20, 1985, 1:54 p.m.  
TRD-854461

**Friday, June 28, 1985, 9 a.m.** The Texas Water Commission will meet in the district courtroom, Medina County Courthouse, Hondo. According to the agenda summary, the commission will consider an amended application by Thousand Trails, Inc., Suite 256, 2550 Walnut Hill Lane, Dallas, Texas 75229, to the Texas Department of Water Resources for proposed Permit 13074-01 to authorize subsurface disposal of treated domestic wastewater effluent at a volume not to exceed an average of 95,000 gallons per day. The applicant proposes to construct a domestic wastewater treatment facility in two phases to serve a membership campground. The facility will consist of an extended aeration, activated sludge package plant with approximately 190,000 square feet of an absorption field. Application rates are not to exceed 1.0gpd/feet<sup>2</sup>. No discharge of pollutants into the waters of the state is authorized by this permit. The committee will also consider an application by Frio Foods, Incorporated, P.O. Box 367, Uvalde, Texas 78801, to the Texas Department of Water Resources for proposed Permit 02752 to authorize the disposal of screened wastewater by irrigation at a volume not to exceed an average of 350,000 gallons per day. The applicant proposes to dispose of wastewater from a plant that washes, blanches, and then freezes vegetables. Wastewater is to be screened in two stages (coarse then fine), then pumped into a series of three lagoons which have a cumulative volume of 14 to 16 acre-feet. From the final lagoon the wastewater will be used for irrigation on 236 acres of grass land with two center pivot systems. The irrigation volume is to be applied to each center pivot tract at the same rate in gallon/acre/year. An additional 80 acres of furrow-irrigated land is to be held in reserve for use as required.

**Contact:** Lee Ann Newberry Jones, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** May 16, 1985, 11:24 a.m.  
TRD-854361, 854360

**Tuesday, July 2, 1985, 2 p.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing on a petition for creation of Harris

County Municipal Utility District 271, containing 280.8486 acres of land.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** May 16, 1985, 3:22 p.m.  
TRD-854375

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### Texas Department of Water Resources

**Thursday, May 16, 1985, 1:30 p.m.** The Texas Water Development Board of the Texas Department of Water Resources submitted an emergency revised agenda for a meeting held in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the revised agenda summary, the board considered the approval of a water supply contract between the North Central Texas Water Authority and the Rhineland Water Supply Corporation pursuant to the master agreement between the board and the authority. The emergency status was necessary because the proposed water supply contract between the North Central Texas Water Authority and Rhineland Water Supply Corporation had to be approved by the board by May 31, 1985, to enable it to secure funding from the Farmers Home Administration.

**Contact:** Charles E. Nemir, P.O. Box 13087, Austin, Texas 78711, (512) 463-7847.

**Filed:** May 16, 1985, 10:05 a.m.  
TRD-854358

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### Regional Agencies Meetings Filed May 16

**The Austin-Travis County Mental Health and Mental Retardation Center.** The Operations and Planning Committee met at 1430 Collier Street, Austin, on May 21, 1985, at 7:30 a.m. The Board of Trustees met in the boardroom, at the same location on May 22, 1985, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141.

**The Dallas Area Rapid Transit Authority, Service Plan/Work Program and Budget and Finance Committees,** met jointly in emergency session at 601 Pacific Avenue, Dallas, on May 17, 1985, at 3:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

**The Lower Colorado River Authority, Board of Directors,** met at 3700 Lake Austin Boule-

vard, Austin, on May 21, 1985, at 1 p.m. The following committees met at the same location on May 22, 1985, at the times indicated.

**Audit and Budget Committee—8 a.m.**  
**Finance and Administration Committee—10 a.m.**  
**Energy Operations Committee—1 p.m.**  
**Natural Resources Committee—2:30 p.m.**

The Board of Directors met at the same location on May 23, 1985, at 9 a.m. Information may be obtained from Elof H. Soderberg, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

**The North Central Texas Council of Governments, Executive Board,** met at Centerpoint Two, second floor, 616 Six Flags Drive, Arlington, on May 23, 1985, at 12:45 p.m. Information may be obtained from Edwina J. Hicks, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.  
TRD-854362

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### Meetings Filed May 17

**The Austin-Travis County Mental Health and Mental Retardation Center, Board of Trustees,** met in the boardroom, 1430 Collier Street, Austin, on May 22, 1985, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141.

**The Coastal Bend Council of Governments,** will meet at 901 Leopard, Corpus Christi, on May 24, 1985, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743.

**The Dallas Area Rapid Transit Authority, Service Plan/Work Program and Budget and Finance Committees,** met in emergency session at 601 Pacific Avenue, on May 17, 1985, at 3:30 p.m. The Legal Committee met at the same location on May 21, 1985, at 8 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

**The Region XVIII Education Service Center, Board of Directors,** will meet at the Education Service Center, LaForce Boulevard, Midland, on June 6, 1985, at 7:30 p.m. Information may be obtained from J. W. Donaldson, P.O. Box 6020, Midland, Texas 79701, (915) 563-2380.

