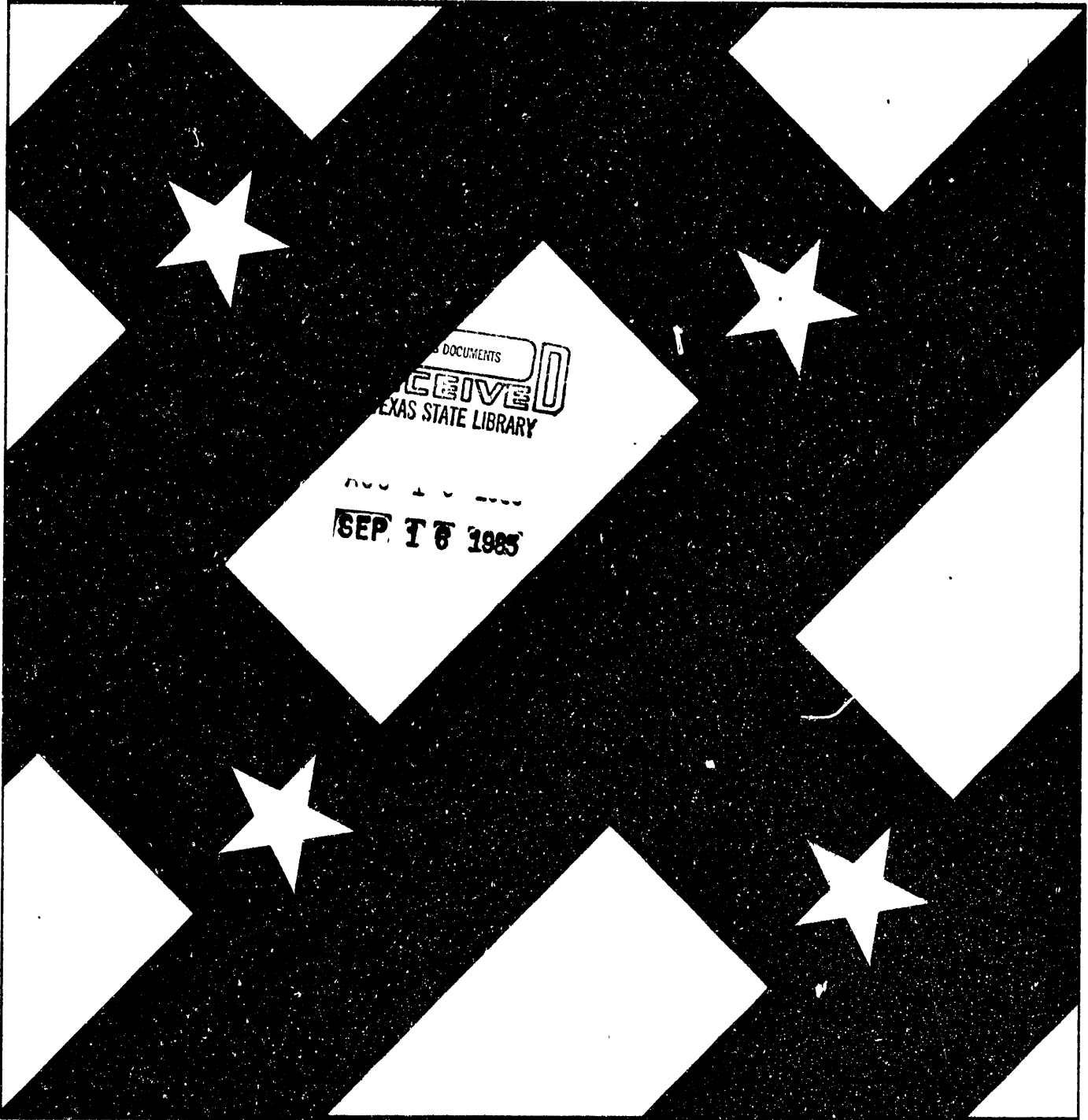


Texas Register

Volume 10, Number 67, September 10, 1985

Pages 3393 - 3450



Highlights

The State Purchasing and General Services Commission adopts emergency amendments concerning telecommunications services. Effective date - September 1.....page 3400

The Public Utility Commission of Texas

adopts an emergency new section concerning substantive rules. Effective date - August 30.....page 3402

The Texas Department of Labor and Standards adopts emergency amendments concerning professional boxing. Effective date - September 1.....page 3403

Office of the Secretary of State

Texas Register

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date.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

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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.

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

TAC stands for the *Texas Administrative Code*;

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



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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the Register publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 475-3021.

Appointments Made August 23

Texas Board of Health

For a term to expire February 1, 1991:

Robert O. Robinson, M.D.
3129 College
Beaumont, Texas 77701

Dr. Robinson is replacing Dr. Robert D. Moreton of Houston, whose term expired.

Texas Sesquicentennial Commission

To the Executive Committee for terms to continue at the pleasure of this governor:

Jim Bowmer
Route 2, Box 120
Killeen, Texas 76541

Calvin Guest
P.O. Box 3097
Bryan, Texas 77805

Mr. Bowmer and Mr. Guest are being appointed pursuant to Senate Bill 1002, 69th Legislature, 1985.

Issued in Austin, Texas, on August 23, 1985.

TRD-857980 Mark White
Governor of Texas

★ ★ ★

Appointment Made August 26

Texas Historical Commission

For a term to expire January 1, 1991:

George Ann Carter
29 Valley Ridge
Fort Worth, Texas 76107

Ms. Carter is replacing Mrs. James F. Biggart of Dallas, whose term expired.

Issued in Austin, Texas, on August 28, 1985.

TRD-867980 Mark White
Governor of Texas

★ ★ ★

Appointments Made August 29

Texas State Technical Institute

To the Board of Regents for terms to expire August 31, 1991:

George Fred Rhodes
Route 1, Box 80
Port Lavaca, Texas 77979

Mr. Rhodes is replacing Liborio Hinojosa of Mercedes, whose term expired.

Mollie Adna Solomon
P.O. Box 577
Groves, Texas 77619

Ms. Solomon is replacing Jesse S. Harris of Dallas, whose term expired.

Issued in Austin, Texas, on August 29, 1985.

TRD-857980 Mark White
Governor of Texas

★ ★ ★

Appointments Made August 30

Ninth Judicial District

To be district attorney for Montgomery, Polk, San Jacinto, and Waller Counties, until the next general election and until his successor shall be duly elected and qualified:

Peter Carter Speers III
28811 Enchanted Drive
Spring, Texas 77381

Mr. Speers is replacing Jim Keeshan of Conroe, who resigned.

358th Judicial District Court

To be judge for Ector County, until the next general election and until his successor shall be elected and duly qualified:

Bill McCoy
1517 Verde
Odessa, Texas 79761

Mr. McCoy is being appointed pursuant to House Bill 1473, 68th Legislature, 1983.

Texas State Technical Institute

To the Board of Regents for a term to expire August 31, 1991:

E. A. Aguilar, Jr., D.D.S.
300 East Main, Suite 608
El Paso, Texas 79901

Dr. Aguilar is replacing Ralph A. Lowenfield of El Paso, whose term expired.

Issued in Austin, Texas, on August 30, 1985.

TRD-857980 Mark White
Governor of Texas

★ ★ ★



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*.

Requests for Opinions

RQ-592. Request from Wilhelmina Delco, Texas House of Representatives, Austin, concerning whether teaching assistant or research assistant under the Texas Education Code, §54.063, includes all special graduate student assistants.

TRD-857929

★ ★ ★

RQ-593. Request from Tim R. Taylor, Titus County attorney, Mount Pleasant, concerning whether a commissioners court may bar video cameras from a public meeting.

TRD-857930

★ ★ ★

RQ-594. Request from W. C. Kirkendall, district attorney, Seguin, concerning whether a commissioners court may contract with the son of the county commissioner.

TRD-857931

★ ★ ★

RQ-595. Request from W. N. Kirby, commissioner of education, Austin, concerning allowable credit for prior state service of student employees.

TRD-857932

★ ★ ★

RQ-596. Request from Vernon M. Arrell, commissioner, Texas Rehabilitation Commission, Austin, concerning whether an individual who receives benefits from the Texas Rehabilitation Commission may be denied benefits under the Hinton/Hazlewood College Student Loan Act, the Texas Education Code, §54.203.

TRD-857933

★ ★ ★

RQ-597. Request from Bob E. Bradley, executive director, Texas State Board of Public Accountancy, Austin, concerning whether the Texas State Board of Public Accountancy may require applicants for licensing to furnish character references from Texas residents.

TRD-857934

★ ★ ★

RQ-598. Request from Oscar Mauzy, chairman, Senate Committee on Jurisprudence, Austin, concerning whether an inoperable computer terminal intended for use in another state as a ticket dispenser in a state lottery is a "gambling device," under the Penal Code, Chapter 47, and related questions.

TRD-857935

★ ★ ★

RQ-599. Request from Mike Driscoll, Harris County attorney, Houston, concerning whether a county clerk may issue a marriage license without parental consent if either applicant is under 18 years of age and has previously been married.

TRD-857936

★ ★ ★

RQ-600. Request from Henry Wade, Dallas district attorney, Dallas, concerning whether a county purchasing agent may contract with a nonprofit agency for blind or severely disabled persons without taking competitive bids.

TRD-857937

★ ★ ★

Opinions

JM-330 (RQ-543). Request from Oscar H. Mauzy, chairman, Committee on Jurisprudence, Texas Senate, Austin, concerning whether the state may provide telecommunication services to a private foundation.

Summary of Opinion. Texas Civil Statutes, Article 601b, §10.07, does not authorize the State Purchasing and General Services Commission to contract with a private nonprofit corporation for the utilization of the state telecommunications system.

TRD-857926

★ ★ ★

JM-331 (RQ-570). Request from Jim Boyle, public counsel, Office of Public Utility Counsel, Austin, concerning whether the citizens advisory panel of the Office of Public Utility Counsel is subject to the Open

Meetings Act, Texas Civil Statutes, Article 6252-17.

Summary of Opinion. Under the facts provided, meetings of the citizens advisory panel appointed by the Office of Public Utility Counsel, Texas Civil Statutes, Article 1446c, §15A, are not subject to the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

TRD-857927

★ ★ ★

JM-332 (RQ-595). Request from William L. Ferguson, county and district attorney, Henderson, concerning circumstances under which a county may dispose of abandoned rights-of-way.

Summary of Opinion. Once a county commissioners court has abandoned a road or right-of-way in compliance with Texas Civil Statutes, Article 6702-1, §2.008, the court is authorized to dispose of the roads only in compliance with Texas Civil Statutes, Article 1577, regardless of the method of acquisition.

TRD-857925

★ ★ ★

JM-333 (RQ-469). Request from Jesusa Sanchez-Vera, Jim Wells County attorney, Alice, concerning whether a municipal judge may simultaneously serve as county auditor.

Summary of Opinion. A municipal judge holds a civil office of emolument even though he refuses to accept the compensation attached to his office. The Texas Constitution, Article XVI, §40, prohibits a municipal judge who qualifies for the position of county auditor from continuing to serve as municipal judge.

TRD-857923

★ ★ ★

JM-334 (RQ-491). Request from Charles D. Penick, criminal district attorney, Bastrop, concerning whether a county may maintain a road which has not been dedicated to the county.

Summary of Opinion. The Bastrop County Commissioners Court has no general authority to maintain private roads. A private road cannot become a public road except as permitted by statute or under the common law theories of dedication, as limited

by Texas Civil Statutes, Article 6812h, and
average possession.
TRD-857924

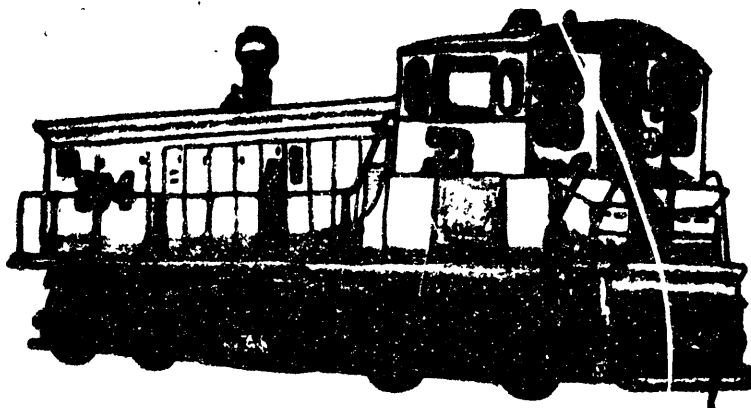
★ ★ ★

JM-336 (RQ-590). Request from William A. Ewert, Jr., Kleberg County attorney, Kingville, concerning whether a county must comply with the public auction requirements of Texas Civil Statutes, Article 4494i, to sell a county hospital in accordance with Texas Civil Statutes, Article 4494i and Article 4437e-2.

Summary of Opinion. A county is not required to comply with the public auction requirements of Texas Civil Statutes, Article 1577, when it sells a hospital pursuant to Texas Civil Statutes, Article 4494i or Article 4437e-2.

TRD-857928

★ ★ ★



Emergency

Rules

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

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

TITLE 1.

ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 121.

Telecommunications Services Division

Telecommunications Services

★1 TAC §121.2-121.6, 121.8, 121.9

The State Purchasing and General Services Commission adopts on an emergency basis amendments to §§121.2-121.6, 121.8 and new §121.9. Adoption of these amendments and new section on an emergency basis is necessary to comply with House Bill 2375, 69th Legislature, 1985, and to assure that critical telecommunications service needs of state agencies are met as of September 1, 1985.

The amendments and new section are adopted on an emergency basis pursuant to the authority granted the State Purchasing and General Services Commission under Texas Civil Statutes, Article 601b.

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

Criminal justice information communications system—The terminal equipment, digital switching centers and other equipment or hardware integral to the operation or use of such system, but excludes the dedicated interconnecting, intercity circuits serving such system.

Dedicated circuit—A circuit obtained and reserved for the exclusive use of the agency requesting it. For the purpose of this section, dedicated circuits provided from the STS are exclusively intercity, and interconnect with agency owned, or leased [local loops,] modems, and terminal equipment, etc. at the interface of demarcation point of each customer premise [telecommunication carrier's toll center main connecting frame] at each city in which the dedicated circuits terminate.

Main connecting frame—The connecting point where STS circuitry interconnects with the agency's terminal equipment

[as follows]. The interface or demarcation point is located at the point of minimum penetration at the customer premises as defined by telephone industry tariffs on file with the Texas Public Utility Commission.

[(A) Dedicated circuits. The telecommunications carriers toll center serving the cities where service is provided.

[(B) Switched network circuits. The terminal block in or serving the building where service is provided. STS circuits serving PBX or CU Centrex facilities are extended to the trunk and tie line termination switching units.]

Parallel toll—All intrastate telephone toll, including WATS, foreign exchange (feature groups A, B, or D), credit card, or third-party billing incurred outside of the STS.

Single agency point to point radio systems—Telecommunications [Telecommunication] systems, owned or leased by a single agency, operating in any frequency spectrum, and providing telecommunication service between two designated points. For the purpose of this section, they are not included as part of the STS.

Telecommunications [Telecommunication] facilities—That equipment that is an integral part of the STS and is used for such modes of transmission as telephone, telegraph, teletypewriter, digital including telemetering, facsimile, telephoto, video, audio, and such corollary items as distribution systems. For the purpose of this section, telecommunications [telecommunication] facilities refers to equipment and circuitry necessary for the make-up of an intercity switched voice and data telecommunication service network, including dedicated circuitry that interconnects at the interface or demarcation point on a customer premises [main connecting frame in toll centers]. It does not include agency owned or leased terminal equipment.

Telecommunications service—Includes, without limitation, the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature by wire, radio, visual or other electrical, electromagnetic, optic, or acoustically coupled means. For the purpose of this section, telecommunication services refers to the transfer of information as defined previously, on an intercity basis [through the STS network].

§121.3. Coverage.

(a) (No change.)

(b) STS coverage does not include:

(1) single agency point to point radio systems;

(2) facilities or services of the criminal justice information communications system;

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

§121.4. Commission Responsibility and Method of Contracting.

(a) The commission is specifically charged with:

(1) planning actions to insure that the system meets the telecommunications needs of state government and that all changes and growth are carried out in an orderly manner and are consistent with the long-range telecommunications plans developed by the automated information and telecommunications council;

(2) (No change.)

(3) publishing and disseminating appropriate policies, guidelines, and operating procedures to all users to insure efficient utilization and operation of the STS. Policies, guidelines, and procedures may not be inconsistent with a guideline or rule adopted by the automated information and telecommunications council. In the event of conflict, the guidelines and rules of the automated information and telecommunications council will prevail;

(4) (No change.)

(b) (No change.)

[(c) The commission can provide technical assistance to state agencies on telecommunications matters including methods and procedures for developing the capability for efficient telecommunications operations, cost projections, equipment selection, and other related matters.]

(c)[(d)] Services within the STS may be contracted for by the commission with telecommunication service providers utilities and carriers], and such contracts shall be let on a competitive bid basis, if possible. All such contracts shall provide that the commission or any participating agency, may obtain data relating to the costs to the state of parallel toll. The commission may acquire transmission facilities by purchase, lease, or lease-purchase, which shall be done on a competitive bid basis if possible. The commission may develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system. The commission may own, lease, or

lease-purchase any or all of the facilities or equipment necessary to provide telecommunications services.

§121.5. Billing Process.

(a) (No change.)

(b) Long distance service for on-to-on, on-to-off, and that portion of off-to-on calls that traverse the network will be billed as STS service. The portion of off-to-on calls from point of origin to the nearest STS entry point (for those calls which do not originate from one of the off-to-on cities) will be billed directly to the using [originating] agency as regular long distance service by the carrier utilized to provide the service [telecommunication utility]. Local service, and long distance service not placed on STS, will continue to be billed to the using [originating] agency by the local telecommunication utility. Long distance service not placed on STS will be billed to the using agency by the selected long distance carrier.

(c) The Telecommunications Services Division of the commission will accumulate all charges for STS service, and bill the using [originating] agencies on a monthly, or other regular basis, to include the following:

(1) a recurring charge based on a proration by each using [receiving] agency of total network costs not appropriated to the commission. Prorations shall be based on [from] a 20% sampling of the total STS network use in minutes. An agency may install at its own expense automatic numbering equipment or similar function equipment to obtain amplified data for internal distribution of STS call usage for select locations. [The cost for such special equipment will be billed directly to the agency in the same manner as local telephone equipment.] In any case, the actual billing for STS service by the commission and payment will be on the basis of the expanded 20% sample as provided by the telephone industry. Measures shall also be taken to assure that all costs associated with providing service to nonstate entities are recovered from each nonstate entity through the monthly billing system. The using agency is the owner and custodian of all call detail records accompanying the monthly STS bill and the commission shall not release such records for any purpose without written permission of the using agency;

(2) nonrecurring charges [the initial installation charge] for [each new location added,] moves, changes of local service equipment, local feature changes and/or modification involving STS circuitry will be billed [directly] to the agency by the telecommunications services division of the commission [telecommunication carrier, utility, or other supplier];

(3) a mileage charge per billing period for specialized voice and/or data circuits, as requested by each agency. Such circuits will be provided on an "as available" intercity basis between the common carrier

toll center main connecting frames. All charges for local loop circuits, line conditioning, terminal equipment, modems as necessary, interconnect devices as necessary, and other ancillary equipment will be billed [directly] to the requesting agency [by the telecommunication common carrier or other supplier, as applicable];

(4) (No change.)

(d) To facilitate the operation of the system and to expedite the payment of the state's telecommunications [telecommunication] expenses, the using agency shall validate the purchase voucher and render payment [return it] to the [Telecommunications Services Division of the] commission within 10 [15] calendar days of the date of the voucher. Should the last day for returning the voucher fall on a Saturday, Sunday, or state holiday, then the last day for rendering payment [returning such voucher] shall be the following working day. Questions involving the propriety or accuracy of the voucher should be presented to the commission as soon as possible within the 10 [15] day period, and every effort should be made to resolve the questions without undue delay.

(e) Prompt and complete payment to the telecommunications service providers [Telecommunication Utility] for all service provided to STS is the joint responsibility of the using agencies and the commission. Validation of the voucher required by §121.5(d) of this title (relating to Billing Process) is the keystone of this joint responsibility. Whenever the commission experiences a series of payment periods when it is unable to make timely payments to the telecommunications service providers [Telecommunication Utilities or Carriers] for service hereunder, the commission may require any or all of the participating agencies to make advance payments to the telecommunication revolving fund, based upon the average of the previous three month STS service charge, exclusive of items described in §121.5(c)(2) of this title (relating to Billing Process). If these advance payments are not equal to the actual amount due at the end of the period, the subsequent advance payment shall be adjusted accordingly.

§121.6. Joining the System and Requests for Additional Service.

(a) All requests for service on the STS network will be evaluated on the basis of the service being cost effective for the customer, [and for] the network, and the state. The commission shall publish appropriate procedures and guidelines covering administrative actions associated with providing service on the STS. The commission may prescribe forms for that purpose and such forms may be reproduced locally by state agencies and governmental bodies.

(b) (No change.)

(c) Plans, service requests, and other service orders should be submitted to the commission as far as possible in advance of

date service is desired to allow lead time for evaluation and scheduling of work. The standard interval for installation of private line services is 48 work days or approximately 10 weeks after the telephone industry has received an order from the commission [Requirements for adding service to locations not involving PBX's should be forwarded to the commission at least 30 days prior to the date service is required. Where service interconnection to PBX's is required, a lead time of 14 to 16 weeks is generally required by the telephone industry to order and install special line termination equipment. Moves of locations require at least 20 days' prior notice to provide reasonable assurance of noninterrupted service and avoid duplicate service charges for the move].

(d) Assuring that the network is limited to placing of official calls is the responsibility of each state agency and governmental body being provided STS service. In addition to establishment of administrative controls, technical controls may also be accomplished by limiting access to the network only to those individual stations requiring long distance telephone service. [Where service is provided through a PBX, a thorough review should be made of those stations requiring service and a formal request be made to the serving telephone that the remaining stations be "blocked" from STS access. This will normally be done on a "no charge" basis if requested at the time the PBX is ordered and being installed.] Stations "blocked" from making outgoing calls may still receive incoming calls. [The commission can provide technical assistance on this or other technical matters.]

(e)-(g) (No change.)

§121.8. Operations.

(a) Monthly traffic reports are prepared on [Periodic reports will be provided] each location that has STS service showing the busy hour of the day for the trunk group serving a particular location. The STS users can help reduce network costs by making calls at nonbusy hours.

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

(d) Grade of service is a term used to describe both an objective and actual level of call completion. Objective grades of service are those for which a trunk group is engineered. Actual service levels are those reflecting the measured performance of a given trunk group. The grade of service is expressed in terms of probability of delay or call blockage. The commission conducts traffic reviews or studies of network circuitry on a monthly basis to determine if the STS objective grades of service levels are being met. Objective grades of service vary by the type of STS access used and the cost effectiveness of serving individual locations. The objective grades of service are based on both operational and economic considerations. [The term P.01 means that the pro-

bability of delay (P) is 1 in 100 (.01) or that, statistically, one call out of 100 call attempts will fail to find an idle circuit. The STS is engineered and administered for a service level of P.10 to P.20 from telephone to telephone. In order to achieve this grade of service, normally intermachine trunks are engineered for P.03 to P.05 services, and access lines are engineered for P.05 service. These levels can be exceeded when only one or two circuits are connected to an agency location on a two-way basis.] Traffic loading in any part of the system may vary from month to month. [;] The commission, as a result of the [will conduct] monthly traffic reviews, and in accordance with the using agencies, will take appropriate action to add or remove circuits based on trends established over six [several] months.

(e)-(f) (No change.)

(g) The purpose of the STS telephone directory is to provide STS users with the telephone numbers necessary for the conduct of state business. The directory is composed of an alphabetical listing (white section) and an organizational listing (yellow section) of the various agencies, departments and organizational units of state government and other political subdivisions participating on the STS network. The agencies will be requested to provide inputs for each of these sections on an annual basis. The white section should be limited to key employees requiring frequent contact by other state personnel where it is essential for the conduct of official state business.

(h)-(k) (No change.)

§121.9. Centralized Capitol Complex Telephone System.

(a) The commission shall provide centralized telephone service in the capitol complex in accordance with the provisions of Texas Civil Statutes, Article 601(b), §10.09(a).

(b) The commission will make terminal equipment available for agencies which choose to use that terminal equipment. Agencies providing their own terminal equipment are responsible for assuring that the selected equipment is compatible with the centralized telephone service.

(c) The Telecommunications Service Division of the commission will accumulate all charges for services and equipment provided on the centralized telephone system and bill the using agencies on a monthly basis. An overhead charge for the operation of the system by the commission shall be prorated to the using agencies on an actual cost basis. The using agency is the owner and custodian of all call detail records accompanying the monthly centralized telephone service bill and the commission shall not release such records for any purpose without the written permission of the using agency.

(d) To facilitate the operation of the system and to expedite the payment of

telecommunications suppliers providing services and/or equipment for the centralized telephone system, the using agency shall validate the monthly billing statements and make payment within 10 calendar days of the date of the bill. Questions involving the propriety or accuracy of the billing statements should be presented to the commission as soon as possible within the 10-day period, and every effort should be made to resolve the questions without undue delay.

(e) Prompt and complete payment to the telecommunications service suppliers for all service provided on the centralized telephone system is the joint responsibility of the using agencies and the commission. Whenever the commission experiences a series of payment periods when it is unable to make timely payments to the telecommunications service providers, the commission may require any or all of the participating agencies to make advance payments to the centralized telephone system revolving fund, based on the average of the previous three month equipment, wiring and administrative charges. If these advance payments are not equal to the actual amounts due at the end of the period, the subsequent advance payment shall be adjusted accordingly.

(f) Each agency should designate a person or persons to coordinate and place requests for centralized telephone service such as moves, additions, disconnects, and changes. The commission shall publish appropriate procedures and guidelines covering administrative actions associated with providing centralized telephone service.

(g) Requests for service should be called in to the commission as far as possible in advance of the date that service is desired to allow lead time for engineering and scheduling of work. Written authorization will be required prior to the work commencing.

(h) In each agency, responsibility for changes or additions to the centralized Capitol complex telephone system directory should be assigned to one or more individuals. Agencies should advise the Telecommunications Services Division of the names, titles, mailing addresses, and regular telephone numbers of the individual(s) so designated. The commission shall issue a revised centralized telephone service directory in February of each year.

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TRD-867942

John R. Neel
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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility

Commission of Texas

Chapter 23. Substantive Rules Certification

★ 16 TAC §23.32

The Public Utility Commission of Texas adopts on an emergency basis new §23.32, concerning automatic dial announcing devices. The commission has determined this action is necessary to implement the provisions of Texas Civil Statutes, Article 1448c, §87B, which became effective September 1, 1985.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 1448c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and to make decisions with respect to administering the provisions of this Act.

§23.32. Permits for Automatic Dial Announcing Devices.

(p) An automatic dial announcing device is any automatic equipment used for telephone solicitation or collection that:

(1) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and

(2) is capable, alone or in conjunction with other equipment, to convey a prerecorded or synthesized voice message to the number called.

(b) Requirements for use. The following requirements are imposed on the user of an automatic dial announcing device:

(1) the user has obtained a permit from the commission and given written notice specifying the type of device to each telecommunications utility over whose system the device is to be used;

(2) the device is not used for random number dialing or to dial numbers by successively increasing or decreasing integers;

(3) the message conveyed by the device, or a message delivered by a human, states the nature of the call and the identity of the person, company, or organization making the call;

(4) the device disconnects from the called person's line not later than 10 seconds after the called person hangs up;

(5) no calls shall be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, or other entities providing emergency service; and

(6) for calls terminating in the State of Texas, the device is not to be used to make a call:

(A) on a Sunday before 1:30 p.m. or after 9 p.m., or before 9 a.m. or after 9 p.m. on a weekday or a Saturday, when the device is used for solicitation; or

(B) at any hour that collection calls would be prohibited under the Federal Fair Debt Collection Practices Act, 15 United States Code §801 *et seq.*, when the device is used for collection purposes.

(c) **Disconnection.** A telecommunications utility may disconnect or refuse to connect service to a person using or intending to use an automatic dial announcing device if the utility determines that the device is not capable of disconnecting from a called party's line as required in this section or that the device would cause or is causing network harm. The telecommunications utility shall disconnect service to the person on a determination by the commission or a court that the person is violating this section, and may reconnect service to the person only on a determination by the commission that the person will comply with this section. The utility shall give notice to the person using the device of its intent to disconnect service not later than the third day before the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given on the day before the date of disconnection.

(d) **Exception.** This section does not apply to the use of an automatic dial announcing device to call a person who has given to the person making the call written permission to be called by an automatic dial announcing device, except that a telecommunications utility may disconnect service to a person using the device if the device is causing network harm.

(e) **Form and fee.** An application for a permit under this section to use one or more automatic dial announcing devices shall be on a form as prescribed by the commission and shall be accompanied by the payment of a fee of \$500 for each permit issued.

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TRD-867967

Rhonda Colbert Ryan
Secretary of the
Commission
Public Utility
Commission of Texas

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For further information, please call
(512) 468-0100.

