

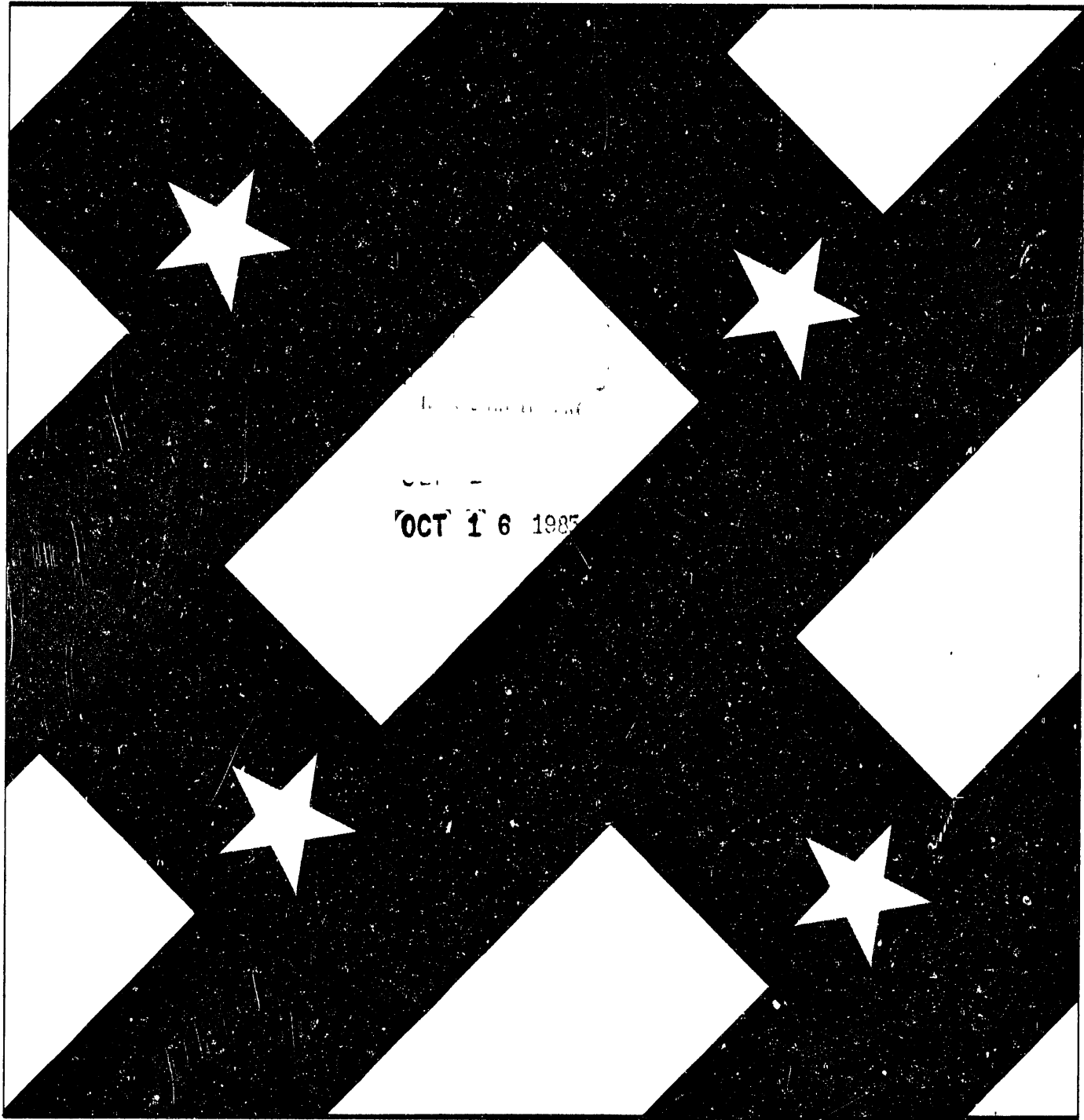
0.6
63
76

FILE COPY

Texas Register

Volume 10, Number 76, October 11, 1985

Pages 3919 - 3990



Highlights

The **Texas Sesquicentennial Commission** adopts emergency new sections concerning program guidelines. Effective date - October 4.....**page 3925**

The **Boards for Lease of State-Owned Lands**

adopt emergency new sections concerning the **Texas Department of Corrections**. Effective date - October 4.....**page 3932**

The **Texas Water Commission** adopts emergency new sections concerning applications processing. Effective date - October 2.....**page 3933**

Office of the Secretary of State

Texas Register

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

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Register* is published under Texas Civil Statutes, Article 6252-13a. Second class postage is paid at Austin, Texas, and additional entry offices.

POSTMASTER: Please send Form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, Texas 78711-3824.

Information Available: The 11 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "10 TexReg 2 Issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "Issue date 10 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



Texas Register Publications

a division of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

Myra A. McDaniel
Secretary of State

Director
Dave Harrell

Documents Section Coordinator
Jane Hooks

Document Editors
Cynthia Cooke,
Cynthia Y. Rodriguez-Perez
Molly Gardner

Open Meetings Specialist
Judy Brewster

Production Section Coordinator
Sue Bumpous

Production Editors
Jody Allen, Lisa Bauer

Typographer
Dawn VanCleave

Circulation Section Coordinator
Dee Wright

Circulation Assistant
Kristine Hopkins Mohajer

TAC Editors
William Craig Howell
Hollis Glaser

Subscriptions—one year (96 regular issues and four index issues), \$80; six months (48 regular issues and two index issues), \$60. Single copies of most issues of the *Texas Register* are available at \$3.00 per copy.

Table of Contents

The Governor

- Appointment Made September 30
 - 3923—Clean Air Study Committee
 - 3923—Joint Special Committee on the Family Role in Reducing Recidivism
 - 3923—Family Role in Reducing Recidivism Advisory Council
- Appointments Made October 1
 - 3923—Texas Board of Health
 - 3923—Task Force on Personal Care Homes
- Appointments Made October 2
 - 3924—Texas Commission on Economy and Efficiency in State Government
- Appointments Made October 3
 - 3924—Industrial Accident Board
 - 3924—Statewide Health Coordinating Council

Emergency Rules

- Texas Sesquicentennial Commission
 - 3925—General Operating Policy
 - 3925—Operating Policy and Program Guidelines
 - 3931—Program Guidelines
- Boards for Lease of State-Owned Lands
 - 3932—General Rules
 - 3933—Exploration and Development
- Texas Water Commission
 - 3933—Applications Processing

Proposed Rules

- State Purchasing and General Services Commission
 - 3935—Executive Administration Division
- Texas Department of Community Affairs
 - 3936—Housing Services
- Texas Sesquicentennial Commission
 - 3940—General Operating Policy
 - 3940—Operating Policy and Program Guidelines
 - 3940—Program Guidelines
- Texas Department of Health
 - 3941—Health Maintenance Organizations
- State Board of Insurance
 - 3945—Property and Casualty Insurance
- Boards for Lease of State-Owned Lands
 - 3946—General Rules
 - 3947—Exploration and Development
- Comptroller of Public Accounts
 - 3947—Tax Administration
- Texas Rehabilitation Commission
 - 3948—General Rules
 - 3949—Vocational Rehabilitation Services Program

- 3950—Extended Rehabilitation Services Program
- 3951—Independent Living Services Program
- 3951—Developmental Disabilities Program
- 3952—Deaf-Blind Multihandicapped Program

Withdrawn Rules

- Texas Parks and Wildlife Department
 - 3954—Parks

Adopted Rules

- Railroad Commission of Texas
 - 3955—Transportation Division
- Public Utility Commission of Texas
 - 3958—Substantive Rules
- Texas Department of Labor and Standards
 - 3961—Boiler Division
- Coordinating Board, Texas College and University System
 - 3962—Administrative Council
- Texas Department of Health
 - 3962—Food and Drug
- Comptroller of Public Accounts
 - 3975—Tax Administration
- Texas County and District Retirement System
 - 3977—Calculation or Types of Benefits
- Texas Commission on Alcohol and Drug Abuse
 - 3977—Project Funding

Open Meetings

- 3978—Texas Aeronautics Commission
- 3978—Texas Department of Agriculture
- 3978—Automated Information and Telecommunications Council
- 3978—State Banking Board
- 3978—Texas Commission for the Deaf
- 3978—Texas State Board of Dental Examiners
- 3978—Interagency Council on Early Childhood Intervention
- 3979—Texas Economic Development Commission
- 3979—Texas Education Agency
- 3979—Texas Employment Commission
- 3979—Texas Department of Health
- 3979—Texas Historical Commission
- 3980—University of Houston System
- 3980—State Board of Insurance
- 3980—Lamar University
- 3980—Long Term Care Coordinating Council for the Elderly
- 3981—Texas Optometry Board
- 3981—Board of Pardons and Paroles
- 3981—Governor's Commission on Physical Fitness
- 3981—Texas State Board of Public Accountancy

3981— Public Utility Commission of Texas
3982— Railroad Commission of Texas
3983— Texas Savings and Loan Department
3983— School Land Board
3983— Texas Sesquicentennial Commission
3984— Structural Pest Control Board
3984— University of Texas System
3984— Texas Tech University
3984— Texas Tech University Health Science
Center
3985— Texas Water Commission
3986— Regional Agencies

In Addition

Texas Adult Probation Commission
3988— Consultant Proposal Request

State Banking Board
3988— Hearing Cancellation
Banking Department of Texas
3988— Application to Acquire Control of a
State Bank
Office of Consumer Credit Commissioner
3988— Rate Ceilings
Texas Commission for the Deaf
3989— Consultant Proposal Request
Texas Economic Development Commission
3990— Consultant Proposal Request
Public Utility Commission of Texas
3990— Consultant Proposal Request

TAC Titles Affected

TAC Titles Affected—October

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission	
1 TAC §§111.41-111.43	3935
Part X. Automated Information and Telecommunication Council	
1 TAC §205.1	3825

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture	
4 TAC §11.8	3890
4 TAC §§19.3-19.6, 19.9, 19.12	3790
4 TAC §§21.3, 21.11, 21.31	3832
4 TAC §23.1, §23.5	3834
4 TAC §23.11, §23.13	3834
4 TAC §§23.21, 23.24-23.29	3835
4 TAC §§23.41, 23.45, 23.47	3836
4 TAC §23.61	3837
4 TAC §23.72, §23.73	3837
4 TAC §23.81	3837
4 TAC §§23.91, 23.95-23.102	3838

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas	
7 TAC §12.1	3839
7 TAC §12.2	3839
7 TAC §12.3	3840
7 TAC §12.4	3841
7 TAC §12.5	3841

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs	
10 TAC §9.3	3802
10 TAC §13.1, 13.3, 13.7-13.14	3936
10 TAC §13.40	3847
Part II. Texas Economic Development Commission	
10 TAC §107.2	3871, 3875

TITLE 13. CULTURAL RESOURCES

Part V. Texas Sesquicentennial Commission	
13 TAC §§51.1-51.7	3925, 3940
13 TAC §§51.1-51.18	3925, 3940
13 TAC §§53.1-53.4	3931, 3940

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas	
16 TAC §3.1	3792
16 TAC §§3.6, 3.16, 3.41	3793
16 TAC §5.37	3847
16 TAC §§5.612-5.615	3955
16 TAC §9.31	3892
16 TAC §9.32	3892
16 TAC §11.211	3801
Part II. Public Utility Commission of Texas	
16 TAC §23.32	3794
16 TAC §23.61	3795
16 TAC §23.66	3758
Part IV. Texas Department of Labor and Standards	
16 TAC §65.20	3961
16 TAC §69.125	3873, 3875
16 TAC §§69.202, 69.204, 69.207	3873

Part V. Texas Amusement Machine Commission	
16 TAC §83.1	3848
16 TAC §85.3	3848

TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System	
19 TAC §25.72	3962
Part II. Texas Education Agency	
19 TAC §61.161	3876
19 TAC §§61.271-61.273	3876
19 TAC §69.126	3878
19 TAC §75.168	3893
19 TAC §77.474	3878
19 TAC §§89.51-89.56	3893
19 TAC §89.57	3893
19 TAC §§89.213, 89.215, 89.221, 89.223, 89.232-89.234	3879
19 TAC §137.41	3894
19 TAC §137.512	3894
19 TAC §137.542	3894
19 TAC §137.560	3895
19 TAC §145.44	3874, 3881
19 TAC §149.71	3881

TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy	
22 TAC §283.11	3882
22 TAC §238.13	3895
22 TAC §291.32, §291.34	3895
22 TAC §291.75	3882, 3896
22 TAC §309.5	3896
Part XXI. Texas State Board of Examiners of Psychologists	
22 TAC §463.10	3849
22 TAC §465.15	3849
22 TAC §465.23	3849
22 TAC §467.2	3850
Part XXIV. State Board of Veterinary Medical Examiners	
22 TAC §573.2	3801
22 TAC §573.12	3801
22 TAC §573.26	3801, 3892
22 TAC §573.28	3801

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health	
25 TAC §§119.1-119.12	3941
25 TAC §§119.1-119.13	3941
25 TAC §§229.231-229.239	3962
Part II. Texas Department of Mental Health and Mental Retardation	
25 TAC §§405.3, 405.4, 405.7	3850
Part XI. Texas Cancer Council	
25 TAC §§701.1-701.9	3826, 3842
25 TAC §§703.1-703.4	3828, 3842

TITLE 28. INSURANCE

Part I. State Board of Insurance	
28 TAC §5.5002	3945

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office	
31 TAC §3.61	3829, 3843
31 TAC §3.62, §3.63	3829, 3843

31 TAC §3.71	3829, 3844
31 TAC §3.71, §3.73	3830
Part II. Texas Parks and Wildlife Department	
31 TAC §59.2, §59.5	3954
31 TAC §§65.331-65.335	3802
Part III. Texas Air Control Board	
31 TAC §101.1	3896
31 TAC §101.24, §101.25	3897
31 TAC §116.7, §116.11	3900
Part V. Boards for Lease of State-Owned Lands	
31 TAC §§201.1-201.12	3931, 3946
31 TAC §§201.1-201.14	3932, 3947
31 TAC §203.1, §302.2	3933, 3947
31 TAC §§340.1-340.8	3933
TITLE 34. PUBLIC FINANCE	
Part I. Comptroller of Public Accounts	
34 TAC §3.58	3947
34 TAC §3.59	3830, 3948
34 TAC §3.173	3975
34 TAC §3.178	3901
34 TAC §3.181	3902
34 TAC §3.182	3883
34 TAC §3.185	3902
34 TAC §3.190	3883
34 TAC §3.194	3976
34 TAC §3.344	3788, 3797
34 TAC §3.372	3797
34 TAC §3.406	3798
34 TAC §3.442	3799
34 TAC §3.449	3976
34 TAC §3.547	3884
34 TAC §3.549	3976
34 TAC §3.554	3803
34 TAC §3.555	3804
34 TAC §3.556	3804
34 TAC §3.557	3804
34 TAC §3.58	3788
Part IV. Employees Retirement System of Texas	
34 TAC §77.1	3844
34 TAC §77.3	3844
34 TAC §77.5	3845
34 TAC §81.7	3850

TITLE 37. PUBLIC SAFETY AND CORRECTIONS	
Part I. Texas Department of Public Safety	
37 TAC §1.181	3850
TITLE 40. SOCIAL SERVICES AND ASSISTANCE	
Part I. Texas Department of Human Services	
40 TAC §15.3203	3804
40 TAC §15.3410	3805
40 TAC §35.708	3902
40 TAC §48.2911, §48.2918	3885
40 TAC §57.8201	3851
40 TAC §§57.8301-57.8306	3851
40 TAC §§57.8401-57.8408	3851
40 TAC §69.94	3903
40 TAC §79.501	3903
40 TAC §79.1603	3904
40 TAC §85.1801	3888
40 TAC §§85.6001, 85.6003, 85.6004, 85.6007-85.6011, 85.6013, 85.6015, 85.6018-85.6022, 85.6024-85.6026	3887
40 TAC §85.6027, §85.6028	3890

TITLE 40. SOCIAL SERVICES AND ASSISTANCE	
Part II. Texas Rehabilitation Commission	
40 TAC §101.11	3948
40 TAC §103.21, §103.22	3949
40 TAC §103.42	3949
40 TAC §103.53	3949
40 TAC §105.1, §105.3	3950
40 TAC §107.1, §107.2	3951
40 TAC §109.2-109.4	3951
40 TAC §§111.1-111.4	3952
40 TAC §§113.1-113.5	3952
Part III. Texas Commission on Alcohol and Drug Abuse	
40 TAC §149.26	3977
Part VI. Texas Commission for the Deaf	
40 TAC §181.25	3846

TITLE 43. TRANSPORTATION	
Part I. State Department of Highways and Public Transportation	
43 TAC §21.143	3891

The Governor

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

Appointments Made September 30

Clean Air Study Committee

For terms to expire January 1, 1987:

Kenneth W. Mackenzie, Jr.
10910 Braes Forest
Houston, Texas 77071

Ivan George Smith
6014 Woodbrook
Houston, Texas 77008

Karen Shewbart
106 Live Oak Lane
Lake Jackson, Texas 77566

Hubert Oxford III
P.O. Box 150
Beaumont, Texas 77704

Mr. Mackenzie, Mr. Smith, Ms. Shewbart, and Mr. Oxford are being appointed pursuant to Senate Bill 725, 69th Legislature, 1985.

Joint Special Committee on the Family Role in Reducing Recidivism

For a term to expire January 1, 1987:

Nicholas Kralj
3608 Dahl Lane
Austin, Texas 78703

Mr. Kralj is being appointed pursuant to House Concurrent Resolution 156, 69th Legislature, 1985.

Family Role in Reducing Recidivism Advisory Council

For terms to expire January 1, 1987:

Marcia Wilhoit
3766 Frazier
Fort Worth, Texas 76110

Jackie Lawson Warmesley
2057 North Third Street
Abilene, Texas 79603

L. B. Davis
6312 Jebel Way
El Paso, Texas 79912

Eddie F. Evans, Sr.
912 Faulkner
Waco, Texas 76704

Wanda Ragsdale
615 West Live Oak
Coleman, Texas 76834

Dorothy Gamble Dubose
2928 Owenwood Drive
Fort Worth, Texas 76109

Anmarie Boroski Jensen
6605 Betty Cook Drive
Austin, Texas 78723

Patricia N. Weed
1417 Bluebonnet Trail
Arlington, Texas 76013

Mary Wathen White
701 East Sunshine Drive
San Antonio, Texas 78228

Clora Nickerson
7325 Sterlingshire
Houston, Texas 77016

Dr. Gary Bonner
209 Magnolia Way
Huntsville, Texas 77340

To serve as chairman:

Ned Rollo
11642 Saxon Street
Dallas, Texas 75218

These members are being appointed pursuant to House Concurrent Resolution 156, 69th Legislature, 1985.

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

TRD-859139 Mark White
Governor of Texas

★ ★ ★

Appointments Made October 1

Texas Board of Health

For a term to expire February 1, 1991:

Jose Roman, Jr., M.D.
1201 Cincinnati
El Paso, Texas 79902

Dr. Roman is replacing Dr. Laurance N. Nickey of El Paso, whose term expired.

Task Force on Personal Care Homes

Nominated by the Texas Department of Human Resources for a term to expire December 31, 1985:

Janice Marie Caldwell, Dr. P.H.
P.O. Box 2960
Austin, Texas 78769

Dr. Caldwell is being appointed pursuant to House Bill 653, 69th Legislature, 1985.

Nominated by the Texas Department of Mental Health and Mental Retardation for terms to expire December 31, 1985:

Sue Dillard
P.O. Box 12668
Austin, Texas 78711

Ellie Selig
366 Guadalupe River Drive
Seguin, Texas 78115

Ms. Dillard and Ms. Selig are being appointed pursuant to House Bill 653, 69th Legislature, 1985.

Nominated by the Texas Department of Health for terms to expire December 31, 1985:

Lynn McGuirt
2111 Kipling
Austin, Texas 78752

Johnnie Benson
P.O. Box 50069
Fort Worth, Texas 76105

Ms. McGuirt and Ms. Benson are being appointed pursuant to House Bill 653, 69th Legislature, 1985.

Nominated by the Texas Department on Aging for terms to expire December 31, 1985:

Peggy Davidson
Texas Department on Aging
P.O. Box 12786
Austin, Texas 78711

John Willis
Texas Department on Aging
P.O. Box 12786
Austin, Texas 78711

Ms. Davidson and Mr. Willis are being appointed pursuant to House Bill 653, 69th Legislature, 1985.