**The Gillespie County Appraisal Review Board, Board of Review,** will meet in Room 101-A, county courthouse, Fredericksburg, on May 29, 1985, at 1 p.m. Information may be obtained from Raymond Roarick,

P.O. Box 429, Fredericksburg, Texas 78624.

**The Heart of Texas Mental Health and Mental Retardation, Board of Trustees, will meet at 110 South 12th Street, Waco, on May 29, 1985, at 11:30 a.m. Information may be obtained from Jan Baty, P.O. Box 890, Waco, Texas 76703, (817) 752-34.**

**The Mills County Appraisal District, met at the county courthouse, Goldthwaite, on May 23, 1985, at 7:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 656, Goldthwaite, Texas 76844, (915) 648-2253.**

**The Wise County Appraisal District, Appraisal Review Board, met at 206 South State Street, Decatur, on May 22, 1985, at 9:30 a.m. Information may be obtained from Angela Caraway, P.O. Box 509, Decatur, Texas 76234, (817) 627-3081.  
TRD-854388**

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#### Meetings Filed May 20

**The Atascosa County Appraisal District, Board of Directors met in emergency session at 1010 Zanderson, Jourdanton, on May 23, 1985, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas 78206, (512) 769-2730.**

**The Central Plains Mental Health and Mental Retardation Center, Board of Trustees, will meet at 404 Floydada Street, Plainview, on May 30, 1985, at 7 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 296-2726.**

**The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees, will meet in the Ward R. Burke**

**Community Room, 4101 South Medford Drive, Lufkin, on May 28, 1985, at 5:30 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901, (709) 639-1141.**

**The East Texas Council of Governments, JTPA Board of Directors, met at 3800 Stone Road, Kilgore, on May 23, 1985, at 2:30 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.**

**The Golden Crescent Regional Planning Commission, Board of Directors, will meet in the Americana Room, second floor, Interfirst Bank, 1908 North Laurent, Victoria, on May 29, 1985, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.**

**The Liberty County Appraisal District, Board of Directors, met in emergency session at 1820 Sam Houston, Liberty, on May 22, 1985, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 712, Liberty, Texas 77575, (409) 336-6771.**

**The Lone Star Municipal Power Agency met in emergency session at city hall, 107 South Hill, Caldwell, on May 20, 1985, at 6 p.m. Information may be obtained from Cathy Locke, 107 South Hill, Caldwell, Texas 77836, (409) 764-3509.**

**The Lower Rio Grande Valley Development Council, Board of Directors, met at Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, on May 23, 1985, at 3:15 p.m. Information may be obtained from Robert A. Chandler, 1701 W. Highway 83, Suite 707, McAllen, Texas 78501, (512) 682-3481.**

**The Middle Rio Grande Development Council, Criminal Justice Advisory Committee, will meet in the conference room, city hall, Eagle Pass, on May 28, 1985, at 10 a.m. Information may be obtained from Ramon S.**

**Johnston, P.O. Box 701, Carrizo Springs, Texas 76834, (512) 876-3533.**

**The Panhandle Regional Planning Commission, Board of Directors, met in the conference room, first floor, Briercroft Building, Eighth and Jackson Streets, Amarillo, on May 23, 1985, at 4 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381.**

**The West Central Texas Municipal Water District, Board of Directors, submitted an emergency revised agenda for a meeting held in Room 320, 174 Cypress Street, Abilene, on May 23, 1985, at 9 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.**

**The West Central Texas Municipal Water District met in emergency session in Suite 300, First National West Building, 401 Cypress Street, Abilene, on May 23, 1985, at 9 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.  
TRD-854451**

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#### Meeting Filed May 21

**The San Jacinto River Authority, Board of Directors, will meet in the Conroe Office Building, Highway 105 West, Conroe, on May 28, 1985, at 2 p.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (713) 588-1111.  
TRD-854495**

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# In **Addition**

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## **Texas Antiquities Committee 1554 Spanish Shipwreck Collection**

The Texas Antiquities Committee (TAC) anticipates the final settlement of the Platoro lawsuit in the near future. Therefore, it will be possible to place the collection of artifacts involved for curatorial in a qualified museum. The collection of artifacts is from a Spanish shipwreck lost in 1554 off Padre Island.

For details of the criteria and qualifications necessary for consideration as the repository, please contact Barto Arnold, marine archeologist, at (512) 475-4242, or write to the Texas Antiquities Committee, P.O. Box 12276, Austin, Texas 78711. Written proposals must be received at the TAC's offices by June 21, 1985. The TAC will consider the proposals at its next scheduled public meeting at 9:30 a.m. on July 12, 1985, in Room 117, Sam Houston Building, 201 East 14th Street, Austin. Qualified institutions may make a brief oral presentation in support of their proposal at that time.