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Part IV. Texas Department of Labor and Standards Chapter 61. Labor/Licensing and Enforcement Division Subchapter A. Professional Boxing Rules

★ 16 TAC §§61.1, 61.5, 61.6

The Texas Department of Labor and Standards adopts on an emergency basis amendments to §§61.1, 61.5, and 61.6, concerning requirements that the department will not license a licensed Texas boxing promoter as a manager of a boxer because of an inherent conflict of interest nor may a licensed boxing promoter be licensed as a second or boxer. Furthermore, if a boxing manager desires to be a boxing promoter in Texas, then the manager has to tender his boxing manager's license in to the department for cancellation. Also a matchmaker of boxing contests may not act or be licensed as a boxer's manager.

Weight-in physical examinations prior to a boxing contest usually involve a hectic and active period. To assure that only physically able contestants are being allowed and licensed to box in Texas, a boxing passport which contains the boxer's fight history will become mandatory. Furthermore, an attempt is being made through the issuance of a passport for boxers to establish the integrity of a boxer's contest history.

Avitene and Thrombin, a coagulant, is being added to the items that may be maintained in a corner during the boxing contest. Boxers participating in boxing exhibitions must also observe the safety provisions of the rules.

Only temporary licenses are to be issued to boxers who do not reside or domicile in Texas. Medical suspensions are to be observed by all boxers, regardless of where their last boxing contest occurred, if the boxer comes into Texas to box.

The amendments are adopted on an emergency basis to protect the health, safety, and welfare of boxing contestants in Texas. The amendments were proposed and published in the *Texas Register* on August 9, 1985 (10 TexReg 2965).

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8601-1, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

§61.1. Applications and Licensing.

(a) (No change.)

(b) Temporary licenses.

(1) Notwithstanding subsection (a) of this section, all applicants, except pro-

motors, who have completed all licensing requirements may be issued a temporary license permitting said holders to participate in boxing contests or exhibitions until such time as an annual license is issued or denied.

(2) All nonresident boxers, or boxers not domiciled in Texas will be issued temporary licenses to box in Texas.

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

(e) License application requirements.

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

(3) Requirements for promoter applicants.

(A) Each promoter applicant must submit, in addition to a completed application form which is provided by the department:

(i) (No change.)

(ii) a financial statement that has been prepared [certified] by [either] a certified public account [or a bank], in lieu of which a promoter may submit a performance bond in the amount of \$10,000;

(iii) (No change.)

(iv) if licensed as a manager, his/her [his] manager's license must be tendered to the department for cancellation; and

(v) a promoter may not act, and cannot be licensed, as a manager, second, or boxer.

(B)-(E) (No change.)

(f) (No change.)

(g) Matchmakers.

(1) (No change.)

(2) No matchmaker shall hold a manager's or second's license or manage either a boxer either directly or indirectly.

(h) (No change.)

§61.5 Safety.

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

(e) Medical examinations.

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

(4) Weight-in physical examination.

The pre-fight medical examinations will be administered on the day of the contest [given] at the time of the weigh-in, which shall be not any later than 2 p.m. of the day of the contest.

(A) The manager or his authorized agent shall accompany the boxer to the weigh-in. No boxer shall be weighed-in or be administered a prefight physical examination unless the boxer is properly licensed by the department, presents a Texas boxing passport, resident state boxing passport, or if from a state with no boxing commission department or agency, proof of the boxer's boxing contests record.

(B)-(I) (No change.)

(5) Post-bout medical exams. At the conclusion of a contest, the ringside physician and commission will issue to the boxer or the boxer's manager a post-bout medical and recommendation form. The boxer or manager must obtain the [such] form and comply with the [to] recommendations, presenting the [and present such] form at the boxer's next weigh-in. The medical disqualifications and rest periods in

these sections shall apply to a boxer regardless of whether the boxer's most recent contest occurred in Texas or outside the State of Texas. A boxer will automatically be medically disqualified from competition if he/she is:

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

(6) Medical disqualification. Medical disqualification of a boxer is for his own safety and may be made at the discretion of the examining physician or the department after a hearing.

(A)-(T) (No change.)

(U) Between round care. The following will be strictly enforced by the department.

(i) (No change.)

(ii) The only substances and materials allowed in the corner are:

(I)-(V) (No change.)

(VI) Adrenalin 1:100; avitene or thrombin;

(VII)-(X) (No change.)

(iii)-(vi) (No change.)

(V)-(Y) (No change.)

§61.6. Conduct of Promotion.

(a) Providing a physician. It shall be the responsibility of the promoter to compensate the [secure the attendance of a] physician appointed [approved] by the department at ringside during the contest. The physician must show evidence of competency to deal with the type of emergencies that may arise during a bout. The physician must have all necessary emergency equipment at the contest.

(b)-(g) (No change.)

(h) Contests and exhibitions must be approved.

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

(8) All boxers participating in boxing exhibitions will be subject to §61.5 of this title (relating to Safety).

(i)-(m) (No change.)

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Allen Parker, Sr.
Commissioner
Texas Department of
Labor and Standards

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For further information, please call
(512) 475-0155.

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Chapter 69. Manufactured Housing Division Fee Structure

★ 16 TAC §§69.29, §69.38

The Texas Department of Labor and Standards adopts on an emergency basis an amendment to §69.29 and new §69.38, concerning fees for registrants and school attenders.

The emergency status is necessary because Senate Bill 1267, 69th Legislature, 1985, requires the department to adopt rules concerning new registration fees and school attendance by registrants, effective September 1, 1985. To implement the statutory mandate, the department is adopting the amendment and new section on an emergency basis. The amendment and new section were proposed and published in the August 20, 1985, issue of the *Texas Register* (10 TexReg 3180).

The amendment and new section are adopted on an emergency basis pursuant to the authority vested in the commissioner of the department by Texas Civil Statutes, Article 5221f, which provide for the adoption of rules pursuant to Texas Civil Statutes, Article 6252-13a, and for action necessary to assure compliance with the intent and purpose of this Act and provide for uniform enforcement of all provisions of this Act.

§69.29. *Fees for Certificate of Registration.* There shall be an annual fee for a manufactured housing manufacturer's certificate of registration of \$750 plus \$250 for each plant location [\$125]; for a manufactured housing retailer's certificate of registration of \$350 plus \$150 for each retailer location [\$75]; for a manufactured housing broker's certificate of registration of \$150 plus \$50 for each brokerage location [\$50]; for a manufactured housing installer's certificate of registration of \$150 plus \$50 for each installer's location [\$50]; for a manufactured housing recycler's certificate of registration of \$150 plus \$50 for each recycling location [\$50], and for a manufactured housing salesperson's certificate of registration of \$50 [\$15].

§69.38. *Educational Fee.* Each attendee at a manufactured housing seminar shall be assessed a fee of \$110 for manufacturers; \$110 for retailers; \$50 for installers; \$50 for recyclers; and \$50 for salespersons.

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(512) 475-0155.

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General Requirements

★ 16 TAC §§69.123, 69.125, 69.126

The Texas Department of Labor and Standards adopts on an emergency basis amendments to §§69.123, 69.125, and 69.126, concerning various miscellaneous items which are either clean-up items or changes necessitated by Senate

Bill 1267, 69th Legislature, 1985; for instance: an exemption from Texas Civil Statutes, Article 8861, for those persons registered under Texas Civil Statutes, Article 5221f, verification that a mobile home purchaser received a formaldehyde notice at time of purchase; new reporting requirements to the division of salespersons both by the salesperson and the principal; reporting of registrant ownership changes to assure registrant responsibilities; clarification of the effective date for education requirements; the deletion of the department having to give 30-day notice of a violation by a registrant; and the necessity of a hearing for an applicant whose certificate of registration has previously been revoked.

The emergency status is necessary because Senate Bill 1267, 69th Legislature, 1985, was effective September 1, 1985, and this emergency adoption implements the statutory mandate. The amendments were proposed and published in the August 20, 1985, issue of the *Texas Register* (10 TexReg 3161).

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 5221f, which provide the commissioner of the department with the authority to adopt rules pursuant to Texas Civil Statutes, Article 6252-13a, and to take action necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement of all provisions of this Act.

§69.123. Retailer Sales Information.

(a) (No change.)

(b) Manufactured housing retailers shall make available for review by department personnel as part of each sales record the following information:

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

(7) verification that the purchaser received the formaldehyde health notice required by the Act, §20.

§69.125. Registration Requirements.

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

(e) Installer registration.

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

(7) Registration of installers dealing in air conditioning installations in HUD-Code manufactured housing.

(i) A person or firm that is registered as a manufacturer, retailer, or installer and is regulated pursuant to Texas Civil Statutes, Article 5221f, and engages exclusively in air conditioning contracting for manufactured homes does not have to be licensed pursuant to Texas Civil Statutes, Article 8861.

(ii) Applicants for air conditioning installer registration shall include a certification that the registration applied for relates to HUD-Code manufactured homes only.

(f) (No change.)

(g) Salespersons.

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

(5) Retailers shall submit to the Registration Section of the division on a calendar quarterly basis for each location a report of all salespersons employed by the retailer as of the end of the reporting quarter and the date of new hires or deletions since the prior report [Written notice by the retailer or broker of the termination of the salesperson and revocation of the agency designation shall be effective on the date received by the department, and the salesperson's registration shall be terminated as of such date].

(6) Responsibility for annual registration renewal shall be that of the salesperson. Copies of renewal forms shall be available at manufactured housing retailer and broker locations, or any Texas Department of Labor and Standards office. Renewal forms and payment of the renewal fee shall be made by the salesperson 30 days prior to the expiration of the current registration.

(7) Salespersons shall be issued a registration card by the department containing effective date and registration number. The salespersons shall be required to present a valid registration card upon request.

(h) Applicable registrant ownership changes.

(1) In addition to a proper endorsement where a new bond shall not be required for any change of ownership of a person registered with the department nor for any change of a location, the registrant shall supply the department with the following items:

(A) a statement of liability for performance of warranty service from date of sale;

(B) a registration application by the purchaser providing such information as the department may require;

(C) no registration fee shall be required resulting from change of ownership or location, however, education requirements of the Act, §7, must be met.

(2) A bond endorsement representing a change of ownership or location from a registered retailer to a purchaser shall not be deemed complete until the items in paragraph (1)(A) of this subsection have been received by the department.

(1)(h) Education requirements. Effective September [January] 1, 1985 [1984], all applicants [an applicant] for registration as a retailer[, broker, or installer] shall attend and complete 40 [six] hours of educational instruction as required by the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, and the rules and regulations of the department. The registration will not be issued until the owner, partner, corporate officer, or other person who will personally have the day-to-day management responsibility for the retail sales location or brokers office attends and completes this educational requirement. This rule shall not apply to the renewal of registrations.

§69.126. Rules for Hearings.

(a) Unless otherwise expressly set forth in the Texas Manufactured Housing Act, Texas Civil Statutes, Article 5221f, all hearings shall be held and conducted pursuant to the applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. [Any person receiving a notice of alleged violation of the Texas Manufactured Housing Act, Article 5221f, or any standard, requirement, rule, regulation, or administrative order of the department may avoid a hearing by correcting the alleged violation within 30 days after receipt of such notice and notifying the department of such correction. Failure to effect such correction will result in the issuance of a notice of hearing.] Any party to a hearing may request that a record of the hearing be made and transcribed by an independent court reporter, other than an employee of the department. Such request must be made not later than seven days prior to the hearing. The additional cost and expense of the independent court reporter may be assessed against the party making the request. In all hearings, the published rules and regulations of the secretary of the U.S. Department of Housing and Urban Development shall be considered, if relevant. If the department believes that such rules and regulations are relevant to any issue to be involved in the hearing, the notice of hearing shall specifically refer to such HUD rules and regulations.

(b) Any person for whom a registration was revoked pursuant to a hearing under Texas Civil Statutes, Article 6252-13a, by the department may only be issued a new registration after a hearing and determination by the commissioner that the certificate of registration may be issued.

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Allen Parker, Sr.
Commissioner
Texas Department of
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(512) 475-0155.

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Chapter 70. Industrialized Housing and Buildings

★ 16 TAC §70.1

The Texas Department of Labor and Standards adopts on an emergency basis new §70.1, which states that industrialized housing in Texas will be governed by the modular rules currently in place in the Texas Administrative Code, Chapter 69. By January 1, 1986, the department expects to have promulgated most of the

rules necessary for the implementation of Senate Bill 1218, 69th Legislature, 1985. The process is expected to have input from all groups affected by the implementation of Senate Bill 1218, 69th Legislature, 1985.

The section is adopted on an emergency basis to facilitate and implement the statutory mandate in Senate Bill 1218.

The new section is adopted on an emergency basis pursuant to the authority vested in the commissioner of the department by Texas Civil Statutes, Article 5221f-1, to adopt and promulgate rules, regulations, and administrative orders.

§70.1 The Regulations. The rules currently in place in the Texas Administrative Code, Chapter 69, for modular housing, shall be the rules for Texas Civil Statutes, Article 5221f-1.

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Chapter 75. Air Conditioning Contractor License Law

★ 16 TAC §§75.1, 75.3-75.5, 75.8, 75.9

The Texas Department of Labor and Standards adopts on an emergency basis amendments to §§75.1, 75.3-75.5, 75.8, and 75.9, concerning a definition change, exemptions to exam licenses, and municipal regulation.

The emergency status is necessary to implement a statutory mandate and to protect the health, safety, and welfare of the citizens of Texas. The statutory mandate was promulgated with the enactment of House Bill 1957, 69th Legislature, 1985, which was effective August 28, 1985. The amendments were proposed for adoption and published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2387).

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8851, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules on an emergency basis under Texas Civil Statutes, Article 6252-13a.

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

Air conditioning contractor—A person licensed under this Act who designs, installs, constructs, maintains, services, re-

pairs, alters, or modifies any heating, ventilating, or air conditioning product, system, or equipment. The terms designing, installing, constructing, maintaining, servicing, repairing, altering, or modifying, as used in the Act, §2(3), shall not be construed to include those activities regulated by the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a. [Maintaining shall mean those functions routinely required for the continued normal performance of the system. Such functions shall include cleaning and replacement of filters, lubrication of motors and moving parts, adjustment and replacement of belts, inspection and cleaning of condensate pans and drains, checking and maintenance of proper refrigerant charge, checking and adjusting of thermostats and air volume dampers, and general cleaning of housings, cabinets, and coil surfaces.]

Air conditioning maintenance work— Repair work and all other work required for the continued normal performance of a heating, ventilating, or air conditioning system. The term does not include the installation of a total replacement of the system or the installation of boilers or pressure vessels that must be installed by licensed persons pursuant to rules and regulations promulgated by the Texas Department of Labor and Standards under the Texas Boiler Inspection Law, Chapter 436, Acts of the 45th Legislature, 1937 (Texas Civil Statutes, Article 5221C).

§75.3. Fees.

(a) All fees should be paid by cashier's check or money order made payable to the Texas Department of Labor and Standards.

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

(3) Lost or revised license. A \$25 fee shall be required and accompany each request for a revised license or to replace a lost or duplicate license.

(4) Lost or revised identification card. A \$10 fee shall be required and accompany each request for a revised or lost identification card.

§75.4. Exams.

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

(c) All exams shall be given "open book," and applicants are encouraged to bring reference material only. The exam shall be based on the latest [1982] edition of the Uniform Mechanical Code, published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, and herein adopted by reference. Copies may be obtained from the International Conference of Building Officials, 603 West 13th Street, Suite 2-F, Austin, Texas 78701, (512) 479-8278. An applicant will also need to know the Texas Boiler Law and Chapter 65 of this title (relating to Boiler Division) as they apply to air conditioning contracting. The exam is also compatible with the latest edition of the *Standard*

Mechanical Code, published by the Southern Building Code Congress International, Inc., and herein adopted by reference. Copies may be obtained from the Southern Building Code Congress International, Southwest Regional Office, 3355 Bee Cave Road, Suite 404, Austin, Texas 78746, (512) 327-8278.

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

(h) An applicant shall be notified by the director of the scheduled examination date within a reasonable amount of time prior to the examination. Applicants who are scheduled for an examination but fail to appear as scheduled and have failed to notify the director not less than 72 hours prior to the scheduled exam must pay the reexamination fee prior to being rescheduled.

§75.5. Licenses and Renewals.

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

(h) A license holder is required to notify the commissioner in writing within 30 days of any change in mailing address, change of location, [or] business affiliation, or business telephone number. The mailing address on file with the commissioner shall be considered the license holder's [contractor's] primary place of business, and all correspondence, including license expiration notice from the department, will be mailed to such address of record. A license holder wishing a duplicate license or to replace a lost license or to revise a license shall request in writing the revision or replacement and pay the appropriate fee required in §75.3 of this title (relating to Fees) and return the original license. Additionally, a revised insurance certificate must be provided to the department correctly reflecting the requested revisions. A license holder wishing to revise or replace the identification card shall request in writing the revision or replacement and pay the appropriate fee required in §75.3 of this title (relating to Fees) and submit an identification size photograph.

(i)-(l) (No change.)

§75.8. Exemptions.

(a) The Act and its rules and regulations do not apply to a person who:

(1) (No change.)

(2) performs air conditioning maintenance work if:

(A) the person is [regularly employed as] a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the air conditioning maintenance work is being performed [or is licensed as a professional engineer under the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271(a)];

(B) the work is performed in connection with the business in which the person is employed; and

(C) the person and the person's employer referred to in subparagraph (A)

of this paragraph do [does] not engage in the occupation of air conditioning contracting for the general public. Maintaining shall mean those functions routinely required for the continued normal performance of the system. Such functions shall include cleaning and replacement of filters, lubrication of motors and moving parts, adjustment and replacement of belts, inspection and cleaning of condensate pans and drains, checking and maintenance of proper refrigerant charge, checking and adjusting of thermostats and air volume dampers, and general cleaning of housings, cabinets, and coil surfaces;

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

(6) is regulated under the Natural Resources Code, Chapter 113;

(7) performs air conditioning maintenance work if the person is licensed as a professional engineer under the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271A, the work is performed in connection with the business in which the person is employed, and the person does not engage in the occupation of air conditioning contracting for the general public; or

(8) performs air conditioning contracting work subject to a license issued by the Texas Department of Labor and Standards pursuant to the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f.

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

§75.9. Municipal Regulation and Reporting Requirement.

(a) A license issued by a municipality of this state is valid under the terms of the license within that municipality. However, a State of Texas license issued under this Act is valid throughout the state, and the holder and people under supervision are [is] not required to hold a municipal license to practice air conditioning contracting in any municipality within this state.

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

Issued in Austin, Texas, on August 29, 1985.

TRD-857807

Allen Parker, Sr.
Commissioner
Texas Department of
Labor and Standards

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For further information, please call
(512) 475-0155.

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Chapter 77. Health Spa Act/Labor, Licensing, and Enforcement Procedures

★ 16 TAC §§77.1, 77.5, 77.9, 77.13, 77.17, 77.21

The Texas Department of Labor and Standards adopts on an emergency basis new §§77.1, 77.5, 77.9, 77.13, 77.17, and 77.21, concerning the filing of registration statements by health spas. The rules were previously proposed and published in the *Texas Register* (10 TexReg 2522).

The sections cover fees and the requirements for filing registration statements by health spas. The emergency status is necessary because Senate Bill 34, 69th Legislature, 1985, requires the department to promulgate procedures for the filing of registration statements effective September 1, 1985. To implement the statutory mandate, the department is adopting the rules on an emergency basis.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5221, §4 and §8, which provide the Texas Department of Labor and Standards with the authority to accept registration statements and to establish procedures for the acceptance of health spa registration statements.

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

Commissioner—The commissioner of the Texas Department of Labor and Standards.

Contract—An agreement by which one becomes a member of a health club.

Department—The Texas Department of Labor and Standards.

Facilities—Equipment, physical structures, improvements, improvements to leasehold premises, and other tangible property, real, personal, or mixed, used by a health spa at each location to conduct its business, including but not limited to saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

Governmental authority—Any city, township, village, county, quasi governmental authority, State of Texas, or any other political subdivision.

Health spa—A business primarily involved in the sale of memberships that provide a members instruction in a program of physical exercise or provide the members use of the facilities of the health spa for a program of physical exercise. The term does not include an organization that is tax exempt under 26 United States Code §501, *et seq.*, a private club owned and operated by its members, an entity primarily operated

for the purpose of teaching dance or aerobic exercise, an entity primarily engaged in physical rehabilitation activity related to an individual's injury or disease, an individual or entity engaged in an activity authorized under a valid license issued by this state, or an activity conducted or sanctioned by a school operating under the Education Code. If an entity otherwise exempt by the provisions of Texas Civil Statutes, Article 5221, provides the members instructions in a program of physical exercise or provides the members use of its facilities for a program of physical exercise, then such an entity must comply with the provisions of the Act and its rules and regulations.

Member—A person entitled to the benefits of membership in a health spa.

Membership—The status under a contract between an individual and a health spa that entitles the individual to the use of the services or facilities of the health spa.

Person—An individual, corporation, association, organization, partnership, business trust, trust, estate, and any other legal entity.

Prepayment—A payment for all services or for the use of facilities made by members of a health spa before the first day the services or facilities are made available to the members.

Purchaser—A person who purchases a health spa membership.

Seller—A person who owns or operates a health spa or who offers for sale the right to use the facilities or the services of the health spa.

Services—programs, plans, guidance, or instruction that a health spa provides for its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

§77.5. Registration Statement.

(a) Each health spa operator shall file a registration statement which shall contain the following information:

(1) the name and location address of the health spa;

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the issued and outstanding voting shares, if the health spa is operated through a corporation;

(3) the name and address of all the partners if the health spa is operated as a general partnership;

(4) the name and address of each general partner if the health spa is operated by a limited partnership;

(5) the name and address of each person deemed to be an owner if the health spa is operated as a sole proprietorship; and

(6) the name and address of any person or entity holding any indirect ownership of the health spa must be disclosed if a person or entity exercises control of the health spa.

(b) Required facilities disclosures include:

(1) a detail disclosure of the type of proposed facilities and services to be provided; and

(2) the approximate size of the health spa measured in square feet.

(c) The registration statement must also contain either:

(1) a full and complete disclosure of any litigation, or any complaint filed with a governmental authority, relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of a health spa that was completed within the past two years or is currently pending; or

(2) a notarized statement that states that within the past two years there has been no litigation and no complaint filed with a governmental authority relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of the spa for which the registration statement is being filed.

(d) The health spa shall file a statement with the department to update the registration statement not later than the 90th day after the day on which the change occurs. All material changes in a health spa's ownership, facilities, or litigation status must be reported by amendment to the registration statement.

(e) Each registration statement filed with the department must be accompanied by a fee of \$100.

(f) Each registration statement must be renewed one year from the date of the original registration and each renewal must be accompanied by a fee of \$100.

(g) Texas Civil Statutes, Article 5221, §25(g), is construed to mean a health spa that has had its facilities open within 730 days prior to September 1, 1985.

(h) Each registration statement shall be notarized and sworn to by the person submitting it.

(i) Upon receipt of the registration statement, the department shall notify the health spa that:

(1) the department has received the statement and it is complete; or

(2) that the department has received the statement and it is not complete and inform the spa of the missing portion(s).

§77.9. Escrow Agent.

(a) Funds to be escrowed pursuant to Texas Civil Statutes, Article 5221, §9, must be escrowed at a financial institution which shall be a state or national bank or savings and loan association.

(b) All prepayments received must be deposited with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation.

(c) The escrow agreement filed with the financial institution must contain the following provisions:

(1) Prepayments must be deposited at least biweekly.

(2) The first deposit shall be made not later than the 14th day after the receipt of the first prepayment by the health spa.

(3) The escrow agreement must name the department as the fiduciary for the prepayment members.

(4) The escrow agreement must provide that the escrow agreement shall not terminate until the 30th day after the health spa fully opens for business.

(5) The escrow agreement must provide that if the health spa does not fully open for business before the 181st day after the date that it first sells a membership in the health spa or if the spa does not remain open for 30 days, the escrow agreement shall terminate and prepayment deposits shall be refunded to the members. Such refund shall not be subject to expenses or other charges to the member.

(6) If the health spa remains open for 30 days after the date the health spa initially opens for business, the escrow agreement shall terminate and the health spa may withdraw the escrowed funds. Upon the termination of the escrow account the health spa shall file an affidavit with the department certifying that all obligations for which a lien could be claimed under Property Code, Chapter 53, have been paid and if no person is eligible to claim a lien under Property Code, Chapter 53, during the period the health spa accepts prepayment.

(d) The health spa shall file a copy of the escrow agreement which identifies the escrow officer, style of the deposit account, the financial institution, and any other information which will identify the escrow account into which the prepayments have been deposited with the department.

§77.13. Disclosures to Members and Departments.

(a) During the period that the registration statement is on file with the department, each membership plan, which exceeds 90 days in duration and is used by a health spa to enter into agreements with its members, must be filed with the department not later than 45 days after the membership plan was first offered to a consumer.

(b) The health spa's members' contracts must contain the provisions which are provided in Texas Civil Statutes, Article 52211, §§12-15.

(c) The name, address, and telephone number must be available to the department upon request for personnel charged with the management of each health spa facility.

§77.17. Rules for Hearings. Any violation of the rules of the Texas Department of Labor and Standards relating to health spas will be subject to enforcement by the department in accordance with the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§77.21. Forms. Forms shall be provided by the Texas Department of Labor and

Standards for purposes of complying with this title. The forms are hereby adopted by reference and may be obtained at the Texas Department of Labor and Standards, Labor, Licensing, and Enforcement Division, P.O. Box 12157, Austin, Texas 78711.

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Commissioner
Texas Department of
Labor and Standards

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(512) 475-0155.

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Chapter 79. Vehicle Storage Facility Act/Labor, Licensing and Enforcement

★ 16 TAC §§79.1, 79.5, 79.9, 79.13, 79.17, 79.21, 79.25, 79.29, 79.33, 79.37, 79.41

The Texas Department of Labor and Standards adopts on an emergency basis new §§79.1, 79.5, 79.9, 79.13, 79.17, 79.21, 79.25, 79.29, 79.33, 79.37, and 79.41, concerning fees, registration, and compliance requirements for vehicle storage facilities. The rules were previously proposed for adoption and published in the August 6, 1985, issue of the *Texas Register* (10 Tex-Reg 2524).

The rules cover fees, registration, and compliance requirements. The emergency status is necessary because Senate Bill 1388, 69th Legislature, 1985, requires the department to adopt rules concerning fees, registration, and compliance requirements, effective September 1, 1985. To implement the statutory mandate, the department is adopting the rules on an emergency basis.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6687-9a, §4, which provide the Texas Department of Labor and Standards with the authority to adopt rules pursuant to Texas Civil Statutes, Article 6252-13a, establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.

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

Commission—The Texas Department of Labor and Standards.

Commissioner—The commissioner of the Texas Department of Labor and Standards.

Department—The Texas Department of Labor and Standards.

Fence—An enclosure about a field or other space of wood, iron, or other materials intended to prevent intrusion from without or straying from within.

Owner of a vehicle—One of the following persons:

(A) a person in whose name the vehicle is registered under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1.

(B) a person in whose name the vehicle is registered under General Laws, Acts of the 41st Legislature, Second Called Session, 1929, Chapter 88, Texas Civil Statutes, Article 6675a-2, §2, or a member of the person's immediate family;

(C) a person who holds the vehicle through a valid lease agreement; or

(D) an unrecorded lienholder whose right to possess the vehicle exists through a chattel mortgage.

Vehicle—A motor vehicle subject to registration under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1, or any other device designed to be self-propelled or transported on a public highway.

Vehicle storage facility—A garage, parking lot, or any type of facility owned by a person other than a governmental entity for storing and parking ten or more vehicles.

§79.5. Vehicle Storage Facility Requirements. Each vehicle storage facility:

(1) if not currently enclosed by a fence of at least five feet, shall be completely enclosed by a fence of at least six feet in height, with a gate which is locked at all times the licensee or an agent or employee is not at the storage lot;

(2) shall have an all-weather surface that makes delivery and release of vehicles feasible in all weather conditions such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel or shell;

(3) shall have a sign at the entrance, clearly readable from the street setting out the name of the storage lot, the street address, the hours vehicles will be released to vehicle owners, and the state license number of the storage lot;

(4) shall have a sign setting out the per diem charge for storage and all other fees which may be charged by the storage lot. This sign shall be located so that it is clearly visible to a vehicle owner prior to payment of the fees;

(5) shall have an operable telephone which must be publicly listed, where the licensee can be contacted. If at any time, the number of the telephone is changed from the number set out in the application for authorization to operate as a vehicle storage facility, the licensee shall give written notice of the change to the department prior to the date the new number is used, setting out in such notice the name of the

storage lot, its location, its license number, the old telephone number, and the new telephone number; and

(6) for night time release of vehicles, shall maintain adequate illumination levels which shall be not less than five footcandles where the vehicles are maintained; 10 footcandles in the traffic lanes; and 50 footcandles at the entrance.

§79.9. Acceptance of Vehicles for Storage. When the licensee, agent, or employee of a storage lot accepts a vehicle towed without the consent of the vehicle owner, such person shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any differences from the information previously set out thereon, but shall not write over or deface in any manner any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip was incorrect, the storage lot shall note on its records the correct number.

§79.13. Vehicle Storage.