For a term to expire December 31, 1985:

Kathryn Vacha
3600 North Hills Drive, #137
Austin, Texas 78731

Karen Lindell
707 West 31st Street
Austin, Texas 78704

Gary D. Anderson
7805 Laver Court
Fort Worth, Texas 76112

Dr. Vacha, Ms. Lindell, and Mr. Anderson are being appointed pursuant to House Bill 653, 69th Legislature, 1985.

Nominated by the Texas Department of Human Resources to serve as chairman for a term to expire December 31, 1985:

Robert C. Greene
2105 Creekview Drive
Round Rock, Texas 78664

Mr. Greene is being appointed pursuant to House Bill 653, 69th Legislature, 1985.

Issued in Austin, Texas, on October 1, 1985.

TRD-859257 Mark White
Governor of Texas

★ ★ ★

Appointments Made October 2

Texas Commission on Economy and Efficiency in State Government

For terms to expire September 1, 1989:

Curtis N. Leggett
9102 Raeford
Dallas, Texas 75243

John Steen, Jr.
207 Ridgemont
San Antonio, Texas 78209

George Beto, Ph.D.
P.O. Box 1296
Huntsville, Texas 77340

L. W. (Bill) Gray
2228 Addison Road
Houston, Texas 77030

Joe Christie
1700 Rockmoor
Austin, Texas 78703

Mr. Leggett, Mr. Steen, Mr. Beto, Mr. Gray, and Mr. Christie are being appointed pursuant to House Bill 460, 69th Legislature, 1985.

Issued in Austin, Texas, on October 2, 1985.

TRD-859257 Mark White
Governor of Texas

★ ★ ★

Appointments Made October 3

Industrial Accident Board

For a term to expire September 1, 1991:

Joseph Gagen
728½ East 7½ Street
Houston, Texas 77007

Mr. Gagen is replacing Margaret M. Maisel of San Antonio, whose term expired.

Statewide Health Coordinating Council

To represent consumers for terms to expire
September 1, 1987:

Adrian Arriaga
107 East Ulex
McAllen, Texas 78501

Father Robert J. Brooks
Independent Executor for the Estate of
R. Max Brooks
16513 Kentwood Drive
Houston, Texas 77058

Buddy Cole
County Judge
P.O. Box 966
Pilot Point, Texas 76258

Lester Cranek
County Judge
P.O. Box 236
Columbus, Texas 78934

Marjorie Daniels
126 Juniper Street
Hereford, Texas 79045

James Easter
1518 Wirt Road, #5
Houston, Texas 77055

James L. Grey
Manager of Human Resources
Radian Corporation
8501 MoPac Boulevard
Austin, Texas 78759

Lynda Fant Hill
2224 Weatherbee
Fort Worth, Texas 76110

Dolores (Sunny) Lawless
495 Yorktown
Beaumont, Texas 77707

Frank Madla
State Representative
Security Tower
7323 Highway 90 West, Suite 410
San Antonio, Texas 78227

To represent consumers for a term to ex-
pire September 1, 1986:

M. Medesta Smith
300 East Pierce Street
Clarksville, Texas 75426

To represent providers for terms to expire
September 1, 1986:

Elizabeth Ann Attell, RN, MSN
Director, Family Planning Services
R. E. Thomason General Hospital
4824 Alberta, #403
El Paso, Texas 79905

Max Brown, Ph.D.
Vice-President and Regional Manager
Kaiser Foundation Health Plan of Texas
12720 Hillcrest, Suite 600
Dallas, Texas 75230

Lynda Calcote
Executive Director
Hospice Abilene
P.O. B0x 1922
Abilene, Texas 79604

Jack Lester Campbell
President
Saint David's Hospital
P.O. Box 4039
Austin, Texas 78765

Melinda Gonzales
Health Services Consultant
Corpus Christi Independent School
District
P.O. Box 110
Corpus Christi, Texas 78403

Jose L. (Pepe) Gonzalez
Director
Laredo-Webb County Health
Department
P.O. Box 2337
Laredo, Texas 78044

Edward A. R. Lord, Jr., M.D.
Partner
Hollins and Lord, Associates
4315 Lockwood Drive, #7
Houston, Texas 77026

Jarmese Morris
Assistant Administrator
Manda Ann Convalescent Home, Inc.
7441 Coffee Street
Houston, Texas 77033

Michael Cooper Waters
President of Hospital Development
Hendrick Medical Center
North 19th and Hickory Streets
Abilene, Texas 79605

Representing providers, to serve as chair-
man for a term to expire September 1, 1986:

Marion R. Zetzman, Dr. P.H.
Professor of Community Medicine and
Special Assistant to the President
University of Texas Health Science
Center at Dallas
5323 Harry Hines Boulevard
Dallas, Texas 75235

These appointees are being appointed pur-
suant to House Bill 2091, 69th Legislature,
1985.

Issued in Austin, Texas, on October 3, 1985.

TRD-859257 Mark White
Governor of Texas

★ ★ ★

Emergency

Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of the 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 13. CULTURAL RESOURCES

Part V. Texas

Sesquicentennial Commission

Chapter 51. General Operating Policy

★13 TAC §§51.1-51.7

(Editor's note: The text of the following rules repealed on an emergency basis will not be published. The rules may be examined in the offices of Texas Sesquicentennial Commission, 510 South Congress, Austin, or the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas 1986 Sesquicentennial Commission adopts on an emergency basis the repeal of §§51.1-51.7, concerning general operating policy

Emergency action is taken on this repeal to coincide with the emergency adoption of new §§51.1-51.18 Senate Bill 1002, 69th Legislature, 1985, redefined the commission's legislative duties regarding the use of the sesquicentennial logo and established the authority of the Executive Committee to direct the program of the commission.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 6145-11, §7, and under Senate Bill 1002, 69th Legislature, 1985, which gives the authority to develop and use an official logo and adopt rules to sanction official sponsors and official commemorative and/or promotional products and license the use of the logo in exchange for either a fee or royalties or both.

§51.1. Purpose.

§51.2. Program.

§51.3. Meetings.

§51.4. Organization.

§51.5. Staff.

§51.6. Executive Steering Committee.

§51.7. Acquisitions and De-Accessions.

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

TRD-859199

Lynn Nabers
Executive Director
Texas Sesquicentennial
Commission

Effective date: October 4, 1985

Expiration date: February 1, 1986

For further information, please call
(512) 475-1986

Chapter 51. Operating Policy and Program Guidelines

★13 TAC §§51.1-51.18

The Texas Sesquicentennial Commission adopts on an emergency basis new §§51.1-51.18, concerning operating policy and program guidelines. Emergency action is taken on these sections to permit a closing date on accepting proposals for sanctioning of commemorative and/or promotional products by the commission as of October 4, 1985, as authorized by the Executive Committee established by passage of Senate Bill 1002, 69th Legislature, 1985. The new sections also define the retail program, the corporate/industrial program, the private sector program, the sesquicentennial fund, and prohibitions

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6145-11, §7, and Senate Bill 1002, 69th Legislature, 1985, which gives authority to develop and use an official logo and adopt rules to sanction official sponsors and official commemorative and/or promotional products and license the use of the logo in exchange for either a fee or royalties or both.

§51.1. Purpose of the Commission.

(a) The Texas 1986 Sesquicentennial Commission (hereafter referred to as commission) shall fulfill all duties and purposes assigned by law.

(b) The commission may, upon responsible and deliberate evaluation, expand its specifically assigned duties to satisfy any requirements prescribed by law.

§51.2. Program of the Commission.

(a) It shall be the responsibility of the commission to set policy, identify objectives, and approve all programs and activities of the commission and its staff.

(b) The commission shall develop and implement a master plan designed to fulfill its responsibilities, and to successfully plan and execute the appropriate observance of the 150th anniversary of Texas independence, and its subsequent progress as a state. Included in this plan shall be historic, economic, cultural, environmental, and social aspects of Texas, including appropriate past, present, and future highlights.

(c) The commission shall create and maintain a working relationship with other public and private sector groups interested in the sesquicentennial celebration. When-

ever possible, the resources of these two groups will be developed, supported, and utilized by the commission to insure maximum efficiency and economy of operation. The commission is authorized to enter into contracts with other state agencies or institutions and with qualified private institutions or nonprofit organizations to carry out the purposes of the Act.

(d) The duties of the commission are:

(1) encourage individuals, private organizations, and local governmental bodies to organize activities celebrating the state's sesquicentennial;

(2) help individuals, private organizations, and local governmental bodies that organize sesquicentennial activities to coordinate the activities;

(3) gather and disseminate information to the general public about sesquicentennial activities conducted in the state;

(4) develop standards for sesquicentennial activities organized by individuals, private organizations, and local governmental bodies, and sanction activities that comply with the standards;

(5) invite national and international dignitaries to attend sesquicentennial activities conducted in the state;

(6) encourage persons living outside the state to attend sesquicentennial activities conducted in the state;

(7) develop and use an official state sesquicentennial logo and register such logo in state and federal offices as a service mark or trademark and secure copyright on such logo and any other printed, visual, graphic, audio, or audiovisual materials developed;

(8) adopt rules to:

(A) sanction official sponsors and official commemorative or promotional products; and

(B) exclusively license the use of the official state sesquicentennial logo by official sponsors including business and corporate sponsors, and producers of official commemorative or promotional products, in exchange for either a fee or royalties or both.

(e) The authority of the commission shall be as follows.

(1) The commission shall have the authority to enter into contracts with a recognized and financially responsible advertising and/or public relations firm having a minimum of five years experience, and to contract for time on broadcasting facilities and space in periodicals for the publication of publicity information, historical facts, statistics, drawings, and photographs which

will be useful and informative to persons within and outside the state.

(2) The commission shall have the authority to enter into contracts with recognized and financially responsible media production companies for the production of moving pictures and still pictures in the state, and to provide for the distribution of such productions or publicity matter to other governmental, quasigovernmental, or private organizations.

§51.3. Meetings of the Commission.

(a) There shall be four regular meetings of the commission each calendar year. They shall be held on the second Friday in February, the second Friday in May, the second Friday in August, and the second Friday in November, or as near these days as the commission may find practicable. Notice of every regular meeting shall be mailed to the commissioners at least 10 days before the time appointed for the meeting.

(b) Special meetings of the commission may be called by the chairman of the commission when he deems necessary, or shall be called by the chairman within 14 days of receipt of a written request of two-thirds of the commission, as then constituted. Notice of any special meeting shall be mailed to commission members at least 10 days in advance, with a statement of the time and place of the special meeting, and information as to the subject or subjects to be considered.

(c) A majority of the members of the commission shall constitute a quorum.

(d) All matters submitted to members of the commission for their vote, including the election of vice-chairman of the commission, shall be decided by plurality vote.

(e) An *ex officio* member or a member appointed either by the speaker of the house of representatives or by the lieutenant governor may designate a representative to serve in the member's absence. A designated representative must be an officer or employee of the member's agency or organization, and for the Executive Committee may be another member of the board. The designated representative has all the powers and duties of the *ex officio* or legislative member.

§51.4. Organization of the Commission.

(a) Officers of the commission shall include the chairman who, as required by law, is appointed by and serves at the pleasure of the governor, and a vice-chairman who shall be elected by the commission from either remaining membership category from which the chairman has not been drawn.

(b) The chairman shall direct the activities of the commission and its staff to accomplish the goals and objectives set by law and by the commission. The chairman shall preside at all meetings of the commission, shall act as spokesman for the commission, and shall be an *ex officio* member of all committees of the commission. The

vice-chairman shall act in behalf of the chairman in his/her absence, and carry out whatever additional duties may be assigned by the chairman.

(c) The commission shall elect the vice-chairman for a one year term at its regular May meeting, and the term shall begin immediately.

(d) Should resignation, death, or incapacity for any reason create a vacancy in the vice-chairmanship, the chairman shall, at the next regular meeting of the commission, conduct an election for a new vice-chairman to fill the unexpired portion of the former vice-chairman's term.

(e) All commissioner's activities requiring expense reimbursement, other than meetings, shall require the prior approval of the chairman.

§51.5. Staff of the Commission.

(a) The commission shall employ an executive director to serve at the pleasure of the commission as chief administrative officer of the Texas 1986 Sesquicentennial Commission.

(1) In addition to general administrative duties, the executive director shall keep full and accurate minutes of all transactions and proceedings of the commission.

(2) With the consent of the commission, and in the name of the Texas 1986 Sesquicentennial Commission, the executive director may accept donations and gifts of property and money which may be made to further the purposes of the commission.

(3) The executive director shall have full authority to employ or dismiss any and all personnel necessary to the discharge of the commission's staff responsibilities. The executive director shall, however, consult the commission on candidates for the position of assistant executive director or that staff member who, although otherwise designated, acts as chief administrative assistant to the executive director.

(4) The commission shall review annually the performance of the executive director.

(b) No employee of the commission shall accept any office, employment, or position on any committee governing board, or other position of possible influence, authority, or responsibility with any organization connected with the Sesquicentennial Program, with or without compensation, without the prior consent of the commission. No employee of the commission shall accept any honorarium or other remuneration for himself for services rendered to any sesquicentennial related organization, other than reimbursement for actual travel expenses, nor own any interest in any sesquicentennial-related organization, nor engage in any business or enterprise connected with the Sesquicentennial Program without the prior consent of the commission. Any honorarium or remuneration paid to an employee should be returned or donated to the general operating funds of the commission.

(c) Employees of the commission may not have any interest in or engage in any business or professional activity or incur any obligation which is in conflict with the proper discharge of duties in the public interest. Specifically, no employee shall:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee discharging official duties or that the employee knows or should know is being offered with the intent to influence official conduct;

(2) accept employment or engage in any business or professional activity in which the employee reasonably might expect would require or induce the employee to disclose confidential information acquired by reason of his or her official position;

(3) accept other employment or compensation which could reasonably be expected to impair independent judgment in the performance of official duties;

(4) make personal investments which reasonably could be expected to create a conflict between the employee's private interest and public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties in favor of another.

(d) It shall be a breach of ethical standards for any employee to participate directly or indirectly in the process of sanctioning a product when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to a product;

(2) the employee or any member of the employee's immediate family has a financial interest in a business or organization pertaining to a vendor or any representative of a vendor;

(3) any other person, business, or organization with whom the employee or any of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a vendor or any representative of a vendor.

(e) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement to the commission, outlining his relationship to vendor or any representative of a vendor. The commission shall request a written statement from the vendor or the vendor's representative, outlining his relationship to the employee(s) of the commission. The commission shall review each case to determine if there is a real or potential conflict of interest and shall take appropriate action.

(f) It shall be a breach of ethical standards for any employee to solicit, demand, accept, or agree to accept a gratuity from a vendor or a vendor's representative.

(g) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee

a gratuity or an offer of employment in connection with influencing the sanctioning process of a vendor's product.

(h) It shall be a breach of ethical standards for a person to be retained or to retain a person, to solicit or secure a State of Texas contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business

(i) At the option of the commission, a person, before being awarded a State of Texas contract, may be required to represent in writing, that such person has not retained anyone in violation of subsection (h) of this section. Failure to do so constitutes a breach of ethical standards.

(j) It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the sanctioning process of products to become or be, while such an employee, the employee of any person contracting with the State of Texas.

(k) It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the State of Texas, in connection with any:

(1) judicial or other proceeding, application, request for a ruling, or other determination;

(2) contract;

(3) claim; or

(4) charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the State of Texas is a party or has a direct and substantial interest

(l) It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person

(m) The term employee as used herein is not deemed to include consultants or advisors to the commission who are engaged on a contractual basis from time to time to advise the commission on limited, specific matters

§51.6 Committees of the Commission.

(a) There shall be created from the membership of the commission an executive committee composed of nine members: the chairman of the commission; two members designated by the governor from the governor's appointees; two members designated by the speaker of the house of representatives from the speaker's appointees; two members designated by the lieutenant governor from the lieutenant governor's appointees; the executive head of the Texas

Tourist Development Agency; and the executive head of the Texas Commission on the Arts. Subject to disapproval by the commission, the Executive Committee may act on behalf of the commission for all purposes when the commission shall not be meeting, and shall have oversight and authority over all the activities of the commission and its employees in the full commission's absence.

(b) A quorum shall consist of five members.

(c) The executive director of the commission or his designee shall be a nonvoting, *ex officio* member of the committee and, at the request of the commission chairman, shall provide such staff assistance as the committee may require.

(d) Summary minutes shall be kept of all meetings, copies of which shall be promptly distributed to all commissioners and agencies designated under the Appropriations Act.

§51.7. Donations, Gifts, and Contributions.

(a) All proposed gifts and donations to the commission shall be approved or rejected by the commission.

(b) All proposals for gifts or donations shall be presented to the commission in writing, explaining the intended purpose and use of such gifts or donations.

(c) All donations shall be allowed to accumulate up to \$1,000, whereupon it shall be put before the full commission to authorize use of unrestricted donations for program development and services. Restricted donations shall be used for the purpose specified by the donor

(d) Nonmonetary gifts to the commission shall be considered property of the state and shall be inventoried and delivered to the State Library and Archives no later than March 31, 1987

(e) No property of the commission may be used by organizations making donations to the commission

(f) No commissioner or employee of the commission may serve as an officer or director in any organization making donations to the commission, unless disclosed to the commission for approval.

(g) Donations to the commission shall not be used for supplementation of salary of any commissioner or employee of the commission

(h) The commission will not accept donations from any manufacturer, vendor, or vendor's representative which have products under consideration for sanctioning

(i) No commissioner or employee of the commission shall accept or solicit any donation that might reasonably tend to influence the commissioner or the employee in discharging official duties

§51.8 Program Guidelines.

(a) It shall be the policy of the commission that the commission shall provide

guidelines for communities, groups, and individuals who desire to participate in the 1986 sesquicentennial celebration.

(b) It is the duty of the commission to:

(1) provide inspiration, leadership, guidance, and technical assistance for organizing all interested groups;

(2) inform and communicate relevant information between all interested parties;

(3) evaluate, endorse, and sanction activities, projects, and products;

(4) coordinate all related activities in 1986 for maximum awareness, utility, and benefit.

(c) It is the intent of the commission that each officially sanctioned Texas independence community/association direct its own approved program and activities, within the commission's established guidelines.

§51.9. Criteria for Sanctioning Organizations.

(a) Organizations.

(1) A Texas independence community is a designation of official state sanctioning and endorsement by the commission. A community becomes officially recognized as a Texas independence community by meeting the following criteria.

(A) A local sesquicentennial coordinating committee (hereafter committee) for the community (or county) is appointed by the mayor and city council (or county judge and commissioners court), with specific reference to the following criteria.

(i) The committee should be a cross-section of the community.

(ii) If at all possible, the committee should include representatives from city government; civic, cultural, patriotic, and historical societies; educational organizations (public and private schools, colleges, universities); communications media; and business, trade, and professional associations.

(B) The committee is recognized by a formal resolution of the city council or county commissioners court.

(C) The local committee prepares a master plan for their community's celebration of the Texas sesquicentennial, based upon the following general criteria.

(i) Projects should be developed that celebrate the community's past, its present, and its future

(ii) Projects should be chosen to insure participation by all segments of the community and a large proportion of its citizenry

(iii) Projects should be chosen that celebrate the uniqueness and diversity of the community, whether ethnic, cultural, social, or economic

(iv) One or more project should result in permanent good for the community as a tangible and lasting reminder of the Texas sesquicentennial of 1986.

(D) When a community's master plan is completed, a resolution of adoption of the plan is passed by the city or county government, and the plan is submitted by written application to the commission for evaluation and endorsement. Official endorsement enrolls the community as a Texas independence community. Should it become necessary to make substantive alterations in the community's master plan, the commission should be notified.

(E) After the initial planning and official endorsement, the responsibilities of the committee are:

(i) to actively develop and implement special community wide sesquicentennial projects, celebrations, and activities;

(ii) to encourage existing local groups and organizations to develop their own individual sesquicentennial projects, and to offer assistance and advice in the implementation of these plans;

(iii) to help coordinate the programs and activities of participating groups and agencies;

(iv) to serve as the official point of contact between local organizations and groups and the commission;

(v) to officially participate in a regional coordinating of activities with surrounding communities.

(2) Texas independence association is a designation of official state sanctioning and endorsement by the commission. A nonprofit organization with statewide membership becomes officially recognized as a Texas independence association by meeting the following criteria.

(A) A special sesquicentennial planning group should be established within the association. This group is appointed by the chairman or the board of trustees of the organization. The planning group functions to plan the association's involvement in the Texas sesquicentennial—its programs, celebrations, and projects. The planning group should be a cross section of the organization as a whole, with a membership balanced in terms of age, sex, and ethnicity. To ensure the greatest possible participation in the celebration of the sesquicentennial, all segments of the association should be drawn into the planning process.