Issued in Austin, Texas, on May 15, 1985.

TRD-854371      Robert S. Mabry  
Director  
Texas Antiquities Committee

Filed: May 16, 1985  
For further information, please call (512) 475-4242.



## **Banking Department of Texas Application to Acquire Control of a State Bank**

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On April 22, 1985, the banking commissioner received an application to acquire control of the Peoples State Bancshares, Inc., Turkey, by M.H. McGinnes, Jr., of Moody.

On May 15, 1985, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas, 78705, (512) 475-4451.

Issued in Austin, Texas, on May 15, 1985.

TRD-854384      William F. Aldridge  
Director of Corporate Activities  
Banking Department of Texas

Filed: May 16, 1985  
For further information, please call (512) 475-4451.



## **Texas Department of Community Affairs**

### **Amendment to Contract Award**

On October 15, 1984, pursuant to the provisions of Texas Civil Statutes, Article 6252-11c, a consultant contract was awarded by the Texas Department of Community Affairs (TDCA) to Garza/Gonzales & Associates to provide auditing and evaluation services. Notice is hereby given of the intent to modify the existing contract after 10 days subsequent to the date of this publication.

The proposed modification requires the contractor to perform auditing services which relate to programs administered by the TDCA Economic Opportunity Division.

The name and business address of the contractor is Garza/Gonzales & Associates, 212 Stumberg, Suite 208, San Antonio, Texas 78204.

As proposed, this modification increases the amount of the original award by \$8,700. The ending date of the contract remains the same. The original consultant proposal request appeared in the July 31, 1984, issue of the *Texas Register* (9 TexReg 4201).

Issued in Austin, Texas, on May 15, 1985.

TRD-854345      Douglas C. Brown  
General Counsel  
Texas Department of Community  
Affairs

Filed: May 15, 1985  
For further information, please call (512) 443-4100, ext. 210.



**Comptroller of Public Accounts**  
**Decision 16,779**

For copies of the following opinion, contact Bob Bullock, Comptroller of Public Accounts, Attention: Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

**Summary of Decision.** A corporation kept a warranty reserve account. During the audit period, it settled a product liability suit for \$1.3 million. It reasonably hoped to recover \$400,000 of that from its insurance company. It sought to offset that contingent claim receivable account against its warranty reserve account, to diminish its franchise tax base. The comptroller held the offset is disallowed. When a reserve liability account and a contingent asset account are offset, disallowance of the liability account requires disallowance of the asset account. However, here the asset account was a direct offset not to the contingent warranty liability account, but to the cost of goods sold account. The only retroactive changes allowed for franchise tax purposes are those caused by an actual error.

Issued in Austin, Texas, on May 17, 1985.

TRD-854453      Bob Bullock  
 Comptroller of Public Accounts

Filed: May 20, 1985  
 For further information, please call (512) 475-1938.

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**Office of Consumer Credit**  
**Commissioner**

**Rate Ceilings**

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> Agricul- tural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 05/27/85-06/02/85	N/A	N/A
Monthly Rate— Article 1.04(c)(1) 05/01/85-05/31/85	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 04/01/85-06/30/85	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11(3) 04/01/85-06/30/85	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d)(3) 04/01/85-06/30/85	16.42%	N/A
Standard Annual Rate— Article 1.04(a)(2)(2) 04/01/85-06/30/85	18.00%	18.00%

Type of Rate Ceilings      Consumer<sup>(3)</sup>Agricul-      Commercial<sup>(4)</sup>  
 Effective Period      tural/Commercial<sup>(4)</sup>      over  
 (Dates are Inclusive)      thru \$250,000      \$250,000

Retail Credit Card Annual Rate— Article 1.11(3) 04/01/85-06/30/85	18.00%	N/A
Annual Rate Applica- ble to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 04/01/85-06/30/85	19.24%	N/A
Judgment Rate— Article 1.05, §2 <sup>a</sup> 06/01/85-06/31/85	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on May 20, 1985.

TRD-854443      Sam Kelley  
 Consumer Credit  
 Commissioner

Filed: May 20, 1985  
 For further information, please call (512) 475-2111.

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**Texas Commission for the Deaf**  
**Consultant Contract Amendments**

In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Commission for the Deaf hereby furnishes the notice of two contract amendments. The contract awards appeared in the June 15, 1984, issue of the *Texas Register* (9 TexReg 3272). The contracts consist of providing a community-based living arrangement for deaf-blind multihandicapped individuals.