(a) No vehicle may be stored or kept on any storage facility authorized to operate as a vehicle storage facility unless it is kept inside the fenced area at all times.

(b) No parts shall be removed from any vehicle, and no vehicle shall be dismantled or wrecked within the fenced area of a private storage lot which is used for the storage of vehicles which were towed without the owner's consent; provided, however, vehicles may be dismantled, or demolished in such fenced area if the storage lot has a certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document issued by the State of Texas for the vehicle being demolished.

§79.17. Document Inspection. Whenever a person claims ownership or right of possession to a motor vehicle located on the facility such person shall be entitled to inspect the wrecker slip or wrecker ticket for the motor vehicle, and shall not be required to pay any fees or charges prior to inspecting the wrecker slip or wrecker ticket.

§79.21. Vehicle Transfers. When a motor vehicle has been delivered to a storage lot, it may not be moved from that vehicle storage facility without authorization by the vehicle owner; provided, however, the vehicle may be moved to another location after the vehicle has been at the vehicle storage facility for not less than 15 days; if the vehicle storage facility has sent notice to the last known registered owners of the motor vehicle and all lienholders of record, pursuant to the Certificate of Title Act, by certified mail, return receipt requested, at least 10 days prior to the date the vehicle is moved, and the vehicle storage facility has sent a copy of the notice to the department prior to the date the vehicle is moved. Such notice shall state:

(1) the vehicle storage facility where the motor vehicle is located and the hours the vehicle can be released to the vehicle owner from that storage lot;

(2) the amount of all fees which must be paid before the vehicle is released; and

(3) the date on which the vehicle will be moved from the vehicle storage facility if it is not recovered by the vehicle owner prior to that date.

§79.25. Vehicle Transfer Requirements. The licensee of the vehicle storage facility from which a vehicle is moved pursuant to this section shall ensure that the following requirements are met:

(1) that the vehicle owner is not charged any fees greater than those permitted under §79.5 of this title (relating to Vehicle Storage Facility Requirements), after the vehicle is towed to another location without the permission of the vehicle owner;

(2) that the provisions of the Texas Civil Statutes, Article 6701g-3, are fully complied with;

(3) that the vehicle owner can obtain possession of the vehicle upon demonstration of satisfactory evidence to show a right of possession and payment of all fees at any time between the hours posted on the sign daily on the same basis as is set out at whatever location the vehicle may be;

(4) that the vehicle storage facility from which the vehicle is moved retains records and informs the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the storage facility until such time as the vehicle is recovered by the vehicle owner or there was issued a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document issued by the State of Texas; and

(5) that the vehicle storage facility from which the vehicle is moved maintains, as part of its vehicle storage facility records, a record of the ultimate disposition of the vehicle to include the date and name of the person to whom the vehicle is released if released to the vehicle owner or a description of the document under which the vehicle was sold or demolished.

§79.29. Vehicle Documentation.

(a) Each licensee of a vehicle storage facility authorized to operate as a private vehicle storage facility shall keep written records on each vehicle that is kept or stored on the private storage lot. Such records shall contain the following information:

(1) year, make, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;

(2) date, time, and location from where the vehicle was towed;

(3) name of wrecker driver, the wrecker license plate number, and company towing the vehicle;

(4) the date the vehicle was released, the name of the individual to whom the vehicle was released, or if the vehicle was transferred to another location, pursuant to §79.25 of this title (relating to Vehicle Transfer Requirements), the address of that location and the name of the wrecker permit holder and the wrecker driver who made that transfer;

(5) if the vehicle ownership has been transferred due to any action of the vehicle storage facility or the vehicle has been disposed of or demolished, a copy of the certificate of title issued after the vehicle came into the possession of the vehicle storage facility, the certificate of authority to demolish, a police auction sales receipt, or transfer document issued by the State of Texas for the vehicle; and

(6) all amounts charged for the storage of the vehicle.

(b) The records required by this section may be kept in the form of wrecker tickets and wrecker slips so long as all information required by this section is kept on the tickets and slips.

(c) The records required by this paragraph shall be made available by the licensee, his agent, or his employee for inspection and copying upon request of any personnel from the department during the hours the vehicle storage facility must ensure that vehicles may be released to the vehicle owner.

(d) Each record required to be kept by this section shall be kept for two years from the date of the last transaction shown in the record under the care and custody of the licensee.

§79.33. Insurance Required. Each applicant shall file satisfactory proof of garagekeepers' legal liability insurance for the vehicle storage facility for which authorization to operate is sought. Such insurance shall include coverage for comprehensive, specified perils, and collision per incident and shall be issued by a company duly authorized to write such insurance in the State of Texas. Such insurance shall be in an amount of not less than \$9,000 for injury to or destruction of property of others if the vehicle storage facility has space to store not more than 50 motor vehicles; \$18,000 if the vehicle storage facility has space to store more than 50 motor vehicles but less than 100 motor vehicles; and \$25,000 if the vehicle storage facility has space to store more than 100 motor vehicles. Said policy shall provide that the insurance company will give notice to the department at least 30 days prior to any cancellation or expiration of the policy. Such policy shall be kept in full force and effect for the entire duration of the authorization and all renewals thereof.

§79.37. Criminal History Background Denial of License.

(a) The following criterion shall be utilized to determine whether an applicant

shall be issued a license if that applicant states in the application for said license that she/he has previously been or is presently under conviction for a criminal offense:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purpose of requiring a license to engage in the occupation or industry;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the convicted same or similar type of criminal activity as that in which the applicant previously had been involved;
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the functions and responsibilities of the licensed occupation or industry.

(b) In addition to the factors that may be considered in subsection (a) of this section, the department, in determining the present fitness of a person who has been convicted of a crime, may consider the following:

- (1) the extended nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or attempted rehabilitation effort while incarcerated or following release;
- (6) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person, the sheriff and chief of police in the community where the person resides, and any other persons in contact with the convicted person.

(c) It shall be the responsibility of the applicant to the extent possible to secure and provide the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by these sections.

(d) The applicants should also furnish proof in any form, as may be required by the licensing authority, that they have maintained a record of steady employment and have otherwise maintained a record of good conduct and have paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant has been convicted.

(e) If the department suspends or revokes a valid license, or denies a person a license or the opportunity to be examined for a license in accordance with these sections because of the person's prior conviction

of a crime and the relationship of the crime to the license, the department shall:

- (1) notify the person in writing, stating reasons for the suspension, revocation, denial, or disqualification;
- (2) use the review procedure provided by Texas Civil Statutes, Article 6252-13D.

(f) The department will be concerned with those offenses as defined as crimes of moral turpitude by statute or common law, and defined crimes, from Class A misdemeanors, first, second, and third degree felonies carrying fines and/or imprisonment or both.

§79.41. Forms. Forms shall be provided by the Texas Department of Labor and Standards for purposes of complying with this title. The forms are hereby adopted by reference and may be obtained at the Texas Department of Labor and Standards, Labor/Licensing and Enforcement Division, P.O. Box 12157, Austin, Texas 78711.

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Commissioner
Texas Department of
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For further information, please call
(512) 475-0155.

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TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 75. Curriculum Subchapter F. Graduation Requirements

★ 19 TAC §75.151, §75.152

The Texas Education Agency adopts on an emergency basis amendments to §75.151 and §75.152, concerning graduation requirements.

Section 75.151, concerning high school graduation requirements, and §75.152, concerning advanced high school program, allow students who achieve an acceptable score on the Texas Physical Fitness-Motor Ability Test provided by the Governor's Commission on Physical Fitness or the Alliance for Health, Physical Education, Recreation, and Dance Youth Fitness Test to substitute certain

courses for the one and one-half required units of physical education.

Experience of school districts this past year calls into question the relationship between these one-time tests and the continued maintenance of a reasonable level of physical fitness. Districts found that there was very little difference in performance between students who were taking physical education courses at the time of testing and those who were not participating in physical education. Further, significant numbers of both physical education students and nonphysical education students did not pass the test.

The amendments to §75.151(c)(6)(A) and §75.152(b)(7)(A), retain the provision that permits substitution of specified activities, such as drill team, marching band, or ROTC, for physical education, but delete the physical fitness test requirement. New §75.151(c)(6)(D) and new §75.152(b)(7)(C) permit school districts to award state credit for physical education, not to exceed two units, for appropriate private or commercially-sponsored physical activity programs approved by the commissioner of education.

Section 75.152(b)(1) is also amended to provide that research/technical writing may be substituted for English IV (academic) in the advanced high school program and to delete provisions allowing the substitution of journalism, debate, and introduction to speech communication for English IV (academic) in the advanced high school program.

These amendments are adopted on an emergency basis so they will be in place for the start of the 1985-1986 school year.

These amendments are adopted on an emergency basis under the authority of the Texas Education Code, §21.101, which directs the State Board of Education to designate the essential elements of each subject in a well-balanced curriculum and to require each school district to provide instruction in those elements at appropriate grade levels.

§75.151. High School Graduation Requirements.

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

(c) All students shall complete a minimum of 21 units of credit to receive a high school diploma. The required units shall include the following:

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

(6) Physical education—one and one-half units.

(A) The school district board of trustees may allow students to substitute certain physical activities for the one and one-half required units of physical education. Such substitutions shall be based upon the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; dance I-IV; and two- or three-hour block vocational gain-

ful employment units. [To be eligible to substitute the listed physical activities, except athletics, for physical education, students shall achieve an acceptable score on the Texas Physical Fitness Motor Ability Test provided by the Governor's Commission on Physical Fitness or the Alliance for Health, Physical Education, Recreation, and Dance Youth Fitness Test. The minimum score shall be established by the commissioner of education and shall require students to demonstrate a level of physical fitness appropriate to their age and grade.]

(B)-(C) (No change.)

(D) School districts may award state credit for physical education not to exceed two units of credit for appropriate private or commercially-sponsored physical activity programs conducted either on or off campus. Districts shall apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education.

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

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

§75.152. Advanced High School Program.

(a) (No change.)

(b) The required units shall include:

(1) English language arts—four units. English I, II, III, and IV (academic). [Journalism] Creative/imaginative writing and research/technical writing [debate, and introduction to speech communication] may substitute for English IV (academic).

(2)-(6) (No change.)

(7) Physical education—one and one-half units.

(A) The school district board of trustees may allow students to substitute certain physical activities for the one and one-half required units of physical education. Such substitutions shall be based upon the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; dance I-IV; and two- or three-hour block vocational gainful employment units. [To be eligible to substitute the listed physical activities, except athletics, for physical education, students shall achieve an acceptable score on the Texas Physical Fitness Motor Ability Test provided by the Governor's Commission on Physical Fitness or the Alliance for Health, Physical Education, Recreation, and Dance Youth Fitness Test. The minimum score shall be established by the commissioner of education and shall require students to demonstrate a level of physical fitness appropriate to their age and grade.]

(B) (No change.)

(C) School districts may award state credit for physical education not to exceed two units of credit for appropriate private or commercially-sponsored physical activity programs conducted either on or off campus. Districts shall apply to the commissioner of education for approval of such

programs which may be substituted for state graduation credit in physical education.

(8)-(11) (No change.)

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

Issued in Austin, Texas, on August 13, 1985.

TRD-858008

W.N. Kirby
Commissioner of
Education

Effective date: September 4, 1985

Expiration date: January 2, 1986

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

★ ★ ★

Chapter 89. Adaptations for Special Populations

Subchapter G. Special Education

Clarification of Provisions in Federal Regulations and State Law

★ 19 TAC §§89.228, 89.235, 89.236,
89.239, 89.242, 89.243

The Texas Education Agency adopts on an emergency basis amendments to §§89.228, 89.235, 89.236, 89.239, 89.242, and 89.243, concerning special education. The amendments implement the provisions of House Bill 72, 68th Legislature, 2nd Called Session, 1984, and other laws passed by the 69th Legislature, 1985.

The amendment to §89.228, concerning provision of services for students placed by their parents in private schools, revises the description of student attendance accounting for dual enrollment to include a reference to determination of contact hours based on the instructional arrangement in which the student is served.

The amendment to §89.235, concerning special education general program requirements, deletes subsection (g), concerning disciplinary suspension of handicapped students. Provisions for discipline for special education students are included in new §133.28, concerning discipline of handicapped students. Subsection (h) is redesignated subsection (g), with no change in the text.

The proposed amendment to §89.236, concerning special education cooperatives, clarifies the responsibilities of cooperative fiscal agents and provides that each member district in the cooperative is responsible for contributing a prorated share of state special education funds or local operating funds to the cooperative. The amount to be contributed shall be determined by the management board of the cooperative. Subsection (h), which sets out the pre-1984-1985 funding system for cooperatives, under which

personnel units were allocated directly to the cooperative, is being deleted.

The amendment to §89.239, concerning other special program provisions, concerns students enrolled at the Texas School for the Blind or the Texas School for the Deaf and implements House Bill 1593, 69th Legislature, 1st Called Session, 1985. The amendments add a new subsection (c) which provides that, beginning with the fall of 1985, for each student enrolled in the Texas School for the Blind or Texas School for the Deaf, the school district responsible for providing appropriate special education services to the student shall share the cost of the student's education (excluding the summer programs) as provided for in the Texas Education Code, §21.507(b) and (c). Under proposed new subsection (d), school districts shall provide each parent or legal guardian of an eligible visually handicapped or auditorially handicapped student certain written information prior to consideration of the student's educational placement for special education services, including the availability of programs offered by the Texas School for the Blind or Texas School for the Deaf for which the student may be eligible, the eligibility requirements and admission criteria for the Texas School for the Blind or Texas School for the Deaf as applicable, and the rights of students in regard to admission to the Texas School for the Blind or Texas School for the Deaf and in regard to appeal of admission decisions.

The amendment to §89.242, concerning instructional arrangements and settings, implements the new state special education funding system required in House Bill 72, 68th Legislature, 2nd Called Session. Under this funding system, special education full-time equivalent students are funded in an amount equal to the adjusted basic allotment multiplied by the weight for the student's instructional arrangement. The types of instructional arrangements and their weights are listed in the Texas Education Code, §16.151(a). The amendment to §89.242 defines each instructional arrangement.

The amendment to §89.243, concerning provision of services for students residing in intermediate care facilities for the mentally retarded in Texas, implements the new state special education funding system required by House Bill 72. Subsection (p) provides that for school districts serving eligible handicapped students within intermediate care facilities for the mentally retarded (ICF/MR) Level V or Level VI facilities may count contact hours in the hospital class instructional arrangement for state funding purposes. School districts serving eligible handicapped students outside of ICF/MR facilities may count contact hours in the instructional arrangement in which the students are served in the district's special education program. New subsection

(q) provides that school districts shall annually report to the agency full-time equivalents generated by out-of-district handicapped students residing in care and treatment facilities. These full-time equivalents shall be reported separately from the full-time equivalents of in-district handicapped students.

The amendments are adopted on an emergency basis to ensure that school districts are able to plan for the start of the 1985-1986 school year.

The amendments are adopted on an emergency basis under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for the administration of the Foundation School Program; and §16.151, which includes special education as a part of the Foundation School Program and which directs the State Board of Education to prescribe the qualifications an instructional arrangement must meet to be funded under the Foundation School Program.

§89.228. Provision of Services for Students Placed by their Parents in Private Schools.

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

(f) If the ARD committee determines that a private school student is eligible and in need of special education instruction or related services or both, the parent may choose to enroll the student full time in the public school. If the parent does not choose to do this, the school district shall make the special education services available only on the basis of dual enrollment. Based on the services and amount of time needed to provide those services as set forth in each student's individual educational plan, when parents choose to enroll a child under the dual enrollment provision, the school district shall use one of the following arrangements for dual enrollment:

(1) enroll the student for at least four consecutive hours per day and count the student eligible for [both] full state ADA, for contact hours based on the instructional arrangement in which the student is served, and for full federal funding (in the annual child count);

(2) enroll the student for at least two consecutive hours per day and count the student eligible for one-half state ADA, for contact hours based on the instructional arrangement in which the student is served, and for full federal funding; or

(3) enroll the student for any amount of time needed less than two hours per day and count the student eligible for contact hours and [only] for full federal funding, but not for state ADA.

(g)-(i) (No change.)

§89.235. General Program Requirements.

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

(g) Minimum standards for three basic levels of suspension are as follows:

[(1) Summary (emergency) suspension.

[(A) Summary suspension is an emergency procedure for the temporary, immediate removal of a student from his or her regularly scheduled school program for a period not to exceed three school days.

[(B) Summary suspension shall be used only when a student exhibits dangerous behavior, posing a physical threat to himself or herself or to others. The suspension may be effected immediately upon the decision of the designated building administrator; however, the district must make and document efforts to contact and notify the parent prior to the suspension.

[(C) The student shall be given oral or written notice of charges against the student, an explanation of the evidence supporting such charges, and at least an informal opportunity for the student to present his or her evidence in rebuttal of the charges.

[(D) The district shall not be obligated to provide educational services during the time of summary suspension.

[(E) Summary suspension is intended to be used in emergency situations only, and consecutive three-day summary suspensions are prohibited. Procedures for short-term or long-term suspensions shall apply in all other cases.

[(2) Short-term suspension.

[(A) Short-term suspension for a period of time not to exceed 10 school days may be effected for a handicapped student who poses an immediate physical threat to himself or herself or others, is destructive of school property, is demonstrating behaviors that are significantly disrupting the learning process for the student or for others, or is otherwise engaging in conduct which would warrant short-term suspension for a nonhandicapped student under local policy. A qualified group of professionals, consisting of at least the student's special education teacher, a special education or regular education support person, and the designated building administrator, must determine that the behavior in question was not related to the handicapping condition or inappropriate placement before short-term suspension may be effected. School officials are cautioned to be sure that the professionals making this determination are actually qualified to assess the behavior-handicap link for the student in question.

[(B) The student shall be given oral or written notice of the charges against the student, an explanation of the evidence in support of such charges, and at least an informal opportunity for the student to present his or her rebuttal of the charges. The district shall make every effort to ensure that the student understands the charges and shall provide any assistance necessary for overcoming language barriers to communicating the student's version of the facts in the hearing.

[(C) The school district shall not be required to provide any educational services to the student unless it has been previously documented by an ARD committee that failure to provide educational services would cause significant regression.

[(D) The district must document efforts to contact the parent prior to the suspension.

[(E) When a student is given summary or short-term suspension or both totalling 15 school days in any one scholastic year, an ARD review of the student's IEP shall be conducted.

[(3) Long-term suspension.

[(A) Long-term suspension for a period of 11 days or more may be effected for a handicapped student who engages in conduct which would warrant long-term suspension for a nonhandicapped student under local policy or state statute and whose behavior has been determined by an ARD committee not to be related to the handicapping condition or inappropriate placement.

[(B) In determining whether a student's disruptive behavior was related to a student's handicapping condition, the ARD committee shall base its decision on current evaluation and assessment data and on review of the current IEP documentation rather than on established eligibility or previous ARD committee decisions. The team shall consider whether the student's behavior indicates the need for new assessment or evaluation data.

[(C) Prior to a suspension of 11 days or more, the student shall be entitled to due process, including a hearing before the local board of trustees or its designee. At that local hearing, the student may be represented by counsel, and may confront and cross-examine witnesses and present witnesses and evidence in his or her own behalf. The district shall make every effort to ensure that the student understands the charges and shall provide any assistance necessary for overcoming language barriers to communicating the student's version of the facts in the hearing.

[(D) The suspension shall be effected for a set period of time not to exceed the end of the current school term. The ARD committee shall determine the educational services to be provided during the time of suspension. The student's IEP shall include goals and objectives designed to assist in returning the student to school.

[(E) If the ARD committee determines that the student's disruptive behavior is related to the handicapping condition or inappropriate placement, the student shall not be suspended. If the disruptive behavior on the part of the student indicates an inappropriate placement, the ARD committee shall review the placement and consider alternatives.

[(4) A local district may establish options or alternatives to suspension such as special assignment centers. A handicapped student may be placed in a special

assignment center in accordance with specifications on his or her IEP, or in place of a short-term suspension subject to the procedures for short-term suspension. Placement in a special assignment center for more than 10 consecutive days constitutes a change in placement.

(5) The provisions of subsection (d) of §89.222 of this title (relating to Parent Participation in ARD Committee Meetings) are applicable in circumstances arising under this section.

(6) The local district is not obligated to refer for special education assessment and evaluation a regular student who has been suspended for violation of school policy to determine if such student might be handicapped. However, local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for evaluation and testing. Professional school district employees should make a referral whenever there exists a reasonable basis to believe that a student is handicapped. However, a suspended regular education student is not entitled to reinstatement to classroom and campus privileges pending any assessment and evaluation which is to be made during the term of the student's suspension.]

(g)(h) A handicapped student's secondary program shall terminate either with graduation or when the student no longer meets the age requirement for eligibility in the Texas Education Code, §16.104. A handicapped student who has not reached his or her 21st birthday on September 1, of a scholastic year shall be eligible for services through the end of that scholastic year or until graduation.

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

§89.236. *Special Education Cooperatives.*

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

(c) One member district of the cooperative shall be designated as fiscal agent. The fiscal agent district must be accredited and must have grades kindergarten-12. The regional education service center may serve as the fiscal agent. The fiscal agent shall be responsible for [all] financial matters on behalf of the cooperative including applications, reports and/or accounting for cooperative-wide personnel; cooperative operating expenses; Education of the Handicapped Act, Part B, funds; and Education Consolidation and Improvement Act, Chapter 1, handicapped funds.

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

(h) The management board of each cooperative is responsible for determining each member's share of allocated special education personnel units and other funds based on student needs of the cooperative as a whole. The special education verification report reflects each member's share of the total allocations including the percentage of shared time of itinerant and support

staff and is signed by each superintendent to indicate agreement. Each district's total personnel unit allocation will be reduced by 0.275 for each special education personnel unit assigned as their share.]

(i)(j) Each school district within the cooperative is [reporting the attendance of its special education students will receive the current operating cost allotment for those students. Member districts are] responsible for contributing a prorated share of the generated state special education and/or local [operating] funds to the fiscal agent for cooperative-wide personnel and operating expenses [the necessary maintenance] of the cooperative. This amount should be determined by the management board of the cooperative.

§89.239. *Other Special Program Provisions.*

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

(c) Beginning with the fall of 1985 and thereafter, for each student enrolled in the Texas School for the Blind or Texas School for the Deaf, the school district responsible for providing appropriate special education services to the student shall share the cost of the student's education (excluding the summer programs) as provided for in the Texas Education Code, §21.507 (b)(c).

(1) Each school district and state school shall submit necessary information not available to the agency in order to determine the district's share of the student's educational costs. The information must be submitted in a form prescribed by the commissioner within 30 calendar days of the student's actual enrollment in the Texas School for the Blind or Texas School for the Deaf.

(2) The agency will make deductions in the school district's regularly scheduled Foundation School Program fund payments and will make payments to the Texas School for the Blind or Texas School for the Deaf according to an established schedule.

(d) School districts shall provide each parent or legal guardian of an eligible visually handicapped or auditorially handicapped student the following written information prior to consideration of the student's educational placement for special education services:

(1) the availability of programs offered by the Texas School for the Blind or Texas School for the Deaf for which the student may be eligible;

(2) the eligibility requirements and admission criteria for the Texas School for the Blind or Texas School for the Deaf as applicable; and

(3) the rights of students in regard to admission to the Texas School for the Blind or Texas School for the Deaf and in regard to appeal of admission decisions.

§89.242. *Instructional Arrangements and Settings.*

(a) (No change.)

(b) For the purpose of determining the student's instructional arrangement, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal committee for a handicapped student whose individual educational plan specifies a shortened day.

(c)(b) Instructional arrangements [settings] for handicapped students will [may] include the following:

(1) Homebound—This instructional arrangement is for providing special education instruction in the student's home or hospital room. This instructional arrangement will be used for eligible handicapped students who are served at home or hospital bedside or who are considered to be home based. Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician. Home based instruction may be provided as an option for eligible handicapped students removed to an alternative education program as a result of disciplinary action. Home based instruction may also be used for prekindergarten students whose developmental levels are such that they are not capable of participating in special education classes for early childhood. [regular education classes with special education supportive services, supplementary aids, or other special arrangements.]

(2) Hospital class—This instructional arrangement is for providing special education instruction in a classroom in a hospital facility or an approved residential care and treatment facility not operated by the school district. Students served in this instructional arrangement are expected to reside in the facility a minimum of four consecutive weeks as documented by an appropriate authority. Students served, but not residing in the facility, are considered to be in a community class instructional arrangement. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class. [special education classes operated by the district on the district regular campus or on a special campus in the district.]

(3) Speech therapy—This instructional arrangement is for speech therapy services provided by a licensed/certified speech therapist. [special classes in a facility not operated by the district but in which district special education personnel are assigned to serve eligible handicapped students in the classes such as community classes or hospital classes.]

(4) Resource room—This instructional arrangement is for providing special education instruction and related services in a school district setting for less than 50% of the regular school day. This arrangement also includes services provided by a special education itinerant teacher (one who pro-

vides instruction to handicapped students on more than one campus). Regardless of the percent of time the student spends in special education, this arrangement includes any supportive special education services provided in a regular education class such as that provided by helping teachers, interpreters, and special education aides working directly with handicapped students. [occupational preparation programs including the following:]

[(A) vocational education;

[(B) CVAE classes;

[(C) VEH classes;

[(D) VAC classes, and on the job training;

[(i) students working part time shall receive a minimum of two hours of job-related and academic instruction per day;

[(ii) students working full time shall receive a minimum of one hour of job-related instruction per week;

[(iii) when VAC travel is paid from local funds, job-related instruction may be offered through on-job supervision;

[(iv) when VAC travel is paid from state or federal vocational education funds, job-related instruction shall be in a school facility.

[(E) sheltered workshop, including a minimum of one hour of job-related instruction per day.]

(5) **Self-contained, mild and moderate, regular campus**—This instructional arrangement is for providing special education instruction and related services to mildly to moderately handicapped students who are in a self-contained program for 50% or more of the regular school day on a regular school campus. [hospital bedside instruction for students who are expected to be confined for a minimum of four consecutive weeks as documented by the student's physician. The district may request a waiver of the four-week requirement from the commissioner of education.]

(6) **Self-contained, severe, regular campus**—This instructional arrangement is for providing special education instruction and related services to severely handicapped students who are in a self-contained program for most of the regular school day on a regular school campus. Students may be capable of attending no more than two regular education classes (such as music, physical education, or art). [homebound instruction for students who are expected to be confined for a minimum of four consecutive weeks as documented by the student's physician.]

(7) **Self-contained, separate campus**—This instructional arrangement is for providing special education instruction and related services to students who are in a self-contained program at a separate campus operated by the school district that provides only special education instruction. This arrangement includes services provided to special education students at an off-

campus facility leased or arranged for by the school district for the purpose of providing special education to district students. [home-based instruction for the following:

[(A) eligible handicapped students who are on long-term suspension; and

[(B) prekindergarten handicapped students whose developmental levels are such that they are not capable of participating in special education classes for early childhood.]

(8) **Multidistrict class**—This instructional arrangement is for providing special education instruction and related services to students from more than one school district served in a single location. These special education services are not otherwise available in the respective sending districts. [other instructional settings approved by the Texas Education Agency.]

(9) **Nonpublic day school**—This instructional arrangement is for providing special education instruction to students through a contractual agreement with an approved nonpublic school for special education.

(10) **Vocational adjustment class**—This instructional arrangement is for providing special education instruction to students who are placed on a job with regularly scheduled supervision by special education teachers. A student in part-time job training/employment receives a minimum of two hours daily instruction from special education instructional personnel. A student in full-time job training/employment receives a minimum of one hour a week instruction from special education instructional personnel. For state special education funding purposes, students in vocational adjustment classes will receive daily contact hours based on the number of credits assigned to the course (not to exceed three credits) provided the students are present on their respective daily jobs. Handicapped students may participate in other occupational preparation programs (which do not generate special education funds) including regular vocational education, coordinated vocational academic education (CVAE) classes, and vocational education for the handicapped (VEH) classes.

(11) **Community class**—This instructional arrangement is for providing special education instruction and related services to students whose instruction is provided by the school district's special education personnel in a facility not operated by a school district which also provides other services for handicapped individuals. This instructional arrangement includes sheltered workshops for handicapped students. A student participating in a sheltered workshop must receive at least one hour per day of special education instruction.

(12) **Self-contained, pregnant**—This instructional arrangement is for providing special education instruction to eligible pregnant students whose instruction is

provided in a self-contained situation. A class serving only pregnant students may not be considered as any other instructional arrangement.

§89.243. *Provision of Services for Students Residing in Intermediate Care Facilities for the Mentally Retarded in Texas.*

(a)-(n) (No change.)

(o) If the local school board determines that the students in the facility are legal residents of that district in accordance with the Texas Education Code, §21.031, the average daily attendance (ADA) of the students may be counted. [These personnel units will be subtracted from the total personnel unit allocation at the 0.275 weight.]

(p) School districts serving eligible handicapped students within intermediate care facilities for the mentally retarded (ICF/MR) Level V or Level VI facilities may count contact hours in the hospital class instructional arrangement in which the students are served in the district's special education program. [School districts in which intermediate care facilities for the mentally retarded (ICF/MR) are located may apply for supplemental special education personnel units to ensure the provision of appropriate instruction to eligible handicapped students residing at the facility. Students whose parents reside within the district where the ICF/MR is located are not eligible to be counted for the supplemental unit allocation. Only those students whose parents are Texas residents living outside the district where the ICF/MR is located are eligible to be counted for the supplemental unit allocation. These units shall be subtracted from the total personnel unit allocation at the 0.275 weight. Supplemental units shall be allocated as follows.