(B) The sesquicentennial planning group should prepare a master plan for its organization's celebrations of the Texas sesquicentennial, based upon the following general criteria

(i) Projects should be developed that celebrate the association's past, its present, and its future

(ii) Projects should be chosen that promote participation by all segments of the association, and a significant proportion of its membership

(iii) Whenever possible, projects should be linked to the general themes of the Texas sesquicentennial

(C) The sesquicentennial planning group submits its master plan for par-

ticipation in the sesquicentennial to the chairman or board of trustees of the parent organization for consideration, amendment, and formal approval.

(D) The master plan should be submitted by written application to the commission for evaluation and endorsement. Official endorsement enrolls the association as an official Texas independence association. Should it become necessary to make substantive alterations in the association's master plan, the commission should be notified.

(b) Application for sanctioning. To request official sanction, a committee or association planning group must submit an application in writing to the commission at P.O. Box 1986, Austin, Texas 78767, on a form prescribed by the commission. The application shall include, but not be limited to, information describing all proposed uses of the Texas sesquicentennial logo by the organization. A description of the uses of the logo shall be as specific as possible.

(c) Changes in master plan. Any subsequent changes that occur in the master plans of committees or sesquicentennial planning groups should be submitted in writing to the commission for review. Each committee or sesquicentennial planning group shall report their knowledge of any misuse of the logo to the commission as soon as possible. The same organizations shall report a list to the commission of all project or product applications received from outside sources.

(d) Duties and rights. After a community or association receives official sanctioning/endorsement from the commission, the committee or sesquicentennial planning group shall have the authority to implement sesquicentennial projects, celebrations, and activities of the master plan, and serve as the official point of contact between the community or parent association and the commission. An officially endorsed Texas independent community/association may use the logo in a manner prescribed by the commission, and may utilize the technical assistance of the commission.

(e) Reports

(1) Each officially sanctioned organization shall submit to the commission an annual progress report regarding the organization's program and activities on a form to be prescribed by the commission.

(2) A final evaluation report of program and activities of each official organization shall be filed with the commission in Austin no later than February 1, 1987, on form to be prescribed by the commission.

§ 51.10 Commission Policy Determining Use of the Logo

(a) Development. The logo shall be developed by means of a statewide contest and final selection shall be determined by the commission.

(b) Ownership of logo rights. All uses, rights (copyright and State of Texas

trademark), and benefits of the logo belong to and are strictly reserved by the commission and the State of Texas.

(c) Logo use.

(1) All uses of the logo outside of the commission must be approved by the commission. Proof of approval for uses of the logo outside of the commission organization shall be in writing and signed by both the chairman of the commission and executive director of the commission.

(2) Application for logo use shall be on a form prescribed by the commission. All intended uses of the logo shall be listed in the application.

(3) Logo use may be approved for projects that further the aims and goals of the commission, such as public education and the dissemination of information, and that represent either:

(A) new projects created especially to commemorate the Texas sesquicentennial; or

(B) existing projects substantially revised to commemorate the Texas sesquicentennial.

(4) Upon official sanction and written approval by the commission, the logo may be used by all state or local units of government, all Texas independence community/associations, private sector organizations, and other organizations and private individuals as authorized by the commission according to the established criteria.

(A) Officially sanctioned communities may use the Texas independence community logo, displaying the community name in conjunction with the state sesquicentennial logo on self-developed products, press releases, or other events sanctioned by the local community without written approval from the full commission.

(B) Officially sanctioned Texas independence associations may use the Texas independence association logo, displaying the association's name; or only the association's name encircling the state logo in conjunction with self-developed products, press releases, or with any activity sanctioned by the association without written approval from the commission.

(5) Sanctioned communities, nonprofit associations, state and local government, and private sector organizations may use the Texas logo in connection with any of the following projects as approved on the organization's application and publicity related to such projects; printed materials for sesquicentennial; related announcements and publicity; and letterheads.

(6) Deviation from these uses may not occur unless excepted by the commission in writing. When commission approval for use of the logo has been granted to an organization, the logo may be used until August 31, 1987.

(7) The commission reserves the right to revoke authorization to use the logo

at any time for what it considers inappropriate use.

§51.11. Commemorative Products Program.

(a) The Sesquicentennial Commemorative Products Program will reflect the highest quality, widest distribution, and greatest benefit possible to the State of Texas and to all official sesquicentennial organizations.

(i) A commemorative product is defined as a product with commemorative value. Official commemorative products shall be the only products displaying the wording, "Official Commemorative of the Texas 1986 Sesquicentennial."

(c) An official commemorative product is so designated because it has been sanctioned for manufacture and sale, displaying the official sesquicentennial logo.

(d) The number of official commemorative product categories may be enlarged. It is the intent of the commission to keep the total number of commemorative categories to a minimum. Official commemorative product categories include:

- (1) flag;
- (2) Texas patriot kit;
- (3) spur;
- (4) boots;
- (5) ring;
- (6) map;
- (7) bronze object/gold object/silver object;
- (8) print;
- (9) ceramic object;
- (10) plate;
- (11) crystal object;
- (12) pitcher;
- (13) button (blazer button set);
- (14) pin;
- (15) art poster;
- (16) Republic of Texas currency (reproduction);
- (17) Republic of Texas artifact (reproduction);
- (18) Texana (an open category for an object or objects of a uniquely Texas nature to be suggested by applicants);
- (19) miscellaneous;
- (20) Christmas decorations;
- (21) toys

(e) Official commemorative products will be selected by the commission. The commission shall conduct a formal period of solicitation for commemorative product proposals. That formal period will end October 4, 1985.

(1) All manufacturers and their products will be evaluated and selected on the basis of a product and marketing proposal submitted to the commission.

(2) Manufacturers will be selected for each category.

(3) Manufacturers will have the opportunity to compete to be official licensees for individual categories of commemorative products.

(4) A manufacturer has the right to request exclusivity on a product line. The

commission will evaluate the line and may grant exclusivity if they so choose.

(5) The commission must give approval to each vendor which distributes, represents, manufactures, or sells official commemorative products.

(6) Each vendor representing an official commemorative product shall be registered with the commission before the vendor may market official commemorative products.

(f) Product and marketing proposals will be evaluated based on the following minimum technical, marketing, and financial criteria.

(1) Technical criteria.

(A) Each product must be demonstrated to have:

(i) commemorative value to the Texas sesquicentennial as determined by the commission;

(ii) appropriateness to theme of the Texas sesquicentennial;

(iii) evidence of product quality, product safety, and its environmental compatibility.

(B) Each manufacturer must provide:

(i) evidence of a potentially successful marketing strategy;

(ii) evidence of a potentially successful production ability;

(iii) an original suggested design; and

(iv) references.

(C) All official commemorative products shall display the Texas sesquicentennial logo.

(2) Marketing and financial criteria.

(A) Each official commemorative product shall bear a royalty fee based upon the manufacturer's wholesale price of each product.

(i) The royalty fee shall be suggested by the manufacturer at the time of application to the commission, expressed both as a percentage of the wholesale price per item and as a whole dollar amount per item.

(ii) The royalty fee on each item shipped shall be remitted to the commission.

(iii) The manufacturer must report to the commission the unit number of products shipped to each retail vendor and royalty due the state net 30 days following the end of the month in which the shipment was made.

(B) All manufacturers and vendors may sell commemorative products through or in cooperation with officially sanctioned Texas Independence community/association organizations.

(C) Manufacturers or vendors may also market and distribute the products directly through catalogs, mail order, sales to nonsanctioned areas, and out of state sales.

(D) Applicants should provide a clear and thorough description of a proposed marketing plan including terms and conditions of sale imposed by the manufacturers, warranties of the product quality, warranties of performance regarding quantities, and distribution and payment arrangements with officially sanctioned selling organizations and the commission.

(E) Each applicant must demonstrate an ability to provide appropriate promotional and collateral material; i.e., advertisements, flyers, catalogues, etc.

(F) Official commemorative products may only be sold between January 1, 1985, and August 31, 1987. Manufacture of products shall terminate March 31, 1987. Final royalty fees and final sales reports are due by September 30, 1987.

(g) The commission may, at its discretion, revoke its sanction from an official commemorative product manufacturer or vendor which does not act in accordance with commission guidelines and policy.

(h) Any royalties, salaries, wages, fees, or other monetary benefits may not accrue directly or indirectly to a member of the commission for an official commemorative product sanctioned by the commission.

(i) Each selected official manufacturer shall, at no cost, provide at least two samples of the finished product to the State Library and Archives Commission for permanent retention.

(j) The commission may award a special commemorative product license and sanction the use of the logo on certain limited edition products and/or cottage industry products which do not conflict with, duplicate, or diminish the value of official commemorative products. The technical, marketing and financial criteria for these special products shall be the same as with official commemorative products.

§51.12. Promotional Products Program.

(a) The Promotional Products Program is designed to help the local Texas independence communities/associations to earn money through the sale of impulse price point merchandise developed by the commission or by the local committee.

(b) The committees may sell or appoint retailers to sell promotional products within their jurisdiction.

(c) Royalty fee on promotional products

(1) Any sanctioned Texas independence community/association may develop and/or sell promotional products themselves and receive the full mark on profit for each item sold.

(2) The community/association may designate a store or stores within their area to sell merchandise with a negotiated royalty to be returned to the committee for their projects.

(3) The commission recommends that where counties, communities, and as-

social areas overlap that the royalties be shared by all parties.

(4) Promotional products manufacturers will remit a 7.0% royalty fee, based on the number of units shipped at wholesale cost. The manufacturer is responsible for the royalty due net 30 days following the end of the month in which the shipment is made.

(d) All marketing of promotional products is done through the sanctioned Texas independence community/association. No committee has the right to infringe into an area not within their jurisdiction as specified in the master plan, with the commission as final arbiter.

§51.13. Retail Program.

(a) The retail plan is designed to allow major retailers to purchase commemorative and promotional products directly from the manufacturer.

(b) A major retailer is defined as a company or corporation with 10 or more stores located in more than one city within the State of Texas or its contiguous states.

(c) Retailers must agree to return a standard royalty fee of 5.0% of wholesale cost to the Texas independence communities based on number of units of products (both commemorative and promotional products) sold within that communities' jurisdiction. The royalty is due net 30 days following the end of the month in which the shipment is made. Where there is a question regarding the jurisdiction, the commission will become the final arbiter of where and how the monies will be remitted.

(d) Retailers, not classified as major will be able to purchase commemorative products through the free market system directly from the manufacturer.

(e) Retailers not classified as major under the definition in subsection (b) of this section, will be able to purchase promotional products only from the sanctioned communities.

(f) Major retailers participating in this program are exempt from purchasing promotional products directly from the local community, however, retailers may purchase products from local communities.

(g) Major retailers will have complete control of what is purchased and sold within their store. Each retailer will be asked to work with the local communities and carry customized products in addition to any products utilizing the state's logo.

(h) Retailers classified as major but not participating in this program will be treated as nonmajor retailers and subject to the same privileges and restrictions.

§51.14. Corporate/Industrial Accounts

(a) Criteria for the selection of manufacturers. After the submission of an application, the commission will evaluate each proposal based on its adherence to the guidelines set forth in this chapter. The applicant's marketing strategy, method of financing, and description of the product will

be important criteria in the selection process.

(b) Product criteria.

(1) The product submitted must be distributed as a giveaway and self-liquidating by nature of disbursement. Any product utilizing the Texas sesquicentennial commission logo in conjunction with any other corporate/nonprofit logo will be considered as a corporate/industrial account.

(2) A product currently listed as a promotional product of the Texas 1986 sesquicentennial may be used for a corporate/industrial account only if approved by the executive committee of the commission. All other promotional products will remain under the guidelines as products to be used by local sanctioned committees for the benefit of the local group.

(3) Commemorative products may be used as corporate/industrial products providing they are resubmitted according to the procedure listed in this section. A commemorative product used on the corporate/industrial level may not use the words "Official Commemorative of the Texas 1986 Sesquicentennial Commission."

(c) Royalty fee. A standard royalty fee of 6.0% of the wholesale cost to the corporate/industrial account will be paid to the commission on products. The remittance of the royalty fee is the responsibility of the manufacturer and is due net 30 days following the end of the month in which the shipment is made.

(d) Logo use. Any sanctioned organization has the right to authorize the use of the Texas independence community/association logo on products for corporate/industrial accounts exclusively within their area of jurisdiction as specified in the original master plan for sanctioning.

(e) Procedure for product sanction

(1) A written proposal must be submitted to the commission for approval and must include:

(A) a description of the product including size, colors, and artwork. A sample of the product should accompany the written proposal;

(B) a description of the sesquicentennial logo placement on the product and a tentative placement of a corporate logo;

(C) list of the corporate/industrial accounts to be contacted;

(D) a complete list of references, including credit references from banks and other financial institutions and businesses that have dealt with the applicant in the past on similar projects;

(E) warranties and other guarantees of product quality as suggested by the applicant;

(F) any other terms or conditions of sale of the product as imposed by the manufacturer or distributors.

(2) Commission approval process

(A) The commission reviews the proposal based on the value and desirability

of the entire proposal.

(B) Upon approval, the commission will provide the vendor with a letter identifying the vendor as authorized to use the sesquicentennial logo on the product approved.

(C) A letter from the corporate/industrial account must be returned to the commission identifying the type of promotion that the product will be used for, the product to be used, and the pricing per product.

(D) The vendor will provide the commission with a finalized sample or artwork identifying the placement for the state logo as well as the corporate logo for the executive committee's final approval of the account.

(E) A letter of agreement with the vendor will be signed on completion of the process described in this section enabling the vendor to proceed with the production of the product using the Texas 1986 sesquicentennial logo.

(F) A report will be given to the executive committee on the area to be impacted and how the product will be used.

(f) Commissions rights. As an agency of the State of Texas, the Texas 1986 Sesquicentennial Commission and all its adopted rules and policy are enforced by the state attorney general. The commission may, at its discretion, revoke its sanction from an official corporate/industrial product manufacturer or distributor which does not act in accordance with the guidelines and policy described in this chapter. Each applicant should be aware that no royalties, salaries, wages, fees, or other benefits may accrue to any member of the Texas 1986 Sesquicentennial Commission or to any member of the commission staff. The commission, or its designee reserves the right to audit records of any entity involved in manufacturing or distributing corporate/industrial products.

§51.15. Private Sector Program.

(a) Private sector projects are special projects of for-profit entities which are sanctioned by the Texas 1986 Sesquicentennial Commission to use a special form of the official logo.

(b) To be sanctioned, private sector projects must meet the following criteria:

(1) They must have substantial educational, informational, or publicity value to the Texas sesquicentennial.

(2) They must have been created especially for the Texas sesquicentennial of 1986 (or substantially revised for it).

(3) No private sector project involving a product to be sold directly to the public may be considered for sanctioning, with the following exceptions:

(A) private sector projects involving a limited edition product (500, or less items);

(B) private sector projects involving a product to be sold directly through a sanctioned Texas independence

community/county or Texas independence association, and remitting a substantial royalty fee to those organizations.

(c) Sanctioned private sector projects must display the special form of the official logo that incorporates the phrase "We Support the Texas Sesquicentennial."

(d) The private sector logo may be displayed upon the product (if any), and upon promotional materials directly associated with the project. It may not be used on company stationary or in general advertising not directly related to the project as approved by the Texas sesquicentennial commission.

(e) Proposals for approval as private sector projects must be submitted on the form provided by the commission, and must include the following information:

(1) a summary of the proposed project;

(2) a substantiation that the project has informational, educational, or publicity value to the Texas sesquicentennial;

(3) a detailed description of all proposed uses of the sesquicentennial logo in association with the project;

(4) if the proposed project involved any product, a statement of how the product qualifies for consideration under subsection (b)(3) of this section;

(5) a marketing plan, if appropriate.

(f) Proposals for approval as private sector projects which involve products for consideration that are books must be reviewed by the sesquicentennial book committee.

(g) Any approved private sector project which involves a product of some kind must provide the Texas Sesquicentennial Commission with two samples of the product for placement in the Texas State Archives.

§51.16. Lone Star Medallions

(a) The Texas 1986 Sesquicentennial Commission shall designate a one ounce silver lone star medallion and one, one-half, one-fourth, and one-tenth ounce gold lone star medallions as official commemorative medallions of the sesquicentennial.

(b) The commission shall contract for the production, marketing, and distribution of the medallions.

(c) The commission shall deposit the proceeds from the sale of medallions to the credit of the sesquicentennial fund.

§51.17. Sesquicentennial Fund.

(a) Amounts received from the following sources shall be deposited in a special fund in the state treasury to be known as the sesquicentennial fund:

(1) licensing fees and royalties;

(2) proceeds from the sale of medallions designated by the Texas 1986 Sesquicentennial Commission as lone stars under Texas Civil Statutes, Article 6145-14a.

(b) The comptroller of public accounts shall collect proceeds from royalties due under licenses granted by the Texas 1986 Sesquicentennial Commission via the state treasury concentration deposit system.

(c) Not less than half the money in the fund allocated to the Texas 1986 Sesquicentennial Commission shall be distributed to local official sesquicentennial committees sanctioned by the commission according to procedures adopted by the commission.

(d) Money in the fund allocated to the Texas 1986 Sesquicentennial Commission that is not distributed to local official sesquicentennial committees or used to reimburse the comptroller of public accounts for audit services shall be used to advertise and promote the sesquicentennial both in and out of state through interagency contracts with the Texas Tourist Development Agency.

(e) The Texas 1986 Sesquicentennial Commission may audit any official sesquicentennial licensee or product manufacturer. The comptroller of public accounts shall perform audits based on random selection and at the request of the commission. The comptroller of public accounts shall be reimbursed for services provided under this section from the sesquicentennial fund as provided for that purpose by Senate Bill 1002, 69th Legislature, 1985.

§51.18. Prohibition.

(a) An individual, company, association, or corporation that is not sanctioned or licensed by the commission may not use the official sesquicentennial logo in whole or in part, nor represent itself as a sponsor of the sesquicentennial, nor market a product as a commemorative or promotional product of the sesquicentennial.

(b) No sanctioned individual, private organization, local sesquicentennial committee, or governmental body may grant or license any sesquicentennial sponsorship or use the official state sesquicentennial logo in whole or in part without the express approval of the Texas Sesquicentennial Commission.

(c) The attorney general on behalf of the commission, or a private lawyer approved by the attorney general, is authorized to institute civil action against any violation of Texas Civil Statutes, Article 6145-11; and in addition to securing an injunction to prevent further violations may also recover actual damages for any violation and at the discretion of the court may recover statutory damages up to \$5,000 per violation and attorney fees are obtainable.

Issued in Austin, Texas, on October 4, 1985

TRD-850201

Lynn Nabers
Executive Director
Texas Sesquicentennial
Commission

Effective date: October 4, 1985
Expiration date: February 1, 1986
For further information, please call
(512) 475-1986.

Chapter 53. Program Guidelines

★13 TAC §§53.1-53.4

(Editor's note: The text of the following rules repealed on an emergency basis will not be published. The rules may be examined in the offices of the Texas Sesquicentennial, 510 South Congress, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Sesquicentennial Commission adopts on an emergency basis the repeal of §§53.1-53.4, concerning program guidelines.

Emergency action is taken to coincide with the emergency adoption of new §§51.1-51.18. New guidelines redefine the promotional/commemorative products, and retail and corporate/industrial accounts, and post the closing date for the acceptance of commemorative/promotional products as of October 4, 1985.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 6145-11, §7, and under Senate Bill 1002, 69th Legislature, 1985, which gives the authority to develop and use an official logo and adopt rules to sanction official sponsors and official commemorative and/or promotional products and license the use of the logo in exchange for either a fee or royalties or both.

§53.1. Program Policy.

§53.2. Criteria for Sanctioning Organizations.

§53.3. Commission Policy Determining Use of the Logo.

§53.4. Commemorative Products.

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

TRD-850200

Lynn Nabers
Executive Director
Texas Sesquicentennial
Commission

Effective date: October 4, 1985
Expiration date: February 1, 1986
For further information, please call
(512) 475-1986.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part V. Boards for Lease of State-Owned Lands

★31 TAC §§201.1-201.12

The Boards for Lease of State-Owned Lands adopts on an emergency basis the repeal of §§201.1-201.12, 203.1, and 203.2 and adopts on an emergency basis new §§201.1-201.14 to clarify the rules govern-

ing the boards for lease. The new sections are adopted on an emergency basis because of legislative changes taking effect September 1, 1985. The 69th Legislature, 1985, consolidated all but two boards for lease, placing them under the authority of the School Land Board. The two boards for lease which the legislature continued in existence handle lands owned by the Texas Department of Corrections and the leasing procedure for the affected lands and creating a uniform system of leasing those lands. The existing sections are repealed on an emergency basis to allow for the adoption of the new sections.