One contractor is the Deaf Action Center, 3115 Crestview, Dallas, Texas 75235. The contract began June 1, 1984, and ends May 31, 1985. This contract was for \$110,799. The contract is amended to continue through August 31, 1985, with a total value of \$151,779. The Deaf Action Center shall submit a quarterly report for the period of June 1, 1985, to August 31, 1985, and shall submit a final report no later than September 30, 1985.

The second contractor is the Lighthouse of Houston, 3530 West Dallas, Houston, Texas 77019. The contract began June 1, 1984, and ends May 31, 1985. This contract was for \$57,651. The contract is amended to continue through August 31, 1985, with a total value of \$72,858. The Lighthouse shall submit a quarterly report for the period of June 1, 1985, to August 31, 1985, and shall submit a final report no later than September 30, 1985.

Issued in Austin, Texas, on May 15, 1985.

TRD-854365      Fred R Tammen  
 Executive Director  
 Texas Commission for the Deaf

Filed: May 16, 1985  
 For further information, please call (512) 475-2482.

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## Office of the Governor Request for Comments

Under the Comprehensive Crime Control Act of 1984, the State of Texas is eligible to receive federal block grants for criminal justice programs. Included in this legislation are the Justice Assistance Act (JAA), which places special emphasis on violent crime and serious offenders, and the Victims of Crime Act (VOCA), which was created to fund services for victims of crime. Governor Mark White has designated the Criminal Justice Division to administer the federal block grants for both the Justice Assistance Act and the assistance (noncompensation) component of the Victims of Crime Act.

Funds available under the JAA and the VOCA will be limited, and these constraints probably will require that the funds be concentrated in those program areas that will offer the greatest probability of achieving a significant impact. To determine the focus of funding for both JAA and VOCA programs, the Criminal Justice Division is soliciting comments from local units of government and other interested parties regarding the most critical eligible needs in Texas. Comments received by the Criminal Justice Division will be incorporated into the recommendations submitted to the governor for final selection of the program areas to be eligible for funding.

The JAA includes the following program areas which may be considered for final selection and funding: community crime prevention; disrupting illicit commerce; combatting arson; prosecuting white-collar crime; identifying and prosecuting serious repeat offenders; victim, witness, and juror assistance; alternatives to pretrial detention; programs for drug-dependent offenders; alleviating prison and jail overcrowding; training criminal justice personnel; prison industry projects; information and workload management systems; serious offenses committed by juveniles; crime against the elderly; crime in rural areas; Integrated Criminal Apprehension Program (ICAP); other innovative programs and programs addressing critical crime problems that have been approved by state and federal authorities.

For additional information or questions regarding the JAA, contact Dr. Robert Milne, Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 475-3001, STS 822-3001.

The VOCA Crime Victim Assistance Program restricts funding to programs that provide services to victims of crime and also designates as first priority those programs that provide assistance to victims of sexual assault, spousal abuse, or child abuse. Included are crisis intervention services; emergency services such as temporary lodging and other necessities; support services such as follow-up counseling, referrals, employer intervention, and assistance with social service and criminal justice agencies; court-related services such as transportation to court and child care; and payment for medical examinations required for evidence.

For additional information or questions regarding the VOCA Crime Victims Assistance Program, contact Percy Symonette, Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 475-3001, 822-3001.

Written comments must be submitted by June 7, 1985. More detailed program descriptions and a recommended format for comments will be provided by the Criminal Justice Division upon request.

Issued in Austin, Texas, on May 16, 1985.

TRD-854367

Gilbert J. Pena  
Executive Director  
Criminal Justice Division  
Office of the Governor

Filed: May 16, 1985

For further information, please call (512) 475-3001.

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## Texas Department of Health Intent to Revoke Certificates of Registration

The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of Certificate of Registration 11-11846, issued to Ronald I. Forbes, M.D., because the agency determined that the registrant is no longer located at 9152 Eastex Freeway, Houston, Texas 77093. The registrant has not notified the agency of a change of address and no forwarding address is available.

The bureau is also seeking the revocation of Certificate of Registration 0-09378, issued to Medical Instrumentation Services, 1957 Del Amo Boulevard, Compton, California 90221.

All attempts by the agency to contact the registrants by telephone, by certified mail, and by inspection have been unsuccessful. Therefore, the Texas Department of Health, Bureau of Radiation Control, recommends that the certificates of registration be revoked immediately.

In accordance with *Texas Regulations for Control of Radiation*, Part 13.8, this notice affords the opportunity for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of publication of this notice to be valid. Such written request must be filed with David K. Lacker, Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a hearing be timely filed, the certificates of registration will be revoked 14 days after the end of the 30-day period of notice.

Issued in Austin, Texas, on May 17, 1985.

TRD-854448

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

Filed: May 20, 1985

For further information, please call (512) 835-7000.