[(1) One unit shall be allocated for every 12 eligible students in an ICF/MR designated as a Level I facility.

[(2) One unit shall be allocated for every nine eligible in an ICF/MR designated as a Level V facility.

[(3) One unit shall be allocated for every six eligible students in an ICF/MR designated as a Level VI facility.

[(4) Fractional units shall be allocated on a pro rata basis.]

(q) School districts shall annually report to the agency full-time equivalents generated by out-of-district handicapped students residing in care and treatment facilities. These full-time equivalents shall be reported separately from the full-time equivalents of in-district handicapped students.

(r)[(q)] Within funds available, school districts providing special education instruction for eligible handicapped students in intermediate care facilities for the mentally retarded may receive a supplemental federal allocation not to exceed \$400 per student per school year for each eligible student whose parents are Texas residents living outside the district in which the ICF/MR is located. Applications for supplemental

assistance shall be included with the district's standard application system (special education) application. This subsection expires at the end of the 1985-1986 school year.

Issued in Austin, Texas, on August 15, 1985.

TRD-858009

W. N. Kirby
Commissioner of
Education

Effective date: September 4, 1985
Expiration date: January 2, 1986
For further information, please call
(512) 475-7077.



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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 1.

ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 121.

Telecommunications Services Division

Telecommunications Services

★ 1 TAC §§121.2-121.6, 121.8, 121.9

(Editor's note: The State Purchasing and General Services Commission proposes for permanent adoption the amendments and new section it adopts on an emergency basis in this issue. The text of the amendments and new section is published in the Emergency Rules section of this issue.)

The State Purchasing and General Services Commission proposes amendments to §§121.2-121.6, 121.8, and 121.9, concerning definitions, coverage, commission responsibility and method of contracting, billing process, joining the system and requests for additional service, operations, and centralized Capitol Complex telephone system. These amendments and new section are proposed to comply with changes to Texas Civil Statutes, Article 610b, Article 10, and House Bill 2375, which became effective September 1, 1985.

George L. Rutherford, Telecommunications Services Division director, has determined that for the first five-year period the sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Rutherford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is provision of a coordinated review through the Automated Information Telecommunications Council of state expenditures for telecommunications services and equipment. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to George L. Rutherford, Director, Telecommunications Services Division, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047.

The amendments and new section are proposed under Texas Civil Statutes, Article 601b, Article 10, which provide the State Purchasing and General Services Commission with the authority to manage the operation of a system of telecommunications services for all state agencies and to provide centralized telephone service in the Capitol complex.

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 August 30, 1985.

TRD-857843

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

Earliest possible date of adoption:

October 11, 1985

For further information, please call
(512) 463-3446.

★ ★ ★

Part VI. Texas Surplus Property Agency Chapter 143. Plan of Operation

★ 1 TAC §143.1

The Texas Surplus Property Agency proposes an amendment to §143.1, concerning Texas plan of operation. The amendment changes the wording in the document adopted by reference. Changes are made in paragraph 1, part V, concerning means and method of financing and an addition is proposed to paragraph 1, part V, service charge trust fund.

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

Mr. Titzman also has determined that for each year of the first five years the section is in effect there is no anticipated public benefit. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Noelle D. Thomas, P.O. Box 8120, San Antonio, Texas 78208, (512) 681-2381.

The amendment is proposed under Texas Civil Statutes, Article 6252-6b, which provides The Texas Surplus Property Agency with the authority to make rules.

§143.1. *Texas Plan of Operation.* The Texas Surplus Property Agency adopts by reference the rules contained in the October 17, 1977, Texas Plan of Operation, as amended January 1984, and as amended August 1985. This document serves as a guideline for this agency in the administration of the Donation Program within the State of Texas. The plan outlines to the administrator of the General Services Administration the methods by which this agency will implement the rules and regulations as set forth in the G.S.A. Donation Handbook. Copies of this document are available for public inspection at any Texas Surplus Property Agency office in the state.

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 August 30, 1985.

TRD-857977

Marvin J. Titzman
Executive Director
Texas Surplus Property
Agency

Earliest possible date of adoption:

October 11, 1985

For further information, please call
(512) 681-2381.

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TITLE 4. AGRICULTURE
Part I. Texas Department of
Agriculture
Chapter 5. Quarantines

★ 4 TAC §§5.300-5.304

The Texas Department of Agriculture proposes new §§5.300-5.304, concerning European brown garden snail quarantine.

The new sections are proposed to prevent the movement of the European brown garden snail into Texas. They establish a quarantine against infested areas outside the state at the boundaries of the state of Texas, define the quarantined area and articles which are subject to the quarantine, and specify conditions under which regulated articles may enter Texas.

Ron White, assistant commissioner for Regulatory Division, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The anticipated effect on state government is an estimated additional cost of \$66,384 in 1986, \$68,376 in 1987, \$70,427 in 1988, \$72,540 in 1989, and \$74,716 in 1990. There will be no fiscal implications for local government. The cost per employee for small or large businesses in the state of Texas due to the nature of the quarantine will be minimal, i.e. regulatory actions (certification) to be initiated in state of origin. It is estimated that the average load is valued at \$15-25,000. The inspection fee is expected to be \$15 per load or 1.0-3.0% of sales price of each load.

Mr. White also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is prevention of further infestation by the snail in both horticultural growing and selling facilities throughout the state. In those locations where the snail already exists, control of the snail will reduce damage to ornamental plants, citrus and other horticultural crops.

The anticipated economic cost to individuals who are required to comply with the rule as proposed will be \$15 per truck load for inspection costs each year from 1986-1990.

Comments on the proposal may be submitted to Ron White, Assistant Commissioner for Regulatory Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The new sections are proposed under the Texas Agriculture Code, §71.001, Chapter 71, Subchapter A, which provides the Texas Department of Agriculture with the authority to establish quarantines against out of state diseases and pests where the department has determined that a dangerous insect pest or plant di-

sease new to and not widely distributed in this state exists in any area outside the state.

§5.300. Quarantined Pest. The quarantined pest is the European brown garden snail (*Helix aspersa* Muller).

§5.301. Quarantined Area. The quarantined areas are the areas in the State of California and any other area which has been or may be found by the commissioner to be infested with the European brown garden snail.

§5.302. Quarantined Articles. The quarantined articles are any article capable of transporting or harboring European brown garden snail, including ornamentals, horticultural and nursery stock.

§5.303. Conditions Governing Shipments into Texas.

(a) Quarantined articles from infested areas may enter Texas, provided each shipment is accompanied by a compliance certificate issued by, and under the signature of an authorized inspector of the state of origin, certifying that regulated articles contained in the shipment were inspected by an authorized inspector of the state of origin, and found to be free of European brown garden snail; or that the pest is not known to occur in the nursery or growing area from which live plant shipments originated.

(b) Regulated articles, other than live plant material, originating from infested areas may enter Texas when:

(1) regulated articles are accompanied by a certificate issued by, and bearing the signature of an authorized inspector of the state of origin, certifying that such regulated articles were inspected by an authorized inspector of the state of origin and found to be free of European brown garden snail;

(2) regulated articles are accompanied by a certificate issued by, and bearing the signature of an authorized inspector of the state of origin, certifying that such regulated articles were treated as recommended by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, treatment of plant-feeding snails.

(c) The movement of regulated articles from regulated areas is prohibited unless such shipments are accompanied by a certificate of origin signed by an authorized representative of the plant industry regulatory division of the state of origin.

(d) Shipments of regulated articles arriving in Texas without proper certification may be refused entry and returned to the shipper or destroyed at the discretion of the Texas Department of Agriculture. Shipments refused entry shall be returned or destroyed at no expense to the department.

(e) Shipments of regulated articles with the required certification which have

entered Texas and have been found to be infested with European brown garden snail may be returned to the shipper or destroyed at the discretion of the department. Further shipments of regulated articles from the shipper who has been found to be in violation of this chapter may be refused entry into Texas until recertification can be obtained from the state regulatory officials of the state of origin.

(f) In the event four or more properly certified shipments of regulated articles from a regulated or infested area are found to be infested with European brown garden snail upon arrival in Texas, within a 12-month period, further shipments of regulated articles from such area may be refused entry into Texas until necessary action has been taken by state agriculture officials in the state of origin to enter into agreement with the department for acceptable methods to prevent further introduction of European brown garden snail into Texas.

§5.304. Penalties.

(a) Any person who violates any of the provisions of §§5.300-5.303 of this title (relating to Quarantined Pest; Quarantined Area; Quarantined Articles; and Conditions Governing Shipments into Texas), shall be guilty of a misdemeanor, punishable by a fine of not more than \$100 per offense.

(b) A person commits a separate offense for each plant or plant product sold or transported in violation of these rules.

(c) A private or common carrier, including a railway, steamship, motorboat, bus, or truck, that transports or delivers any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of a provision of §§5.300-5.303 of this title (relating to Quarantined Pest; Quarantined Area; Quarantined Articles; and Conditions Governing Shipments into Texas), is liable to the state for a penalty in the amount of \$500.

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

Issued in Austin, Texas, on September 4, 1985.

TRD-858013

Dolores Alvarado Hibbe
Hearings Officer
Texas Department of
Agriculture

Earliest possible date of adoption:

October 11, 1985

For further information, please call
(512) 463-7563.

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**TITLE 16. ECONOMIC
REGULATION
Part I. Railroad Commission
of Texas
Chapter 5. Transportation
Division
Subchapter L. Insurance
Requirements**

★16 TAC §5.183

The Railroad Commission of Texas proposes an amendment to §5.183, concerning minimum limits of insurance required. The commission makes these amendments to ensure additional protection for the public.

Nim K. Graves, assistant director, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Graves also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be additional public protection by increasing the minimum liability insurance coverage from \$500,000 to \$750,000 for motor carriers operating in Texas interstate commerce. The anticipated economic cost to individuals who are required to comply with the rule as proposed will be, annually, approximately \$341 per vehicle operated. The proposed rule will affect less than 5.0% of the 75,000 vehicles in operation by motor carriers.

Comments on the proposal may be submitted to Mike James, Acting Director, Transportation Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 911b, §13, which

provide the commission with the authority to set insurance limits for motor carriers.

§5.183. Minimum Limits. The minimum amounts referred to in §5.181 of this title (relating to Evidence of Insurance Required) are hereby prescribed as follows:

(1) Combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others (excluding cargo)—\$750,000 [\$500,000].

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

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

Issued in Austin, Texas, on August 12, 1985.

TRD-857903

Walter Earl Little
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:

October 11, 1985

For further information, please call
(512) 463-7149.

★ ★ ★

**Subchapter M. Motor Bus
Companies**

★16 TAC §5.217

The Railroad Commission of Texas proposes an amendment to §5.217, concerning insurance requirements for motor bus companies. The amendment will provide additional protection for the public.

Nim K. Graves, assistant director, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Graves also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be additional public protection by increasing the minimum liability coverage of motor bus companies operating vehicles of seating capacities of 15 or less passengers from \$500,000 to \$750,000, and those operating vehicles of seating capacities of more than 15 passengers from \$500,000 to \$2.5 million.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be, annually, approximately \$453 per vehicle of 15 or less passenger seating capacity and \$4,116 per vehicle with more than a 15-passenger seating capacity. The section would affect approximately 98% of

the 350 buses operated when the seating capacity is 15 or less, and less than one-half of 1.0% of the 2,200 buses operated with seating capacities more than 15.

Comments on the proposal may be submitted to Mike James, Acting Director, Transportation Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 911a, §11, which provide the commission with the authority to set insurance limits for motor bus companies.

§5.217. Insurance. All motor bus companies shall be subject to and governed by the insurance requirements of Subchapter L of this chapter (relating to Insurance Requirements). The minimum amounts for each motor vehicle as referred to in §5.181 of this title (relating to Evidence of Insurance Required) are hereby prescribed as follows for motor bus companies.

(1) Seating capacity of 15 or less passengers:

(A)[(1)] combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or others (excluding cargo)—\$750,000 [\$500,000];

(B)[(2)] limit for loss of or damage to cargo carried on any one motor bus—\$5,000;

(C)[(3)] limit for loss of or damage to or aggregate of losses or damages of or to cargo occurring at any one time and place—\$5,000.

(2) Seating capacity of more than 15 passengers:

(A) combined single limit for bodily injuries to or death of all persons injured or killed in any accident, to property or others (excluding cargo)—\$2.5 million;

(B) limit for loss of or damage to cargo carried on any one motor bus—\$5,000;

(C) limit for loss or damage to or aggregate of losses or damages of or to cargo occurring at any one time and place—\$5,000.

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 August 12, 1985.

TRD-857904

Walter Earl Little
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:

October 11, 1985

For further information, please call
(512) 463-7149.

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TITLE 19. EDUCATION

Part II. Texas Education

Agency

Chapter 75. Curriculum

Subchapter F. Graduation Requirements

★ 19 TAC §75.151, §75.152

The Texas Education Agency proposes amendments §75.151 and §75.152, concerning graduation requirements.

Section 75.151, concerning high school graduation requirements, and §75.152, concerning advanced high school program, allow students who achieve an acceptable score on the Texas Physical Fitness-Motor Ability Test provided by the Governor's Commission on Physical Fitness or the Alliance for Health, Physical Education, Recreation and Dance Youth Fitness Test to substitute certain courses for the one and one-half required units of physical education.

Experience of school districts this past year calls into question the relationship between these one-time tests and the continued maintenance of a reasonable level of physical fitness. Districts found that there was very little difference in performance between students who were taking physical education courses at the time of testing and those who were not participating in physical education. Further, significant numbers of both physical education students and nonphysical education students did not pass the test.

The proposed amendment deletes the requirement for acceptable performance on a physical fitness test before the activities listed in the section may be substituted for physical education.

Representatives of the Governor's Commission on Physical Fitness have urged that the physical fitness test be maintained, because studies show that the physical fitness level of Texas youth are declining. However, the agency finds at this time that requiring students to prove physical fitness only one time in four years is not effective enough to justify the administrative burden. Because of concern over fitness levels for Texas young people, the board has directed the agency staff to review the essential curriculum elements for physical education. Local school districts will continue to have the option to use physical fitness test for their students.

It is also proposed that §75.152, advanced high school program, be amended to allow students to substitute research/technical writing for English IV (academic) in the advanced high school program and to delete the provision allowing students to substitute journalism, debate, and introduction to speech communication for English IV (academic) in the advanced high school program.

These amendments have been adopted on an emergency basis.

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

Dr. Beverly J. Bardsley, director for policy development, and Mr. Bennett have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be deletion of an administrative requirement which proved not to be effective for the purpose for which it was intended and strengthening of the requirements for the advanced high school program.

There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

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

These amendments are proposed under the Texas Education Code, §21.101, which directs the State Board of Education to designate the essential elements for the curriculum subjects areas in §21.101(a) and to require that these elements be taught as appropriate grade levels in accordance with board rules.

§75.151. High School Graduation Requirements.

- (a)-(b) (No change.)
(c) All students shall complete a minimum of 21 units of credit to receive a high school diploma. The required units shall include the following:
(1)-(5) (No change.)
(6) Physical education—one and one-half units.

(A) The school district board of trustees may allow students to substitute certain physical activities for the one and one-half required units of physical education. Such substitutions shall be based upon the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; dance I-IV; and two- or three-hour block vocational gainful employment units. [To be eligible to substitute the listed physical activities, except athletics, for physical education, students shall achieve an acceptable score on the Texas Physical Fitness Motor Ability Test provided by the Governor's Commission on

Physical Fitness or the Alliance for Health, Physical Education, Recreation, and Dance Youth Fitness Test. The minimum score shall be established by the commissioner of education and shall require students to demonstrate a level of physical fitness appropriate to their age and grade.]

- (B)-(C) (No change.)
(7)-(8) (No change.)
(d)-(g) (No change.)

§75.152. Advanced High School Program.

- (a) (No change.)
(b) The required units shall include:
(1) English language arts—four units. English I, II, III, and IV (academic). [Journalism] Creative/imaginative writing and research/technical writing [debate, and introduction to speech communication] may substitute for English IV (academic).
(2)-(6) (No change.)
(7) Physical education—one and one-half units.

(A) The school district board of trustees may allow students to substitute certain physical activities for the one and one-half required units of physical education. Such substitutions shall be based upon the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Reserve Officer Training Corps (ROTC); athletics; dance I-IV; and two- or three-hour block vocational gainful employment units. [To be eligible to substitute the listed physical activities, except athletics, for physical education, students shall achieve an acceptable score on the Texas Physical Fitness Motor Ability Test provided by the Governor's Commission on Physical Fitness or the Alliance for Health, Physical Education, Recreation and Dance Youth Fitness Test. The minimum score shall be established by the commissioner of education and shall require students to demonstrate a level of physical fitness appropriate to their age and grade.]

- (B) (No change.)
(8)-(11) (No change.)
(c)-(d) (No change.)

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

Issued in Austin, Texas, on August 13, 1985.

TRD-858010 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
October 12, 1985
For further information, please call
(512) 475-7077.

★ ★ ★



**Chapter 89. Adaptations for
Special Populations**
Subchapter G. Special Education
Clarification of Provisions in
Federal Regulations and State
Law

★ 19 TAC §§89.228, 89.235, 89.236,
89.239, 89.242, 89.243

(Editor's note: The Texas Education Agency proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)

The Texas Education Agency proposes amendments to §§89.228, 89.235-89.236, 89.239, and 89.242-89.243, concerning special education. The proposed amendments implement the provisions of House Bill 72, 68th Legislature, 2nd Called Session, 1984, and other laws, passed by the 69th Legislature, 1985.

The proposed amendment to §89.228, concerning provision of services for students placed by their parents in private schools, revises the description of student attendance accounting for dual enrollment to include a reference to determination of contact hours based on the instructional arrangement in which the student is served.

The proposed amendment to §89.235, concerning special education: general program requirements, deletes subsection (g), concerning disciplinary suspension of handicapped students. Provisions for discipline for special education students are included in new §133.28, concerning discipline of handicapped students. Subsection (h) is redesignated subsection (g), with no change in the text.

The proposed amendment to §89.236, concerning special education cooperatives, clarifies the responsibilities of cooperative is responsible for contributing a prorated share of state special education funds or local operating funds to the cooperative. Subsection (h), which sets out the pre-1984-85 funding system for cooperatives, under which personnel units were allocated directly to the cooperative, is being deleted.

The proposed amendment to §89.239, concerning other special program provisions, concerns students enrolled at the Texas School for the Blind or the Texas School for the Deaf and implements House Bill 1593, 69th Legislature, 1985. The proposed amendments add a new subsection (c) which provides that, beginning with the fall of 1985, for each student enrolled in the Texas School for the Blind or Texas School for the Deaf, the school district responsible for providing appropriate special education services to the student shall share the cost of the student's education (excluding the sum-

mer programs) as provided for in the Texas Education Code, §21.507 (b)(c). Under proposed new subsection (d), school districts shall provide each parent or legal guardian of an eligible visually handicapped or auditorially handicapped student certain written information prior to consideration of the student's educational placement for special education services, including the availability of programs offered by the Texas School for the Blind or Texas School for the Deaf for which the student may be eligible, the eligibility requirements and admission criteria for the Texas School for the Blind or Texas School for the Deaf as applicable, and the rights of students in regard to admission to the Texas School for the Blind or Texas School for the Deaf and in regard to appeal of admission decisions.

The proposed amendment to §89.242, concerning instructional arrangements and settings, implements the new state special education funding system required in House Bill 72, 68th Legislature, 2nd Called Session, 1984. Under this funding system, special education full-time equivalent students are funded in an amount equal to the adjusted basic allotment multiplied by the weight for the student's instructional arrangement. The types of instructional arrangements and their weights are listed in the Texas Education Code, §16.151(a). The proposed amendment to §89.242 defines each instructional arrangement.

The proposed amendment to §89.243, concerning provision of services for students residing in intermediate care facilities for the mentally retarded in Texas, implements the new state special education funding system required in House Bill 72, 68th Legislature, 2nd Called Session, 1984. Proposed subsection (p) provides that for school districts serving eligible handicapped students within intermediate care facilities for the mentally retarded (ICF/MR) Level V or Level VI facilities may count contact hours in the hospital class instructional arrangement for state funding purposes. School districts serving eligible handicapped student outside of ICF/MR facilities may count contact hours in the instructional arrangement in which the students are served in the district's special education program. New subsection (q) provides that school districts shall annually report to the agency full-time equivalents generated by out-of-district handicapped students residing in care and treatment facilities. These full-time equivalents shall report separately from the full-time equivalents of in-district handicapped students.

Proposed §89.243(r), which was previously (q), concerns a supplemental federal allocation not to exceed \$400 per student per school year for each eligible student whose parents are Texas residents living outside the district in which the ICF/MR

is located. Applications for supplemental assistance shall be included in the district's standard application system application. Subsection (r) expires at the end of the 1985-1986 school year.

These proposed amendments have been adopted on an emergency basis.

Richard Bennett, associate commissioner for finance, has determined that for the first five-year period the sections will be in effect the fiscal implications for state or local government as a result of enforcing or administering the sections is an estimated increase in revenue to TSB and TSD, based on \$2,000 per ADA for 600 ADA, and will be \$1.2 million in 1986-1990.

There will be no fiscal implications for small businesses as a result of enforcing or administering the sections. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Dr. Beverly J. Bardsley, director for policy development, and Mr. Bennett have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification concerning the new funding system for special education established by House Bill 72, 68th Legislature, 2nd Called Session, 1984.

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*.

These amendments are proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for the administration of the Foundation School Program; and §16.151, which includes special education as part of the Foundation School Program and which directs the State Board of Education to prescribe the qualifications an instructional arrangement must meet to be funded under the Foundation School 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 August 15, 1985.

TRD-858011

W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
October 12, 1985

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Special Senses and Communication Disorders

★ 25 TAC §§37.22-37.24, 37.26, 37.29, 37.31, 37.32, 37.38, 37.39

The Texas Department of Health proposes amendments to §§37.22-37.24, 37.26, 37.29, 37.31, 37.32, 37.38, and 37.39, concerning special senses and communication disorders. The proposed amendments relate to definitions, required vision and hearing screening, required record or proof of screening, dates for submitting proof of screening and reports of screening results, standards for screening tests and screener training courses in vision and hearing, standards for equipment, provisions of other screening services offered by the department, department-approved providers, and denial, modification, suspension, or termination of provider approval.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be the update and clarification of the sections and the implementation of recent amendments to Texas Civil Statutes, Article 4419g. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gilbert Levine, M.D., Director, Division of Child Health, 1100 West 49th Street, Austin, Texas 78756, (512) 450-7700. Comments will be received for 30 days from the date of publication of the proposed changes.

The amendments are proposed under Texas Civil Statutes, Article 4419g, §4 and §7, which provide the Texas Board of Health with the authority to adopt rules covering special senses and communication disorders.

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

Article 4512j—The Texas Civil Statute establishing the State Committee of Examiners for Speech-Language Pathology and Audiology and requiring the licensing

of all persons providing speech-pathology or audiology services in Texas.

[Examination—A diagnostic evaluation performed by a licensed, certified, or sanctioned individual whose expertise addresses the diagnostic needs of the individual identified as having a possible special senses or communication disorder.]

Instructors of screeners—Screeners in one or more program area (vision, hearing, or speech/language) who can provide credentials indicating professional and experiential suitability for instruction in a program area and [and/or] who have successfully completed any department-required training course.

Professional examination (also referred to as examination)—A diagnostic evaluation performed by an appropriately [a] licensed professional or, if no license exists in this state, by a certified or sanctioned individual whose expertise addresses the diagnostic needs of the individual identified as having a possible special senses or communication disorder.

Provider—An individual, partnership, association, corporation, state agency, or political subdivision of the state that provides remedial services to individuals who have special senses and/or communication disorders and includes [may include] a physician, audiologist, speech/language pathologist, optometrist, psychologist, hearing aid dispenser, hospital, clinic, rehabilitation center, university, or medical school.

Screening equipment—An instrument or device used to perform a measurement or measurements for the assessment of sensory abilities. [This may include, but is not limited to, stereoscopic instrumentation, audiometers, tympanometers, impedance/admittance/compliance bridges or meters, middle ear analyzers, aural acoustic immittance instruments, brain stem evoked response audiometers, auditory evoked potential audiometers, visual potential testing instrumentation, evoked response audiometers and electric response audiometers.]

Testing equipment—An instrument or device used to perform a measurement or measurements to substantiate or verify the presence or absence of sensory impairment(s) [and to identify the particular sensory deficiency. This category may include, but is not limited to, the equipment defined as screening equipment and also secondary equipment such as audiometric calibration equipment and hearing aid analyzers].

Tests—Procedures to measure [assess] special senses and communication functions [which may include, but are not limited to: auditory brainstem response audiometry; pure-tone air and bone conduction thresholds, with appropriate masking when indicated; speech discrimination scores; speech reception thresholds; tympanograms with reflex thresholds; Snellen chart screening; screening with stereoscopic

instrumentation; visual evoked potential testing instrumentation; measurements of articulation functioning, receptive and expressive language, voice quality, stuttering, auditory perception, and discrimination; and other corroborating tests which the person conducting the professional examination determines as necessary to define the parameters of the individual's sensory loss or communication disorder].

§37.23. *Children Requiring Vision and Hearing Screening.*

(a) (No change.)

(b) First-time entrants into preschool programs who are four years of age or older, beginning September 1, 1985, will be screened within 120 days of enrollment or present evidence of screening conducted one year prior to enrollment. [Those children will be screened or present evidence of screening in the following sequence:

[(1) children who are four years of age or older, beginning September 1, 1985;

[(2) children who are three years of age, upon notice from the department of development and implementation of department-approved screening methods and referral criteria; and

[(3) children from birth to three years of age, upon notice from the department of development and implementation of department-approved screening methods and referral criteria.]

(c) The school population to be screened for vision and hearing problems beyond the level of first entry into preschools or schools shall be expanded according to the following schedule:

(1) (No change.)

(2) In the 1986-1987 school year, kindergarten and first grade students will be added to those children to be screened under subsections (a) and (b) of this section.

(3)[(2)] In the 1986-1987 school year, seventh and ninth grade students will be added to those children to be screened under subsection (c)(1) of this section.

(d)-(h) (No change.)

[(i) Until more comprehensive screening procedures are recommended by the department, and published, all vision and hearing screeners who provide testing above the minimum requirements are urged to continue such testing and to continue using referral criteria for such testing that are either professionally accepted or recommended by the manufacturer of the testing equipment or the developer of the testing instrument.]

§37.24. *Required Record or Proof of Screening.*

(a) The requirement of §37.23 of this title (relating to Children Requiring Vision and Hearing Screening) may be met by an entry made in the official preschool or school record of the child, which record states that the child has undergone screening tests that meet the standards set by the board and were administered by persons au-

thorized to sign the required proof of screening. That entry into the child's record shall consist of the child's visual acuity, sweep check results or [when required by failure of the sweep check, the threshold results in the form of an audiogram, and/or] or any other screening results.

(b) The requirement of §37.23 of this title (relating to Children Requiring Vision and Hearing Screening) may be met by a record of screenings which shows the child's visual acuity, sweep check results, or [and, when required by failure of the sweep check, the threshold results in the form of an audiogram, and/or] or any other screening results from vision and hearing screens performed within the year immediately preceding the child's mandatory vision and hearing screening years.

§37.26. Closing Dates for Submitting Proofs of Screening and Reports of Screening Results.

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

(c) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year.

(1) The results of required professional examinations and/or screening tests shall be reported annually by the governing body of each preschool and school, under the signature of the superintendent or chief administrator of the preschool or school, as specified on a form(s) which is (are) approved by the department.

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

(d) Reports of failures among the populations which are required to be screened in a Texas preschool or school shall be submitted to the department upon request. This submission shall be on a form(s) which is (are) approved by the department [on or before June 30 of each reporting year in which the screening was performed].

(e) Reports of failures among the populations which are required to be screened in a Texas child care facility shall be submitted to the department every six months on form(s) which is (are) approved by the department, i.e., on or before April 1 and October 1 of each reporting year. For example, the failures among those children screened between October 1985 and March 1986 should be reported on or before April 1, 1986; and the failures among those children screened between April 1986 and September 1986 should be reported on or before October 1, 1986.]

§37.29. Standards for Screening Tests and Screener Training Courses in Vision and Hearing.

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

(d) Department staff or department-approved [department-certified] instructors of screening shall issue a certificate to an individual who successfully completes the department's vision or hearing screening course. The certificate indicates that the screener has the authority to screen children

in the approved area (vision or hearing) for a period of five years.

(e) If the screening of hearing authorized by this Act is conducted by persons other than appropriately licensed professionals, hearing screening shall be limited to the screening of hearing sensitivity, and individuals unable to respond reliably to such screening shall be referred to an appropriately licensed professional. [The certificate shall be renewable as follows: an individual in good standing who holds a valid certificate will be eligible for a five-year extension of his or her certificate to screen upon successful completion of an approved continuing education course in vision or hearing screening. This continuing education course may be taken at any time during the five-year period but must be taken before the expiration of each original five-year certificate.]