Chapter 201. General Rules

★31 TAC §§201.1-201.12

The repeal is adopted on an emergency basis under the Texas General Laws, Chapter 624, page 4727, et seq., 1985, which provide each of the boards for lease with the authority to adopt rules and collect fees.

- §201.1. Board Members.
- §201.2. Land for Lease.
- §201.3. Lease Sale.
- §201.4. Minutes.
- §201.5. Duty of Lessee.
- §201.6. Assignment of Lease.
- §201.7. Forfeiture of Lease.
- §201.8. Permits.
- §201.9. Easement.
- §201.10. Filing in General Land Office
- §201.11. Exceptions.
- §201.12. Deposits.

Issued in Austin, Texas, on October 4, 1985

TRD-859285 Garry Mauro
 Commissioner
 General Land Office

Effective date, October 4, 1985

Expiration date, February 1, 1986

For further information, please call
(512) 475 6740.

★ ★ ★

★31 TAC §§201.1-201.14

The new sections are adopted under the Texas General Laws, Chapter 624, page 4727, et seq., which provide each of the boards for lease with the authority to adopt rules and collect fees

- §201.1. Boards for Lease. There are two separate boards for lease. One board for lease representing the Texas Department of Corrections will lease lands owned by that agency. Another board for lease representing the Texas Parks and Wildlife Department will lease lands owned by that agency.
- §201.2. Board Members. Each board for lease of the two state agencies listed in §201.1 of this title (relating to Boards for Lease) is composed of three members, the

commissioner of the General Land Office, who is chairman, a citizen member appointed by the governor for a two-year term, and the head of the agency involved.

§201.3. Minutes. The minutes for each board for lease are kept by the secretary of the board and are part of the records of the General Land Office.

§201.4. Agenda.

(a) The agenda for each meeting will be prepared and notice shall be posted eight days prior to the meeting date. Items for board consideration must be received by the secretary of the boards for lease not later than 11 days prior to the meeting date.

(b) Notice of a board meeting will be filed with the secretary of state and will be posted in the Capitol building eight days prior to the meeting date. Notice of the board meeting will include:

(1) the time, date, and location of the meeting; and

(2) those items to be considered by the board.

(c) Any person intending to present evidence before the board and who wishes to participate in the meeting will notify the secretary prior to the meeting, providing in writing his name and address, and a statement of his interest in the meeting. Parties may be represented by an attorney. Any member of the public may make a personal statement of his views on any matter at the meeting provided that he identifies himself for the record.

(d) Anyone submitting an application before the board and any other person filing their name, address, and a statement related to that same application, will be notified of the date, time, and place of the board meeting at which the application will be considered. However, failure to provide such notice does not invalidate any action taken by the board.

(e) The applicant will be informed in writing of any action taken by the board concerning that person's application as expeditiously as possible following the meeting

§201.5. Land for Lease. Land owned by or held in trust for the use and benefit of either agency may be leased for oil, gas, or other minerals.

§201.6. Excluded Lands. Lands subject to the provisions of the Relinquishment Act, owned or acquired by the Texas Department of Corrections or the Texas Parks and Wildlife Department, are not subject to lease by either board, but are subject to lease pursuant to the Natural Resources Code, Chapter 52, as unsold public school land.

§201.7. Lease Sale.

(a) At least 30 days prior to a lease sale date, the appropriate board will advertise in at least four daily newspapers for at least three issues. The advertisement will state the date upon which the sale will be

held and will provide that a list of the lands that are offered may be obtained from the General Land Office accompanied by the prescribed fee.

(b) The lease will contain the same terms and conditions as leases issued by the School Land Board. However, a board may place any other terms and conditions in the lease it determines to be in the best interest of the state.

(c) Each bidder is required to pay by separate check an amount equal to 1½% of the bid payable to the commissioner as a special sales fee.

(d) Failure to pay the special sales fee does not render a bid void, but the commissioner shall demand payment of the fee before he issues a lease to the successful bidder. If the successful bidder fails or refuses to make the payment within 30 days after demand by the commissioner, the bidder is not entitled to a lease on the tract covered by his bid and the cash bonus shall be automatically forfeited to be deposited by the commissioner in the state treasury to the credit of the appropriate special mineral fund for the agency involved.

(e) Checks submitted by unsuccessful bidders shall be returned to the bidders with their bid checks.

§201.8. Nominations of Tracts, for Lease. Written requests that designated tracts of land owned by the Texas Department of Corrections of the Texas Parks and Wildlife Department be offered for lease of oil, gas, and other minerals may be submitted to the appropriate agency or the commissioner of the General Land Office at any time. A \$100 fee shall be submitted for each tract so nominated and shall be made payable to the General Land Office. The envelope containing the tract nomination and fee shall be marked nomination for lease. The fee will be refunded only if the tract nominated is not eligible for lease by the board. The board will from time to time schedule a lease sale and give notice as provided in §201.7 of this title (relating to Lease Sale).

§201.9. Filing in General Land Office. Records pertaining to leases by a board are to be filed in the records of the General Land Office accompanied by any filing fee prescribed by §1.91 of this title (relating to Fees)

§201.10. Deposits. Payments received by boards for lease are payable to the commissioner of the General Land Office, who will deposit receipts with the state treasurer to the credit of the appropriate special mineral fund for the agency involved.

§201.11. Assignment of Lease. Leases may be assigned and shall be recorded in any county in which all or part of the leased area is located. The recorded assignment or a certified copy of the assignment must be filed in the General Land Office in accordance with §11.12 of this title (relating to

Assignments) and within 90 days after its execution accompanied by the filing fee prescribed by §1.91 of this title (relating to Fees).

§201.12. Forfeiture of Lease. A lease may be forfeited by the commissioner for nonpayment of any sum due within 30 days after the sum is due, false reporting, failure to file reports, failure to give information, refusing access to records or failing to furnish a log.

§201.13. Permits. Either board for lease may issue permits for geological or other surveys under terms and conditions prescribed by the board.

§201.14. Easements. A board may grant easements of right-of-way under terms and conditions the board considers to be in the best interest of the state. This section does not apply to land owned by the state as a part of the penitentiary system.

Issued in Austin, Texas, on October 4, 1985

TRD-859281 Garry Mauro
Commissioner
General Land Office

Effective date: October 4, 1985
Expiration date: February 1, 1986
For further information, please call
(512) 475-8740.

★ ★ ★

Chapter 203. Exploration and Development

Lease of Lands of State Departments, Boards, and Agencies

★ 31 TAC §203.1, §203.2

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Boards for Lease of State-Owned Lands, 1700 North Congress Avenue, Stephen F. Austin Building, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is adopted under the 1985 Texas General Laws, Chapter 824, page 4727, et seq., which provide each of the boards for lease with the authority to adopt rules and collect fees

§203.1. Lands Offered for Lease.

§203.2. Lease Approval.

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

TRD-859284 Garry Mauro
General Land Office

Effective date: October 4, 1985
Expiration date: February 1, 1986
For further information, please call
(512) 475-8740

★ ★ ★

Part IX. Texas Water Commission

Chapter 340. Applications Processing

★ 31 TAC §§340.1-340.8

The Texas Water Commission adopts on an emergency basis new §§340.1-340.8, concerning purpose, initial review, notice of receipt of administrative completeness, applications returned, referral to commission, extension, technical review, applications processing, and effect of rules.

Senate Bill 249, 69th Legislature, 1985, and effective September 1, 1985, amended the Texas Water Code to require new provisions for issuance of notice of application and receipt of requests for public hearing. The purpose of these emergency rules is to extend the substantive requirements of rules adopted by the Texas Water Development Board for the former Texas Department of Water Resources and to incorporate the new provisions required by Senate Bill 249. By virtue of Senate Bill 249, §10 002, the rules of the Texas Department of Water Resources relating to applications processing ceased being effective when the Texas Water Commission adopted these new sections.

Section 340.2 adds provisions for the review of all applications for permits, licenses, and other types of approvals for administrative completeness, and sets time deadlines for the agency staff to complete such reviews.

A new §340.3 has been added to provide for the procedures for issuance of notice of the receipt of an application, as required by the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(B) and for issuance of notice of administrative completeness of an application, as required by the Texas Water Code, §5 115

In §340.7, the time deadlines for technical review of all applications for permits, licenses, and other types of approvals, except applications for permits for existing hazardous municipal waste and industrial solid waste facilities under §335.34(b) and applications for permits for existing waste disposal wells under §353.11 have been shortened from 90 days to 75 days. Section 340.7, for the first time, establishes a 120-day deadline for technical review of applications for permits for existing hazardous municipal waste and industrial solid waste facilities and for existing waste disposal wells.

The Texas Water Commission finds that an urgent need exists to adopt these emergency rules to prevent undue delay in the processing of applications and to alleviate otherwise an imminent peril to the public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which authorizes the commission to adopt rules and establish policy.

§340.1. Purpose. It is the intent of the Texas Water Commission to establish a general policy for the processing of applications for permits, licenses, and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of this commission that all applications for permits, licenses, and other types of approvals be processed by the executive director according to the schedule established in this chapter.

§340.2. Initial Review.

(a) Applications for permits, licenses, or other types of approvals, except as provided in subsection (b) of this section, shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director.

(b) Applications made under §335.43 (b) of this title (relating to Permit Required) or §353.11 of this title (relating to Application Required for Existing Wells) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this subsection. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on which the review will commence.

(c) Requirements for initial administrative completeness of the following types of applications are:

(1) applications for the use of state water that must include:

- (A) complete application form(s), signed and notarized;
- (B) payment of fees;
- (C) appropriate ownership documents (including easements and consents);
- (D) an adequate map of plat;
- (E) required engineering plans or studies;

(F) legal status of applicant, verified;

(2) applications for wastewater discharge, underground injection, hazardous waste and industrial solid waste management permits that must include:

- (A) complete application form(s), signed and notarized, and appropriate copies provided;

(B) payment of fees;

(C) legal status of applicant, verified;

(D) signature of applicant, checked against agency requirements;

(E) technical reports and supporting data required by the application;

(3) applications for plan approval of reclamation projects that must include:

- (A) complete application form(s), signed and notarized;

(B) a list of adjacent and potentially affected landowners along with a map locating these landowners;

(C) an engineering report and supporting data.

§340.3. Notice of Receipt of Application and Declaration of Administrative Completeness.

(a) Applications for permits or licenses. Upon receipt of an application described in §340.2(c)(2) of this title (relating to Initial Review) which contains the information and attachments required by §340.2 of this title (relating to Initial Review), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of an application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to mailed notice of an application under §338.286 of this title (relating to Notice by Mail) in the manner provided therein. In the case of weather modification permits or licenses, the chief clerk shall notify those persons who in the judgment of the commission may be affected by the issuance of the permit or license.

(b) Application for use of state water. If an application for the use of state water, other than for a permit under §§303.91-303.93 of this title (relating to General Applications for Temporary Permits; Provisional Issuance in Certain Cases; and Time Extensions) or §303.121 and §303.122 of this title (relating to General and Documents Needed to File) is received containing the required information and attachments as set out in §340.2(c)(1) of this title (relating to Initial Review), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and a brief technical summary of application to assist the chief clerk, along with a copy of the application. The chief clerk shall notify every person entitled to mailed notice of the filing of an application under §303.176 of this title (relating to Notice of Application by Mail) in the manner provided therein.

(c) Application for a temporary permit to use state water. If an application for a temporary or emergency permit, other than a provisional temporary permit under §303.92(2) of this title (relating to Applications for Temporary Permits; Provisional Issuance in Certain Cases), for the use of state water, is received containing the required information and attachments, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness to every water rights holder of record

with the commission who would be entitled to notice of hearing under §303.92(4) of this title (relating to Applications for Temporary Permits; Provisional Issuance in Certain Cases).

(d) Application for provisional temporary permit. When an application for a provisional temporary permit for the use of state water under §303.92 (2) of this title (relating to Applications for Temporary Permits; Provisional Issuance in Certain Cases), is received containing the information required by §340.2(c)(1) of this title (relating to Initial Review), the chief clerk shall cause a notice of receipt of the application and declaration of administrative completeness to be published in the *(Texas Register)*. The chief clerk may include in the notice other information concerning the disposition of the application.

§340.4. Applications Returned. If an application or petition is received which is not administratively complete, the staff shall notify the applicant of the deficiencies with 10 working days of receipt of the application, or within 15 working days after assignment, in accordance with §340.2 of this title (relating to Initial Review) by certified mail, return receipt requested. If the required information is not forthcoming from the applicant within 30 days of the date of the deficiency notice, the executive director will return the incomplete application to the applicant without prejudice. If the additional information is received within 30 days, the staff will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of an application and declaration of administrative completeness in accordance with §340.3 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If the application is not complete, it will be returned to the applicant.

§340.5. Referral to Commission. If administratively and technically complete, then on or before the 75th day of the technical review period an application will be sent to the commission for filing and setting.

§340.6. Extension. If, on or before the date a matter is required to be sent to the commission for filing and setting, the staff determines additional time will be required for technically reviewing an application, the staff will notify the executive director of the additional time required to complete the technical review at the time the matter is sent to the commission for appropriate action. All applications sent to the commission on or before the 75th day which will require more than 90 days or, in the case of applications filed under §335.43(b) of this title (relating to Permit Required) and

§353.11 (relating to Application Required for Existing Wells), 120 days of assignment of the application to a staff member for technical review will be listed along with the reasons for the delay and furnished to the executive director. Any additional time required by the staff when a matter is sent to the commission must be approved by the executive director.

§340.7. Technical Review. After the application is found by the staff to be administratively complete on its face the staff will commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 75 days. The applicant will be promptly notified of any additional technical material as may be necessary for a complete staff review. If necessary additional technical/legal information is requested in a timely manner and not received by the executive director prior to the deadline for sending a matter to the commission for filing and setting of a hearing, the executive director may return the application to the applicant if the information is considered essential by the executive director to make recommendations to the commission on a particular matter. Decisions to return material to the applicant during the technical review stage will be made on a case by case basis. The applicant will have the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned to the applicant. In no event will the applicant have less than 30 days to provide the technical data before an application is returned or referred to the commission for a hearing upon sufficiency. If the applicant provides the information requested within the prescribed period, the staff will complete processing of the application within the period of time prescribed by this section extended by the number of days required for the additional data.

§340.8. Effect of Rules. The time limits set out in this chapter are not jurisdictional.

Issued in Austin, Texas, on October 2, 1985.

TRD-859140

James K. Rourke, Jr.
General Counsel
Texas Water
Commission

Effective date: October 2, 1985
Expiration date: January 30, 1988
For further information, please call
(512) 463-7875.

★ ★ ★

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 111. Executive Administration Division Parking

★ 1 TAC §§111.41-111.43

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the State Purchasing and General Services Commission, ninth floor, LBJ Building, 111 East 17th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The State Purchasing and General Services Commission proposes the repeal of §§111.41-111.43, concerning statutory offenses, violation of rules, and general parking and traffic violations. The sections are proposed for repeal to accommodate the adoption of new sections which will provide greater clarity to the public as to what constitutes a parking or traffic violation in the Capitol complex area, which may be ticketed by Capitol security police; establish the amount of a fine for a parking or traffic violation; establish the bases for forfeiture of a state parking permit and the procedures for such forfeiture; and establish the circumstances under which an illegally parked vehicle may be removed and impounded.

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

Mr. Neel also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is to allow the adoption of new sections which will provide greater clarity to the public regarding parking and traffic violations in the Capitol complex area, forfeiture of state parking permits, and removal and impounding of illegally parked vehicles. There is no anticipated economic cost to individuals as a result of the proposed repeal.

Comments on the proposal may be submitted to John R. Neel, general counsel, State Purchasing and General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas 78711-3047.

The repeal is proposed under Texas Civil Statutes, Article 601b, §4.12, which provide the State Purchasing and General Services Commission with the authority to promulgate rules and regulations necessary to regulate parking and traffic in the Capitol complex area.

- §111.41. *Offenses under Texas Civil Statutes, Article 601b, §412.*
- §111.42. *Violation of Rules.*
- §111.43. *Parking and Traffic Violations Generally.*

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 October 4, 1985.

TRD-850275

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

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 463-3446.

★ ★ ★



The State Purchasing and General Services Commission proposes new §§111.41-111.43, concerning parking and traffic violations, forfeiture of parking permit, and removal and compounding of vehicles. The proposed new sections specify those actions which will constitute a parking or traffic offense on state property in the capitol complex area which may be ticketed by capitol security police,

establish the amount of fine for a parking or traffic violation, establish the bases and procedures for forfeiture of a state parking permit, and establish the circumstances under which an illegally parked vehicle may be removed and impounded. If adopted, the new sections should provide greater clarity to the public and state employees holding state parking permits about traffic rules and regulations in the Capitol complex and should promote a more efficient and equitable utilization of the complex's limited parking resources.

John R. Neel, general counsel, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be \$15,000 in 1986, \$16,000 in 1987, \$17,000 in 1988, \$18,000 in 1989, and \$19,000 in 1990. The estimated increase in revenue will be \$100,000 each year, from 1986-1990. There will be no effect on local government or small businesses during the first five-year period the sections will be in effect.

Mr. Neel 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 greater clarity to the public and state employees regarding the traffic rules and regulations in the capitol complex and more efficient and equitable utilization of the complex's limited parking resources. There will be no economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas 78711-3047.

The new sections are proposed under Texas Civil Statutes, Article 601b, §4.12, which provide the State Purchasing and General Services Commission with the authority to promulgate rules and regulations necessary to regulate parking and traffic in the capitol complex area.

§111.41. *Parking and Traffic Violations.*

(a) Pursuant to the provisions and authority of Texas Civil Statutes, Article 601b, §4.12, and House Bill 20, Rider 26,

69th Legislature, 1985, the following shall constitute parking and traffic violations on state-owned property in the capitol complex which may be ticketed by capitol security officers:

- (1) overtime parking, i.e., parking in a time zone for a period of time in excess of the time limit marked for that zone;
- (2) speeding, i.e., driving in excess of 15 miles per hour;
- (3) moving a barricade or parking within any barricaded area;
- (4) parking on a sidewalk, walk area, curb, or grass;
- (5) parking in an area marked "No Parking";
- (6) parking within 15 feet of a fire plug or fire zone;
- (7) parking on or over a stall line;
- (8) parking in a loading zone except while loading or unloading;
- (9) parallel parking over 18 inches from the curb or parking stop, measured from any part of the car body facing the curb or parking stop;
- (10) angle or straight-in parking over 18 inches from the vehicle front bumper to the curb or parking stop, or with the rear of the vehicle facing the curb or parking stop;
- (11) parking in a space or facility other than the one assigned;
- (12) parking in a space or facility without a plainly visible parking permit;
- (13) parking in a space other than a space marked or designated for parking;
- (14) double-parking;
- (15) parking in a nonstate space or facility located within or adjacent to the capitol complex while having a valid state parking permit;
- (16) blocking or impeding a crosswalk, driveway, or alley; or
- (17) displaying more than one parking permit, even if one is not currently valid.

(b) Proof that a ticket was placed on a vehicle shall constitute *prima facie* evidence that the owner of the vehicle received the ticket.

(c) Each commission ticket issued by a capitol security officer shall carry a fine of \$10.

(d) The owner of the vehicle ticketed shall remit, in person or by mail, the amount of the fine to the accounting office of the State Purchasing and General Services Commission no later than the 10th calendar day following the date of issuance of the ticket. Failure to timely remit the amount of the fine shall subject the owner of the vehicle to forfeiture of his or her parking permit.

§111.42. Forfeiture of Parking Permit.

(a) Pursuant to the provisions and authority of Texas Civil Statutes, Article 6016, §4.12, and House Bill 20, 69th Legislature, 1985, a state employee's parking permit may be forfeited for any of the following reasons:

- (1) failure to pay a commission ticket(s) issued by a capitol security officer;
- (2) nonpayment of fees for a parking permit;
- (3) falsifying data on an application for a parking permit; or
- (4) subleasing a parking assignment.

(b) Forfeiture of parking permits shall be at the order of the chief of capitol security police.

(c) Upon receipt of information constituting, *prima facie*, justification for forfeiture of a state employee's parking permit, the chief of capitol security police shall inform the employee, in writing, of the reasons for the forfeiture and that the forfeiture shall become effective at 5 p.m. on the 10th calendar day after the date of the notice. The notice shall further inform the employee that the vehicle shall be subject to removal and impounding if found on state property after the date of forfeiture.

(d) Forfeiture may be stayed by the filing of a written notice of appeal with the chief of capitol security police prior to the date of forfeiture. The notice of appeal must present reasons why the parking permit should not be forfeited. The chief of capitol security police shall, within 10 calendar days after receipt of a written notice of appeal, prepare and provide to the state employee a written order that forfeiture occur or not occur, detailing the reasons for the action. If the reason for the possible forfeiture arises from nonpayment of parking fees or fines, an order concluding that no forfeiture shall occur shall not be issued until all appropriate parking fees or fines have been paid.