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## Intent to Revoke Radioactive Material Licenses

The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of the following three radioactive material licenses.

(1) Radioactive Material License 5-3294, issued to Carl F. Gullede because the agency determined that the

licensee is no longer located at 1413 Cherry Hill Lane, Lewisville, Texas 75067. The licensee has not notified the agency of a change of address and no forwarding address is available.

(2) Radioactive Material License 9-3437, issued to Beard Energy Group, Inc., because the agency determined that the licensee is no longer located at 2423 North Oak, Pearsall, Texas 78061. The licensee has not notified the agency of a change of address and no forwarding address is available.

(3) Radioactive Material License 12-3194, issued to Wildfire Inspection Services, because the agency determined that the licensee is no longer located at 1905 W. Industrial, Midland, Texas 70702. 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 licensees by telephone, by certified mail, and by inspection have been unsuccessful. Therefore, the Texas Department of Health, Bureau of Radiation Control, recommends that the radioactive material licenses be revoked immediately.

In accordance with *Texas Regulations for Control of Radiation*, Part 13.8, this notice affords the opportunity for a hearing to show cause why the radioactive material licenses 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, Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a hearing be timely filed, the radioactive material licenses will be revoked 14 days after the end of the 30-day period of notice.

Issued in Austin, Texas, on May 17, 1985.

TRD-854447 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: May 20, 1985  
For further information, please call (512) 835-7000.

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## Opportunity for Public Hearing

Webb County has filed Application 1636 with the Texas Department of Health for a permit to operate a proposed Type III municipal solid waste disposal site to be located northeast of Bruni, on the east side of the Old Cole Petroleum Company Camp Road (Avenue G), approximately one mile northeast of its junction with State Highway 359 in Bruni, Webb County.

The site consists of approximately 56.2619 acres of land, and is to receive daily approximately one ton of solid waste under the regulatory jurisdiction of the Texas Department of Health.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application.

If a hearing is requested by a person affected, notice of such hearing will be provided to the requester and also will be published in a newspaper of general circulation in the area where the site is located at least 30 days prior to the date of such hearing. If no request for a hearing is received within 30 days of the date of publication of the said notice in a newspaper of general circulation, the department will make a decision.

Requests for a public hearing and/or requests for a copy of the technical summary of the application prepared by the Bureau of Solid Waste Management shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete application may be reviewed at the Bureau of Solid Waste Management or at the Department's Public Health Region 8 headquarters located at 1401 South Rangerville Road, Harlingen, Texas 78550, (512) 423-0130.

Issued in Austin, Texas, on May 17, 1985.

TRD-854448 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: May 20, 1985  
For further information, please call (512) 458-7271.

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## Request for Public Comments

Under authority of the Omnibus Budget Reconciliation Act of 1981, the Texas Department of Health is making application to the U.S. Public Health Service for funds to continue the maternal and child health services and preventive health and health services block grants during federal fiscal year 1986.

A proposed fiscal year 1986 intended use of funds report has been prepared by the department for each of the block grants as required by the Act. Prior to the preparation of these reports, four hearings and six conferences were held within the department's public health regions, and public comment received from these hearings/conferences has been included. The reports consist of statements of compliance and assurance, program need, goals, objectives, activities/services, reports/data, criteria for fund distribution, and federal fiscal year 1985 accomplishments.

These reports are available for public review and comment from any person (including any federal, state, local, or other public agency) and may be viewed at the Texas Department of Health and at the following regional offices: Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7738; Public Health Region 1, Old Health Center Building, 300 Victory Drive, Canyon, Texas 79016, (806) 655-7157; Public Health Region 2/12, 4709 66th Street, Lubbock, Texas 79414, (806) 797-4331; Public Health Region 3, 2300 East Yandell, El Paso, Texas 79903, (915) 533-4972; Public Health Region 4, Commerce Plaza Office Building, 1290 South Willis, Suite 100, Abilene, Texas 79605, (915) 695-7170; Public Health Region 5, 2561 Matlock Road, Arlington, Texas 76114, (817) 460-3032; Public Health Region 6, 2408 South 37th Street, Temple, Texas 76503, (817) 778-6744; Public Health Region 7/10, 1517 West Front Street, Tyler, Texas 75702, (214) 595-3585; Public

Health Region 8, 1401 South Rangerville Road, Harlingen, Texas 78550, (512) 423-0130; Public Health Region 9, Old Memorial Hospital, Garner Field Road, Uvalde, Texas 78801, (512) 278-7173; Public Health Region 11, 1110 Avenue G, Rosenberg, Texas 77471, (713) 342-8685;