(f) Individuals other than department staff, eligible to become instructors in hearing screening techniques must be licensed individuals whose licensure qualifies them to screen [evaluate] for hearing difficulty[, medical doctors specializing in hearing disorders, or individuals who have been evaluated and approved by the program's staff on the basis of formal and/or experiential background].

(g) (No change.)

(h) Instructors shall be those eligible individuals who have successfully completed a course in procedures and techniques of instruction presented by the program's staff and who have demonstrated their knowledge of department-approved vision or hearing screening techniques or those eligible individuals who have had their training credentials evaluated and approved by the department. A certificate verifying instructor status will be issued upon satisfaction of these requirements.]

(i) [(i)] In order to maintain instructor status, the individual shall successfully complete each updated continuing education course provided by the program upon notification of the provision of such a course.

(j) [(j)] All training sessions for screeners must be approved by the department at least ten working days in advance of the training sessions.

§37.31. Standards for Equipment.

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

(f) Each person using audiometric screening or testing equipment shall perform, upon instruction from the department, or shall permit the department to perform such reasonable tests as the department deems appropriate or necessary to assure compliance with these sections.

(g) [(1)] Each person using such equipment shall perform a biological calibration on the equipment during each month of use.

(h) [(2)] All such equipment shall receive a periodic electronic calibration annually and an exhaustive electronic calibra-

tion every five years, evidence of which should remain with the equipment at all times.

(i) [(g)] Periodic electronic calibrations and exhaustive electronic calibrations shall be performed only by calibration firms that are registered with the department and the audiometric equipment shall show dated evidence of those calibrations, i.e., decals or stickers.

(j) [(h)] Registration of calibration firms shall be based upon their ability to perform audiometric repairs and/or calibrations which meet appropriate current ANSI standards or, in the absence of such, the manufacturer's specifications and follow department-approved procedures.

(k) [(i)] In addition to violations set out in the Texas Regulations for the Control of Infrasonic, Sonic, and Ultrasonic Radiation, in §289.3 of this title (relating to Control of Infrasonic, Sonic, and Ultrasonic Radiation), violations of the responsibilities of registered calibration firms shall be:

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

(i) [(j)] In addition to penalties set out in Texas Civil Statutes, Article 4590f, and Texas Regulations for the Control of Infrasonic, Sonic, and Ultrasonic Radiation, in §289.3 of this title (relating to Control of Infrasonic, Sonic, and Ultrasonic Radiation), penalties for violations by calibration firms shall include:

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

(m) [(k)] Before the department revokes registration of a calibration firm, the department will give the calibration firm the opportunity for a hearing in accordance with Part 13 of the Texas Regulations for Control of Radiation, in §289.1 of this title (relating to Control of Radiation Generally), and §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

(n) [(l)] Registration of the calibration firm may be reinstated after one year of revocation upon application to the department for such and demonstration of satisfactory performance according to the specifications herein established.

§37.32. Provision of Other Screening Services Offered by the Department.

(a) (No change.)

(b) The department may provide screening personnel, equipment, and services only if there are no other means for meeting the screening requirements. [For any other screening instrument or equipment the department develops, adapts, or approves for special senses and communication disorders detection, the agency using said product shall follow prescribed department standards in screening utilization of the product and report all screening results to the department upon departmental request.]

§37.38. Department Approved Providers.

(a) Approval criteria. All providers who wish to furnish services through this

program must be approved by the department and must meet the following criteria.

(1) (No change.)

(2) The provider's testing equipment[, including but not limited to audiometers, tympanometers, hearing aid analyzers, and audiometer calibration equipment, and such other equipment that is used in the assessment of human hearing abilities,] must be registered with the department.

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

[(5) A provider for the Speech/Language Services Program must possess a variety of test instruments which measure articulation, receptive and expressive language abilities, cognitive functioning, semantics, syntactic rules, voice quality, fluency of speech, and other typical tests used in the assessment of speech and language functioning.

[(6) A provider for the Speech/Language Services Program must demonstrate that its staff and equipment are suitable and capable for evaluating the speech and language problems of infants, children, and/or young adults.]

(5)[(7)] All providers shall be required to submit an annual inventory of state-owned equipment on loan to their facility from the department and of all hearing aids on consignment to their facility which have not been transferred by receipt to a recipient of services approved by the department.

(6)[(8)] The provider must supply its federal vendor identification number to the department to ensure vendor payments from the state comptroller's office.

(7)[(9)] The provider's equipment requiring calibration shall be calibrated annually by a calibration firm that is registered with the department.

(8)[(10)] The equipment and facility of all providers shall be subject to monitoring visits by personnel from the department in accordance with Article 4590f.

(9)[(11)] Providers who furnish services and/or hearing aids for the Hearing Aid Loan Program alone shall be in compliance with Articles [Article] 4419g, 4512j, and 4566, as applicable and [after the audiological assessment] shall obtain the approval of an otologist for the hearing aid fitting.

[(12) All the providers specified in subsection (b)(4) of this section, except those in subsection (b)(4)(C)-(F), shall have a licensed audiologist and, when applicable, a licensed speech/language pathologist on staff or on contract who are in compliance with Article 4419g.

[(13) All providers specified in subsection (b)(4)(E) of this section shall have a licensed speech/language pathologist on staff or on contract who is in compliance with Article 4419g.]

(b) Method of obtaining approval as a provider.

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

(4) The contract applicant may apply for different levels of service delivery as indicated in subparagraphs (A)-(F) of this paragraph.

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

[(E) The contract applicant may request approval as a full provider only under the Speech/Language Services Program for all services to all ages, birth through 20 years of age, if the provider's facility and personnel qualify under the standards set by the department.]

(E)[(F)] Providers holding valid contracts with the Hearing Aid Loan Program as of January 1, 1983, may continue to function as providers of services with the Texas Department of Health as contracted.

(5)-(8) (No change.)

§37.39. Denial, Modification, Suspension, or Termination of Provider Approval.

(a) Reasons for denial, modification, suspension, or termination of provider approval. A provider will have its privilege to participate in the program denied, modified, suspended, or terminated if:

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

(4) the provider fails or refuses to submit in a manner prescribed by the department information which is:

(A) requested by the department for the purpose of determining the provider's compliance with the provisions [provision] of Articles [Article] 4419g, and 4512j or these program rules;

(B)-(C) (No change.)

(5) the provider submits false or misleading information to the department and the information is material to the department's determination that the provider is:

(A) (No change.)

(B) in compliance with the provisions of Texas Civil Statutes, Articles 4419g [Article 4419f, Article] 4590g, 4512j, [Article] 4566, and these rules; or

(C) (No change.)

(6)-(9) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on September 4, 1985.

TRD-858003

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

Proposed date of adoption:
October 10, 1985

For further information, please call
(512) 458-7700.

★ ★ ★



Chapter 97. Communicable Diseases

Venereal Disease

★25 TAC §97.136

The Texas Department of Health proposes an amendment to §97.136, concerning prophylaxis against ophthalmia neonatorum. The amendment will delete silver nitrate solution as an approved prophylaxis and add specifications regarding strength of remaining approved prophylaxes.

Ophthalmia neonatorum traditionally was viewed as conjunctivitis of the newborn caused by *neisseria gonorrhoeae*. It is now recognized that *chlamydia trachomatis* is also a causative agent of ophthalmia neonatorum; and in fact is responsible for more cases of ophthalmia neonatorum than *N. gonorrhoeae*. It is also recognized that neither 1.0% silver nitrate solution nor injectable penicillin are effective in preventing chlamydial infections. This being the case, it is the opinion of the Texas Board of Health that only 1.0% tetracycline ophthalmic ointment or drops of 0.5% erythromycin ophthalmic ointment or drops applied within two hours of birth will provide effective prophylaxis against ophthalmia neonatorum cause by *N. gonorrhoeae* or *C. trachomatis*.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be prevention of blindness and eye infections in newborn babies. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comment on the proposal may be submitted to Thomas Beitz, M.D., Chief, Bureau of Communicable Disease Services, 1100 West 49th Street, Austin, Texas 78756-3192. Comments will be accepted for 30 days after publication of the proposed amendment in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4445d, §3.02, as amended by House Bill 1665, §1, 69th Legislature, 1985, which provides the Texas Board of Health with the authority to approve prophylactic treatment of newborns, and Article 4414b, §1.05, which authorizes the Texas Board of Health to adopt rules to implement its statutory duties.

§97.136. *Prophylaxis Against Ophthalmia Neonatorum.*

(a) Every physician, nurse, midwife, or other person in attendance at childbirth

shall apply or cause to be applied to the child's eyes one of the following:

(1) two drops of a 1.0% silver nitrate solution in each eye within two hours after birth, or]

(1)(2) a 1.0% [standard] ophthalmic tetracycline solution (drops) or ointment in each eye within two hours after birth, or

(2)(3) a 0.5% [standard] ophthalmic erythromycin solution (drops) or ointment within two hours after birth.

(b) The 1.0% tetracycline or 0.5% erythromycin solution (drops) or ointment [silver nitrate solution] shall be provided by the department without charge to health-care providers if the newborn's financially responsible adult is unable to pay. No charge shall be made by the health-care provider for tetracycline or erythromycin solution (drops) or ointment [silver nitrate solution] which are [is] received free of charge from the department.

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

Issued in Austin, Texas, on September 4, 1985.

TRD-858001

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

Proposed date of adoption:
October 19, 1985

For further information, please call
(512) 458-7456.

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TITLE 28. INSURANCE

Chapter 1. General Administration

Subchapter B. Fees, Charges, and Costs

★ 28 TAC §1.303

The State Board of Insurance proposes an amendment to §1.303 (Rule 059.04.07 .013), concerning the cost per copy of the board publication of the Insurance Code and related laws. This volume is published by the board subsequent to each legislative session. It includes new law and amendments but does not contain annotations. The present charge for the volume containing laws through the 68th Legislature ending in 1983 is \$38, which includes applicable sales tax. Due to an increase in the sales tax, this amount is no longer sufficient to reimburse the board for its cost of publication. The

charge is proposed to be changed to \$36.28, which will not include sales tax. Under current sales tax laws, the total cost including sales tax will be increased to \$38.50.

Carroll Fuchs, chief of staff services, has determined that for the first five-year period the section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The state will receive an additional \$.50 per volume sold each year in 1985-1989. There is no effect on local government. The cost to small businesses will be the cost of the number of volumes purchased at \$38.50 per volume in lieu of the present \$38 per volume. There is no difference in cost between large and small businesses.

Mr. Fuchs also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be a section which will reflect the current cost of the board publication containing the Insurance Code and related laws. The anticipated economic cost to individuals required to comply with the section will be the charge for the publication at \$38.50 in lieu of the present \$38 charge.

Comments on the proposal may be submitted to Carroll Fuchs, Chief of Staff Services, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.

The amendment is proposed under the Insurance Code, Article 4.07, which authorizes the board to set and collect a sales charge for copies of any paper or record in its offices sufficient to reimburse the state for actual expense.

§1.303. *Charge for the Insurance Code.* The charge for the board published volume of the Insurance Code and related laws is \$36.28 plus [\$38, which includes] applicable sales tax.

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 August 30, 1985.

TRD-857990

James W. Norman
Chief Clerk
State Board of
Insurance

Earliest possible date of adoption:
October 11, 1985
For further information, please call
(512) 475-2960.

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★ 28 TAC §1.304

The State Board of Insurance proposes an amendment to §1.304 (Rule 059.04.07 .014), concerning the cost per copy of the

board publication of insurance-related legislation. This volume is published by the board subsequent to each legislative session.

Evelyn Ireland, Research and Information Services director, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The added cost to small businesses from this section will be the cost of the number of volumes purchased at \$10 per volume. (The current cost is \$5.00 per volume.) There is no difference in cost between large and small businesses.

Ms. Ireland also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be the adoption in rule form of the current cost of the board publication containing insurance-related legislation. The anticipated economic cost to individuals required to comply with the section will be the \$10 charge for each volume of the publication.

Comments on the proposal may be submitted to Evelyn F. Ireland, Director, Research and Information Services, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

The amendment is proposed under the Insurance Code, Article 4.07, which authorizes the board to set and collect a sales charge for copies of any paper or record in its offices sufficient to reimburse the state for actual expense.

§1.304. *Charge of Insurance-Related Legislation.* Subsequent to each legislative session, the board published copies of insurance-related legislation. The charge for the 1985 publication is \$10 [\$5.00] plus applicable sales tax.

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 August 30, 1985.

TRD-857991

James W. Norman
Chief Clerk
State Board of
Insurance

Earliest possible date of adoption:
October 11, 1985
For further information, please call
(512) 475-2960.

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**Chapter 19. Agents Licensing
Subchapter B. Examinations of
Legal Reserve Life Insurance
Agent Applicants and Accident
and Health Insurance Agent
Applicants**

★28 TAC §19.101, §19.102, §19.104

The State Board of Insurance proposes amendments to §19.101, §19.102 and §19.104 (Rules 059.59.01.001, .002, and .004), respecting certain textbooks to be studied and procedures to be followed by prospective insurance agents under the Insurance Code, Article 21.07 and Article 21.07-1. The sections are amended to update the list of textbooks to be studied for the agents' examination, to change the place and time of taking the examination, and to require at least 20 days' notice to the board for anyone wishing to take the agents' examination.

Mel Clanton, License Division manager, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Clanton also has determined that the public benefit will be rules which will use updated textbooks and provide for a more efficient regulation of agents' examinations. There are no anticipated economic costs from these amendments to individuals required to comply with the section.

Comments on the proposal may be submitted to Mel Clanton, Manager, License Division, State Board of Insurance, Annex Building, 1110 San Jacinto, Austin, Texas 78786.

The amendments are proposed under the Insurance Code, Article 21.07-1, §15, pursuant to which the board may adopt rules to administer Article 21.07-1; and the Insurance Code, Article 21.07, §13, pursuant to which the board may adopt rules to administer Article 21.07.

§19.101. Study Material.

(a) Textbooks. The following textbooks are hereby designated as official materials to be studied by applicants in preparation for the legal reserve life insurance agent examination administered under the Insurance Code, Article 21.07-1, and for the accident and health insurance agent examination administered under the Insurance Code, Article 21.07, §4:

(1) (No change.)

(2) Passkey for life insurance and passkey for health insurance [Introduce Yourself to Life Insurance and Introduce Yourself to Health Insurance] (with Texas Supplement) by R & R Newkirk, Division of Longman Financial Services, Inc., 500 North Dearborn Street, Chicago, Illinois 60610 [the Research and Review Service of

America, Inc., P.O. Box 1727, Indianapolis, Indiana 46206];

[(3) Agents' Insurance Examination Preparation Manual Life and Health Insurance State of Texas by the Merritt Company, P.O. Box 955, Santa Monica, California 90406; and]

(3)[(4)] Life, Accident, and Health Insurance [Part A and Part B] by Cal-State Exams, 2049 Century Park East, Suite 2714, [505 North Arrowhead Avenue] Los Angeles [San Bernardino], California 90067 [94201].

(b) (No change.)

(c) Although an applicant might find it helpful to review and study all three [more than one of the] texts, they differ mainly in teaching and learning approaches employed.

§19.102. Place and Time of Examinations.

(a) Regularly scheduled exams in Austin. The examinations for licenses under the Insurance Code, Article 21.07-1 and Article 21.07, §4, shall be conducted simultaneously on Mondays and Fridays [Thursday] of each week (except for Mondays and Fridays [Thursdays] designated by the legislature of the State of Texas as holidays for late employees) beginning at 9:30 a.m. and 1 p.m. in Room 115 [142] of the state fire marshal's office [insurance building] located at 7901 Cameron Road [1110 San Jacinto Street], Austin, Texas.

(b) (No change.)

§19.104. Written Request to Take Examinations.

Each applicant for license under the Insurance Code, Article 21.07-1 and Article 21.07, §4, must file a written request to take the qualifying examination with the State Board of Insurance. Such request must be on a form provided by the State Board of Insurance and must be received by the State Board of Insurance at its address at least 20 [10] days prior to the particular examination date desired by the applicant. The form is available to qualified applicants on request, by writing to the License Division of the State Board of Insurance at 1110 San Jacinto Street, Austin, Texas 78786.

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 August 30, 1985.

TRD-857992

James W. Norman
Chief Clerk
State Board of
Insurance

Earliest possible date of adoption:

October 11, 1985

For further information, please call
(512) 475-2650.

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**TITLE 34. PUBLIC
FINANCE**

**Part I. Comptroller of Public
Accounts**

**Chapter 3. Tax Administration
Subchapter O. State Sales and Use
Tax**

★34 TAC §3.297

The Comptroller of Public Accounts proposes an amendment to §3.297, concerning carriers. The Texas Tax Code, §151.330 (c), which exempted tangible personal property acquired outside Texas and moved into Texas for use as a licensed and certificated carrier was repealed by the legislature. The amendment would subject such tangible personal property to sales tax. The repeal becomes effective October 1, 1985. Additionally, the definition of licensed and certificated carrier is clarified. The effect of the amendment is to provide administrative rules governing changes in the tax law made by the 69th Legislature, 1985.

Billy Hamilton, revenue estimating director, has determined that for the first five-year period the section will be in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section, as shown in the fiscal note prepared for the bill. The section is promulgated under the Tax Code, Title 2, and no statement of fiscal implications for small businesses is required.

Mr. Hamilton also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is provision of a notice of changes due to tax law changes. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to D. Carolyn Busch, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

§3.297. Carriers.

(a) Carriers generally.

(1) Licensed and certificated carrier—A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle or pipeline as a common or contract carrier transporting [other transportation device used to transport] persons or property for hire in the regular course of business. Certificates of inspection or air-

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 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 97. Communicable Diseases
Venereal Disease
★ 25 TAC §97.136

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed amendments to §97.136, concerning venereal disease. The text of the amended section as proposed appeared in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2398).

Issued in Austin, Texas, on September 4, 1985.

TRD-858002

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

Filed: September 4, 1985
For further information, please call
(512) 458-7238.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part III. Texas Air Control Board
Chapter 115. Volatile Organic Compounds

Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Brazoria, Dallas, El Paso, Harris, and Tarrant Counties

★ 31 TAC §115.133, §115.134

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendments to §115.133 and §115.134, submitted by the Texas Air Control Board have been automatically withdrawn, effective September 4, 1985. The amendments as proposed appeared in the March 1, 1985, issue of the *Texas Register* (10 TexReg 731).

TRD-858006

Filed: September 4, 1985

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Control of Reid Vapor Pressure of Gasoline in Collin, Dallas, Denton, Ellis, El Paso, Hood, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties

★ 31 TAC §§115.281-115.285

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed new §§115.281-115.285 submitted by the Texas Air Control Board have been automatically withdrawn, effective September 4, 1985. The new sections as proposed appeared in the March 1, 1985, issue of the *Texas Register* (10 TexReg 737).

TRD-858007

Filed: September 4, 1985

★ ★ ★



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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Venereal Disease

★25 TAC §97.136

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed amendments to §97.136, concerning venereal disease. The text of the amended section as proposed appeared in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2398).

Issued in Austin, Texas, on September 4, 1985.

TRD-858002

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

Filed: September 4, 1985
For further information, please call
(512) 459-7236.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 115. Volatile Organic Compounds

Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Brazoria, Dallas, El Paso, Harris, and Tarrant Counties

★31 TAC §§115.133, §115.134

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendments to §115.133 and §115.134, submitted by the Texas Air Control Board have been automatically withdrawn, effective September 4, 1985. The amendments as proposed appeared in the March 1, 1985, issue of the *Texas Register* (10 TexReg 731).

TRD-858006

Filed: September 4, 1985

★ ★ ★

Control of Reid Vapor Pressure of Gasoline in Collin, Dallas, Denton, Ellis, El Paso, Hood, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties

★31 TAC §§115.281-115.285

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed new §§115.281-115.285 submitted by the Texas Air Control Board have been automatically withdrawn, effective September 4, 1985. The new sections as proposed appeared in the March 1, 1985, issue of the *Texas Register* (10 TexReg 737).

TRD-858007

Filed: September 4, 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 *Texas Register*. The rule becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

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

TITLE 7. BANKING AND SECURITIES

Part IV. Texas Savings and Loan Department Chapter 51. Charter Applications

★7 TAC §51.1

The Texas Savings and Loan Department adopts an amendment to §51.1, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2385).

The amendment is adopted to implement recent changes in the Texas Savings and Loan Act authorizing rules to set initial capitalization requirements for savings and loan associations. Amendments to the original proposal were made to require \$3 million initial capital for all new associations, in an attempt to insure adequate initial capital. A new subparagraph was added to provide for capital requirements for charters granted to facilitate supervisory acquisitions and mergers under the recent amendments.

The amendment sets the requirements for capital stock or savings liability which must be paid into an association before it opens for business or, in special cases, before it acquires another association.

No written comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the State Finance Commission with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of this state and, from time to time, to amend the same; the Texas Civil Statutes, Article 852a, §§2.03, 2.05, and 2.13, which authorize the Savings and Loan Section and the commissioner to set initial capitalization requirements for savings and loan associations.

§51.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-In Surplus or Savings Liability and Expense Fund; Payment Before Opening for Business.

(a) When articles of incorporation of a new association are presented to the sav-

ings and loan commissioner for his approval, such articles shall be accompanied by an application which conforms to the statutory requirements provided in the Texas Savings and Loan Act, §2.01(1)-(3), and states the proposed location of the principal office of the new association and the identity and qualifications of the proposed managing officer. There shall also be submitted with the application a facsimile of each proposed loan instrument and such additional information as may be required by the proposed bylaws of the association together with such statements, exhibits, maps, plans, photographs and other data, sufficiently detailed and comprehensive to enable the commissioner to pass upon matters set forth in the Texas Savings and Loan Act, §2.08 (1)-(4). Such information must show that the proposed association will have and maintain independent quarters with a ground floor location or it equivalent. The articles of incorporation and all statements of fact tendered to the commissioner shall be verified as required by the Texas Savings and Loan Act, §2.01.

(b) No application to incorporate a new association shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in the minimum amount of \$3 million, with at least 80% of the total subscriptions being allocated to the capital stock account or the savings liability account, as applicable.

(c) No association with an approved charter shall open or do business as a savings and loan association until the commissioner certifies that he has received proof satisfactory to him that the previously required dollar amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as applicable, have been received by the association in cash, free of encumbrance.

(d) No application to incorporate as association for an acquisition or merger under the Texas Savings and Loan Act, §2.13, shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association will be capitalized in an amount sufficient to accomplish the purposes for which incorporation is requested, which shall be an amount sufficient to insure that,

after the proposed acquisition or merger, the resulting association will meet and continue to meet applicable minimum net worth requirements.

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 August 30, 1985.

TRD-857961

Russell R. Oliver
General Counsel

Effective date: September 20, 1985
Proposal publication date: July 26, 1985
For further information, please call
(512) 479-1250.

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★7 TAC §51.2

The Texas Savings and Loan Department adopts an amendment to §51.2, with changes to the proposed text published in the July 19, 1985, issue of the *Texas Register* (10 TexReg 2302).

The amendment enhances the commissioner's ability to gather accurate and sufficient biographical and financial data on proposed incorporators of savings and loan associations so as to ensure the safe and sound operation of a newly chartered association.

The section as amended requires proposed incorporators to submit annual financial statements for the five years preceding the application to incorporate, with additional information since the end of the last fiscal year.

One comment was received, to the effect that five years was burdensome to require an individual applicant to submit financial statements. The comment came from Tom Rutledge, attorney, Snead, Vine, Wilkerson, Selman, and Perry, Austin.

The agency adopted the amendment with the five year's financial statements, because similar requirements have been used in change of control applications without undue difficulty.

The amendment is adopted under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the Finance Commission of Texas with the authority to promulgate general rules

and regulations not inconsistent with the constitution and statutes of this state and, from time to time, to amend the same; and under Texas Civil Statutes, Article 852a, §8.01, which authorize the Savings and Loan Section to adopt rules relating to the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or department.

§1.2. Use of Approved Forms. The commissioner shall furnish approved forms of application, and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, he shall make or cause to be made an investigation of the application. The Savings and Loan Department hereby adopts by reference the application for charter, as amended in August 1985. The form is available from the Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

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 August 30, 1985.

TRD-857980
 Russell R. Oliver
 General Counsel
 Texas Savings and Loan
 Department

Effective date: September 20, 1985
 Proposal publication date: July 19, 1985
 For further information, please call
 (512) 479-1250.

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Chapter 61. Hearings

★7 TAC §61.5

The Texas Savings and Loan Department adopts new section §61.5, without changes to the proposed text published in July 28, 1985, issue of the *Texas Register* (10 TexReg 2385).

The section implements recent amendments to the Texas Savings and Loan Act, which require confidential treatment of financial information furnished by applicants for a new savings and loan charter.

The section requires confidential treatment of financial information furnished by charter applicants and for limited access to such information in a contested proceeding.

No written comments were received regarding the proposed section.

The new section is adopted under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the State Finance Commission with the

authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of this state and, from time to time, to amend the same; and under Texas Civil Statutes, Article 852a, §2.01, which exempts from public disclosure certain financial information furnished by charter applicants.

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 August 30, 1985.

TRD-857982
 Russell R. Oliver
 General Counsel
 Texas Savings and Loan
 Department

Effective date: September 20, 1985
 Proposal publication date: July 26, 1985
 For further information, please call
 (512) 479-1250.

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Chapter 64. Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth

★7 TAC §64.7

The Texas Savings and Loan Department adopts new §64.7, with changes to the proposed text published in the July 28, 1985, issue of the *Texas Register* (10 TexReg 2387).

This section sets increasing minimum net worth requirements for state-chartered associations in an effort to secure additional capital in the industry.

The section sets minimum net worth requirements which must be met on an annual basis and allows associations to meet net worth requirements set by the Federal Savings and Loan Insurance Corporation in lieu of these requirements.

Numerous comments in opposition to the section as proposed were received. Commenters argued that the proposed increase of one-half of 1.0% per year, to be met on a monthly basis, was too onerous for many associations to meet and urged a slower increase, with an alternative of allowing associations to meet federally mandated net worth requirements.

Those commenting against the rule were Shelby J. Smith, president, First State Savings Association; William C. Horabin, chairman of the board, Capitol City Savings Association; Peter J. Link, president, Home Savings Association (Midland); J. Michael Cornwall, chairman, First Texas Savings Association; Lester R. Calhoun, president, American Savings and Loan Association; Jack Sommerfield, vice chairman, Sunbelt Savings Association;

Ben A. Plotkin, chief executive officer, Franklin Savings Association; Terry L. Cholakian, president, Delta Savings Association of Texas; John W. Harrell, vice chairman, Commodore Savings Association; Don R. Etheridge, chief financial officer, Charter Savings Association; Carroll Kelly, Jr., chairman, Continental Savings Association; and Pat Malone, Vernon Savings and Loan Association.

The agency amended the section prior to adoption to accommodate the concerns expressed by the commenters.

The new section is adopted under Texas Civil Statutes, Article 342-114, which provides the Savings and Loan Section of the State Finance Commission with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of this state and, from time to time, to amend the same; and Texas Civil Statutes, Article 852a, §7.02, which authorize the Savings and Loan Section to adopt rules setting minimum net worth requirements for associations.

§64.7. Net Worth Requirement.

(a) Definitions.

(1) Net worth for a capital stock association shall include the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the association's net worth under generally accepted accounting principles) plus any retained earnings and paid in surplus as well as such other items as the commissioner may approve in writing for inclusion in its net worth.

(2) Net worth for a mutual association shall include its pledged-savings liability and expense fund plus any retained earnings and such other items as the commissioner may approve in writing for inclusion in its net worth.

(3) Total liabilities shall mean total savings liability of an association, plus all amounts an association owes or which are payable by it or which it may be obligated to pay for any reason, including unapplied mortgage credits, dealer participation reserves, dealer hold-back reserves, all consignment items, and all other liabilities.

(b) Minimum net worth. Each association shall maintain a minimum net worth, computed as percentage of total liabilities, in the amounts stated as follows, as of the dates shown as follows, as of December 31 of each year:

As of	Percentage
December 31, 1985	3.00%
December 31, 1986	3.25%
December 31, 1987	3.50%
December 31, 1988	3.75%
December 31, 1989	4.00%
December 31, 1990	4.25%
December 31, 1991	4.50%
December 31, 1992	4.75%

December 31, 1993	5.00%
December 31, 1994	5.25%
December 31, 1995	5.50%
December 31, 1996	5.75%
December 31, 1997	6.00%

(c) In lieu of the requirements of subsection (b) of this section, an association may maintain its net worth at levels which are required for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

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 August 30, 1985.

TRD-857963 Russell R. Oliver
General Counsel
Texas Savings and Loan
Department

Effective date: September 20, 1985
Proposal publication date: July 28, 1985
For further information, please call
(512) 479-1250.

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TITLE 25. Health Services Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter S. Admissions, Transfers, Furloughs, and Discharges—State Mental Health Facilities

★ 25 TAC §§405.441-405.502

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.441-405.502, without changes to the proposal published in the March 19, 1985, issue of the *Texas Register* (10 TexReg 908). The repeal is adopted contemporaneously with the adoption of new §§405.441-405.477, concerning the same matters.