(e) If a parking permit is forfeited pursuant to the provisions of this section, any prepaid parking fees shall also be forfeited and the employee shall not be eligible for a new parking permit for a period of 90 days from the date of forfeiture.

§111.43. Removal and Impounding of Vehicles.

(a) When necessary to protect the public health, safety, or welfare, or to promote and protect a critical state function, the chief of capitol security police may remove or cause to be removed any vehicle which has been ticketed by a capitol security officer.

(b) The chief of capitol security police may also remove or cause to be removed any nonpermitted vehicle which has been ticketed three or more times within the preceding three months if the fines for such tickets have not been paid.

(c) When vehicles are removed, the vehicle shall be impounded by or at the direction of the chief of capitol security police. The vehicle impounded shall not be released until all towing fees and storage fees have been paid.

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 October 4, 1985.

TRD-859274

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

Earliest possible date of adoption:

November 11, 1985

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

★ ★ ★

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs Chapter 13. Housing Services Subchapter A. Housing Bond Reservations

★ 10 TAC §§13.1, 13.3, 13.7-13.14

The Texas Department of Community Affairs proposes amendments to §§13.1, 13.3, and 13.7-13.14, concerning definitions, address of communications, housing bond reservations request, limitations on amount of local share to be reserved, housing bond reservation request form, exhaustion of state share by Texas housing agency, issuance of reservation certificate, reservation certificate, certificate of delivery and payment, and certificate of delivery and payment form. The amendments relate to the filing of requests for reservation of portions of the local share of the state ceiling imposed on housing bonds by the Internal Revenue Code of 1954, §103A (26 United States Code §130A)

Douglas C. Brown, general counsel, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Brown 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 administration of procedures for establishing priority of reservation requests filed pursuant to Texas Civil Statutes, Article 1269I-8, as amended by the 69th Legislature, 1985. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Douglas C. Brown, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 12691-8, §5, which provide the Texas Department of Community Affairs with the authority to administer the process whereby housing finance corporations created pursuant to Texas Civil Statutes, Article 12671-7 may reserve a portion of the tax-exempt housing revenue bonds which can be issued in the State of Texas in any calendar year.

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

State share—The product which results from multiplying the state ceiling by 30%.

Statute— Texas Civil Statutes, Article 12691-8 [House Bill 2350, 67th Legislature, 1981].

§13.3. Address of Communications. All letters, documents, and other papers intended for the executive director relating to housing bonds reservations should be addressed to Housing Bonds Reservations, Office of the Executive Director, Texas Department of Community Affairs, P.O. Box 13166, Capitol Station [210 Barton Springs Road], Austin, Texas 78711 [78704].

§13.7. Housing Bond Reservation Requests [Reservations Request]. Upon the effective date of the determination of the state ceiling in each calendar year, an issuer may request reservation of a portion of the local share by filing a housing bond reservation request [accompanied by a bond purchase contract executed by the issuer and the purchaser of such bonds,] with the executive director in accordance with the provisions of the statute and of these sections. The reservation request must be signed by an authorized officer of the issuer and must be verified before a person having lawful authority to act as notary.

§13.8. Limitations on Amount of Local Share to Be Reserved.

(a) Housing finance corporations filing housing bond reservation requests [in 1981 prior to September 1, 1984, or filing in 1985 or 1986 and 1987] prior to June 1 of a calendar [that] year, may request reservation of a portion of the local share not to exceed a figure determined by multiplying the local population by:

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

(b) Housing bond reservation requests received by the executive director prior to the date [dates] specified in subsection (a) of this section which are for amounts in excess of those specified in subsection (a) of this section will not be accepted for filing by the executive director.

(c) In determining the local population of a housing finance corporation, in instances where two or more overlapping local governmental units have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, the executive director shall not include in the total population of the housing finance corporation making the reservation request the population of any smaller overlapping local governmental unit of a population of 20,000 or more which has created such a housing finance corporation unless the reservation request is accompanied by a copy of the minutes of the action of the governing body of the smaller local government unit by which that unit's authority to issue housing bonds for the period of the calendar year prior to the date [dates] specified in subsection (a) of this section was assigned to the larger local governmental unit which is making the reservation request.

(d) In each calendar year, after the date [dates] specified in subsection (a) of this section, the maximum amount of the reservation request shall not be restricted other than as otherwise provided by the laws of the State of Texas.

§13.9. Housing Bond Reservation Request Form. The housing bond reservation request filed with the executive director shall be on the following prescribed form:

Issuer Name:
Issuer Identification No.:

TEXAS DEPARTMENT OF COMMUNITY AFFAIRS
HOUSING BOND RESERVATION REQUEST

Pursuant to the provisions of ARTICLE 12691-8, TEXAS CIVIL STATUTES, AS AMENDED [House Bill No. 2350, Acts of the 67th Texas Legislature, Regular Session, 1981], the undersigned Issuer hereby requests reservation of a portion of the local share of the state ceiling imposed on housing bonds by Section 103A, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 103A). For that purpose, the following statements are submitted:

1. The name of the Issuer is _____.
2. THIS RESERVATION REQUEST IS BEING FILED FOR CALENDAR YEAR _____.
3. [2] The date of Issuer's incorporation is _____
and its duration is _____.
4. [3] Issuer is created and acting on behalf of the following local governmental units: _____

5. [4] The [series of] bonds which are the subject of this reservation request are _____
of an aggregate PRINCIPAL amount of _____
[5. A bond purchase contract pertaining to the sale of the bonds identified in Item 4, above, was executed on _____.]

Questions 6 and 7 are to answered if reservation request is filed [in 1981 prior to September 1; or if filed in 1982 or 1983] prior to June 1 OF THIS CALENDAR YEAR.

6. The following local governmental unit or units which have a population as determined by the MOST RECENT DECENNIAL[1980] Census of 20,000 or more and which have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, overlap local governmental units on whose behalf Issuer is acting. (If none, state "none.")

7. For local governmental units listed in Item No. 6 above, list all those which, with relation to the overlapping portion, are smaller than the local governmental unit represented by the Issuer and which have assigned their authority to issue housing bonds FOR CALENDAR YEAR _____ [in 1981 prior to September 1, 1981; or in 1982 or 1983, prior to June 1 of that year, based on its population] to Issuer. (PLEASE INCLUDE A COPY OF THE MINUTES OF THE ACTION OF THE GOVERNING BODY OF EACH LOCAL GOVERNMENTAL UNIT LISTED BELOW):

8. During THIS[the current] calendar year, Issuer has previously filed reservation requests with the Executive Director pertaining to \$ _____ of housing bonds which are subject to the state ceiling.

9.[10]Address to which Reservation Certificate should be mailed:

[9. The reservation request is accompanied by the bond purchase contract executed by Issuer and by the purchaser or purchasers pertaining to the bonds which are the subject of this reservation request.]

I HEREBY CERTIFY THAT I HAVE REVIEWED THE ABOVE STATEMENTS AND THAT ALL INFORMATION CONTAINED IN THESE STATEMENTS IS COMPLETE AND TRUE.

Signature of Authorized Officer of Issuer
Typed Name:
Typed Title:

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public
Name (print or type):
Commission Expires:

Two original duplicates of the completed Reservation Request form accompanied by a copy of all applicable attachments should be mailed to:

Housing Bond Reservations
Office of the Executive Director
Texas Department of Community Affairs
P. O. BOX 13166, CAPITOL STATION[210 Barton
Springs Road]
Austin, Texas 78711[78704]

§13.10. Exhaustion of State Share by Texas Housing Agency. No portion of the local share of the state ceiling will be available to the Texas Housing Agency in a calendar year until it has exhausted the state share of the state ceiling. [If a reservation request is filed by the Texas Housing Agency, in addition to the other requirements relating to the filing of housing bond reservation request, the request must be accompanied by a verified statement by an authorized officer that the state share of the state ceiling allocated to the Texas Housing Agency for the current calendar year has been exhausted.]

§13.11. Issuance of Reservation Certificate. Upon the filing of a reservation request complying with the statute and with these sections and to the extent that the local share of the state ceiling has not been exhausted, the executive director shall promptly issue a housing bond reservation certificate. The executive director shall issue certificates according to the following categories of priority: [order in which housing bond reservation requests are filed.]

(1) the first category of priority shall include reservation requests filed by housing finance corporations which filed reservation requests on behalf of the same local population during the 30-day period immediately following the determination of the state ceiling in the previous calendar year, but which did not receive a reservation certificate during such year due to the exhaustion of the local share of the state ceiling; [If two or more reservation request are filed on the same date, certificates shall be issued in the order of the date of execution of the bond purchase contracts.]

(2) the second category of priority shall include reservation requests not included in the first category of priority; and [If both the date of filing of the requests and the date of execution of the bond purchase contracts are the same, the executive director shall issue certificates in an order determined by lot unless, prior to the issuance of reservation certificates by the executive director, the affected issuers file with the executive director a written agreement, signed by all affected issuers, specifying another method of determining the order of issuance of certificates.]

(3) Within each category of priority, certificates shall be issued in an order determined by lot, unless otherwise agreed by the affected housing finance corporations of the Texas Housing Agency. The executive director shall certify in connection with each reservation certificate that the issue of bonds that is the subject of the certificate meets the volume limitation requirements of the Internal Revenue Code, §103A(g), 1954.

§13.12. Reservation Certificate.

(a) Each reservation certificate shall contain the following information:

(1) the local share;
(2) the name of the issuer;
(3) the amount and identity of the bonds which were the subject of the reservation request [and accompanying bond purchase contract to which the certificate applies];

(4) the date of execution of the bond purchase contract; [and]

(5) the aggregate amount of the local share reserved by all issuers in the current calendar year for which reservation requests have been received and certificates have been issued which have not expired, including the bonds for which the certificate is being issued; and

(6) a certification by the executive director that the issuer of bonds that is the

subject of the certificate meets the volume limitation requirements of the Internal Revenue Code, §103A(g), 1954.

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

§13.13. Certificate of Delivery and Payment. A housing bond reservation certificate reserving a portion of the local share to an issuer shall lapse and no longer be effective upon [if prior to] the expiration of 90 [45] days following the date of issuance [filing] of a housing bond reservation certificate [request] by the executive director, if prior thereto the issuer has failed for whatever reason to file [not filed] with the executive director a certificate of delivery and payment evidencing that [covering] the bonds for which the [housing bond] reservation [request] was filed have been de-

livered and paid for. Such [The] certificate of delivery and payment must [evidence that the bonds have been delivered and paid for], be signed by an authorized officer of the issuer, and must be verified before a person having lawful authority to act as a notary. The certificate of delivery and payment must be accompanied by the final official statement made in connection with the offering and sale of the bonds, or, if no final official statement was prepared, by an equivalent disclosure document.

§13.14. Certificate of Delivery and Payment Form. The certificate of delivery and payment filed with the executive director shall be on the following prescribed form:

Issuer Name:
Issuer Identification No.:

TEXAS DEPARTMENT OF COMMUNITY AFFAIRS
CERTIFICATE OF DELIVERY AND PAYMENT

Pursuant to the provisions of ARTICLE 1269I-8, TEXAS CIVIL STATUTES, AS AMENDED [House Bill No. 2350, Acts of the 67th Texas Legislature, Regular Session 1981], the undersigned Issuer does hereby evidence delivery of and payment for housing bonds which were the subject of a housing bond reservation request filed with the Texas Department of Community Affairs. For that purpose, the following statements are submitted:

1. The name of Issuer is _____.

2. On _____, 198__, Issuer delivered and received full payment for its housing bonds of the series identified as follows:

In the aggregate amount of _____.

3. The housing bonds which are the subject of this Certificate of Delivery and Payment are those for which the Issuer had filed a housing bond reservation request [accompanied by an executed bond purchase contract] with this office on _____, 198__ [1981] and had received a reservation certificate number _____ dated _____, 198__.

4. This Certificate of Delivery and Payment is accompanied by the final official statement or, if no final official statement was issued, other disclosure document relating to the housing bonds.

I HEREBY CERTIFY THAT I HAVE REVIEWED THE ABOVE STATEMENTS AND THAT ALL INFORMATION CONTAINED IN THE STATEMENT IS COMPLETE AND TRUE.

Signature of Authorized Officer or Issuer
Typed Name:
Typed Title:

Subscribed and sworn to before me this ____ day of _____, 198__.

Notary Public
Name (print or type):
Commission expires:

(over)

Two original duplicates of the complete Certificate of Delivery and Payment form and one copy of all attachments should be mailed to:

Housing Bond Reservations
Office of the Executive Director
Texas Department of Community Affairs
P. O. BOX 13166, Capitol Station [210 Barton Springs Road]
Austin, Texas 78711 [78704]

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 October 1, 1985.

TRD-859168 Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 834-8060.

★ ★ ★

TITLE 13. CULTURAL RESOURCES

Part V. Texas Sesquicentennial Commission

Chapter 51. General Operating Policy

★ 13 TAC §§51.1-51.7

(Editor's note: The Texas Sesquicentennial Commission proposes for permanent adoption the repeal it adopts on an emergency basis in this issue. The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Sesquicentennial Commission, 510 South Congress, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Sesquicentennial Commission proposes the repeal of §§51.1-51.7, concerning general operating policy. The general operating policy is repealed and replaced by new §§51.1-51.18. Senate Bill 1002, 69th Legislature, 1985, created a new Executive Committee for the commission along with establishing a new sesquicentennial fund, and the new sections are written to reflect these changes.

Lynn Nabers, executive director, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Ms. Nabers also has determined that for each year of the first five years the repeal

is in effect the public benefit anticipated as a result of the repeal will be the avoidance of future expenses involved in administering the products sanctioning program past October 1, 1985. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Joanne Brown, P.O. Box 1986, Austin, Texas 78767

The repeal is proposed under Texas Civil Statutes, Article 6145-11, §7, which provides the Texas Sesquicentennial Commission with the authority to develop and use an official logo and adopt rules to sanction official sponsors and official commemorative and/or promotional products and license the use of the logo in exchange for either a fee or royalties or both.

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 October 4, 1985.

TRD-859203 Lynn Nabers
Executive Director
Texas Sesquicentennial
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 475-1986

★ ★ ★

Chapter 51. Operating Policy and Program Guidelines

★ 13 TAC §§51.1-51.18

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

The Texas Sesquicentennial Commission proposes new §§51.1-51.18, concerning operating policies and program guidelines. The new sections define the commemorative/promotional products program; the retail and corporate/industrial program; the private sector program; and the sesquicentennial fund and prohibitions. The new sections also close acceptance of commemorative and/or promotional products for sanctioning as of October 5, 1985.

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

Ms. Nabers 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 the avoidance of future expenses involved in administering the products sanctioning program past October 1, 1985. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Joanne Brown, P.O. Box 1986, Austin, Texas 78767

The new sections are proposed under Texas Civil Statutes, Article 6145-11 §7, which provide the Texas Sesquicentennial Commission with the authority to develop and use an official logo and adopt rules to sanction official sponsors and official commemorative and/or promotional products and license the use of the logo in exchange for either a fee or royalties or both.

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 October 4, 1985.

TRD-859204 Lynn Nabers
Executive Director
Texas Sesquicentennial
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 475-1986.

★ ★ ★



Chapter 53. Program Guidelines

★ 13 TAC §§53.1-53.4

(Editor's note: The Texas 1986 Sesquicentennial Commission proposes for permanent adoption the repeal it adopts on an emergency basis in this issue. The text of the sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Sesquicentennial Commission, Suite 116, 510 South Congress, Austin, or in the Texas Register office, Suite 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Sesquicentennial Commission proposes the repeal of §§53.1-53.4, con-

cerning program guidelines. The repeal coincides with the emergency adoption of new §§51.1-51.18. New guidelines redefine the promotional commemorative products program and retail and corporate/industrial accounts, and post the closing date for the acceptance of commemorative/promotional products as of October 4, 1985.

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

Ms. Nabers also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is avoidance of future expenses involved in administering the products sanctioning program past October 1, 1985. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Joanne Brown, P.O. Box 1986, Austin, Texas 78767

The repeal is proposed under Texas Civil Statutes, Article 6145-11, §7, which provides the Texas Sesquicentennial Commission with the authority to develop and use an official logo and adopt rules to sanction official sponsors and official commemorative and/or promotional products and license the use of the logo in exchange for either a fee or royalties or both.

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 October 4, 1985.

TRD-859202

Lynn Nabers
Executive Director
Texas Sesquicentennial
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 475-1986.

★ ★ ★

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 119. Health Maintenance Organizations

The Texas Department of Health proposes the repeal of §§119.1-119.12 and new

§§119.1-119.13, concerning health maintenance organizations. The new sections cover health maintenance organizations (HMOs), providers of services, clinical records, statistics reporting, complaint investigation, preventive health education, utilization review, and quality assurance.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications for state or local governments as a result of enforcing or administering the regulations. There will be no adverse economic effect on small businesses.

Mr. Seale has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to assure that HMOs provide health care in a manner that enhances availability, accessibility, and continuity of services, and an ongoing quality assurance program. There is no anticipated cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Carroll W. Gregory, M.P.H., HMO Program Administrator, Health Facility Licensure and Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7528. Comments will be received for 30 days from the date of publication of the proposed sections.

★ 25 TAC §§119.1-119.12

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Texas Health Maintenance Organizations Act, Texas Civil Statutes, §20A, which authorizes the Texas Board of Health to adopt sections concerning health maintenance organizations, and House Bill 1584, 69th Legislature, 1985, which amended the Health Maintenance Organizations Act.

§119.1. *Introduction.*

§119.2. *Definitions.*

§119.3. *Organization.*

§119.4. *Facilities and Environment.*

§119.5. *Services.*

§119.6. *Medical Records.*

§119.7. *Statistical Information.*

§119.8. *Quality of Care.*

§119.9. *Complaint Investigation.*

§119.10. *Assurance of Reimbursement for Emergency Care.*

§119.11. *Application to Texas Health Facilities Commission*

§119.12. *Such Other Information as the Board may Require.*

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 October 7, 1985.

TRD-859288

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

Proposed date of adoption:

November 16, 1985

For further information, please call
(512) 458-7528.

★ ★ ★

★ 25 TAC §§119.1-119.13

The new sections are proposed under the Texas Health Maintenance Organizations Act, Texas Civil Statutes, §20A, which authorizes the Texas Board of Health to adopt rules concerning health maintenance organizations and House Bill 1584, 69th Legislature, 1985, which amended the Health Maintenance Organizations Act.

§119.1. *Introduction.* The department will examine the quality of care of initial applicants during an onsite survey. Subsequent quality of care surveys will occur as often as deemed necessary, but no less frequently than once every three years. Toward that purpose, the following rules and regulations are promulgated under the authority of the Texas Health Maintenance Organization (HMO) Act.

§119.2. *Definitions.* In addition to the definitions in the Health Maintenance Organization Act, Texas Civil Statutes, Texas Insurance Code, Article 20A.02, the following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

Act—Health Maintenance Organization (HMO) Act, Texas Civil Statutes, the Insurance Code, Articles 20A.01-20A.35.

Basic health plan—Health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient services.

Certified facility—A health care provider which is certified by the federal government for participation in rendering care to Medicare and/or Medicaid beneficiaries.

Credentials—Certificates, diplomas, licenses, and other written documentation that establishes proof of training, education, and experience in a field of expertise.

Health maintenance organization (HMO)—Any person who arranges for or provides a health care plan to enrollees on a prepaid basis.

Inpatient medical care—Include, but is not limited to, medical and surgical care received in a hospital or skilled nursing home environment.

Outpatient services—Those services which may be rendered in, but are not limited to, clinics, private offices, hospital based outpatient departments, home health services, ambulatory surgical centers, hospices and kidney dialysis centers.

Primary, acute, full service hospitals—General hospitals that are equipped and staffed to handle the medical needs of an HMO's enrolled population.

Referral hospitals—May be primary, acute, full service hospitals which, in addition to those services, are equipped and staffed to provide intensive medical and surgical care.

Referral specialists—Those who set themselves apart from the primary care physician through specialized training and education in a body system or section of a health care discipline.

Single health care service plan—A health care service that an enrolled population might reasonably require in order to be maintained in good health with respect to a particular health care need for the purpose of preventing, alleviating, curing, or healing human illness or injury of a single specified nature and that is to be provided by one or more persons, each of whom is licensed by the state to provide that specific health care service.

Specialty hospitals—Those hospitals that are equipped and staffed to provide special care in one or more areas such as psychiatry, rehabilitation, or alcohol/drug abuse.

§119.3. Organization.