In addition, the reports may be viewed at the following local health departments: Angelina County and Cities Health District, 915 Ellis Avenue, Lufkin, Texas 75901, (409) 632-1372; Corpus Christi-Nueces County, Department of Public Health, 1702 Horne Road, Corpus Christi, Texas 78416, (512) 855-4051; Grayson County Health Department, 521 West Houston, Sherman, Texas 75090, (214) 893-0131; Harris County Health Department, 2501 Dunstan, Houston, Texas 77005, (713) 526-1841; Laredo-Webb County Health Department, 2600 Cedar Street, Laredo, Texas 78041, (512) 723-2051; San Angelo-Tom Green County, Health Department, City Hall, San Angelo, Texas 76902, (915) 655-9121; San Antonio Metropolitan Health District, 332 West Commerce Street, San Antonio, Texas 78285, (512) 299-8781; Texarkana-Bowie County Family, Health Center, 902 West 12th Street, Texarkana, Texas 75502, (214) 792-8211; Victoria County Health Department, 107 West River Street, Victoria, Texas 77901, (512) 578-6281; Wichita Falls-Wichita County Health Department, 1700 Third Street, Wichita Falls, Texas 76301, (817) 322-9702.

Written comments regarding these block grants may be sent to Jimmy Helm, Chief, Office of Grants and Contract Development, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. After a 30-day comment period, a final intended use of funds report for each block grant will be prepared. Comments received during this period will be considered in preparation of the final report. The final intended use of funds report will be approved by the Texas Board of Health prior to its submission to the federal government.

Issued in Austin, Texas, on May 17, 1985.

TRD-854450 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: May 20, 1985  
For further information, please call (512) 458-7738.

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## Texas Health Facilities Commission

### Applications Accepted for Amendment, Declaratory Ruling, Notices of Intent, and Petition for Reissuance of Certificate of Need

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research

project; NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party or interested person to any of the previously stated applications, that person must file a proper request to become a party or interested person to the application within 10 days after the date of this publication of notice. If the tenth day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. A request to become a party or interested person should be mailed to the chair of the commission at P.O. Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party or interested person.

The contents and form of a request to become a party or interested person to any of these applications must meet the criteria set out in 25 TAC §515.9. Failure of a party or interested person to supply the necessary information in the correct form may result in a defective request to become a party or interested person.

Casa de Ninos, Inc., and Healthcare Dimensions, Inc., for Casa de Ninos, Houston  
AN84-0423-251A(051085)

CN/AMD—Request for an extension of the completion deadline from June 1, 1985, to October 1, 1985, in Certificate of Need AN84-0423-251, which authorized the certificate holder to establish a 60-bed inpatient children's hospice in Houston.

Presbyterian Hospital of Winnsboro, Winnsboro  
AH83-0131-100A(041285)

CN/AMD—Request for an amendment to Certificate of Need AH83-0131-100, which authorized the certificate holder to construct, equip, and operate a 51,000-square-foot, general acute hospital with 50 beds to replace the existing Winnsboro Memorial Hospital located at 504 East Coke Road in Winnsboro. The certificate holder requests an increase in the total project cost from \$7,436,745 to \$7,887,005; an extension of the completion deadline from March 16, 1985, to December 31, 1985; a decrease in the square footage of the facility from 51,000 square feet to 49,508 square feet; and a change in the room configuration from all private to 30 private, 16 semi-private, and four ICU beds.

Mission Hospital, Inc., doing business as Mission Hospital, Mission  
AH82-0311-029A(051485)

CN/AMD—Request for an extension of the completion deadline from May 30, 1985, to August 31, 1986, in Certificate of Need AH82-0311-029, which authorized the certificate holder to construct a three-floor, 110-bed acute care hospital to replace the existing single 58-bed facility.

Jones Health Center, Inc., doing business as Jones Health Center, Orange  
AN84-0330-200R(050885)

PFR—Petition for reissuance of Certificate of Need AN84-0330-200, which authorized the certificate holder to construct, equip, and operate a 25,650-square-foot addition to its present nursing facility and to renovate 2,710 square feet of that facility, adding an additional 69 skilled nursing beds.

Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-280

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Villa Inn Nursing Center, an existing 110-bed ICF nursing facility located in Palestine, from Palestine Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Palestine Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-281**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase the leasehold interest in Country Inn Care Center, an existing 61-bed ICF nursing facility located in Van, from Palestine Medical Investors, Ltd., a Georgia limited partnership which currently subleases the facility from Medi-Villas Convalescent Homes East. Beverly Enterprises—Texas, Inc., currently subleases the facility from Palestine Medical Investors, Ltd.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-282**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Buffalo Inn Nursing Center, an existing 60-bed ICF nursing facility located in Buffalo, from Palestine Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Palestine Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-283**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Village East Nursing Home, an existing 120-bed ICF nursing facility located in Tyler, from Tyler Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Tyler Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-284**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Heritage House, an existing 148-bed ICF nursing facility located in Tyler, from Tyler Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Tyler Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-285**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Frankston Nursing Center, an existing 76-bed ICF nursing facility located in Frankston, from Frankston Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Frankston**