The repeal and replacement of these sections enact the general recommendations of a rule review committee appointed by the commissioner to suggest ways by which the department's administrative laws could be made more concise.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5547-202, §2.11(b), which provide the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas

Board of Mental Health and Mental Retardation.

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 August 31, 1985.

TRD-857969 Gary E. Miller
Commissioner
Texas Department of
Mental Health and
Mental Retardation

Effective date: September 20, 1985
Proposal publication date: March 19, 1985
For further information, please call
(512) 475-4670.

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Subchapter S. Admissions, Transfers, Furloughs, and Discharges—Mental Health Facilities

★ 25 TAC §§405.441-405.477

The Texas Department of Mental Health and Mental Retardation (FDMHMR) adopts new §§405.441-405.443, 405.451-405.453, 405.455, 405.460, 405.461, 405.468, 405.469, and 405.477, with changes to the proposed text published in the March 17, 1985, issue of the *Texas Register* (10 TexReg 907). Sections 405.444-405.450, 405.454, 405.456-405.459, 405.482-405.487, and 405.470-405.476 are adopted without changes and will not be republished.

The new sections are proposed contemporaneously with the repeal of §§405.441-405.502, in Subchapter S, concerning admissions, transfers, furloughs, and discharges at state mental health facilities; Subchapter T, concerning admission criteria for Vernon Center Adolescent Drug Treatment Unit; and Subchapter EE, concerning admission criteria for the Waco Center for Youth.

The new sections and the repeal of the sections they replace enact the general recommendations of a rule review committee appointed by the commissioner to suggest ways by which the department's administrative laws could be made more concise. In addition to incorporating the key ideas of the sections they replace, the new sections reflect the provisions of the Texas Mental Health Code, the RAJ v. Miller settlement agreement, and other departmental policies pertaining to coordination of placement of clients by state mental health and mental retardation authorities.

The changes made to the sections as proposed are based on actions of the 69th Legislature, 1985, i.e., the amendment of the Mental Health Code, and Texas Civil Statutes, Article 5561c-1, passage of the Texas Alcohol and Drug

Abuse Services Act, and the repeal of Texas Civil Statutes, Article 5561c.

Section 405.441 is changed to reflect that the rule should be of informational value to community mental health and mental retardation centers and other designated providers in that many of the statutes on which it is based are applicable to them as well as facilities.

The language is changed in §405.442 to reflect the applicability of the rule to community centers in their role as a mental health authority. Language is added to emphasize that the provision of services to priority populations is mandated through Senate Bill 633, 69th Legislature, 1985.

In §405.443, the terms "community mental health and mental retardation center," "mental health authority," and "person charged with a criminal offense" are added consistent with changes to the subchapter resulting from amendments to the Mental Health Code.

In the same manner, §405.451 is changed to emphasize that it applies to inpatient services in subsection (c) and inpatient services in subsection (d). Also consistent with the Mental Health Code, new subsection (h) provides that clients be informed of rights within 24 hours of admission.

In §405.452, several changes are made consistent with recent legislation. In keeping with amendments to the Mental Health Code, the criteria for emergency detention reference the necessity for demonstration of severe emotional distress or deterioration; the maximum time limit for detention is redefined; it is clarified that if any one of the criteria for detention no longer apply, the client should be released; and if there are no appropriate inpatient services available, the person should be transferred to another facility deemed appropriate by the mental health authority. The section as proposed has been reformatted to make proposed language pertaining to mental health emergency detention new subsection (a). Subsection (b) is added consistent with the Texas Alcohol and Drug Abuse Services Act. This subsection, which governs alcoholism emergency detention, is based on law which takes effect January 1, 1986. Subsection (c) is added consistent with amendments to Texas Civil Statutes, Article 5561c-1, and describes procedures for the detention of the drug-dependent person in protective custody.

Section 405.453 is changed in subsection (a) to reference the new Texas Alcohol and Drug Abuse Services Act as the applicable law for alcoholism orders of protective custody, commitment, and commitment in lieu of sentencing. In subsection (a)(2), new reference is made to orders for temporary detention enabled through the recent amendment of the

Mental Health Code, and subsequent paragraphs in the subsection are renumbered. Subsection (b) has been added to reflect the action taken by the clerk of the county court and the head of the facility when a client is committed. In subsection (d), a description of alcoholism commitment by courts in criminal proceedings has been added consistent with the Texas Alcohol and Drug Abuse Services Act. Proposed language stating that a person must be 18 to be committed under alcoholism statutes is deleted consistent with the new law. In subsection (f), language is changed to indicate discharge should be made in accord with the Mental Health Code. In subsection (g), language has been added regarding revised court-ordered commitment bases and postponement of the hearing as a result of hazardous weather, consistent with recent changes in the Mental Health Code. Subsection (h) provides for the submission of the recommendation for most appropriate treatment alternatives prior to the commitment hearing date. Subsection (i) has been added to clarify the status of a person charged with a criminal offense. Both new subsections are derived from recent amendments to the Mental Health Code.

Section 405.455 has been changed and reformatted to distinguish court orders for temporary or extended mental health services (subsection (a)) from court orders for temporary detention (subsection (b)) and court orders for the commitment of drug dependent persons (subsection (c)). Subsections (b) and (c) reflect changes in law arising in the recent session of the legislature.

The title of §405.460 is changed to include reference to outpatient services and alcoholism treatment and to revise discharge criteria to inpatient mental health services in accord with recent amendments to the Mental Health Code. The section is reformatted to differentiate procedures for persons court-ordered to inpatient mental health services (subsection (a)) from procedures for persons court-ordered for outpatient mental health services (subsection (b)), procedures for persons court-ordered for alcoholism treatment (subsection (c)), and persons found to be drug-dependent (subsection (d)). Subsections (b)-(d) are new and track recent law changes.

Section 405.461(b) is changed to reflect that discharge of persons inappropriately admitted under an order of protective custody shall comply with the Mental Health Code.

The title of §405.469 is changed to reflect the amended definition of mental health facility in the Mental Health Code. Subsection (k) is added to provide the circumstances under which a person with mental retardation may be transferred to a mental health facility, consistent with the amended Mental Health Code.

Section 405.477 is changed to add reference to the Texas Alcohol and Drug Abuse Services Act in paragraph (11), to reference in paragraph (14) Chapter 405, Subchapter BB, relating to admissions, transfers, furloughs, and discharges for mental retardation residential facilities, and to delete reference to Texas Civil Statutes, Article 5561c, which was repealed, in paragraph (9). Subsequent paragraphs are renumbered.

No comments were received regarding adoption of the sections as proposed.

These new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11(b), which provides the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

§405.441. Purpose. The purpose of this subchapter is to establish criteria and guidelines to govern admissions, transfers, furloughs, and discharges of clients of mental health facilities of the department, and to inform community mental health and mental retardation centers and other designated providers of applicable statutes.

§405.442. Application. This subchapter applies to all mental health facilities of the Texas Department of Mental Health and Mental Retardation and to community mental health and mental retardation centers in their role as mental health authorities. Nothing in this subchapter is meant to preclude other properly authorized designated providers from performing the subject services in keeping with Senate Bill 633, 69th Legislature, 1985, which mandates provision of these services to priority population.

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

Authority—A component of the Texas Department of Mental Health or Mental Retardation service system designated by the department to direct, operate, facilitate, or coordinate such services to mentally ill and mentally retarded children and adults as are required to be performed at the local level by state law and by the department.

Client—A person who has been admitted or committed to a facility of the department for mental health or mental retardation services.

Community mental health and mental retardation center—An entity established pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203, §3.01, which provides mental health and mental retardation services.

Department—The Texas Department of Mental Health and Mental Retardation.

DSM-III—The Diagnostic and Statistical Manual of Mental Disorders, Third Edition, published by the American Psychiatric Association, 1980.

Interstate transfer—The importation of an individual to a Texas mental health facility or deportation of an individual to another state's mental health facility.

Mental health authority—An agency designated by the commissioner of the department to directly operate, facilitate, and/or coordinate services to mentally ill and drug-dependent persons and alcoholics.

Mental health facility—A facility of the Texas Department of Mental Health and Mental Retardation that provides mental health services.

Mental retardation facility—A facility of the Texas Department of Mental Health and Mental Retardation that provides mental retardation services.

Office of Client Services and Rights Protection—The departmental authority for ascertaining whether importation or deportation of clients shall occur.

Person charged with a criminal offense—Does not include a juvenile alleged to be a child engaged in delinquent conduct or to be a child in need of supervision as defined in the Family Code, §51.03.

§405.451. Admissions: Voluntary.

(a) Facilities shall encourage courts, practitioners, referral agencies, and other appropriate parties to pursue voluntary admissions in preference to involuntary commitments.

(b) Request for voluntary admission shall be in writing and signed:

(1) by the client if the client is 16 years of age or older;

(2) by the parent, legal guardian, or managing conservator, if the client is under 16 years of age; or

(3) by both the guardian or managing conservator and the minor under 16 in cases in which the guardian or managing conservator is an employee or agent of the State of Texas or a political subdivision thereof and is acting in an official capacity.

(c) The application for voluntary admission for inpatient services shall be filed with the head of the mental health facility to which admission is sought in accord with the facility's written admission procedures and shall state that the applicant agrees to submit to the custody of the mental health facility as an inpatient for diagnosis, observation, care, and treatment until discharged, or until the expiration of 96 hours after written request for release is filed with the head of the facility.

(d) An application for court-ordered mental health services may only be filed for a voluntary client in inpatient care if the head of the facility believes the client meets the criteria for court-ordered mental health services, and:

(1) the client has filed a request for release with the head of the facility;

(2) the client is absent without authorization; or

(3) the client refuses or is unable to consent to appropriate and necessary psychiatric treatment.

(e) Screening of applicants for inpatient services will be accomplished by a qualified provider in accord with Chapter 405, Subchapter DD, of this title (relating to Continuity of Care: Procedures for Pre-admission Screening, Community Support Plan Development, and Client Program Coordination).

(f) Persons of age 18 and above seeking voluntary admission whose primary diagnosis under DSM-III is a type of alcoholism or drug dependence should be admitted to the appropriate speciality unit at the facility. The clinical director must review and approve admission of such a person to a general psychiatric unit since this is not the preferred approach.

(g) If a person seeks voluntary admission at a mental health facility without having been properly screened, the following steps should be pursued.

(1) An examination should be performed and the responsible regional mental health authority contacted concerning applicable community-based services. If no appropriate services exist, the facility should admit the applicant.

(2) If appropriate services exist in the community and the local community center has adequate resources and desires to serve, facility staff should provide transportation of the applicant to the community services entry point.

(3) If the voluntary applicant presents after hours or on the weekend, the mental health facility may admit the applicant if the mental health authority is not available but must contact it on the next working day and meet the requirements described in paragraph (1) and paragraph (2) of this subsection.

(h) Within 24 hours of admission the client must be informed of his or her rights as prescribed in Chapter 405, Subchapter L, of this title (relating to Rights of Clients—Mental Health Services).

§405.452. Admissions: Emergency Detention.

(a) Mental health emergency detention of a person shall be in accord with the following provisions.

(1) The head of the facility shall neither admit nor detain any person for emergency observation and treatment unless:

(A) a warrant has been obtained from a magistrate ordering the apprehension and taking into custody of such person to be admitted pursuant to Texas Civil Statutes, Article 5547-28; or

(B) an application by a peace officer for emergency detention has been presented pursuant to Texas Civil Statutes, Article 5547-26.

(2) The department will not accept any person under an emergency warrant or a warrantless emergency application as provided in the Texas Mental Health Code if, upon preliminary examination by a physician, it is clear to the physician that the person for whom admission is sought is mentally retarded rather than mentally ill or that the person is mentally retarded and mentally ill, but does not meet the Mental Health Code criteria for emergency admission.

(3) Within 24 hours of apprehension of the client pursuant to a magistrate's warrant as described in paragraph (1) of this subsection or an emergency detention as described in paragraph (2) of this subsection, an examining physician acceptable to the facility must prepare a written statement indicating the opinion that:

(A) the person is mentally ill, the nature of which disorder shall be described;

(B) the person evidences a substantial risk of serious harm to self or others, which risk of harm shall be specified and described, and which is demonstrated by behavior or evidence of severe emotional distress and deterioration in mental condition to the extent that the person cannot remain at liberty;

(C) the described risk of harm is imminent unless the person is immediately restrained; and

(D) emergency detention is the least restrictive means by which necessary restraint may be effected.

(4) The statement required in paragraph (3) of this subsection shall contain specific detailed information on which the physician's opinion required in subparagraph (3)(A)-(D) of this subsection is based.

(5) A person may be detained for a period not to exceed 24 hours except that when the 24-hour period ends on a Saturday or Sunday or a legal holiday, or before 4 p.m. on the first succeeding business day, the period of detention shall end at 4 p.m. on the first succeeding business day.

(6) Persons with mental retardation must have a primary diagnosis of mental illness to be detained on an emergency basis. When the primary diagnosis is not mental illness, alcoholics may be detained in accord with subsection (b) of this section, and drug-dependent persons may be detained in accord with subsection (c) of this section.

(7) If any one of the conditions described in subsection (c) of this section no longer apply during the detention period, the person shall be released and arrangements made for return to the county of residence or of apprehension or some other suitable place at the county's cost.

(8) If there are no appropriate inpatient mental health services available, the person will be transported to another facility deemed appropriate by the mental health authority of that county.

(b) Emergency detention of a person for alcoholism shall be in accord with the Texas Alcohol and Drug Abuse Services Act, effective January 1, 1986.

(1) If the magistrate finds that the person meets all of the following four criteria for emergency detention set out in the application for warrant, he shall issue a warrant for the immediate transportation of the person to an approved treatment program or other appropriate facility for a preliminary examination by a physician:

(A) the person suffers from alcoholism;

(B) the person evidences risk of serious harm to himself or others;

(C) the risk of harm is eminent if the person is not immediately restrained; and

(D) necessary restraint cannot be accomplished without emergency detention.

(2) The preliminary examination shall be performed as soon as possible within 24 hours of the time of apprehension. Copies of the application for warrant and the warrant itself shall be immediately transmitted to the program.

(3) The person shall be released unless the examining physician or the physician's designee provides written opinion that the person meets the criteria set out in paragraph (1) of this subsection. A person so released shall be entitled to reasonably prompt return to the location of apprehension or other suitable place, unless the person is arrested or objects to the return.

(4) The person shall not be detained more than 24 hours from the time of arrival at the facility, unless a written order for further detention is obtained. If the period of detention ends on a Saturday, Sunday, or legal holiday, the period of detention shall end at noon on the first succeeding business day.

(5) If during the emergency detention, the head of the facility or designee determines that the criteria in paragraph (1) of this subsection no longer apply, the person shall be released in accord with paragraph (3) of this subsection.

(6) A person detained under the provisions of this subsection shall be informed of his or her rights in accord with the Texas Alcohol and Drug Abuse Services Act.

(c) Detention of a drug-dependent person in protective custody shall be in an appropriate inpatient mental health facility or other facility deemed appropriate by the mental health authority. A person may not be detained for more than 72 hours, except that when the period ends on a Saturday, Sunday, or legal holiday, the person may be detained until the first succeeding business day. If extremely hazardous weather conditions exist, the facility shall detain the person for an additional 24-hour period if the presiding judge of the court in which the application for extended commitment is pending or the magistrate issues a writ-

ten order declaring an emergency and delaying the hearing.

(1) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held not later than the 72nd hour, excepting weekends and holidays, the head of the facility shall release the client unless the presiding judge or magistrate has delayed the hearing as provided in Texas Civil Statutes, Article 5561c-1, §19(a).

(2) A client shall be discharged by the head of the facility in which he has been detained if:

(A) final court order of commitment has not been entered by the court before the expiration of 14 days, or 30 days if an order of continuance has been granted; or

(B) head of the facility or designee determines that the client no longer meets the criteria for protective custody described in Texas Civil Statutes, Article 5561c-1, §17.

§405.453. Admissions: Persons Court-Ordered to Inpatient Mental Health Services.

(a) All persons subject to the following judicial orders will be accepted by the designated mental health facility in accord with the following referenced and related statutes:

(1) order of protective custody (OPC) (Mental Health Code, Texas Civil Statutes, Article 5547-36);

(2) order for temporary detention (Mental Health Code, Texas Civil Statutes, Article 5547-53);

(3) order for temporary mental health services (Mental Health Code, Texas Civil Statutes, Article 5547-31b);

(4) order for extended mental health services (Mental Health Code, Texas Civil Statutes, Article 5547-31c);

(5) alcoholism OPC (Texas Alcohol and Drug Abuse Services Act);

(6) alcoholism commitment (Texas Alcohol and Drug Abuse Services Act);

(7) alcoholism commitment in lieu of sentencing (Texas Alcohol and Drug Abuse Services Act);

(8) drug dependence OPC (Texas Civil Statutes, Article 5561c-1);

(9) drug dependence commitment (Texas Civil Statutes, Article 5561c-1);

(10) pretrial evaluation (Code of Criminal Procedure, Article 46.02, §3);

(11) criminal commitment (Code of Criminal Procedure, Article 46.02, §5);

(12) insanity commitment (Code of Criminal Procedure, Article 46.03).

(b) The clerk of the county court shall send a certified transcript of the commitment proceedings to the head of the mental health facility to which the client is committed. The clerk shall send with the transcripts any available information concerning the medical, social, and economic status and history of the client and his family. The head of the facility, upon receiving a copy of the writ of commitment and ad-

mitting a client, shall give the person transporting the client a written acknowledgment of accepting of the client and personal belongings and shall file a copy of the statement with the clerk of the committing court.

(c) Alcoholics and drug-dependent persons must also have mental illness to be court-ordered for mental health services.

(1) If a person committed as an alcoholic or drug dependent person is being treated on a substance abuse specialty unit, a change of commitment is necessary to treat for mental illness. A mental illness primary diagnosis should be assigned, a mental illness commitment secured, and the person should be transferred to the facility's appropriate psychiatric unit.

(2) If a person committed as mentally ill is evaluated as primarily having an alcoholism or drug-dependence problem, an alcoholism or drug-dependence commitment should be obtained, the primary diagnosis changed to an alcoholism or drug-dependent one, and the person internally transferred to the facility's substance abuse unit.

(d) Alcoholism commitments by courts in criminal proceedings shall be in accord with the following procedures.

(1) The judge of a court having jurisdiction in misdemeanor cases may remand the defendant to an approved alcoholism treatment program not to exceed 90 days, in lieu of incarceration or fine, if:

(A) the court or a jury has found the defendant guilty of an offense;

(B) the court finds that such violation resulted from or was related to the defendant's abuse of alcohol; and

(C) an approved treatment program is available and the facility agrees in writing to admit the defendant.

(2) The order of sentencing may be appealed in the same manner as for other judgments of the court.

(3) If a juvenile court finds that a child has engaged in delinquent conduct or conduct indicating a need for supervision resulting from or related to the child's abuse of alcohol or drugs, the court may remand the child to an approved treatment program for not more than 90 days if:

(A) an approved treatment program is available; and

(B) the program agrees in writing to receive the child.

(e) If a commitment order is valid on its face but there exists a reason to believe that the requirements for a proper commitment have not been met, the client must be admitted and the court notified of suspected irregularities.

(f) After the involuntarily committed client has been admitted and a thorough psychiatric evaluation of the client's condition has been conducted, if one or more of the contraindications of admission to mental health facilities enumerated in §405.457(a) of this title (relating to Admis-

sions: Contraindications) are present and applicable, the head of the facility should initiate discharge procedures in accord with the Mental Health Code, Texas Civil Statutes, Article 5547-72 and Article 5547-73.

(g) Persons accepted under an order of protective custody (except alcoholics) must be provided a probable cause hearing within 72 hours of the time detention begins pursuant to the order for protective custody. Alcoholics must have a hearing not less than five days and no more than 14 days from the filing of the petition. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, it shall be held on the next business day. The hearing may be postponed an additional 24 hours if an extreme emergency is declared by the presiding judge or magistrate based on extremely hazardous weather conditions that threaten the safety of the person or other essential parties to the hearing. At the hearing, the client and the client's attorney shall have an opportunity to appear and present evidence to challenge the allegation that the client presents a substantial risk of serious harm to self or others or continued deterioration of ability to function independently due to severe and abnormal mental, emotional, or physical distress, coupled with an inability to decide on treatment independently.

(h) A designated facility or provider in the county of the application shall file a recommendation with the court prior to the commitment hearing date on the most appropriate treatment alternatives for the proposed client.

(i) An order for temporary mental health services or an order for extended mental health services is not valid if a person has been charged with a criminal offense. An order of protective custody may be issued if the person is charged with a criminal offense, provided the head of the facility designated to detain the person has consented to the proposed custody.

§405.455. Admissions: Persons Court-Ordered to Outpatient Mental Health Services.

(a) Temporary or extended mental health services. Either temporary or extended health services orders may be issued for outpatient services. Such orders must name the head of the facility or the individual designated by the head of the facility as responsible for service delivery.

(1) The named individual responsible for court-ordered outpatient services (other than the facility head) shall submit a general program of treatment to the court within two weeks of the entering of the order. If the person ordered to receive outpatient services fails to comply, or if substantial changes in the general program of treatment occur, the responsible individual shall inform the court.

(2) A request to the court may be made by the head of the facility to modify an inpatient mental health services order to an outpatient order. This request shall be supported by a detailed explanation of why

modification is sought, an examination performed, and a certificate of medical examination form completed within the seven days immediately preceding the hearing.

(b) Temporary detention. Temporary detention in an inpatient setting to evaluate the appropriate setting for continued court-ordered care shall not exceed 72 hours, excepting weekends, legal holidays, and extreme weather emergencies as provided in the Mental Health Code, Texas Civil Statutes, Article 5547-38, pending the hearing on modification. If there is no appropriate inpatient mental health facility, the person shall be transported to another facility deemed appropriate by the mental health facility of that county.

(c) Commitment of drug-dependent persons and alcoholics. Transportation procedures are carried out in accord with §405.453(b) of this title (relating to Admissions: Persons Court-Ordered to Inpatient Mental Health Services).

§405.460. Discharges: Persons Court-Ordered to Inpatient and Outpatient Mental Health Services, Alcoholism, and Drug-Dependence Treatment.

(a) Persons court-ordered to inpatient mental health services must be discharged in accord with the following provisions.

(1) A person court-ordered to inpatient mental health services who upon re-examination is found to be mentally impaired, but who meets all of the following criteria, shall be discharged within the shortest possible time consistent with orderly discharge planning, including appropriate coordination with the court and aftercare referral:

(A) there are no significant ideational or behavioral indices of causing serious harm to self or others nor does the person continue to suffer severe and abnormal mental, emotional, or physical distress resulting in continued deterioration of the person's ability to function independently coupled with an inability to decide on treatment voluntarily;

(B) psychiatric, medical, social, or psychological treatment is no longer needed or could be provided in a setting other than the mental health facility;

(C) the individual is able to function intellectually, socially, and occupationally to the extent that the structure of inpatient mental health services is not required to maintain reasonable safety.

(2) This section is intended to protect an involuntarily committed client's right not to be confined against his or her will beyond the point at which the client no longer requires inpatient mental health services. There is no option as to whether or not to discharge an involuntary client who meets these criteria.

(3) Consistent with orderly discharge planning and coordination with the court, the head of the facility in which the

person is detained in protective custody shall immediately release the client from custody if:

(A) no notice is received of a probable cause hearing having been held within 72 hours of detention (excluding weekends and holidays);

(B) a final order for court-ordered mental health services has not been entered by the court before the expiration of 14 days or before the expiration of 30 days from the time of filing the original application if an order of continuance has been granted;

(C) the head of the facility or designee determines that the client no longer presents a substantial risk of serious harm to self or others if not immediately restrained; or

(D) a court order for temporary mental health services expires (not to exceed 90 days) or a court-order for extended mental health service expires (not to exceed 12 months) and no additional order, emergency detention, or voluntary admission is forthcoming.

(b) Persons court-ordered to outpatient mental health services must be discharged in accord with the following provisions.

(1) The head of the facility shall discharge the person upon expiration of the court order.

(2) A discharge under this subsection terminates the court order. Any person discharged under this subsection shall not again be compelled to submit to involuntary mental health services except pursuant to a new order entered in accord with the Mental Health Code.

(3) Upon discharging a person under this section, the individual responsible for outpatient mental health services shall file a certificate of discharge with the court that entered the order.

(4) If the head of the facility in which the person is detained does not receive notice that a modification hearing has been held within 72 hours of the time detention begins pursuant to an order of temporary detention, excepting weekends, legal holidays, and extreme weather emergencies authorizing the temporary detention to continue, the head of the facility shall immediately release the person from custody. If the person is released because the modification hearing has not been held within the required time, the person shall continue to be subject to the conditions of the court order for outpatient services issued prior to the order for temporary detention if it has not already expired.

(c) Persons court-ordered for alcoholism treatment must be discharged in accord with the following provisions.

(1) The head of the facility shall discharge the client on expiration of the court order.

(2) The head of the facility may discharge the client prior to the expiration

of the court order if the client no longer meets the criteria for court-ordered treatment.

(3) A discharge under this subsection terminates the court orders. Any person discharged under this subsection may not again be compelled to submit to involuntary treatment except pursuant to a new order entered in accord with the Texas Alcohol and Drug Abuse Services Act.

(4) Upon discharge of a person under this section, the head of the facility shall file a certificate of discharge with the court that entered the order.

(d) A person found by the court or jury to be a drug-dependent person and to require hospitalization for his or her own welfare and protection or for the protection of others shall be committed to a mental health facility for an extended period not to exceed six months or until he or she is discharged by the head of the mental health facility.

(1) If the court or jury finds that a drug-dependent person should not be hospitalized, the court shall dismiss the jury, if any, and hear additional evidence relating to alternate settings for outpatient services. The judge may order outpatient services, which may include, but are not limited to, community substance abuse programs by a private psychiatrist or psychologist, for up to six months.

(2) An order for outpatient services must identify the individual responsible for outpatient care, who shall submit to the court not later than the 14th day after the date of order a general treatment program to be incorporated into the court's order.

(3) On request by the client or individual responsible for the client's care, the court may modify or waive the requirements before the end of the six-month period.

(4) If the client fails to comply with an order, the individual responsible for the client's treatment shall send the court written notification. On receipt of the notification or on motion by the court, the court may issue to the client a show cause order commanding the client to show cause why he or she should not be held in contempt of court. Notice shall be served not later than the 10th day before the hearing as provided in the Texas Rules of Civil Procedure.

§405.461. Discharges: Inappropriate Admissions under Court Order.

(a) Inappropriate admissions by court order are of three types:

(1) valid order but commitment procedures inappropriate;

(2) admission criteria in the subchapter are found unmet after admission has taken place;

(3) admission contraindications in §405.457 of this title (relating to Admissions: Contraindications) found present and applicable after admission has taken place.

(b) The head of the mental health facility should discharge a client admitted

under an order of protective custody when the admission is inappropriate in accord with the Mental Health Code, Texas Civil Statutes, Article 5547-19(e).

(c) Inappropriate admissions already on temporary or extended commitments can be discharged with medical advice; the concerned judge should be informed of the discharge circumstances.

§405.468. Transfers: Between Mental Retardation and Mental Health Facilities.

(a) Transfers of involuntary clients for an indefinite period.

(1) Transfer of an involuntary client from a mental health facility to a mental retardation facility thought to be indefinite in nature shall be made pursuant to Texas Civil Statutes, Article 5547-78. In making the finding required by the statute, which is that the client has symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a mental retardation facility (state school or state center) would be in the best interest of the client, all of the following criteria should be applied.

(A) The client is found not to be in need of inpatient mental health services by a comprehensive diagnostic and evaluation team.

(B) The client has been found to be mentally retarded.

(C) No appropriate resources are available in the community.

(2) A transfer thought to be indefinite in nature of an involuntarily committed client from a mental retardation to a mental health facility shall be made pursuant to Texas Civil Statutes, Article 5547-300, §46, and Chapter 405, Subchapter BB, of this title (relating to Admissions, Transfers, Furloughs, and Discharges—State Schools for the Mentally Retarded).

(b) Transfer of involuntary client for a short-term period.

(1) When an involuntarily committed client in a mental retardation facility is in need of medical, dental, or psychiatric care for a period not to exceed 30 consecutive days, the client may be transferred pursuant to an agreement between the heads of facilities to a mental health facility in accordance with the provisions contained in Texas Civil Statutes, Article 5547-300, §46.

(2) The mental retardation facility from which a client was received for short-term treatment or evaluation pursuant to paragraph (1) or paragraph (2) of this subsection should promptly receive that client back when such treatment or evaluation is completed.

(c) Transfer of voluntary clients. If the transfer is to be indefinite in nature either from a mental retardation facility to a mental health facility, or vice versa, the person admitted on a voluntary basis should be discharged from the original facility and properly admitted to the second. If the

transfer is only temporary, appropriate consent for the transfer should be obtained from or on behalf of the voluntary client.

(d) Interested relatives and the guardian should be notified of the transfer by the transferring facility and requested to provide transportation, if feasible.

(e) If the head of the transferring facility has been notified by a prosecuting attorney that the person to be transferred has criminal charges pending, the prosecutor shall be informed of the transfer by the transferring facility.