(a) The health maintenance organization will be organized in a manner which allows attainment of its stated mission.

(1) Basic health plans shall furnish, as a minimum, the following:

(A) emergency care;

(B) outpatient medical care including referral specialties and diagnostic testing such as laboratory, imaging, and therapeutic radiology services;

(C) inpatient hospital and medical services; and

(D) other services as mandated by the HMO Act.

(2) Single health care service plans shall furnish only one specific health care service for the purpose of preventing, alleviating, curing, or healing human illness or injury of a single, specified nature such as dentistry, podiatry, or optometry.

(3) There shall be a physically identifiable administrative headquarters office in which the direction of the plan is housed. It shall be physically located within the geographic service area.

(b) A governing body, person, or persons legally responsible for the operation of the HMO shall.

(1) have written bylaws that declare the service or services which the HMO proposes to render to its enrolled population; declare the basis upon which its members are selected and their term of office; specify when meetings will be held; identify officers; and provide a mechanism for assuring that services are furnished in a manner enhancing availability, accessibility, and continuity by physicians and providers who are appropriately credentialed;

(2) maintain current contracts with all participating physicians and providers;

(3) keep up to date a list of all participating physicians and providers of service which includes license numbers or other authorization to practice in this state, office location, health care facility staff privileges, federal certification numbers, specialty boards, where applicable, and any other identifying information deemed necessary to provide enrollees with the information needed to make an enlightened decision in the selection of physicians and providers;

(4) appoint a full-time chief executive officer;

(5) appoint a medical director, in basic health plans. The medical director shall be a physician who is licensed in the State of Texas;

(6) appoint a service director, in single health care service plans. The service director shall be a professional licensed or otherwise authorized to practice in this state in the health care field in which the single health care service is being offered;

(7) assure that the medical director or service director assumes the responsibilities of that office. The time spent in discharging the obligations of that office may be less than full-time;

(8) approve the medical staff or single service professional staff bylaws and rules and regulations;

(9) keep minutes of meetings and other records to document the fact that the governing body is effectively discharging the obligations of its office;

(10) assure that support services and supplies are furnished in numbers and locations sufficient to assure that enrollee health care service(s) are available without unreasonable periods of delay;

(11) approve the HMOs written quality assurance plan;

(12) provide personnel and systems needed to compile, develop, evaluate, and report statistics relating to the operating cost and the utilization of services within the HMO.

§119.4. Geographical Service Area.

(a) The geographical service area boundaries shall be defined in narrative form accompanied by a map drawn to scale.

(1) The narrative shall identify all counties, parts of counties, cities, and towns within the service area. Zip codes may be used to further define the area.

(2) The map shall be clearly legible and drawn to scale with an accurate mileage legend. Geographically significant points such as highways, county lines, cities, and towns shall be readily located.

(3) The map shall identify the approximate location of providers of care.

(b) Primary care physician services and initial contact single service providers of care shall be available to all enrollees within 30 miles of their place of residence.

(c) Referral physicians and providers shall be available to all enrollees within 50 miles of their place of residence.

(d) Acute hospital facilities shall be available to all enrollees within 50 miles of their place of residence.

(e) Referral hospitals shall be available to all enrollees at distances no greater than 100 miles from their place of residence.

(f) Administrative personnel, such as health service coordinators and others who interface with the enrolled population, shall be readily available and accessible during normal business hours.

§119.5. Facilities and Environment.

(a) Physical facilities owned, leased, or otherwise provided for through service contracts shall be maintained in such a condition that the health and safety of the patients are assured.

(b) There shall be a sufficient number of physical facilities that are appropriately placed throughout the geographical service area to assure the availability of health care.

(c) The facilities will maintain a safe and sanitary environment to avoid sources and transmission of infections.

(d) Equipment shall be environmentally safe and technologically accurate.

(e) Equipment maintenance and calibration records will be kept at the facility and shall be available for review by the HMO staff upon request.

(f) The HMO shall identify the staff person who is responsible for auditing compliance with maintenance and safety requirements.

§119.6. Basic Health Care Services (Required Services). The items in this section apply to the categories of services required of basic health care plans. Services, except those specifically excluded by law, shall be offered directly by the HMO or they shall be offered by contract arrangements with independent professional providers. Contracted services shall be provided by formal, written contract.

(1) Emergency service.

(A) Life threatening emergency care shall be available 24-hours per day, seven days per week without restrictions as to where the service is rendered.

(B) Nonlife threatening emergency care shall be available 24-hours per day, seven days per week.

(C) There shall be telephone access to physicians at all times.

(2) Inpatient hospital and medical services.

(A) Primary, acute, full service hospital care is available and accessible to all enrollees.

(B) Referral and specialty hospital care is available and accessible to all enrollees.

(C) Hospital care shall be available 24-hours per day, seven days per week.

(D) Hospitals providing service to HMO enrollees shall be currently licensed by the State of Texas.

(E) Hospitals providing service to HMO enrollees should be accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA). If hospitals are not JCAH or AOA accredited, they shall be Medicare certified.

(F) The HMO shall provide a list of participating hospitals with addresses, license numbers, JCAH/AOA accreditation status if applicable, Medicare certification number, number of beds and current occupancy rate with the initial application, each subsequent quality assurance survey, and each request for geographical service area expansion.

(G) Participating physicians shall have staff privileges at one or more participating hospitals.

(H) The hospital shall not bill the enrollee for services other than deductibles and personal convenience items.

(3) Outpatient medical services.

(A) Primary care physician services shall be available and accessible 24-hours per day, seven days per week. The HMO shall be responsible for assisting enrollees with no preference, in selecting a primary care physician. That service shall extend to enrollees who have difficulty in establishing a satisfactory patient-physician relationship.

(B) Referral physician services shall be available and accessible 24-hours per day, seven days per week.

(C) The HMO will furnish the enrollees and others in need to know situations with periodically updated lists of primary care physicians and referral physicians.

(D) A sufficient number of physicians (primary care and referral), professionals, paraprofessionals, and support personnel will be available and accessible to meet the basic health care needs of the enrolled population and to assure continuity of patient care.

(E) The method by which enrollees may secure health care service after hours shall be communicated in writing to enrollees.

(F) Where physician on call responsibilities are shared with non-participating physicians, there is an agreement in writing that the non-participating physician will look only to the HMO or the participating

physician for reimbursement for services rendered.

(G) Medical records and information will be shared among need to know professionals in such a manner that the confidentiality of the records and information is assured.

(H) Physician group practices and individual practice associations shall operate under bylaws, rules, and regulations to govern the organization's operations.

(I) Direct contract HMOs shall adopt and implement bylaws and rules and regulations to govern the physician staff.

(4) Diagnostic and therapeutic services.

(A) Laboratory

(i) Clinical and pathological laboratory services shall be provided.

(ii) Clinical and pathological laboratory services shall meet the demands of the medical staff.

(iii) A committee of physicians review the laboratory's ability to satisfy the medical staff's needs and makes recommendations to the HMO management regarding methods of improving the service.

(iv) Provision of laboratory services shall be by one of the following and shall be provided according to the terms of a formal, written contract:

(I) reference laboratory, must be Medicare certified;

(II) JCAH or AOA accredited general hospital laboratory;

(III) Medicare certified general hospital laboratory; or

(IV) physician group, individual physician office, or provider of a single health care service. This option requires that the laboratory shall furnish documentation to the HMO that it is Medicare certified or that there is an ongoing, effective, in-house quality control program and proficiency testing by the American Association of Bioanalysts or the College of American Pathology.

(B) Diagnostic imaging and therapeutic radiology.

(i) Diagnostic imaging.

(I) Diagnostic imaging shall be provided.

(II) Diagnostic imaging shall be available and accessible to all enrollees.

(III) Diagnostic imaging shall meet the needs of the physician staff.

(IV) Diagnostic imaging shall be regularly checked by local or state health authorities or a radiation physicist and any hazards identified are promptly corrected.

(V) Diagnostic imaging services shall be regularly reviewed by a committee of physicians.

(ii) Therapeutic radiology.

(I) Therapeutic radiology shall be provided.

(II) Therapeutic radiology shall be available and accessible to all en-

rollees.

(III) Therapeutic radiology shall meet the needs of the physician staff.

(IV) Therapeutic radiology services shall be regularly reviewed by a committee of physicians.

(5) Other required services.

(A) Additional health care services mandated by law shall be provided by physicians or providers of care as defined in the Act, Article 20A.02(N).

(B) Such services shall have their quality and utilization regularly reviewed by a committee composed of physicians and appropriate providers.

§119.7. Other Benefit Services. The items in this section apply to categories of service which the basic health care plan chooses to offer to meet the demands of its enrolled population. The services included are not a complete list of all possible benefit additions. If a benefit is added which is not included, the health maintenance organization shall follow the principles outlined in this section.

(1) Nursing home care.

(A) Nursing home care shall be available and accessible to the enrolled population by one or a combination of the following facilities:

(i) skilled nursing home that is licensed by the state and certified by Medicare or Medicaid, or both;

(ii) swing-bed hospital that is licensed by the state and certified by Medicare;

(iii) general hospital licensed by the state and certified by Medicare or Medicaid or both as a distinct part skilled nursing facility.

(B) Nursing home care shall be offered directly by facilities owned and operated by the health maintenance organization or by contract with independent professional providers.

(C) Nursing home care shall have the quality of skilled nursing services regularly reviewed by a committee of physicians.

(2) Home health care.

(A) Nursing home care shall be available and accessible to the enrolled population through home health agencies that are licensed by the state.

(B) Branch offices and sub-offices shall be appropriately licensed.

(C) Hospices shall be appropriately licensed.

(D) Home health care shall be offered directly by the health maintenance organization or through contracts with independent providers of care.

(E) Services offered shall meet the professional needs as specified by the participating physicians.

(F) The quality of the services shall be regularly reviewed by a committee of physicians and nurses.

(3) Pharmacy services.

(A) Pharmacy services shall be available and accessible to the enrolled population through pharmacies that are directed by registered pharmacists and which are appropriately licensed.

(B) Pharmacy services shall be offered directly by the health maintenance organization or through contracts with independent pharmacists or groups of pharmacies.

(C) The health maintenance organization is responsible for assuring that drug utilization review is performed on a regular basis.

(D) The health maintenance organization shall develop, review, and periodically update a formulary or drug list.

(E) The health maintenance organization shall maintain or assure that its contracting pharmacies maintain drug profiles on the enrolled population.

(F) The quality of pharmacy services shall be regularly reviewed by a committee composed of physicians, pharmacists, and other professionals as needed.

(4) Other services.

(A) Health care services such as dental, podiatric, vision, hearing, speech, durable medical equipment, mental health, drug dependency, or any other health care services shall be offered by contracts with providers who are licensed or otherwise authorized to practice in this state.

(B) Such services shall be of sufficient number and locations as to be readily available and accessible to the enrolled population.

(C) Such services shall be regularly reviewed by a committee composed of physicians and providers commensurately qualified to render decisions concerning the quality of the services and their utilization.

§119.8. Single Health Care Service. The items in this section apply to categories of service which the single health care service plan offers to an enrolled population. The single health care service, except those specifically excluded by law, shall be offered directly by the health maintenance organization or they shall be offered by contract with independent providers. Contracted services shall be provided by formal, written contract.

(1) Emergency service. This item applies to those single health care services which deal with specific health care situations that may require emergency intervention.

(A) Emergency care shall be available 24-hours per day, seven days per week.

(B) There shall be telephone access to providers of care at all times.

(2) Inpatient hospital and single health care services. This item applies to those single health care services which require hospital inpatient status for the management of the enrollees single health care problem.

(A) Primary, acute, full service hospital care is available and accessible to all enrollees.

(B) Specialty hospital care may be used when such a facility is available.

(C) Hospitals providing single health care service to health maintenance organization enrollees shall be currently licensed by the State of Texas.

(D) Hospitals providing single health care service to health maintenance organization enrollees should be accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA). If the hospitals are not JCAH or AOA accredited, they shall be Medicare certified.

(E) The health maintenance organization shall provide a list of participating hospitals with addresses, license numbers, JCAH/AOA accreditation status, if applicable, Medicare certification number, number of beds, and current occupancy rate. The list is to accompany the initial application, each subsequent quality assurance survey and each request for geographical service area expansion.

(F) Providers of single health care services who use hospital inpatient care in their practice shall have staff privileges at one or more hospitals.

(G) The hospital shall not bill the enrollee for service other than deductibles and personal service items.

(3) Outpatient single health care services.

(A) Providers of the single service health care shall be available and accessible during routine business hours.

(B) Providers of the single service health care who are recognized specialists in the single service are available and accessible during routine business hours so as to assure continuity of patient care.

(C) The health maintenance organization will furnish enrollees and others in need to know situations with periodically updated lists of the single service health care providers.

(D) A sufficient number of single health care providers (initial contact and specialists), professionals, paraprofessionals, and support personnel will be available and accessible to meet the single health care needs of the enrolled population and to assure continuity of care.

(E) Single health care services that require after hours or urgent response by providers shall notify enrollees of the method by which services will be available.

(F) Official records and information will be shared among need to know providers of care in such a manner that the confidentiality of the records and information is assured.

(G) Single service health care providers shall adopt and implement bylaws and rules and regulations to govern the provider staff.

(4) Diagnostic and therapeutic services.

(A) The single health care service that uses clinical and pathological laboratory technologies in the care of patients shall provide those technologies according to §119.6(4)(A) of this title (relating to Basic Health Care Services (Required Services)).

(B) The single health care service that uses diagnostic imaging and/or therapeutic radiology in the care of patients shall provide those procedures according to §119.6(4)(B) of this title (relating to Basic Health Care Services (Required Services)).

(C) The single health care service that uses the expertise of an ancillary health care facility to fulfill its obligations to an enrolled population shall have in effect a written contract with each facility. Facilities requiring specific licensure will furnish proof that the license is current. The services of contracting facilities will be regularly reviewed by a committee composed of pertinent single health care service providers.

§119.9. Clinical Record.

(a) Clinical records shall be maintained by the health maintenance organization or the appropriate physician and/or provider of service.

(b) The health maintenance organization shall assure that the clinical records contain sufficient information to justify the diagnosis, support the treatment, and justify the outcome.

(c) The health maintenance organization shall assure that the clinical records are maintained in accordance with accepted professional principles and that they are filed by a system that provides for prompt retrieval.

(d) The health maintenance organization shall assure that clinical records are shared among physicians and/or providers.

(e) The health maintenance organization shall provide for adequate protection of the confidentiality of clinical information which shall only be disclosed in accordance with applicable law and the Health Maintenance Organization Act and shall only be subject to subpoena upon showing good cause.

(f) Clinical records shall be preserved for at least the period of time provided by the statute of limitations of the State of Texas.

§119.10. Statistical Information.

(a) The health maintenance organization will develop and maintain a statistical reporting system which allows for compiling, developing, evaluating, and reporting statistics relating to the cost of operation, the pattern of utilization of services, the accessibility, availability, and continuity of services.

(b) The health maintenance organization will submit directly to the Texas Department of Health one copy of its annual report and its annual financial state-

ment on or before March 1 of each year. In addition to the information contained on the report forms, the annual report shall include:

- (1) the total enrollee membership;
- (2) the total disenrollment;
- (3) the percentage of disenrollments;
- (4) the number of new enrollees for the reporting year;
- (5) the percentage of new enrollees;
- (6) inpatient hospital service (if applicable):
 - (A) admissions per 1,000 members;
 - (B) days of care per 1,000 members;
 - (C) average length of stay excluding Medicare and Medicaid;
 - (D) average length of stay—Medicare;
 - (E) average length of stay—Medicaid;
- (7) ambulatory care as applicable:
 - (A) total physician encounters;
 - (B) total provider encounters;
 - (C) average physician encounters per enrollee per year;
 - (D) average provider encounters per enrollees per year; and
 - (8) quality of service complaints:
 - (A) number of formal, written complaints about the quality of the medical or single health care service;
 - (B) number of telephone or verbal complaints about the quality of the medical or single health care service;
 - (C) total number of complaints (see subparagraphs (A) and (B) of this paragraph) about the quality of the medical or single health care service;
 - (D) the number of complaints unresolved;
 - (E) the quality of service complaint rate per 1,000 enrollees per month with annualized average.

§119.11. Complaint Investigation.

- (a) The health maintenance organization shall develop a written complaint investigation procedure that provides for receiving, recording, investigating, and reporting complaints concerning the quality of the medical or single health care service.
- (b) In complying with these sections, the health maintenance organization shall meet the rules adopted by the State Board of Insurance (28 TAC §11.204(9)(A)-(F) (Rule 059.51.03.004) (relating to Contents)).
- (c) Complaint reports concerning the quality of the medical or single health care service shall be provided to the health maintenance organizations quality assurance committee.

§119.12. Preventive Health Education.

- (a) To assist the enrollee in becoming a contributor to his/her own good health, the health maintenance organization shall:

- (1) develop written preventive health education plans;
- (2) establish goals;
- (3) implement the plans; and
- (4) evaluate the results.
- (b) The plans shall include both one-to-one and group presentations.
- (c) The health maintenance organization should integrate into its program the use of audiovisual aids, such as, film, film strips, pictures, flannel boards, visuals, pamphlets, disease specific civic organizations, and newsletters. Other vehicles should be examined by the health maintenance organization for inclusion in the health education program.
- (d) The preventive health education program shall be regularly reviewed by a committee composed of health education personnel (if available), administrative personnel, physicians, and providers of care.

§119.13. Quality Assurance Plan. The health maintenance organization shall develop a written quality assurance plan which, as a minimum:

- (1) provides for the credentialing of all contracting physicians and providers of care;
- (2) provides an effective peer review procedure;
- (3) provides an ongoing quality assurance program:
 - (A) a quality assurance committee composed of physicians and providers shall be appointed to perform quality assurance functions;
 - (B) the quality assurance committee meets at least monthly;
 - (C) the quality assurance committee assesses the quality of care and quality of service by:
 - (i) determining the availability, accessibility, and adequacy of personnel and facilities;
 - (ii) assessing health care continuity;
 - (iii) performing quality of care studies which are based upon health care processes and outcomes; and
 - (iv) reviewing quality of service complaints;
 - (D) the committee regularly reports and makes recommendations concerning the quality of care and continuity of services to the health maintenance organizations management;
- (4) provides for utilization review:
 - (A) a utilization review committee composed of physicians, providers, and others, as necessary, shall be appointed to perform utilization review. (The committee may be integrated with the quality assurance committee);
 - (B) the utilization review committee meets monthly;
 - (C) the utilization review committee activities should include:
 - (i) the analysis of utilization statistics;

- (ii) the analysis of referral trends;
- (iii) assessing ambulatory treatment patterns;
- (iv) assessing a pre-hospitalization admission program;
- (v) evaluation of a hospital inpatient monitoring program; and
- (vi) monitoring the effectiveness of a discharge planning procedure;
- (D) the utilization review committee regularly reports and makes recommendations to the health maintenance organizations management concerning its activities.

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 October 7, 1985.

TRD-859287

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

Proposed date of adoption.

November 18, 1985

For further information, please call
(512) 458-7528

★ ★ ★

TITLE 28. INSURANCE
Part I. State Board of
Insurance
Chapter 5. Property and
Casualty Insurance
Subchapter F. Inland Marine
Insurance

★ 28 TAC §5.5002

The State Board of Insurance proposes an amendment to §5.5002 (Rule 059.05.53.102), concerning the definition and classification of inland marine insurance to add self service storage customer floater policy as a filed class of inland marine insurance for policy forms and endorsements and subject to fire and extended coverage for rates. Coverage for property located within a self service storage facility is eligible to be insured under the Texas standard policy or the Texas commercial multiperil policy, however, due to the short policy terms required for the insuring of these types of risk, coverage is not available in the insurance market under any of the standard promulgated property policies. The addition of a new inland marine class to the Texas definition of inland marine insurance will produce an available market for insurance coverage for property stored in self service storage facilities.

G. J. Jones, deputy commissioner, Property Division, has determined that for

the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Jones 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 the market availability for insurance on property stored in self service storage facilities. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to G. J. Jones, Deputy Commissioner, Property Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786

This amendment is proposed under the Insurance Code, Article 5.53, pursuant to which the board may define inland marine insurance and which permits and requires board interpretation of which classes of inland marine insurance are regulated or nonregulated.

§5.5002. Texas Definition of Inland Marine Insurance. Inland marine insurance is defined and classified as follows:

- (1)-(4) (No change.)
- (5) Other inland marine risks.

(A)-(HH) (No change.)