**Medical Investors, Ltd., and leased to Beverly Enterprises—Texas Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-286**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Canton Nursing Center, an existing 66-bed ICF nursing facility located in Canton, from Frankston Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Frankston Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-287**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Lindale Nursing Center, an existing 89-bed ICF nursing facility located in Lindale, from Frankston Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Frankston Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-288**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Canton Residential Center, an existing facility with 38 mental health Type A beds located in Canton, from Canton Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Canton Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-290**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Physicians Nursing and Convalescent Center, an existing 80-bed ICF nursing facility located in Mount Pleasant, from Canton Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Canton Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-291**

**NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase the leasehold interest in Villa Siesta Nursing Center, an existing 60-bed ICF nursing facility located in Van, from Canton Medical Investors, Ltd., a Georgia limited partnership which subleases the facility from Medi-Villas Convalescent Homes East. Beverly Enterprises—Texas, Inc., currently subleases the facility from Canton Medical Investors, Inc.**

**Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California  
AN85-0502-292**

**NIEH—Request for a declaratory ruling that a cer-**

tificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Gardenale Nursing Home, an existing 120-bed ICF nursing facility located in Jacksonville, from Jacksonville Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Jacksonville Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.

Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California

AN85-0502-293

NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Sunset Care Center, an existing 53-bed ICF nursing facility located in Jacksonville, from Jacksonville Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Jacksonville Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.

Beverly Enterprises—Texas, Inc., a California corporation, Pasadena, California

AN85-0502-294

NIEH—Request for a declaratory ruling that a certificate of need is not required for Beverly Enterprises—Texas, Inc., to acquire by purchase Pittsburg, from Jacksonville Medical Investors, Ltd., a Georgia limited partnership. The facility is currently owned by Jacksonville Medical Investors, Ltd., and leased to Beverly Enterprises—Texas, Inc.

O-I Holding Company of Center, a wholly-owned subsidiary of Owens-Illinois, Inc., Toledo, Ohio

AH85-0503-300

NIEH—Request for a declaratory ruling that a certificate of need is not required for O-I Holding Company of Center to acquire by purchase Memorial Hospital of Center, an existing 60-bed general acute care hospital located in Center, from Health Group of Center, Inc.

July Associates II, an Oklahoma general partnership, Oklahoma City, Oklahoma

AN85-0506-301

NIEH—Request for a declaratory ruling that a certificate of need is not required for July Associates II to acquire by purchase Boulevard Manor Care Center, an existing 122-bed nursing facility with 98 ICF and 24 skilled beds located in Fort Worth, from Don A. Karchmer.

O-I Holding Company of New Boston, a wholly-owned subsidiary of Owens-Illinois, Inc., Toledo, Ohio

AH85-0508-308

NIEH—Request for a declaratory ruling that a certificate of need is not required for O-I Holding Company of New Boston to acquire by purchase New Boston General Hospital, an existing 63-bed general acute care hospital located in New Boston, from Health Group of New Boston, Inc.

Community Health System, Inc., a Delaware corporation, Houston

AH85-0510-313

NIEH—Request for a declaratory ruling that a certificate of need is not required for Community Health Systems, Inc., to acquire by purchase Colonial Hospital, an existing 49-bed general acute care

hospital located in Terrell, from Colonial Hospital, Inc., a Texas corporation.

Lucas Medical Associates, Inc., Austin

AO85-0514-320

NIE—Request for a declaratory ruling that a certificate of need is not required for Lucas Medical Associates, Inc., to acquire a .5 Tesla magnetic resonance imaging system. The proposed equipment will be located at HEB-MRI Center, Ltd., 1600 Hospital Parkway, Bedford, and will be utilized on an outpatient basis and on an inpatient basis pursuant to commission rules.

Health Resources Development Corporation, Columbus, Ohio

AN85-0515-322

NIEH—Request for a declaratory ruling that a certificate of need is not required for Health Resources Development Corporation to acquire by purchase Wichita Falls Convalescent Center, an existing 197-bed nursing facility with 159 ICF and 38 personal care beds located in Wichita Falls, from Southeastern Health Care, Inc.

Jewell Enterprises, Inc., Arlington

AN85-0514-319

DR—Request for a declaratory ruling that no certificate of need is necessary for Western Hills Nursing Center, Abilene, to be relicensed and recertified to operate as a 118-bed ICF nursing facility. The facility was closed and ceased operations on January 9, 1984.

Issued in Austin, Texas, on May 20, 1985.

TRD-8524452

John R. Neel  
General Counsel  
Texas Health Facilities  
Commission

Filed: May 20, 1985

For further information, please call (512) 475-6940.