(f) Each client, whether voluntary or involuntary, should participate in the planning for his or her transfer to the extent possible.

(g) Copies of medical records or relevant parts thereof should be transferred with the client.

(h) Transfers under this section shall only be made after coordination between the heads of both facilities involved.

§405.469. Transfers: Between Mental Health Facilities and Other Mental Health Facilities, Private Mental Hospitals, or Hospitals Operated by the United States.

(a) Upon giving notice to the committing court and the department, the head of a private mental hospital may, for any reason, transfer an involuntarily committed person to a mental health facility designated by the department.

(b) Transfers from mental health facilities should be made to properly licensed and appropriately accredited private hospitals whenever possible.

(c) The procedure in Texas Civil Statutes, Article 5547-76, for transferring an involuntary client to a private mental hospital will be followed in making such transfers, including:

(1) application by client, guardian, or friend;

(2) agreement of the head of the private mental hospital; and

(3) notice to committing court.

(d) The requirements of Texas Civil Statutes, Article 5547-77, regarding the transfer of an involuntary client to an agency of the United States, will be observed in making such a transfer. These requirements include:

(1) notice to a committing court;

(2) notice of availability and eligibility; and

(3) order approving the transfer by the county judge of the county of residence of the involuntary client.

(e) Copies of medical records or relevant parts thereof, personal property, and trust fund accounts should be transferred with the client. The head of a private mental hospital or an agency of the United States is required to send the medical records of a person transferred to a mental health facility.

(f) Each person, whether voluntarily admitted or involuntarily committed,

should participate in the planning of his or her transfer to the extent possible.

(g) If the head of the transferring facility has been notified by a prosecuting attorney that the person to be transferred has criminal charges pending, then the prosecutor will be informed of the transfer by the transferring facility.

(h) Interested relatives and the guardian should be notified of the transfer by the transferring facility.

(i) The regional mental health authority(s) should be notified when transfers of clients are made by mental health facilities to private psychiatric hospitals in his or her region(s).

(j) During transfers from one mental health facility to another, attending staff shall ensure that all appropriate physical care needs of the client are met and that the client's rights under departmental rules are preserved.

(k) If the person has mental retardation as well as mental illness, the facility may not transfer the person to a mental health facility operated by the Texas Department of Mental Health and Mental Retardation unless the commissioner of the department has determined that space is available in a unit of a departmental facility specifically designed to serve such persons. The head of the inpatient mental health facility shall obtain such determination prior to initiating the transfer.

§405.477. Reference. Reference is made to the following statutes and rules:

(1) Texas Code of Criminal Procedure, Article 46.01;

(2) Texas Code of Criminal Procedure, Article 46.02;

(3) Texas Code of Criminal Procedure, Article 46.03;

(4) Texas Civil Statutes, Article 3196c, c-1;

(5) Texas Civil Statutes, Article 4355;

(6) Texas Civil Statutes, Article 4476, §14;

(7) Texas Civil Statutes, Article 4476, §15;

(8) Texas Civil Statutes, Article 5547-1, *et seq.*;

(9) Texas Civil Statutes, Article 5561c, c-1;

(10) Texas Civil Statutes, Article 5561f;

(11) Texas Alcohol and Drug Abuse Service Act;

(12) Family Code, §54.04;

(13) Family Code, §55.02;

(14) Chapter 405, Subchapter BB, of this title (relating to Admissions, Transfers, Furloughs, and Discharges—State Schools for the Mentally Retarded);

(15) Chapter 405, Subchapter DD, of this title (relating to Continuity of Care: Procedures for Preadmission Screening, Community Support Plan Development, and Client Program Coordination);

(16) Chapter 405, Subchapter I, of this title (relating to Review Boards (Skyview Maximum Security Unit at Rusk State Hospital) for Making a Determination of Manifest Dangerousness);

(17) Chapter 405, Subchapter L, of this title (relating to Rights of Patients and Residents);

(18) Chapter 405, Subchapter N, of this title (relating to Transfer of Court-Committed Patients to Rusk State Hospital Maximum Security Unit);

(19) Chapter 405, Subchapter Z, of this title (relating to Comprehensive Diagnostic and Evaluation Centers);

(20) Chapter 403, Subchapter H, of this title (relating to Interstate Transfer);

(21) Texas Department of Mental Health and Mental Retardation, Memo from Gary E. Miller, M.D., commissioner, to staff, Designation of Local Mental Health and Mental Retardation and Local Service Areas. February 1, 1984;

(22) Texas Department of Mental Health and Mental Retardation Administrative Policy 1, Procedures for Discharge of Persons with Mental Retardation from State Mental Hospitals, February 23, 1984.

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 August 30, 1985.

TRD-857968

Gary E. Miller
Commissioner
Texas Department of
Mental Health and
Mental Retardation

Effective date: September 20, 1985
Proposal publication date: March 19, 1985
For further information, please call
(512) 475-4670.

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Subchapter T. Admission Criteria for Vernon Center Adolescent Drug Treatment Unit

★ 25 TAC §§405.511-405.519

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.511-405.519, without changes to the proposal published in the March 19, 1985, issue of the *Texas Register* (10 TexReg 916). The repeal is adopted contemporaneously with the adoption of new §§405.441-405.477, concerning admission, transfers, furloughs, and discharges of clients at mental health facilities of the Texas Department of Mental Health and Mental Retardation.

The repeal of this subchapter and the incorporation of its key ideas into new sections enacts the general recommenda-

tions of a rule review committee appointed by the commissioner to suggest ways by which the department's administrative laws could be made more concise.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5547-202, §2.11(b), which provide the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

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 August 15, 1985.

TRD-857971

Gary E. Miller
Commissioner
Texas Department of
Mental Health and
Mental Retardation

Effective date: September 20, 1985
Proposal publication date: March 19, 1985
For further information, please call
(512) 475-4670.

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Subchapter EE. Admission Criteria for the Waco Center for Youth

★ 25 TAC §§405.781-405.789

The Texas Department of Mental Health and Mental Retardation adopts the repeal §§405.781-405.789, without changes to the proposal published in the March 19, 1985, issue of the *Texas Register* (10 TexReg 916). The repeal is adopted contemporaneously with the adoption of new §§405.441-405.477, concerning admissions, transfers, furloughs, and discharges at mental health facilities of the Texas Department of Mental Health and Mental Retardation.

The repeal of this subchapter and the incorporation of its key ideas into new sections enacts the general recommendations of a rule review committee appointed by the commissioner to suggest ways by which the department's administrative laws could be made more concise.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5547-202, §2.11(b), which provide the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

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.

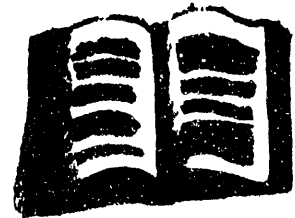
Issued in Austin, Texas, on August 31, 1985.

TRD-857970

Gary E. Miller
Commissioner
Texas Department of
Mental Health and
Mental Retardation

Effective date: September 20, 1985
Proposal publication date: March 19, 1985
For further information, please call
(512) 475-4670.

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TITLE 28. INSURANCE Part I. State Board of Insurance

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

Subchapter Z. Exemption from Review and Approval of Certain Life, Accident, and Health and Annuity Forms and Expedition of Review Process of Facsimiles Previously Approved Forms

★ 28 TAC §3.4001, §3.4002

The State Board of Insurance adopts amendments to §3.4001 and §3.4002 (Rules 059.03.42.030 and .031), without changes to the proposed text published in the July 2, 1985 issue of the *Texas Register* (10 TexReg 2162).

Section 3.4001 and §3.4002 are part of a series relating to the exemption from review and approval of certain life, health, and annuity forms as permitted in the Insurance Code, Article 3.42. These changes are cosmetic only and are necessary to conform the language of the sections to certain amendments to the procedures specified in Article 3.42, which occurred subsequent to the adoption of the rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Insurance Code, Article 3.42, pursuant to which the State Board of Insurance may exempt from the requirements of Article 3.42, for so long as it deems proper, any

Insurance document or form specified in the order, the filing and approval of which is, in its opinion, not desirable or necessary for the protection of the public.

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 August 29, 1985.

TRD-857993

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: September 24, 1985
Proposal publication date: July 2, 1985
For further information, please call
(512) 475-2950.

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★28 TAC §7.10

The State Board of Insurance adopts an amendment to §7.10 (Rule 059.01.15.212), without changes to the proposed text published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1854).

Section 7.10 deals with electronic machines constituting a data processing system or systems, and other office equipment, furniture, and labor-saving devices as admitted assets under the Insurance Code, Article 3.01, §10(b). Subsection (b) of the section lists certain insurers to which the section is applicable. This amendment adds certain other insurers and rewrites a sentence to make it clear that the section is applicable to every type of insurer to which the Insurance Code, Article 3.01, §10(b), is made applicable by law.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 3.01, §10, Article 9.47, §2, and Article 16.24, which relate to the treatment of data processing systems, office equipment, furniture, machines and labor saving devices as admitted assets for various types of insurers.

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 August 29, 1985.

TRD-857995

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: September 24, 1985
Proposal publication date: June 7, 1985
For further information, please call
(512) 475-2950.

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Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

★28 TAC §7.3

The State Board of Insurance adopts the repeal of §7.3 (Rule 059.01.15.204), without changes to the proposal published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1854).

Section 7.3 specifies certain reporting by insurers of additional balance sheet liability for reinsurance on paid and unpaid losses due from unauthorized insurers. This section has been rendered obsolete by the passage of the Insurance Code, Article 3.10A and Article 5.75-2, which now control the subject matter of the rule for most companies. No cost or fiscal implications are expected from this repeal since a change has already been caused by the cited statutes.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Insurance Code, Article 3.10A and Article 5.75-2, relating to credit which may be taken in the financial statements of certain domestic ceding insurers on account of reinsurance of policies of reinsurance reserve ceded to an assuming insurer which is not licensed to do business 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 August 29, 1985.

TRD-857994

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: September 24, 1985
Proposal publication date: June 7, 1985
For further information, please call
(512) 475-2950.

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Chapter 19. Agents Licensing

Subchapter H. Variable Contract Agents

★28 TAC §19.701

The State Board of Insurance adopts an amendment to §19.701 (Rule 059.21.01.111), without changes to the proposed text published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1855).

Section 19.701 specifies certain qualifications necessary for persons to become an agent for variable life insurance and variable annuity products. This amendment permits qualification under

subsection (b) of the section by successful completion of the National Association of Securities Dealer Series 1 examination. The Series 1 examination is no longer administered. Its inclusion in the section will permit persons who have heretofore successfully completed it to qualify under subsection (b) of the section. The board believes that successful completion of the Series 1 examination meets the examination standards necessary under subsection (b).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 3.75, §8, pursuant to which the State Board of Insurance may establish such rules as are reasonable and appropriate for the implementation of Article 3.75, including, but not limited to, the licensing of agents.

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 August 29, 1985.

TRD-857996

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: September 24, 1985
Proposal publication date: June 7, 1985
For further information, please call
(512) 475-2950.

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Chapter 21. Trade Practices

Subchapter E. Unfair Discrimination Based on Sex or Marital Status

★28 TAC §21.407

The State Board of Insurance adopts an amendment to §21.407 (Rule 059.21.21.107), without changes to the proposal published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1855).

Section 21.407 is one in a series of rules concerning unfair practices in insurance based on sex or marital status. This section provides generally that coverage in individual policies must be continued for an individual who otherwise loses coverage due to a change in marital status. It provides in part that for coverage other than life and accident and health, the inception date of new coverage need not precede the earliest date required to maintain continuity of coverage, and that such coverage shall have the same expiration date as the policy under which coverage was issued prior to a change in marital status. This amendment changes the later provision respecting the expiration date to permit the insured

and insurer to agree on a later expiration date than the same expiration date as the coverage which was issued prior to a change in marital status.

The only comment received on the proposal was from Government Employees Insurance Company, which suggested the amendment. The board agreed that the rule should be changed.

The amendment is adopted under the Insurance Code, Article 21.21, §3 and §4, which prohibit unfair practices in insurance; under the Insurance Code, Ar-

ticle 21.49-2, pursuant to which the State Board of Insurance may prescribe reasonable rules as to the cancellation of all policies of insurance adopted by the board under the Insurance Code, Chapter 5; and the Insurance Code, Article 3.42, which authorizes the board to disapprove unfair provisions in certain insurance policies.

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 August 29, 1985.

TRD-857907

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: September 24, 1985
Proposal publication date: June 7, 1985
For further information, please call
(512) 475-2950.

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State Board of Insurance Exempt Filings

State Board of Insurance Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved a filing by PMI Mortgage Insurance Company, of a new endorsement form UM 2095.05 (June 1985). The endorsement is to be used with the 100% coverage master policy approved under Board Order 45927.

The intent of 100% coverage has been to provide insurance on loans included in a mortgage security transaction such as a

mortgage revenue bond issue, a pass-through certificates issue, or a mortgage pool sale. This insurance is needed for a mortgage security transaction to receive an investment quality rating by an agency such as Standard and Poor's. The endorsement is being filed to limit the 100% coverage master policy to that use for which it was intended.

The filing is effective 15 days after it is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempt it from the requirements of the Administrative Procedure and Texas Register Acts.

Issued in Austin, Texas, on August 28, 1985.

TRD-857941

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: September 25, 1985
For further information, please call
(512) 475-2950.

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The State Board of Insurance has adopted on a standard basis revised multiple lines retrospective premium endorsements and related Texas amenda-

tory endorsements. The revised retrospective premium endorsements were re-drafted by the National Council on Compensation Insurance to be consistent with the multiple lines retrospective premium endorsements used by member companies of the Insurance Services Office and the Texas Automobile Insurance Service Office.

The Texas amendatory multiple lines endorsements were revised to delete language now contained in the revised retrospective premium endorsements.

The revised retrospective premium endorsements and the Texas amendatory endorsements shall apply to all new and renewal retrospective rating plans made effective on and after October 1, 1985.

The notification is made pursuant to the Insurance Code, Articles 5.96 and 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on August 28, 1985.

TRD-857940

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: October 1, 1985
For further information, please call
(512) 475-2950.

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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 Department of Agriculture

Friday, September 13, 1985, 10:30 a.m. The Family Farm and Ranch Security Program of the Texas Department of Agriculture will meet in Room 1033, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the program will consider proposed amendments to the Family Farm and Ranch Security Program rules and review a petition for modification of the Aubrey Stone loan guaranty.

Contact: Larry Strange, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: September 4, 1985, 4:23 p.m.
TRD-858128

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Texas Antiquities Committee

Friday, September 13, 1985, 9:30 a.m. The Texas Antiquities Committee (TAC) will meet in Room 117, Sam Houston Building, 201 East 14th Street, Austin. Items on the agenda summary include approval of Minutes 82 of the July 12, 1985, meeting; discussion and decision on proposals for curation of the Platoro/Kenon/Purvis Collection; a discussion of the moratorium on and the TAC's future policy regarding historic structures; and a staff report.

Contact: Dr. William G. Reeder, 2400 Trinity Street, Austin, Texas 78705, (512) 471-4794.

Filed: September 3, 1985, 1:53 p.m.
TRD-857982

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Texas Economic Development Commission

Friday, September 20, 1985, 10 a.m. The Texas Small Business Industrial Develop-

ment Corporation of the Texas Economic Development Commission will meet in Room 221, Anson Jones Building, 410 East Fifth Street, Austin. According to the agenda, the corporation will discuss the proposed issuance of its revenue bond in an amount not to exceed \$400,000 to finance the cost of the acquisition of approximately 1.483 acres of land the acquisition and rehabilitation of a building thereon of approximately 18,000 square feet to be used as an office/processing/distribution facility for the testing, purifying, and processing of industrial gases and the distribution of gas handling equipment and accessories, together with certain equipment and various other items which are functionally related and subordinate to the foregoing (the project), to be owned by Scott Environmental Technology, Inc., and operated by Scott Specialty Gases, a division of Scott Environmental Technology Inc., and to be located at 3714 Lapas Drive in Houston. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby.

Contact: John H. Kirkley, P.O. Box 12728, Austin, Texas 78711.

Filed: September 4, 1985, 4:47 p.m.
TRD-858129

Friday, September 20, 1985, 10 a.m. The Texas Small Business Industrial Development Corporation of the Texas Economic Development Commission will meet in Room 221, Anson Jones Building, 410 East Fifth Street, Austin. According to the agenda, the corporation will discuss the proposed issuance of its revenue bond in an amount not to exceed \$750,000 to finance the cost of the acquisition and construction of a 6,000 square foot banking facility, together with drive-in banking facilities and certain equipment and facilities functionally related and subordinate to the foregoing (including a computer system and a security system) (the project), to be owned by FNE Properties and to be leased to the First National Bank of Ennis. The project will be

located at 207 South Clay Street, Ennis. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby.

Contact: John H. Kirkley, P.O. Box 12728, Austin, Texas 78711, (512) 472-5039.

Filed: September 4, 1985, 4:47 p.m.
TRD-858130

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Texas Education Agency

Wednesday, September 11, 1985, 1:30 p.m. The Accountable Costs Advisory Committee of the Texas Education Agency (TEA) will meet in conference Room 3-006, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda include an update of the legislative charge to the committee; review of preliminary study plan elements of the committee; discussion of goals and objectives for 1985-1986; discussion of strategies for completion of a study; assignment of committee members to subcommittees; and a summary of committee recommendations for State Board of Education consideration.

Contact: Tom Krueck, 201 East 11th Street, Austin, Texas 78701, (512) 475-2275.

Filed: September 3, 1985, 4:21 p.m.
TRD-857999

Thursday, September 12, 1985, 6 p.m. The State Board of Education of the Texas Education Agency (TEA) will meet in the Padre Island Room, Hyatt Regency Hotel, 208 Barton Springs Room, Austin. According to the agenda, the board will conduct a dinner meeting with the principals of four Texas high schools, who are members of the Coalition of Essential Schools, to discuss

the development of quality schools committed to excellence.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:26 p.m.
TRD-858018

Thursday, September 12, 1985, 7:30 p.m. The Committee of the Whole of the State Board of Education of the Texas Education Agency (TEA) will meet in the Padre Island Room, Hyatt Regency Hotel, 208 Barton Springs Room, Austin. According to the agenda, the committee will consider goals and objectives for the board's long-range plan, and the proposed repeal of 19 TAC Chapter 73, concerning goals.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:25 p.m.
TRD-858019

Friday, September 13, 1985, 8:30 a.m. The Committee for Finance and Programs of the State Board of Education of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda summary include presentation on the permanent school fund (PSF) by Inter-First; a review of PSF securities transactions; a review of PSF investment portfolio; recommended PSF investment program for September; estimated funds from the PSF available for the September program; discussion of contract with the investment counsel for the PSF; a report of the investment officer regarding the PSF; the annual operating plan/budget for 1985-1986; an overview and discussion of the budget process; mineral leases by school districts; appeals procedure for proprietary schools; special education; proprietary schools and veterans education; school-community guidance centers; secondary school vocational education; requirements for student attendance accounting for state funding purposes; school district annual performance report; allocation of personnel units to the Texas Department of Corrections; the Windham Independent School District allotment; operation of school buses; regular student eligibility for transportation; contracted transportation; a contract with a transportation company or system; summer school programs; description of a well-balanced elementary curriculum; approval of non-public schools for handicapped students for contracting purposes for the 1985-1986 school year; approval of funding for the Texas Future Problem Solving Program; a request for authorization to apply for funds under the Elementary and Secondary Education Act, Title VII; 1985-1986 proposed schedule of activities for preparing the long-range master plan for vocational education; notice of a request to increase the price for producing large print textbooks; a proposed contract with the Texas Department of

Community Affairs for Job Training Partnership Act (JTPA), §123; a request for approval to fund the evaluation of the Youth Opportunities Unlimited (YOU) Model Program; approval of a contractor for the development of the Teacher Appraisal Training Program and training materials; appointment to the Apprenticeship and Training Advisory Committee; proposed JTPA, §123, 20% special projects; research design for the 1986-1987 biennium; a report on management and services audits of regional education service centers; establishment of vocational education technical committees; a preliminary report on recommendations of the State Textbook Committee; authorization to issue a request for proposals for a coordinated data base for an accountability project; and appointment of a trustee for the Fort Sam Houston Independent School District.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:26 p.m.
TRD-858020

Friday, September 13, 1985, 8:30 a.m. The Committee for Personnel of the State Board of Education of the Texas Education Agency will meet in Room 1-106, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda summary include qualifications of special education personnel; special education related services personnel; training for school board members; preparation and planning time; teacher career ladder; in-service training in management skills for district administrators; teacher certification; certificate issuance procedures; duty-free lunch; assignment of personnel; State Textbook Committee meetings, compensatory per diem, and expenses; paperwork reduction; evidence of educational attainment; the testing program; description of a well-balanced elementary curriculum; teacher education; hearings concerning complaints made to the Teachers' Professional Practices Commission (TPPC); proceedings concerning recommendations made to the commissioner by the TPPC; a petition for adoption of a rule concerning assignment to the teacher career ladder; statewide standards on the duties of a school board member; approval of fees for the Texas Educator Initial Certification Testing Program; approval of a contractor for the development of the Teacher Appraisal Training Program and training materials; a report on the teacher appraisal pilot study; a report on the initial certification test development program; a report on the Texas examination of current teachers and administrators; a report on the implementation of the Houston alternative teacher certification plan; and a review of the 1984 standards for teacher education with representatives of the Commission on Standards for the Teaching Profession.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:25 p.m.
TRD-858021

Friday, September 13, 1985, 8:30 a.m. The Committee for Students of the State Board of Education of the Texas Education Agency will meet in Room 1-109, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda summary include special education; clarification of provisions in federal regulations and state law; materials available for use with textbooks; driver education; credit by examination; time sessions for school operation; graduation requirements; kindergarten; discipline management; general educational development; special education general program requirements; instructional resources adoption by reference; library media standards; bilingual education and other special language programs; curriculum; educational programs for gifted and talented students; midterm Texas educational assessment of minimum skills for migrant students; and a preliminary report on recommendations of the State Textbook Committee.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:25 p.m.
TRD-858022

Friday, September 13, 1985, 5 p.m. The Committee for Long-Range Planning of the State Board of Education of the Texas Education Agency will meet in Room 1-106, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda include discussion of proposed new 19 TAC Chapter 97, concerning accreditation, the proposed repeal of Chapter 97, concerning planning and accreditation; and a comprehensive state plan for regional education service centers.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:24 p.m.
TRD-858023

Friday, September 13, 1985, 6:30 p.m. The State Board of Education of the Texas Education Agency (TEA) will meet in the Padre Island Room, Hyatt Regency Hotel, 208 Barton Springs Room, Austin. According to the agenda, the board will conduct a dinner meeting to receive reports from the chairmen of the State Board of Education committees—Committee for Finance and Programs, Committee for Students, Committee for Personnel, Committee for Long-Range Planning; and Committee of the Whole, concerning items discussed in committee meetings on Thursday, September 12 and Friday, September 13.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:26 p.m.
TRD-858024

Saturday, September 14, 1985, 8:30 a.m. The State Board of Education of the Texas Education Agency (TEA) will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda summary include investment of the permanent school fund (PSF); the annual operating plan/budget for 1985-1986; mineral leases by school districts; appeals procedure for proprietary schools; special education; proprietary schools and veterans education; school-community guidance centers; secondary school vocational education; requirements for student attendance accounting for state funding purposes; school district annual performance report; allocation of personnel units to the Texas Department of Corrections; the Windham Independent School District allotment; operation of school buses; regular student eligibility for transportation; contracted transportation; a contract with a transportation company or system; summer school programs; description of a well-balanced elementary curriculum; approval of non-public schools for handicapped students for contracting purposes for the 1985-1986 school year; approval of funding for the Texas Future Problem Solving Program; a request for authorization to apply for funds under the Elementary and Secondary Education Act, Title VII; 1985-1986 proposed schedule of activities for preparing the long-range master plan for vocational education; notice of a request to increase the price for producing large print textbooks; a proposed contract with the Texas Department of Community Affairs for Job Training Partnership Act (JTPA), §123, for program period 1985-1987; a request for approval to fund the evaluation of the Youth Opportunities Unlimited (YOU) Model Program; approval of a contractor for the development of the Teacher Appraisal Training Program and training materials; appointment to the Apprenticeship and Training Advisory Committee; special education clarification of provisions in federal regulations and state law; materials available for use with textbooks; driver education; credit by examination; time sessions for school operation; graduation requirements; kindergarten; discipline management; general educational development; special education general program requirements; instructional resources adoption by reference; library media standards; bilingual education and other special language programs; curriculum; educational programs for gifted and talented students; qualifications of special education personnel; special education related services personnel; training for school board members; preparation and planning time; teacher career ladder; in-service training in management skills for district administrators; teacher certification; certificate issuance procedures; duty-free

lunch; assignment of personnel; State Textbook Committee meetings, compensatory per diem, and expenses; paperwork reduction; evidence of educational attainment; the testing program; teacher education hearings concerning complaints made to the Teachers' Professional Practices Commission (TPPC); proceedings concerning recommendations made to the commissioner by the TPCC; a petition for adoption of a rule concerning assignment to the teacher career ladder; statewide standards on the duties of a school board member; approval of fees for the Texas Educator Initial Certification Testing Program; goals and objectives for the State Board of Education's long-range plan; goals; TEA organization; authorization to issue a request for proposals for a coordinated data base for an accountability project; and appointment of a trustee for the Fort Sam Houston Independent School District.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 4, 1985, 1:24 p.m.
TRD-858025

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Texas Employment Commission

Friday, September 6, 1985, 9 a.m. The Texas Employment Commission (TEC) met in emergency session in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda, the commission heard a presentation by the Policy/Planning and Evaluation Unit. The emergency status was necessary to authorize strategic planning necessary to give proper effect to legislative mandates, particularly with regard to budgeting.

Contact: C. Ed Davis, TEC Building, 101 East 15th Street, Austin, Texas 78701, (512) 463-2291.

Filed: September 4, 1985, 3:56 p.m.
TRD-858035

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Office of the Firemen's Pension Commissioner

Wednesday, September 25, 1985. The Administrative Division of the Office of the Firemen's Pension Commissioner will meet at the Beaumont Plaza Holiday Inn, IH 10 and Walden, Beaumont. Times and agendas follow.

2 p.m. The Board of Trustees for the Senate Bill 411 pension system as prescribed by Texas Civil Statutes, Article 6243e.3, will discuss the pension plan.

7 p.m. The division will conduct a workshop with Beaumont area volunteer fire departments to discuss the Senate Bill 411 pension plan available for volunteer firefighters in Texas.

Contact: Hal H. Hood, Room 503-F, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 475-5879.

Filed: September 4, 1985, 2:16 p.m.
TRD-858029, 858030

Thursday and Friday, September 26 and 27, 1985, 1 p.m. and 8 a.m. respectively. The Administrative Division of the Office of the Firemen's Pension Commissioner will meet at the Beaumont Plaza Holiday Inn, IH 10 and Walden, Beaumont. According to the agenda, the division will conduct a workshop for the fully paid fire departments participating in the House Bill 238 pension plan as prescribed by Texas Civil Statutes, Article 6243e, to discuss the pension plan as well as recent legislation affecting the participants in the pension plan.

Contact: Hal H. Hood, Room 503-F, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 475-5879.

Filed: September 4, 1985, 2:16 p.m.
TRD-858031

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Texas Health and Human Services Coordinating Council

Thursday, October 3, 1985, 10 a.m. The Administration Committee of the Texas Health and Human Services Coordinating Council will meet in the seventh floor conference room, Sam Houston Building, 201 East 14th Street, Austin. Items on the agenda include minutes of the last meeting; committee structure; advisory committees; and council foundation.

Contact: Lynn Levarty, P.O. Box 12428, Austin, Texas 78711, (512) 475-2427.

Filed: September 4, 1985, 12:40 p.m.
TRD-858026

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Texas Department of Human Services

Saturday, September 14, 1985, 9 a.m. The Medical Care Advisory Committee of the Texas Department of Human Services will meet in classroom 1, second floor, West Tower, 701 West 51st Street, Austin. Items on the agenda include commissioner's comments; teenage parent case manager pilot project; indigent health care; limitation of contracts with hospitals; moratorium on

nursing home beds; full month of institutionalization; revision to ICF/SNF sanction rules; amendments to ICF/SNF standards for participation, Chapter XIX, medical review and evaluation; amendments to the ICF-MR sanction rules; nursing home standards compliance with House Bill 403; implementation of residential health care program; increase in the Form 2060 eligibility score for primary home care; vendor hold provision in primary home care contracts; and amendments to reimbursement methodology for intermediate community services for ICF-MR school age children.

Contact: Larry Corley, P.O. Box 2960, Austin, Texas 78767, (512) 450-3020.