(II) **Self service storage customer floater policy** (filed for policy forms and endorsements; fire and E.C. for rates) may be issued to a tenant of a self storage facility and covering property stored at such facility. Coverage is limited to property in storage for the perils set forth in the policies, which must include coverage for property while in transit. Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection. It is not intended that this coverage definition will allow coverage of property stored in any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property, or in facilities other than storage facilities that have multiple storage units. Accordingly, the terms self-service storage facility and tenant shall have the meaning prescribed by the Texas Property Code, §59.000, i.e., self-service storage facility means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant. Tenant means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility;

(JJ)(II) theatrical floaters, excluding buildings and their improvements and betterments and furniture and fixtures that do not travel about with theatrical troupes (filed);

(KK)(JJ) tourists' floaters (filed);

(LL)(KK) travel baggage (non-regulated);

(MM)(LL) valuable papers and records (filed);

(NN)(MM) wedding present floaters (nonregulated);

(OO)(NN) wool growers and wool buyers floater policies, coverage property usual to the conduct of the assured's business while in transit and all other situations customary and incidental thereto (non-regulated).

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 October 4, 1985.

TRD-859290

James W. Norman
Chief Clerk
State Board of
Insurance

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 483-8327.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part V. Boards for Lease of State-Owned Lands

The Boards for Lease of State-Owned Lands proposes the repeal of §§201.1-201.12 and §203.1 and §203.2 and the adoption of new §§201.1-201.14, concerning general rules, lands offered for lease, and lease approval. Sections 201.1-201.14 outline the new procedures governing the leasing of lands owned by the Texas Department of Corrections and the Texas Department of Parks and Wildlife. These sections cover the board membership requirements, the procedures to comment before the board, notice of meetings, procedure to lease agency land, nominations of tracts to lease, filing of information, assignments and forfeitures of leases, and the obtaining of permits and easements. The Boards for Lease of State-Owned Lands propose these repeals and new sections to achieve uniformity between the administrative rules and the enacted legislation. The Boards for Lease of State-Owned Lands have simultaneously proposed these changes on an emergency basis.

John Hall, deputy commissioner of resource management, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or small businesses as a result of the proposed repeals. The effect on state gov-

ernment for the first five-year period the repeal will be in effect is an estimated increase in revenue of \$900 for each year through 1989. If a small business chooses to nominate a tract to lease, the cost will be \$100 per tract.

Mr. Hall also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeal is an increased efficiency in processing leases by state agencies, the creation of a uniform system of leasing all state lands, and the creation of procedures which will enable interested persons to attend and comment at meetings of the Boards for Lease of State-Owned Lands. The public benefit from the proposed repeal of the existing sections is that it allows for the promulgation of the proposed new sections. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal of the existing sections. The possible economic cost to individuals who are required to comply with the proposed new sections will be a \$100 fee for each tract nominated for lease for the years 1985-1989.

Comments on the proposal may be submitted to Dan Miller, Deputy Commissioner for Legal Services, General Land Office, 1700 North Congress, Austin, Texas 78701.

Chapter 201. General Rules

★ 31 TAC §§201.1-201.12

(Editor's note: The Boards for Lease of State-Owned Lands propose for permanent adoption the repeal adopted on an emergency basis in this issue. The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Boards for Lease of State-Owned Lands, 1700 North Congress, Avenue, Stephen F. Austin Building, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal proposed under Texas General Laws, Chapter 624, page 4727, et seq., which provide the Boards for Lease of State-Owned Lands with the authority to adopt rules and collect fees.

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 October 4, 1985.

TRD-859283

Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 475-8740.

★ ★ ★

★ 31 TAC §§201.1-201.14

(Editor's note: The Boards for Lease of State-Owned Lands proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)

The new sections are proposed under 1985 Texas General Laws, Chapter 624, page 4727, et seq., which provide the boards for lease with the authority to adopt rules and collect fees.

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 October 4, 1985.

TRD-859280 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

Chapter 203. Exploration and Development

Lease of Lands of State Departments, Boards, and Agencies

★ 31 TAC §§203.1, §203.2

(Editor's note: The Boards for Lease of State-Owned Lands proposes for permanent adoption the repeal it adopts on an emergency basis in this issue. The text of the sections proposed for repeal will not be published. The sections may be examined in the offices of the Boards for Lease of State-Owned Lands, 1700 North Congress Avenue, Austin, or in the Texas Register office, Room 303E, Sam Houston Building, 201 East 14th Street, Austin).

The repeal is proposed under Texas General Laws, Chapter 624, page 4727, et seq., 1985, which provide the Boards for Lease of State-Owned Lands with the authority to adopt rules and collect fees.

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 October 4, 1985.

TRD-859282 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter E. Miscellaneous

Taxes Based on Gross Receipts

★ 34 TAC §3.58

The Comptroller of Public Accounts proposes new §3.58, concerning definitions of terms relating to telephone company gross receipts tax. The scope of this tax was substantially changed during the recent legislative session, and this section defines significant terms in the context of those changes. It identifies the types of businesses which are classified as telephone companies for purposes of this tax, and defines the limits of basic local exchange service.

Dale Craymer, revenue estimating director, has determined that for the first five-year period the proposed section will be in effect the section will provide administrative rules governing changes in the taxation of telecommunications as required by House Bill 1949, 69th Legislature, 1985. The revenue impact of these changes is shown in the fiscal note for that bill. The section is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer 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 notice and information on changes in the tax laws of the state. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

The new section 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 miscellaneous taxes based on gross receipts.

§3.58. Definitions—Gross Receipts Tax—Telephone Company. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Basic local exchange telephone service—

(A) Basic local exchange telephone service means the provision by a telephone company of an access line and dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. For the purposes of the administration of this tax,

receipts for providing single line, single or multiple party residential or business service in the local exchange network as evidenced by tariffs filed with the Public Utility Commission, will be considered to be receipts from basic local exchange telephone service.

(B) Basic local exchange service includes:

- (i) single line service;
- (ii) single or multiple party residential or business service;
- (iii) service for use in connection with fire, security, or other monitoring devices;
- (iv) semipublic pay phone service; and
- (v) data (other than ordinary telephone voice) transmission, provided service is not available at a higher rate.

(C) Variations in the method of billing will not affect the taxability of the charge for basic local exchange service. The tax is applicable to the entire charge, including any interim rate collected, for residential or business local exchange service as evidenced by tariffs filed with the Public Utility Commission. The basic charge may be:

- (i) a flat rate per month;
- (ii) a charge per call;
- (iii) a charge for the time used;
- (iv) any combination of clauses (i)-(iii) of this subparagraph; and
- (v) any other basic charge authorized by the Public Utility Commission.

(D) Basic local exchange service does not include:

- (i) manual or automatic trunk lines (PBX);
- (ii) hotel/motel measured trunk;
- (iii) key line; and
- (iv) optional service available which provides access outside the local exchange area. Examples include, but are not limited to:

(I) extended area service;

(II) wide area telephone service (WATS);

(III) metro or metropolitan service; and

(IV) foreign exchange service.

(v) any optional feature which enhances the available basic local service and for which there is an additional charge as evidenced by tariffs filed with the Public Utility Commission. Examples of enhanced services include, but are not limited to, the following:

- (I) call forwarding;
- (II) call back;
- (III) touch-tone dialing;
- (IV) line hunting (rotary);
- (V) call waiting;
- (VI) three-way calling;
- (VII) speed calling.

Business—Providing basic local exchange telephone service or telephone ser-

vice paid for by reinsertion of coins into a coin-operable telephone.

Public Utility Commission—The Public Utility Commission of the State of Texas or any other successor agency for the State of Texas.

Telephone company—A person who owns or operates a telephone line or a telephone network in this state, charges for its use, and is regulated by the Public Utility Commission or a certified provider of local telephone service.

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

Issued in Austin, Texas, on October 7, 1985.

TRD-850291 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 463-4606.

★ ★ ★

★ 34 TAC §3.59

The Comptroller of Public Accounts proposes new §3.59, concerning receipts/exemptions—telephone company. The scope of this tax was significantly changed during the recent legislative session. This section establishes guidelines for determining the tax status of various receipts.

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed section will be in effect the section will provide administrative rules governing changes in the taxation of telecommunications as required by House Bill 1949, 69th Legislature, 1985. The revenue impact of these changes is shown in the fiscal note for that bill. This section would have no additional fiscal implications. This section is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer 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 notice and information on changes in the tax laws of the state.

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

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

This new section 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 miscellaneous taxes based on gross receipts.

§3.59. Receipts/Exemptions—Telephone Company.

(a) The following receipts are subject to the tax levied by the Texas Tax Code, §182.062:

(1) receipts from coin telephone service provided by a telephone company;

(2) receipts from basic local exchange telephone service;

(3) amounts collected from customers as reimbursements for municipal or other assessments made against the telephone company.

(b) The following receipts are exempt from this tax:

(1) receipts from a provider of telecommunications services to access a local telephone company's network;

(2) receipts from leasing or selling telephones or telephone equipment;

(3) receipts from telecommunications services taxable under the Tax Code, Chapter 151, limited sales, excise, and use tax;

(4) receipts from coin-operated telephones provided by someone other than a telephone company;

(5) receipts of a telephone company owned and operated by a cooperative, nonprofit, membership corporation.

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

Issued in Austin, Texas, on October 7, 1985.

TRD-850292 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 463-4606.

★ ★ ★



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 101. General Rules

★ 40 TAC §101.11

The Texas Rehabilitation Commission proposes an amendment to §101.11, con-

cerning administrative review of agency action and fair hearing for applicants and clients. The amendment deletes the obsolete term "supervisor" and substitutes the term "area manager."

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

Dale Place, deputy commissioner for programs, 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 that applicants and clients will have grievances determined by a fair administrative hearing. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The amendment is proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§101.11. Administrative Review of Agency Action and Fair Hearing for Applicants and Clients.

(a) (No change.)

(b) Normally, the first level of review or appeal from the counselor's decision is to the counselor's area manager [supervisor] and the second level is to the regional director. However, if the regional director desires, he may act on the appeal from the counselor's decision

(c)-(i) (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 October 1, 1985.

TRD-850156 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 445-8126.

★ ★ ★

Chapter 103. Vocational Rehabilitation Services Program

Subchapter B. Client Participation [Economic Need]

★ 40 TAC §103.21, §103.22

The Texas Rehabilitation Commission proposes amendments to §103.21 and §103.22, concerning basic living requirements (BLR) and equitable treatment and notice. The amendments provide clients' participation in their vocational rehabilitation program and equitable treatment and notice accorded all clients with regard to basic living requirements.

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

Mr. Young 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 that clients will be provided information to which vocational rehabilitation services the commission will provide without client participation in costs. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The amendments are proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§103.21. Basic Living Requirements (BLR) [Criteria for Economic Need].

(a) The purpose of basic living requirements (BLR) [the economic need criteria] is to establish a framework in determining whether [determine the portion of service cost, if any, to be paid by] the client should pay any of the service cost. The commission does not consider the table of basic living requirements in determining [economic need as a requirement for] eligibility for vocational rehabilitation services; however, the commission does apply the table of basic living requirements to determine whether the client must contribute to the cost [consider economic need in the purchase] of certain services.

(b) All services are subject to required client participation except the following [The commission does not consider the client's economic need for determining his participation in the cost of]:

- (1) services paid for, or reimbursed by, a source other than the commission [evaluation of rehabilitation potential, including diagnostic and related services];
- (2) counseling, guidance, and referral; [and]
- (3) placement services;
- (4) diagnostic service, including diagnostic maintenance and transportation, in any status;
- (5) interpreter services; and/or
- (6) halfway house services.

§103.22. Equitable Treatment and Notice.

(a) The commission applies the table of basic living requirements [economic need policies] uniformly to assure that equitable treatment is accorded all clients in similar circumstances.

(b) The counselor will inform each client of the [distinction between] services which require client participation in the cost of [are based on economic need and] services and those services which do not require [are not based on economic need and which the commission may, therefore, provide at no cost to the] client participation.

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 October 1, 1985.

TRD-859157

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985

For further information, please call
(512) 445-8126.

★ ★ ★

Subchapter D. Eligibility, Ineligibility, and Certification

★ 40 TAC §103.42

The Texas Rehabilitation Commission proposes an amendment to §103.42, concerning eligibility, ineligibility, and certification. The amendment provides factors to be disregarded in determining eligibility of individuals for vocational rehabilitation services.

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

Dale Place, deputy commissioner for programs, 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 clarification of existing policy as to those factors which are disregarded by the commission in determining an individual's eligibility for services. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The amendment is proposed under Title 7, the Human Resources Code, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§103.42. Factors Disregarded in Determining [Irrelevant to] Eligibility. The commission determines [considers the following factors irrelevant to the] eligibility of applicants without regard to [who otherwise meet the basic eligibility requirements]:

- (1) sex, race, age, creed, religion, color, or national origin;
- (2)-(3) (No change.)
- (4) the residence requirement, duration or other, which excludes from service any individual [of the applicant] who is present 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 October 1, 1985.

TRD-859158

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985

For further information, please call
(512) 445-8126.

★ ★ ★

Subchapter E. Methods of Administration of Vocational Rehabilitation

★ 40 TAC §103.53

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Rehabilitation Commission, 118 East Riverside, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Rehabilitation Commission proposes the repeal of §103.53, concerning order of selection and outcomes, and service goals in selecting cases for service when such service cannot be provided to all who apply and are eligible. This section is repealed so that a new §103.53 can be adopted.

Robert L. Young, controller, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Dale Place, deputy commissioner for programs, also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is information to applicants for services of the priority in which services are provided by the commission. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The repeal is proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§103.53. Order of Selection and Outcomes and Services Goals.

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 October 1, 1985.

TRD-859159 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 445-8126.

★ ★ ★

The Texas Rehabilitation Commission proposes new §103.53, concerning methods of administration of vocational rehabilitation. The new section provides the order of selection and outcomes and service goals in selecting cases for service

when such service cannot be provided to all who apply and are eligible.

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

Dale Place, deputy commissioner for programs, 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 information to applicants for services of the priority in which services are provided by the commission. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The new section is proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§103.53. Order of Selection and Outcomes and Service Goals.

(a) An order of selection established for allocation of vocational rehabilitation services when such services cannot be provided to all who apply and are eligible is as follows:

(1) first priority to the severely handicapped;

(2) second priority to eligible clients not severely handicapped who can be served without expenditure of commission funds; and

(3) third priority to all other eligible clients not severely handicapped in the order in which client services were requisitioned.

(b) General outcomes and service goals to be achieved in each priority category are:

(1) first priority will contain 60% severely handicapped in the active caseload with statuses of 10-24;

(2) second priority eligible clients not severely handicapped served without expenditure of commission funds will comprise 10% of the active caseload with statuses of 10-24;

(3) third priority eligible clients not severely handicapped in the order of date client services were requisitioned will comprise 30% of the active caseload with statuses of 10-24.

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 October 1, 1985.

TRD-859160 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 445-8126.

★ ★ ★

Chapter 105. Extended Rehabilitation Services Program

★ 40 TAC §105.1, §105.3

The Texas Rehabilitation Commission proposes amendments to §105.1 and §105.3, concerning purpose and basic requirements for eligibility. The amendments provide the purpose of the Extended Rehabilitation Services Program and the basic requirements for eligibility for the program with regard to basic living requirements.

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

Dale Place, deputy commissioner for programs, 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 clarification of the eligibility requirements for extended rehabilitation services. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The amendments are proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§105.1. Purpose.

(a) The purpose of the Extended Rehabilitation Services Program is to provide

rehabilitation services to severely handicapped individuals who, on entering the program, are not capable of entering the competitive labor market but who may achieve maximum personal independence through the provision of rehabilitation services [to include needy persons who are totally and permanently disabled because of a mental or physical handicap].

(b) (No change.)

§105.3. Basic Requirements for Eligibility.

(a) (No change.)

(b) **Basic living requirements** [The economic need of an individual] may be considered as a requirement for eligibility.

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 October 1, 1985.

TRD-859161

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985

For further information, please call
(512) 445-8126.

★ ★ ★

Chapter 107. Independent Living Services Program

★ 40 TAC §107.1, §107.2

The Texas Rehabilitation Commission proposes amendments to §107.1 and §107.2, concerning purpose and basic requirements for eligibility. The amendments provide the purpose of the Independent Living Services Program and the basic requirements for eligibility with regard to basic living requirements.

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

Dale Place, deputy commissioner for programs, 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 clarification of the eligibility requirements for the independent Living Services Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The amendments are proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§107.1. Purpose.

(a) The purpose of the Independent Living Services Program is to provide rehabilitation services to [needy persons who are totally and permanently disabled because of a mental or physical handicap, to include] the severely or catastrophically disabled, in order that such persons may achieve a greater level of self-care and independent living.

(b) (No change.)

§107.2. Basic Requirements for Eligibility.

An individual meets the basic requirements for eligibility if he is severely or catastrophically disabled under current published commission regulations and there is:

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

(3) **compliance with the basic living requirements table** [the presence of economic need].

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 October 1, 1985.

TRD-859162

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985

For further information, please call
(512) 445-8126.

★ ★ ★

Chapter 109. Developmental Disabilities Program

★ 40 TAC §§109.2-109.4

The Texas Rehabilitation Commission proposes amendments to §§109.2-109.4, concerning legal basis, administration, and organization. The amendments provide the legal basis for the Developmental Disabilities Program, the administration of the program, and the organization of the program.

Robert L. Young, controller, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small busi-

nesses as a result of enforcing or administering the sections.

Dale Place, deputy commissioner for programs, 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 compliance with new legislation with respect to legal, administrative, and organizational matters of the Developmental Disabilities Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The amendments are proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§109.2. Legal Basis. The following federal and state laws and regulations are adopted by reference into this part:

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

(4) **Developmental Disabilities Act of 1984 (Public Law 98-527);**

(5)(4) **Developmental Disabilities Program, 45 Code of Federal Regulations Parts 1385-1387; and**

(6)(5) **The Human Resources Code, Texas Civil Statutes, Chapter 112, Developmental Disabilities.**

§109.3. Administration.

(a) The Developmental Disabilities Program involving the federal Administration on Developmental Disabilities, Texas Planning Council for Developmental Disabilities, and the Texas Rehabilitation Commission is a joint state-federal program designed to enhance [provide] services available to persons with developmental disabilities.

(b) (No change.)

(c) The council, under the Developmental Disabilities Program:

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

(8) **advocates for state and federal legislation, appropriations, and policies on behalf of persons with developmental disabilities.**

(d) (No change.)

§109.4. Organization.

(a) (No change.)

(b) **Members of the Texas Planning Council for Developmental Disabilities shall be appointed by the governor in accordance with applicable federal developmental disabilities laws. [The Texas Planning Coun-**

of Developmental Disabilities is composed of 25 members, including persons with developmental disabilities, immediate relatives, or guardians of persons with developmental disabilities. Also included are representatives of seven state agencies, consumers, higher education training facilities, local governmental and nongovernmental agencies, and groups concerned with services to persons with developmental disabilities. At least 50% of the council membership must consist of persons with developmental disabilities or parents or guardians of such persons.]

(c) (No change.)

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

Issued in Austin, Texas, on October 1, 1985

TRD-859163

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:

November 11, 1985

For further information, please call
(512) 445-8128.

★ ★ ★

Chapter 111. Deaf-Blind Multihandicapped Program

★ 40 TAC §§111.1-111.4

The Texas Rehabilitation Commission proposes new §§111.1-111.4, concerning the Deaf-Blind Multihandicapped Program. The new sections define the purpose of the program, basic requests for eligibility and ineligibility, and the types of programs available.

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

Dale Place, deputy commissioner for programs, 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 that the public will be advised of the new rules relating to eligibility for and the services provided by the Deaf-Blind Multihandicapped Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The new sections are proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§111.1. Purpose.

(a) The purpose of the Deaf-Blind Multihandicapped Program is to provide rehabilitation services to deaf-blind multihandicapped individuals by helping them attain self-sufficiency and independent living.

(b) The Deaf-Blind Multihandicapped Program is a state-funded program.

§111.2. *Basis Requests for Eligibility.* An individual meets the basic requirements for eligibility if he is a deaf-blind multihandicapped person and there is:

(1) a substantial impediment to the individual's ability to attain self-sufficiency or independent living;

(2) a reasonable expectation that rehabilitation services will benefit the individual in improving his ability to function independently in his family and environment; and

(3) compliance with the basic living requirements table.

§111.3. *Ineligibility.* An individual becomes ineligible for services when the provision of such services would be ineffective in achieving their purpose of attaining self-sufficiency or independent living.

§111.4. *Programs.* Programs to serve deaf-blind multihandicapped individuals include the following:

(1) a program of parental counseling for the parents of deaf-blind individuals;

(2) a summer outdoor training program for deaf-blind individuals; and

(3) contract services with private and public entities.

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 October 1, 1985.

TRD-859164

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:

November 11, 1985

For further information, please call
(512) 445-8128.