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## Texas Department of Human Resources Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Resources (DHR) furnishes this notice of consultant contract award. The consultant proposal request was published in the March 22, 1985, issue of the *Texas Register* (10 TexReg 1005).

**Description of Service.** The service to be provided is a conference which focuses on family violence, particularly as it relates to spouse abuse. This conference will provide orientation and continuing education to family violence service providers. The conference will offer an opportunity for providers to share information and acquire more knowledge about the area of family violence and provision of services to battered women and their children.

**Name of Consultant.** The consultant selected is the Texas Council on Family Violence, 509-A West Lynn, Austin, Texas 78703.

**Total Value and Terms of the Contract.** The contract begins May 20, 1985, and ends November 30, 1985. Payments under the contract shall not exceed \$20,000.

**Due Dates for Reports.** The consultant's reports and documentation will be delivered to the Program Specialist

for Family Violence, Protective Services for Families and Children Branch, Texas Department of Human Resources, under timeframes specified in the contract.

Issued in Austin, Texas, on May 20, 1985

TRD-854441      Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Resources

Filed: May 20, 1985

For further information, please call (512) 450-3766.

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## Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Resources (DHR) is requesting proposals for consulting services.

**Description of Service.** The DHR will contract for the services of specialists to treat children and families in DHR conservatorship. These services will be provided in DHR's Region 2. The specialists must be licensed professionals who have demonstrated expertise in dealing with child abuse and neglect and in testifying as witnesses in DHR's behalf in court proceedings.

**Limitations.** The contract period will be September 1, 1985, through August 31, 1986. The contract amount will not exceed \$20,000.

**Contact Person.** The contact person is John D. Noyes, Contract Specialist, Mail Code 005-2, Texas Department of Human Resources, P.O. Box 3700, Amarillo, Texas 79116-3700, (806) 376-07214 or (STS) 847-5243.

**Evaluation and Selection.** Offers will be evaluated according to the following criteria: experience and education; cost and provider contributions; and range of service, timeliness, and accessibility to clients. Final selection will be based upon the department's evaluation of these criteria.

**Closing Date.** Closing date for receiving offers is July 1, 1985.

This proposed contract is a continuation of a current program. The department intends to contract with the current provider unless it receives a substantially better offer.

Issued in Austin, Texas, on May 20, 1985.

TRD-854442      Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Resources

Filed: May 20, 1985

For further information, please call (512) 450-3766.

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## Railroad Commission of Texas Public Hearing

The Railroad Commission of Texas, LP-Gas Division, will hold a public hearing to receive comments and evidence regarding a request for exception to the regula-

tions for compressed natural gas (CNG) fuel systems filed by Dual Fuel Systems, Inc. The exception, if granted would exempt the applicant from use of required insulators between containers and mounting systems as required by §13.33(j) of the regulations.

The hearing will be held at 10 a.m. on June 6, 1985, in the Hearings Room, 105 West Riverside Drive, Austin. If necessary, the hearing will be continued at a time and place announced on the record.

The commission invites all interested persons to appear at the hearing. Copies of the notice of public hearing may be obtained from the LG-Gas Division. To be considered, written comments must be received in the division offices at least two days in advance of the hearing date. Requests for any information regarding the hearing should be directed to Donn G. Miller, Hearings Examiner, Railroad Commission of Texas, LP-Gas Division, P.O. Box 12967, Austin, Texas 78711-2967.

Issued in Austin, Texas, on May 17, 1985.

TRD-854411      Walter Earl Lille  
Special Counsel  
Railroad Commission of Texas

Filed: May 17, 1985

For further information, please call (512) 445-1186.

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## Texas Tourist Development Agency Consultant Proposal Request

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Texas Tourist Development Agency (TTDA) serves notice of the opening of its media account to solicitation by Texas advertising agencies.

**Contact Person.** Agencies wishing to compete for the account should contact Larry Todd, TTDA Executive Director, P.O. Box 12008, Austin, Texas 78711, (512) 475-4326.

**Closing Date.** Notice of interest to compete must be received by May 20, 1985. (Note: Letters announcing the opening of this account were mailed April 26, 1985, to all Texas agencies listed in the current (February-May 1985) edition of the *Standard Directory of Advertising Agencies*).

**Method of Selection.** Interested agencies will complete questionnaires designed to profile for TTDA their relative ability to handle the \$1.3 million account. The agencies that seem most qualified will be invited to appear before the full nine-member Texas Tourist Development Board, governing authority for the TTDA, in mid-July, to present credentials and make presentations. After all finalists have been heard, the board will decide which agency will be awarded the TTDA account effective September 1, 1985, for a maximum four-year period before the account is reopened in 1989.

Issued in Austin, Texas, on May 13, 1985.

TRD-854383      Larry Todd  
Executive Director  
Texas Tourist Development Agency

Filed: May 16, 1985

For further information, please call (512) 475-4326.

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