Filed: September 5, 1985, 9:14 a.m.
TRD-858139

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State Board of insurance

Thursday, September 5, 1985, 9 a.m. The State Board of Insurance met in emergency session in Room 101, John H. Reagan Building, 15th Street and Congress Avenue, Austin. According to the agenda, the board signed orders relating to workers' compensation and employers' liability insurance resulting from a July 23, 1985, hearing. The emergency status was necessary because the board wanted the rates to go into effect on October 1, 1985, which was imperative because of recent statutory changes increasing benefits and the overall present inadequacy of the rates.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 4, 1985, 3:33 p.m.
TRD-858033

Thursday, September 13, 1985, 10 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. Items on the agenda summary include final action on new Rules 059.03.28.301-.305; amendments to Rule 059.01.14.021; proposed action on new Rule 059.21.01.031; withdrawal and reconsideration of proposed Rule 059.60.06.009; proposed definitions for physical or mental impairment and handicap or partial handicap as used in the Insurance Code, Article 21.21-3, and Rule 059.21.21.122; proposed changes to health maintenance organization rules; the numbering system for the agency's rules; board orders on several different matters; the fire marshal's report concerning personnel; the commissioner's report concerning personnel; litigation; participation in the Governor's Executive Development Council; and consideration of whether certain property

qualifies for the Insurance Code, Article 21.49, §8(h), exception for rating purposes.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 4, 1985, 3:33 p.m.
TRD-858034

Friday, September 13, 1985, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 350, 1110 San Jacinto Street, Austin. According to the agenda, the section will conduct a public hearing in Docket 9046—application for amendment to the articles of incorporation of National Health Insurance Company, Grand Prairie.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6326.

Filed: September 4, 1985, 11:15 a.m.
TRD-858016

Monday, September 16, 1985, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will reopen a public hearing in Docket 9027—whether disciplinary action should be taken against Philip Craig Shaffer, Dallas, who holds a Group I legal reserve agent's license and local recording agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6326.

Filed: September 4, 1985, 11:15 a.m.
TRD-858017

Tuesday, September 17, 1985, 2 p.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider the City of Houston's appeal of the state fire marshal's interpretation of the meaning of the term "the general public" in Rule 059.41.92.613.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 5, 1985, 8:56 a.m.
TRD-858140

Wednesday, September 18, 1985, 10 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will hear a request by the Atlas Assurance Company of America for an amendment to the Texas definition of inland marine insurance to include a class of inland marine insurance for contents of self service storage units.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 5, 1985, 9:01 a.m.
TRD-858141

Thursday, September 19, 1985, 9 a.m. The State Board of Insurance will meet in the hearing room, DeWitt Greer Building, 11th and Brazos Streets, Austin. According to

the agenda summary, the board will consider private passenger and commercial (including general rules, public, garage, nonowned, and miscellaneous classes and coverage), *Automobile Insurance Manual* rules, rating plans, classification plans, and policy and endorsement forms for both voluntary and Texas auto insurance plan policies and to consider the revision of private passenger and commercial automobile insurance rates and rating plans (including rates applicable to public, garage, nonowned, and miscellaneous classes and coverages).

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 5, 1985, 9:02 a.m.
TRD-858142

Friday, September 20, 1985, 9:30 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider the appeal of Willie B. Hardy from commissioner's Order 85-1656.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 5, 1985, 9:02 a.m.
TRD-858143

Monday, September 23, 1985, 9:30 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider the appeal of Commercial State Life Insurance Company from commissioner's Order 85-0677.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 5, 1985, 9:02 a.m.
TRD-858144

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Texas Advisory Commission on Intergovernmental Relations

Friday, September 13, 1985. Committees of the Texas Advisory Commission on Intergovernmental Relations and the full commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Times, rooms, committees, and agendas follow.

8:30 a.m. In Room 119 the Special Committee on Operations and Funding will review the status of fiscal year 1985 finances, potential new grants and contracts, and a revised fiscal year 1986 budget.

9:30 a.m. In Room 119 the New Federalism Committee will hear a report on the Population Estimates and Data Management Program and will consider progress reports on other projects.

9:30 a.m. In Room 118 the State-Local Issues Committee will review a report on

9-1-1 emergency telephone services and receive progress reports on other projects.

10:30 a.m. In Room 118 the commission will consider the executive director's report; reports from the Operations and Funding, New Federalism, and State-Local Issues Committees; a revised fiscal year 1986 operating budget; and a report on 9-1-1 emergency telephone systems in Texas.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78711, (512) 475-3728.

Filed: September 4, 1985, 4:25 p.m.
TRD-858131-858134

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Texas Board of Land Surveying

Tuesday, October 1, 1985, 8 a.m. The Texas Board of Land Surveying will meet in Suite 210W, 1106 Clayton Lane, Austin. According to the agenda summary, the board will approve the previous meeting minutes and conduct two formal hearings on complaints 84-15, 16, 17 against R. T. Abrahamson of Amarillo and complaint 85-6 against Marshall Lynn Sartin of Sherman.

Contact: Betty J. Pope, 1106 Clayton Lane, Suite 210W, Austin, Texas 78723, (512) 452-9427.

Filed: September 5, 1985, 8:56 a.m.
TRD-858137

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Texas State Board of Examiners of Psychologists

Thursday-Saturday, September 12-14, 1985, 8:30 a.m. daily. The Texas State Board of Examiners of Psychologists will meet in Suite C-270, 1300 East Anderson Lane, Austin. Items on the agenda include minutes; supervision guidelines; an oral exam report; rules; application files; opinion letters; complaint files; interviews; a meeting with the Executive Committee of the Texas Psychological Association; the AASPB report; informal hearings; and the budget.

Contact: Patti Bizzell, 1300 East Anderson Lane, Suite C-270, Austin, Texas 78752, (512) 835-2036.

Filed: September 3, 1985, 3:55 p.m.
TRD-857989

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Texas State Board of Public Accountancy

Friday, September 13, 1985, 9:30 a.m. The Continuing Education Committee of the

Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Items on the agenda include the review of exemption requests and additional credit requests, sponsor registrations, statistics, noncompliance recommendations, and random samples and audits.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752.

Filed: September 5, 1985, 8:55 a.m.
TRD-858136

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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, September 12, 1985, 9 a.m. Consideration of Dockets 6200, 6181, 6218, 6371, 6266, 5898, 6191, 6376, 4891, 5644, 6204, 6207, 6288, 6190, 6323, 5749, 5871, 6367, 6015, 5395, 5451, 6049, 6154, 5930, 5939, 6230, 6303, 6330, 6357, 6368, 6358, 6378, 6287, 6352, 6179, 6188, 6202, 6209, 6260, 6261, and 6273. The division will also meet in executive session to consider pending litigation and personnel matters.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 4, 1985, 2:55 p.m.
TRD-858032

Friday, September 13, 1985, 10 a.m. A pre-hearing conference in Docket 6375—application of Central Power and Light Company for authority to change rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1985, 2:44 p.m.
TRD-857983

Friday, September 20, 1985, 10 a.m. A pre-hearing conference in Docket 6454—application of the City of Pharr for a sewer certificate of convenience and necessity within Hidalgo County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1985, 2:44 p.m.
TRD-857984

Thursday, October 17, 1985, 9 a.m. A hearing on the merits in Docket 5616—application of Lake Country Water Company to amend its certificate of convenience and necessity within Denton County; Docket 5859—application of Terra Southwest, Inc., to amend its certificate of convenience and necessity within Denton County; and Dock-

et 6410—application of Hackberry Development Company, Inc., for a certificate of convenience and necessity within Denton County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1985, 2:43 p.m.
TRD-857985

Thursday, November 7, 1985, 9 a.m. A hearing on the merits in Docket 6433—petition of Chacko Thomas and Associates to terminate service to the Lincoln-Cedar subdivision in Chambers County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 4, 1985, 10:44 a.m.
TRD-858015

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Texas Youth Commission

Thursday, September 12, 1985, 10 a.m. The board of the Texas Youth Commission will meet in Suite 322, 8900 Shoal Creek Boulevard, Austin. Items on the agenda include approval of interagency medical contracts; key annual objectives; construction update; approval of financial statements, speech therapist contracts at Giddings and Corsicana, a superintendent of the West Texas Children's Home, and a contract for Sunset consultant; and an update of the Sunset review process.

Contact: Ron Jackson, P.O. Box 9999, Austin, Texas 78766, (512) 452-8111.

Filed: September 4, 1985, 2:11 p.m.
TRD-858028

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Regional Agencies Meetings Filed September 3

The Burnet County Appraisal District will meet at 215 South Pierce Street, Burnet, on September 12, 1985, at 6:30 p.m. Information may be obtained from Alvin C. Williams, Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Carson County Appraisal District, Board of Directors, will meet at 102 Main Street, Panhandle, on September 11, 1985, at 8:30 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569.

The East Texas Council of Governments, Executive Committee, met in emergency session at 3800 Stone Road, Kilgore, on September 5, 1985, at 2 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on September 11, 1985, at 10 a.m. Information may be obtained from James Bachus, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Grayson Appraisal District, Appraisal Review Board, met in emergency session at 205 North Travis, Sherman, on September 6, 1985, at 9 a.m. Information may be obtained from Sandra Bollier, 124 South Crockett, Sherman, Texas 75090, (214) 893-9673.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on September 10, 1985, at noon. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Palo Pinto Appraisal District, Board of Directors will meet at Palo Pinto Court House, Palo Pinto, on September 11, 1985, at 2 p.m. The Budget Hearing Board of Directors will meet at the same location on the

same day at 3 p.m. Information may be obtained from Edna Beaty, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-3651, ext. 208.

The Upshur County Appraisal District, Board of Directors, met at the district office, Warren and Trinity Streets, Gilmer, on September 9, 1985, at 7:30 p.m. Information may be obtained from Louise Stracener, P.O. Box 31, Gilmer, Texas 75644, (214) 843-3041.

The Wheeler County Appraisal District, Board of Directors, met at the district's office, County Courthouse Square, Wheeler, on September 9, 1985, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.

TRD-857981

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Meetings Filed September 4

The Copano Bay Soil and Water Conservation District #329 will meet at Shay Plaza, 106 South Alamo, Refugio, on September 11, 1985, at 8:30 a.m. Information may be obtained from Jim Wales, P.O. Drawer 340, Refugio, Texas 78377, (512) 526-2334.

The Edwards Underground Water District, Board of Directors, will meet at 1615 North

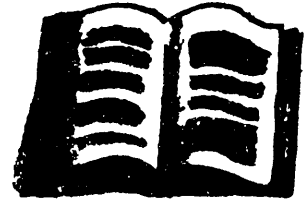
St. Mary's Street, San Antonio, on September 10, 1985, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's Street, San Antonio, Texas 78205, (512) 222-2204.

The Jasper County Appraisal District, Board of Directors, will meet at Jasper ISD school boardroom, 128 Park Street, Jasper, on September 12, 1985, at 6:30 p.m. Information may be obtained from David W. Luther, Appraisal District County Courthouse Annex, Jasper, Texas 75951, (409) 384-2544.

The Lower Colorado River Authority, Energy Operations Committee, met in emergency session at 3700 Lake Austin Boulevard, Austin, on September 5, 1985, at 1 p.m. Information may be obtained from R. L. Hancock, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

TRD-858027

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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 Adult Probation Commission Victim Impact Statement

Pursuant to House Bill 235, 69th Legislature, 1985, the Texas Adult Probation Commission, with the participation of the Board of Pardons and Paroles, is developing a form for a victim impact statement. The newly-enacted Crime Victims' Rights Act, Code of Criminal Procedures, Article 56.03(a), effective September 1, 1985, provides that the form is to be used by law enforcement agencies, prosecutors, and other participants in the criminal justice system to record the impact of an offense on a victim of the offense, guardian of a victim, or a close relative of a deceased victim and to provide the agencies, prosecutors, and participants with information needed to contact the victim, guardian, or relative if needed at any stage of a prosecution of a person charged with the offense.

The final version of the form will be ready no later than October 31, 1985. (House Bill 235, §4) A draft version of the form is available to anyone who has an interest in this matter for review and comment. The Texas Adult Probation Commission and the Board of Pardons and Paroles want to receive as many comments and suggestions as possible from all concerned agencies and members of the public. Comments should be received no later than October 10, 1985, to be considered in the drafting of the final form. The adoption of this form will be on the agenda of the Texas Adult Probation Commission at its meeting of October 25, 1985. To obtain a copy of the current draft, please call or write David Spencer, General Counsel, Texas Adult Probation Commission, P.O. Box 12427, Austin, Texas 78711, (512) 834-8188, ext. 103.

Issued in Austin, Texas, on September 3, 1985.

TRD-857908 David Spencer
General Counsel
Texas Adult Probation Commission

Filed: September 3, 1985
For further information, please call (512) 834-8188.

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Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of August 5-9, 1985.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by con-

tacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Gatx Terminals Corporation, Galena Park; bulk storage tanks; 906 Clinton Drive, Harris County; 9849; modification

James Richard Jackson, Hart; grain elevator-additional storage; Highway 145, Castro County; 5256A; modification

Potter Paint Company of Texas, Brownsville; coatings manufacturing factory; 101 Yard Road; 9851; new source

General Electric Company, Baytown; power generating systems; West Bay Road; Chambers County; 9857; new source

R. R. Donnelley & Sons Company, Cleburne; commercial printing plant; Johnson County; 9861; new source

Jagoe-Public Company, Denton; asphalt concrete plant; 3020 Fort Worth Drive; 5713A; modification

Westworld Community Health Care of Texas, Inc., Muleshoe; incinerator; 708 South First, Bailey County; 5532A; modification

Estopy-Cantrell Commodities, Edinburg; cotton gin; Hidalgo County; 9864; new source

Exxon Chemical Americas, Baytown; naphtha rerun efficiency facility; 5000 Bayway Drive, Harris County; 9867; new source

W. R. Boyd, Inc., Carthage; asphalt hot mix; U.S. 59, Panola County; 2632E; modification

Capitol Aggregates, San Antonio; sand and gravel screening and crushing; Highway 1604, east of Nelson Road, Bexar County; 4989A; modification

Farmland Industries, Inc., Mertzon; gas products plant; Irion County; 9869; new source

Therm-O-Safe Products, Inc., San Antonio; polyurethane roof insulation facility; Bexar

County; 1343B; modification
 Issued in Austin, Texas, on August 28, 1985.

TRD-857930 Paul M. Shinkawa
 Director of Hearings
 Texas Air Control Board

Filed: August 30, 1985
 For further information, please call (512) 461-5711, ext. 384.

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State Banking Board Public Hearing

The hearing officer of the State Banking Board will conduct a hearing on Tuesday, November 12, 1985, at 9 a.m. at 2601 North Lamar Boulevard, Austin, on the charter application for Sanger Bank, Sanger, Denton County.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, State Banking Department, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on August 29, 1985.

TRD-857965 William F. Aldridge
 Director of Corporate Activities
 State Banking Board

Filed: August 30, 1985
 For further information, please call (512) 475-4451.

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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 ⁽³⁾ Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 09/09/85-09/15/85	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 09/01/85-09/30/85	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/85-12/31/85	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 10/01/85-12/31/85	18.00%	N/A

Type of Rate Ceilings
Effective Period
(Dates are Inclusive)

Consumer ⁽³⁾ Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽²⁾ 10/01/85-12/31/85	N/A
Standard Annual Rate— Article 1.04(a)(2) ⁽²⁾ 10/01/85-12/31/85	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 10/01/85-12/31/85	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/85-12/31/85	18.00%
Judgment Rate— Article 1.05, §2 09/01/85-09/30/85	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) V.T.C.S.
- (3) Credit for personal, family, or household use.
- (4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on September 4, 1985.

TRD-858012 Sam Kelley
 Consumer Credit
 Commissioner

Filed: September 4, 1985
 For further information, please call (512) 579-1280.

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Texas Historical Commission Consultant Proposal Request

The Texas Historical Commission (THC) invites the offer of services on a consulting basis for an assessment of state preservation policy. This consultant proposal request is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

Description of Services. The consultant will conduct a series of workshops to identify key issues in historic preservation with particular emphasis on state preservation laws and programs and to develop, based on experience in other states, an analysis of alternative approaches for addressing these issues. A written report on this analysis will be submitted following the last workshop. The consultant will work closely with the THC and Texas Antiquities Committee staff to list options for various approaches to state laws.

Contractor Qualifications. Direct experience in drafting state preservation legislation, direct experience at local level in drafting and administering preservation laws, and experience at facilitating large groups.

Project Duration. All bids should be based upon a project completion date of January 31, 1986. For each day

exceeded there shall be a penalty to the contractor of \$250 per day.

Contact Person. For further information, contact Joe Oppermann, Director, National Register Programs, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 475-3094.

Procedure for Selection. The information contained in this consultant proposal request is intended to serve only as a general description of the services desired. The THC will use any responses as a basis for further negotiation of specific project details. The THC reserves the right to accept or reject any of the proposals submitted. Selection of a contractor will be made on the basis of demonstrated competence and qualifications and reasonableness of fees for services. Unless a considerably better offer is submitted, preference will go to a contractor that has satisfactorily performed similar services in the past.

Closing Date. The deadline for receipt of offers is 5 p.m. on October 7, 1985.

Issued in Austin, Texas, on August 26, 1985.

TRD-857878 Curtis Tunnell
Executive Director
Texas Historical Commission

Filed: September 3, 1985
For further information, please call (512) 475-3092.

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Texas Department of Human Services Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) is requesting proposals for consulting services.

Description of Services. The DHS is the agency responsible for protecting abused and neglected children. To fulfill this responsibility and the department's responsibility as managing conservator of many of these children, the provision of psychological evaluation and treatment services including parent education are necessary. These services are provided as part of a complete service plan for individual families to both remediate the effects of abuse and neglect and to prevent further harm.

Specific activities to be performed include psychological/development testing; psychological evaluation; and counseling/therapy.

Contract Term. Services will be purchased in the following counties: Anderson, Cherokee, Camp, Franklin, Titus, Morris, Delta, Hopkins, and Lamar. The contract period will be January 1, 1986-December 31, 1987. Funding will not exceed \$200,000.

The last day to receive offers is October 4, 1985.

Contact Person. To receive additional information, please contact Mike Folmar, Program Director, Texas Department of Human Services, Purchased/Community Services, P.O. Box 839, 4315 Bonham Street, Paris, Texas 75460, (214) 785-8464.

Procedure for Selecting Consultant. The following criteria will be used to evaluate offers: range of services; accessibility of services to clients; client flow and time frames; unique and innovative aspects of the program;

provider contributions (match); staff qualifications; example of work; and cost.

Issued in Austin, Texas, on September 3, 1985.

TRD-857987 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: September 3, 1985
For further information, please call (512) 450-3766.

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Request for Proposals

The Texas Department of Human Services (DHS) announces a request for proposals (RFP) for purchased food stamp issuance services. The DHS uses a competitive procurement process to ensure and document that services purchased are of the highest quality, lowest price, and best meet the needs of clients served.

Description of Services. Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) cards. The food stamp clients will present the issuance agent with their ATP and ID cards. The issuance agent will then check to see that the ID card serial number matches the number on the ATP card. The client will then sign the ATP card and the issuance agent will exchange the indicated number of booklets for the signed ATP card. The issuance agent will write the issuance verification code on the ATP card, date stamp, and batch the ATP cards for delivery to DHS.

To contract with DHS, the contractor must comply with the following: applicable federal and state laws, regulations, and policies; DHS's service standards applicable to the service being purchased; generally accepted accounting principles and procedures recognized by the American Institute of Certified Public Accountants; and contractual terms such as those relating to sufficient operating capital, bonding requirements, assumption of liability for redemption errors, losses and audit exceptions, and contract termination.

The DHS will procure over-the-counter food stamp issuance services in Harris and Bexar Counties.

Terms of Contract. Contracts will be for a 12-month period. The DHS has the option to renegotiate renewal on a non-competitive basis for additional periods. Contractors will be paid on a fee per transaction basis for eligible ATP cards processed.

Contact Person. To request an RFP package or additional information, contact Charley Jennings at (512) 450-3467. All proposals must be submitted to DHS no later than noon on October 18, 1985.

Sealed bids must be mailed to Charley Jennings, Director of Program Control, Texas Department of Human Services, Program Management Division, 518-W, P.O. Box 2960, Austin, Texas 78769.

Issued in Austin, Texas, on September 3, 1985.

TRD-857988 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: September 3, 1985
For further information, please call (512) 450-3766.

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Texas Department of Mental Health and Mental Retardation Consultant Proposal Request

Pursuant to Texas Civil Statutes, A. 6252-11c, the Texas Department of Mental Health and Mental Retardation through the Rusk State Hospital is requesting proposals for consulting services.

Description of Services. The Rusk State Hospital will contract for the services of a licensed psychologist for the evaluation of mentally ill patients who seek services at the Anderson County Community Services Center and the Cherokee County Community Service Center. These centers are located in the cities of Palestine, and Rusk, respectively. The consultant must be experienced in dealing with mentally ill persons. This proposed contract is a continuation of a current program.

Contract Period. The contract period will be January 1, December 31, 1985. The contract amount will not exceed \$20,000.

Contract Person. The contract person is Wilson W. Lilley, Director of Community Programs, Rusk State Hospital P.O. Box 318, Rusk, Texas 75785, (214) 683-3431 or (STS) 836-7431

Evaluation Criteria. Offers will be evaluated according to experience and education, cost of providing services, and the ability to provide services within specified time frames. Final selection will be based upon the department's evaluation of these criteria.

Issued in Austin, Texas, on September 3, 1985.

TRD-858000 Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: September 3, 1985
For further information, please call (512) 465-4501.

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Railroad Commission of Texas Public Hearings

The Railroad Commission of Texas will conduct a public hearing on proposed new §5.121, concerning the establishment of variable rate tariffs, §5.122, concerning the rejection, suspension, or investigation of individual or joint tariffs, §5.123, concerning the filing of individual or joint tariffs, and proposed amendments to §5.141, concerning freight bills, and §5.458, concerning the filing fee accompanying an application.

The public hearing will commence at 9 a.m. on September 24, 1985. The hearing will be held in the auditorium William B. Travis Building, 1701 North Congress Avenue, Austin.

This public hearing will be conducted in compliance with the general and special rule of practice and procedure before the transportation division. Any interested member of the public may appear and offer comments. Cross-examination of witnesses will not be allowed, although the presiding examiner may ask questions of any person testifying.

Written comments will be accepted through October 4, 1985.

For further information, please contact Holly Noelke, Hearings Examiner, Transportation Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Issued in Austin, Texas, on August 30, 1985.

TRD-857902 Walter E. Lille
Special Counsel
Railroad Commission of Texas

Filed: August 30, 1985
For further information, please call (512) 463-7149.

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Under the legal authority of the Texas Natural Resources Code, §113.051, the Railroad Commission of Texas will hold a hearing on September 24, 1985, at 9 a.m. in Room 101, Reagan Building, 15th Street and Congress Avenue, Austin.

The hearing will be convened to provide a forum for all interested persons to present evidence and comment to the commission regarding the commission's proposed new rules governing the use of LP-gas in the State of Texas. Those sections were published in the June 4, 1985, issue of the *Texas Register* (10 TexReg 1766) and in the June 14, 1985, issue (10 TexReg 1959).

If a continuation is necessary, this hearing will proceed on subsequent working days to the extent possible. The exact time and place of continuation will be announced on the record in these proceedings.

To appear in support of or in opposition to these rules, all persons must file with the office of the hearings examiner, LP-Gas Division, a notice of intent to appear at least five days in advance of the hearing.

Any person with pertinent testimony will be given the opportunity to bring that testimony before the commission. However, the commission reserves the right to restrict testimony in terms of time or repetitive content.

The commission requires that all written statements of evidence or documentary evidence be submitted to the office of the hearings examiner, LP-Gas Division, at least five days in advance of the hearing date.

All exhibits filed as a part of the record in this cause must be submitted in duplicate. References to data in commission records may be incorporated by reference, but the reference must be specific, and if it includes exhibits filed in prior proceedings, before the commission, a copy of such exhibit properly identified shall be submitted for the record.

In the event that the Railroad Commission of Texas or any of its members are not present to preside over and hold said hearing, then the director of the LP-Gas Division or a hearings examiner assigned to the division is designated and empowered to hold the hearing and to do and perform any acts as provided in Texas Civil Statutes, Article 6519 (Supplement 1982-1983).

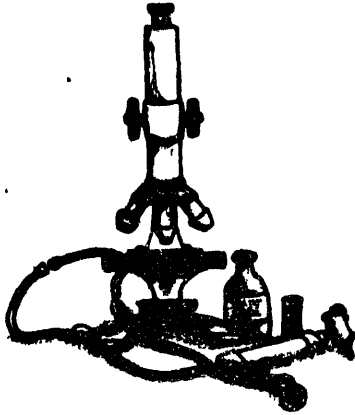
Requests for any information regarding the hearing should be directed to Elizabeth Younkin, Hearings Examiner, Railroad Commission of Texas, LP-Gas Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

Issued in Austin, Texas, on August 30, 1985.

TRD-867901 Walter Earl Lille
Special Counsel
Railroad Commission of Texas

Filed: August 30, 1985
For further information, please call (512) 463-7149.

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Texas Tourist Development Agency Consultant Proposal Request

In accord with the provisions of Texas Civil Statutes, Article 6252-11c, the Texas Tourist Development Agency (TTDA) serves notice of invitation for offers of services on the project described below.

Contact Person. A video tape producer who wants to make an offer on this project should contact C. O. Garza, Chief of Media Relations, TTDA, P.O. Box 12008, Austin, Texas 78711.

Closing Dates. No offers will be considered unless they are received by 5 p.m. on October 11, 1985.

Background. The producer chosen will render all services in producing, editing, and distributing for TTDA 50 90-second videotaped or filmed television new releases (segments) concerning Texas tourism. These segments are to include a sound track as well. A written script must be provided if requested by TTDA. The producer will distribute any such segments to a maximum of 16 stations designated by TTDA. However, it is understood between the producer and TTDA that three master copies of all 50 tapes be forwarded to TTDA on a monthly basis, and those master tapes become the property of TTDA for use as TTDA sees fit. These tapes will be sent to TTDA in three video tape formats: ½ inch, ¾ inch, and one inch. The producer may keep copies for his own record and use if they are not used in conflict with TTDA policy.

Method of Selection. To be considered as an interested bidder, the bidder must shoot a minimum of two 90-second sample television news segments and provide these to TTDA on video tape. The video tapes will be reviewed by TTDA and an impartial panel of their choice. Subjects for the two segments will be mutually agreed upon by bidder and the TTDA. The TTDA will be responsible for submitting the tapes to the selecting panel for their approval. Following the reviewing process, the tapes will remain the property of the bidder. After all

tapes from all bidders have been submitted to TTDA, reviewed by TTDA and the panel, a decision will be made by TTDA as to which bidder will be awarded the video tape producer contract.

Compensation. TTDA will pay the producer no more than \$37,500, payable in 12 monthly payments of \$3,125. Lower bids will certainly be considered.

Time Frame. All 50 segments must be delivered on a monthly basis to TTDA by October 31, 1986, services commencing October 14, 1985. The TTDA reserves the right to reject, in total or in part, any/or all proposals.

Issued in Austin, Texas, on August 22, 1985.

TRD-867938 Larry Todd
Director
Texas Tourist Development Agency

Filed: August 30, 1985
For further information, please call (512) 463-7400.

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Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of August 26-30, 1985.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-2678.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

George E. Stourton, doing business as Northgate Utilities, League City; wastewater treatment plant; approximately 2,000 feet southwest of the intersection of Pruitt Road and IH 45, approximately 4,000 feet northwest of the IH 45 crossing of Spring Creek in Montgomery County; 13177-01; new permit

Rancher's Development Corporation, Houston; wastewater treatment plant; approximately 4,600 feet

southeast of the intersection of Wilson Road and Deer Trails Drive, approximately 5,600 feet northeast of the intersection of Wilson Road and North Belt in Harris County; 13200-01; new permit

Hahn & Clay, Houston; steel fabrication job shop; 5100 Clinton Drive approximately ¼ mile south of the intersection of Lockwood Drive and IH 10 in the City of Houston, Harris County; 02794; new permit

Carolina Mirror Houston, Inc., Houston; glass mirror manufacturing facility; on Park Row two miles west of State Highway 6 and 0.3 miles north of IH 10 in the City of Houston, Harris County; 02783; new permit

City of Alpine; wastewater treatment plant; approximately 2½ miles northeast of the City of Alpine on the west bank of Alpine Creek in Brewster County; 10117-01; renewal

Phoenix Frozen Foods, Inc., Monte Alto; food processing plant; approximately ¼ mile west of FM 88, adjacent to the abandoned Missouri Pacific Railroad Track in the community of Monte Alto; 02803; new permit

Laura Investment Company, LTD., Houston; wastewater treatment plant; approximately 14 miles southeast of downtown Houston on Nyack Drive ad-

acent to IH 45, bounded on the west by Turkey Creek and on the north by Nyack Drive in Harris County; 13101-01; new permit

Double J and T Ranch Joint Venture, Austin; wastewater treatment facility; approximately eight miles north of the intersection of Texas Highways 71 and 620, 1.5 miles west of Lake Austin and three miles east of Highway 620 in Travis County; 13191-01; new permit

Mike Nations, Mineola; mobile home part; on the west side of FM Road 1799, approximately 0.9 miles north of U.S. 80 and 1/8 mile west of Lake Holbrook in Wood County; 13201-01; new permit

Glen C. Anderson, Austin; housing development; approximately three miles south of the intersection of FM Road 1625 and U.S. Highway 189 and 2,000 feet east of FM Road 1625 in Travis County; 13188-01; new permit

Issued in Austin, Texas, on September 3, 1985.

TRD-857986

Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: September 3, 1985

For further information, please call (512) 463-7906.

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