★ ★ ★

Chapter 113. Comprehensive Medical Rehabilitation

★ 40 TAC §§113.1-113.5

The Texas Rehabilitation Commission proposes new §§113.1-113.5, concerning comprehensive medical rehabilitation. The new sections define the Comprehensive Medical Rehabilitation Services Program, and include the purpose of the program, the basic requirements for eligibility and ineligibility, services provided, and availability of services.

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

Dale Place, deputy commissioner for programs, 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 that the public will be advised of the new rules relating to eligibility for and services provided by the Comprehensive Medical Rehabilitation Services Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Vernon H. Newman, Assistant Commissioner, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

The new sections are proposed under the Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter.

§113.1. Purpose.

(a) The purpose of the Comprehensive Medical Rehabilitation Services Program is to provide rehabilitation services to persons with traumatic spinal cord injuries and traumatic brain injuries in order that such persons may achieve a greater level of mobility, self-care, and independent living.

(b) The program is a state-funded program, but it may be either state-funded or a joint state-federal program. In the event that federal funds are available at a future date, all federal laws and regulations required by the acceptance of these funds by the state are applicable to these sections.

§113.2. *Basic Requirements for Eligibility.* An individual meets the basic requirements for eligibility if there is present a traumatic spinal cord or brain injury and there is:

(1) a physician's recommendation that the person may benefit from the Comprehensive Medical Rehabilitation Services Program;

(2) a medically stable person;

(3) a time elapse of less than six months from the person's discharge from the acute care facility;

(4) compliance with the basic living requirements table;

(5) ineligibility for other sources of funding;

(6) a person who is a citizen or immigrant alien of the United States and a resident of Texas;

(7) a person who is or will be 16 years of age by the time the planned services are complete; and

(8) a person who is not currently eligible for vocational rehabilitation services.

§113.3. Ineligibility. An individual becomes eligible for the Comprehensive Medical Rehabilitation Services Program when the provision of such programmed services would be ineffective in achieving the purpose of a greater level of mobility, self-care, and independent living.

§113.4. Services Provided. The provision of comprehensive medical rehabilitation services may include:

(1) medical management;

(2) rehabilitation nursing;

(3) physical therapy;

(4) occupational therapy;

(5) psychological services;

(6) nutritional services;

(7) patient and family education;

(8) orthotics and prosthetics;

(9) laboratory testing;

(10) x-ray services;

(11) social services;

(12) pulmonary medical services;

and

(13) speech therapy and communication devices.

§113.5. Availability of Service. The following limitations apply to the Comprehensive Medical Rehabilitation Services Program.

(1) Sponsorship is limited to 90 days of inpatient comprehensive medical rehabilitation services. An extension of 30 days is possible; however, any such extension is within the sole discretion of the appropriate commission staff.

(2) If, during the comprehensive medical rehabilitation services, the individual is not making the expected progress, the case will be reevaluated to determine whether continued sponsorship is appropriate.

(3) If, during the course of comprehensive medical rehabilitation services, the individual becomes eligible for the commission's Vocational Rehabilitation Program, sponsorship of comprehensive medical rehabilitation services will be shifted to that program immediately after eligibility determination.

(4) Drugs and medical supplies provided at discharge from the facility may not exceed a 30-day supply.

(5) The Comprehensive Medical Rehabilitation Services Program may not be available to all applicants on a statewide basis.

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 October 1, 1985.

TRD-859165

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption:
November 11, 1985
For further information, please call
(512) 445-8126.

★ ★ ★

Withdrawn

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 59. Parks

Park Entrance and Park Use Fees

★31 TAC §59.2, §59.5

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption the proposed amendments to §59.2 and §59.5, concerning park entrance and use fees. The text of the amended sections as proposed appeared in the September 13, 1985, issue of the *Texas Register* (10 TexReg 3502).

Issued in Austin, Texas, on October 2, 1985.

TRD-859132

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Filed: October 2, 1985

For further information, please call
(512) 479-4805.

★ ★ ★



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 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 5. Transportation

Division

Subchapter AA. Rail Safety

★ 16 TAC §§5.612-5.615

The Railroad Commission of Texas adopts the repeal of §§5.612-5.615, without changes to the proposal published in the June 21, 1985, issue of the *Texas Register* (10 TexReg 2059).

The repeal and simultaneous adoption of new §§5.612-5.615 allow the implementation of Senate Bill 444, 69th Legislature, 1985, effective April 16, 1985, which imposes upon the commission the duty to regulate all matters affecting the safety of railroad operations.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Senate Bill 444, 69th Legislature, 1985, which empowers the commission to adopt regulations to ensure railroad safety.

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 September 30, 1985.

TRD-859228

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

Effective date: October 25, 1985
Proposal expiration date: June 21, 1985
For further information, please call
(512) 463-7122.

★

★

★

The Railroad Commission of Texas adopts new §§5.612-5.615, with changes to the proposed text published in the June 21, 1985, issue of the *Texas Register* (10 TexReg 2059). Section 5.614 is

adopted without changes and will not be republished.

These new sections implement the provisions of Senate Bill 444, 69th Legislature, 1985, effective April 16, 1985, which imposes upon the Railroad Commission of Texas the duty to regulate all matters affecting the safety of railroad operations.

All comments received opposed at least portions of the new sections. One commenter opposed all the new sections except §5.612(a), and a modification of that section was suggested. That commenter discussed the preemptive intent of the Federal Railroad Safety Act of 1970, 45 United States Code §§421-441. A response to that discussion follows along with identification of the comments made to particular sections and detailed responses to those comments.

The Federal Railroad Safety Act of 1970, 45 United States Code §§421-441, does not preempt the Railroad Commission of Texas from adopting the new sections. In that Act's statement of purpose, Congress declared that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable (45 United States Code §434). The new sections adopted here further that purpose by subjecting railroads operating within the State of Texas to the federal railroad safety laws and regulations.

States may adopt an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce (45 United States Code §434). With the exception of the telephonic accident reporting requirement of §5.612(b) and (c) discussed in the following, no additional or more stringent regulation is being adopted; therefore, the three-pronged standard contained in 45 United States Code §434 is inapplicable.

States are not preempted from adopting federal railroad safety laws and regulations. The Federal Railroad Administration encourages state participation in the national railroad safety program (49 Code of Federal Regulations §212.101(d)).

State agencies may participate in investigation and surveillance activities concerning federal railroad safety laws and regulations, 49 Code of Federal Regulations §212.101(d), and monitor the compliance of railroads with federal railroad safety laws and regulations, 49 Code of Federal Regulations §212.109. The federal railroad safety laws are the Federal Railroad Safety Act of 1970, the Safety Appliance Acts, the Locomotive Inspection Act, the Signal Inspection Act, the Accident Reports Act, and the Hours of Service Act. Each of these Acts is listed in §5.613(a).

Comments were made complaining of the vagueness of proposed §5.612(a), requiring that copies of accident/incident reports be promptly filed with the commission. The term "promptly" was not defined, and reports were not limited to those concerning Texas accidents or incidents.

The commission responds by modifying §5.612(a) to require the filing of copies of reports of Texas accidents/incident within 30 days after expiration of the month during which the accidents/incidents occurred. The time limitation is the same as that contained in the federal regulation, 49 Code of Federal Regulations §225.11(a). The erroneous reference to 40 Code of Federal Regulations §225 is changed to 49 Code of Federal Regulations §225.

Comments suggested that §5.612(b) and (c) are preempted by 49 Code of Federal Regulations §225, which provides at §225.1 that the issuance of regulations under the Federal Railroad Safety Act preempts states from prescribing accident/incident reporting requirements. In support of the preemption argument, *National Association of Regulatory Utility Commissioners v. Coleman*, 542 F.2d 11 (3rd Cir. 1976), was cited. The plaintiffs there challenged 49 Code of Federal Regulations §225, requesting the court to declare invalid and to enjoin enforcement of the federal regulations to the extent they preempt state accident reporting requirements (Id. at 12). There was no state regulation at issue. The court denied the requested relief, and found that the provisions of the Federal Railroad Safety Act of 1970, §434, evinced a total preemptive intent (Id. at 13).

The court went further in the Coleman decision however; it explained that the challenged federal regulation preempts the states only with respect to monthly accident reporting requirements. It does not prevent them from requiring rail carriers to provide immediate notification of accidents to enable the states to launch promptly their own investigations. Nor does it forbid the states from requiring the railroads to furnish them copies of the monthly reports filed with the FRA (id. at 15). The Coleman decision, then, specifically permits the regulations adopted here. New §5.612(b) and (c) only require immediate telephonic notification of accidents/incidents. No duplicative monthly reports are required.

The commission recognizes that proposed §5.612(b)(2), which requires telephonic notification of accidents/incidents resulting in the death or injury of two or more persons, is a stricter reporting requirement than that imposed by the federal regulation, 49 Code of Federal Regulations §225.9(a) (requiring telephonic notification of accidents/incidents resulting in the death or injury of five or more persons). A notification requirement more stringent than the federal requirement is not necessarily incompatible. See e.g., *Monongahela Connecting Railroad Company v. Pennsylvania Public Utility Commission*, 404 A.2d 1376, 1380 (Commonwealth Court of Penn., 1979). The Federal Railroad Safety Act of 1970 permits states to adopt regulations more stringent than existing federal regulations (45 United States Code §434).

Whenever two or more persons die or are injured, a local safety hazard may exist. The telephonic notification will enable commission officials to investigate shortly after the occurrence of the accident/incident. No undue burden on interstate commerce is imposed by the notification requirement. Although the notification requirement for accidents/incidents in which two or more persons die or are injured is more stringent than the federal requirement, it is not incompatible since the two requirements do not conflict. The Federal requirement is not impaired because all accidents/incidents which previously have warranted notification to the Federal Railroad Administration must continue to be reported there. The new state regulation requires notification of the same accidents/incidents which are reported to the FRA plus notification of those accidents/incidents where two, three, or four persons are killed or injured.

One commenter noted that §5.612(b) does not identify the capacity of the person to whom the telephonic report is to be made. The telephone number used in the rule is that of a 24-hour answering service which is operated by numerous individuals who are trained to receive reports. The reporting procedure should not cause confusion.

The same commenter complained of duplicative reporting requirements of the commission and the Texas Department of Water Resources. The Texas Department of Water Resources has been abolished since the comment was received, and its jurisdiction has been transferred to the Texas Water Commission. The Texas Water Commission has adopted emergency rules which provide, in part, that transporters shall notify the Texas Water Commission as soon as possible and not later than 24 hours after the occurrence of a discharge of hazardous waste during transportation (31 TAC §335.93). The reporting requirements are not duplicative, then, at least insofar as procedure is concerned since the Railroad Commission of Texas is the only agency which requires immediate notification of accidents/incidents.

Two commenters suggest that §5.613(a) is preempted by federal laws and regulations. Senate Bill 444, Texas Civil Statutes, Article 6448a, authorizes the Commission to subject railroads operating in Texas to the safety requirements contained in or adopted pursuant to the six named federal statutes. The commission is not preempted from adopting these laws and regulations; indeed, the congressional goal of nationally uniform railroad safety standards, 45 United States Code §434, is furthered by the adoption.

Article 6444, *et seq.*, is properly included in the list of governing statutes set out in §5.613(a). The commission has the duty to adopt regulations to govern and regulate railroads (Texas Civil Statutes, Article 6445). The commission may adopt a safety requirement and that requirement will not be preempted unless there is a federal rule, regulation, order, or standard covering the subject matter of the commission requirement (45 United States Code §434). An additional or more stringent requirement can be adopted pursuant to Article 6444, *et seq.*, if such requirement is necessary to reduce or eliminate a local safety hazard, is not incompatible with any federal requirement, and does not create an undue burden on interstate commerce (id).

The proposed §5.613(b) states, in part, that federal railroad safety regulations, including, but not limited to, those enumerated in this subsection, as they may from time to time be adopted or amended, are hereby adopted. A commenter complained that this language was vague because it fails to list all federal regulations which the commission adopts and, therefore, fails to give adequate notice of the commission's minimum safety requirements. The commission responds by modifying §5.613(b) to provide that the listed federal regulations as they exist on September 30, 1985, are adopted.

The preemption argument was raised by one commenter with respect to §5.613(b).

Section 5.613(b)(1)-(4) and (8) is said to be preempted by 49 Code of Federal Regulations Parts 213, 236, 215, 223, 217, 218, 220, 221, and 225. These subparts adopt federal regulations found at 49 Code of Federal Regulations Parts 213, 236, 215, 223, 217, 218, 220, 221, 225, and 228 in their entirety, without deviation. No additional or more stringent rules are adopted by the commission; therefore, the three-prong test established by 45 United States Code §434 is not applicable. The commission is not preempted from adopting the uniform federal regulations.

The commenter contends that §5.613(b)(5) is preempted by 49 Code of Federal Regulations Part 229 which was promulgated under the Boiler Inspection Act, 45 United States Code §§22-34. Section 5.613(b)(5) adopts the locomotive safety standards codified at 49 Code of Federal Regulations Part 229 without changing those standards in any respect. None of the court decisions cited by the commenter, *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605 (1926); *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1149 (9th Cir. 1983); and *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission*, 536 F. Supp. 653 (E.D. Penn. 1982), involved a situation where a state adopted federal regulations. In each case, a conflicting or differing state statute or regulation was found to have been preempted.

It is also contended by the commenter that §5.613(b)(6) and (7) are preempted by the Safety Appliance Act, 45 United States Code §§1-16. The sections adopt the safety appliance and power brake standards contained in 49 Code of Federal Regulations Parts 213 and 232. *Gilvary v. Cuyanoga Valley Ry. Co.*, 292 U.S. 57 (1934) does not hold that a state cannot adopt regulations promulgated pursuant to the Safety Appliance Act. In that case the defendant railroad company sought an election to be bound by a state statute rather than the Federal Safety Appliance Acts. The court noted that the Safety Appliance Acts exclude state regulation whether consistent, complementary, additional or otherwise (id at 60-61). This comment should reasonably be interpreted to apply only to state regulation which varies from federal regulation. The actual holding in *Gilvary* was that the Safety Appliance Act did not extend to the field occupied by the state statute (id. at 62).

Similarly, the contention that §5.613(b)(8) is preempted by 49 Code of Federal Regulations Part 228 is without merit. The federal regulations which were promulgated pursuant to the Hours of Service Act, 45 United States Code §§61-64b, are adopted without change. *Erle Railroad Company v. New York*, 233 U.S. 671 (1914) does not prevent states from adopting regulations under the Hours of Service Act. The Supreme Court there held only

that a New York law prescribing a still shorter work day must give way to the federal statute.

One commenter contends that §5.614 is not in conformity with 45 United States Code §435 of the Federal Railroad Safety Act. State participation in investigative and surveillance activities is described in 45 United States Code §435. A state may participate in carrying out investigative and surveillance activities in connection with any federal requirement if the state agency submits an annual certification stating, in part, that the state agency is conducting the investigative and surveillance activities prescribed by the secretary of transportation as necessary for the enforcement by him of federal requirements (45 U.S.C. §435(a)). This provision does not set requirements for state investigative and surveillance activities in connection with a state's own safety requirements. Nor does the provision prohibit a state agency from conducting investigative or surveillance activities which may be in addition to those prescribed by the secretary of transportation. The provision does not concern the subject matter of a state agency's investigative and surveillance activities themselves: it merely delineates those statements which must be made by a state agency in its annual certification to the secretary of transportation. The federal regulation concerning certification in the state participation program requires the participating state agency to file an annual certification providing, in part, that it will, at a minimum, conduct planned compliance inspections meeting the level of effort prescribed (49 Code of Federal Regulations §212.107(b)(2)).

The preemptive argument was again raised in comments to proposed §5.615. The Federal Railroad Safety Act of 1970 provides in pertinent part at 45 United States Code §435(a) that the secretary of transportation shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by §436 of this title) to request injunctive relief for the violation of rules, regulations, orders, and standards prescribed by the secretary. Section 5.615(a) provides that the director of transportation may refer violations of the regulations adopted in §5.613(b) and recommend that the Federal Railroad Administration seek civil penalties, injunctive relief, or both. Section 5.613(b) adopts the federal safety requirements. The provision for referral of these violations to the Federal Railroad Administration implements the state participation program regulations. (See 49 Code of Federal Regulations §212.115(c) regarding requests for civil penalty assessments and injunctive actions.)

Section 5.615(b) concerns state enforcement action. The commission is authorized, through the attorney general of Texas, to bring an action against violation

of a railroad safety regulation or order issued under Texas Civil Statutes, Article 6448a. This provision complies with the applicable section of the Administrative Procedure and Texas Register Act, Article 6252-13a, §19A.

The commission acknowledges that violations of federal regulations must first be referred to the Federal Railroad Administration pursuant to 45 United States Code §436. New §5.615(b) permits enforcement of commission regulations or orders which might be promulgated pursuant to Texas Civil Statutes, Article 6448a, concerning subjects on which there is no federal requirement or subjects concerning essentially local safety hazards.

The second sentence of §5.615(b) is hereby modified in response to comments concerning a discrepancy with the federal venue requirement. The proposed section would have permitted the commission, through the attorney general of Texas, to bring an action in any court of competent jurisdiction and proper venue against violation of a regulation adopted under §5.613(b) if the Federal Railroad Administration had failed to take timely action on a request from the director. This language is changed to "the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office" to reflect the provisions of 45 United States Code §436.

Southern Pacific Transportation Company, Santa Fe Southern Pacific Corporation, Texas Railroad Association, and Georgetown Railroad Company commented against the proposal.

The new sections are adopted under Senate Bill 444, 69th Legislature, 1985, which empowers the Railroad Commission of Texas to adopt regulations to ensure railroad safety.

§5.612. Reports of Railroad Accidents/Incidents.

(a) Each railroad shall promptly furnish the commission with a copy of each accident/incident report filed with the Federal Railroad Administration pursuant to 49 Code of Federal Regulations §225, within 30 days after expiration of the month during which the accident/incident occurred. Only copies of reports which concern accidents/incidents occurring in the State of Texas should be filed with the commission.

(b) A railroad must report immediately by telephone to the commission at (512) 475-6143, whenever it learns of the occurrence of any collision, derailment, fire, explosion, act of God, or other event occurring in the State of Texas and involving operation of railroad on-track equipment (standing or moving) which:

- (1) results in the death of any railroad passenger or railroad employee;
- (2) results in the death or injury of two or more persons;

(3) involves a passenger train; or
(4) involves a commodity classified as a hazardous material under 49 Code of Federal Regulations Part 172.

(c) Each report filed pursuant to subsection (b) of this section must state the:

- (1) name of the railroad;
- (2) name, title, and telephone number of the individual making the report;
- (3) time, date, and location of accident/incident;
- (4) circumstances of the accident/incident;
- (5) number of persons killed or injured; and
- (6) name of hazardous commodity or commodities involved.

§5.613. Railroad Safety Requirements.

(a) Governing statutes. Railroads operating within the State of Texas are subject to safety requirements contained in or adopted pursuant to the following statutes:

- (1) the Federal Railroad Safety Act of 1970, as amended (45 United States Code 421, 431-441);
- (2) the Safety Appliance Acts, as amended (45 United States Code 1-16);
- (3) the Locomotive Inspection Act, as amended (45 United States Code 22-34);
- (4) the Signal Inspection Act, as amended (49 United States Code 26);
- (5) the Accident Reports Act, as amended (45 United States Code 38-42);
- (6) the Hours of Service Act, as amended (45 United States Code 61-64b); and

(7) Texas Civil Statutes, Article 6444, *et seq.*

(b) Federal regulations adopted by reference. The following federal railroad safety regulations, as they exist on September 30, 1985, are hereby adopted as the minimum railroad safety requirements of the Railroad Commission of Texas, and all railroads operating within the State of Texas shall be governed thereby:

- (1) track safety standards codified at 49 Code of Federal Regulations Part 213;
- (2) rules, standards, and instructions for railroad signal systems codified at 49 Code of Federal Regulations Part 236;
- (3) freight car safety standards codified at 49 Code of Federal Regulations Part 215;
- (4) safety glazing standards codified at 49 Code of Federal Regulations Part 223;
- (5) locomotive safety standards codified at 49 Code of Federal Regulations Part 229;
- (6) safety appliance standards codified at 49 Code of Federal Regulations Part 231;
- (7) power brake standards codified at 49 Code of Federal Regulations Part 232; and
- (8) federal operating practice regulations codified at 49 Code of Federal Regulations Parts 217, 218, 220, 221, 225, and 228.

§5.615. Enforcement of Railroad Safety Requirements.

(a) Federal enforcement action. The director of transportation may refer violations of railroad safety requirements adopted under §5.613(b) of this title (relating to Railroad Safety Requirements) to the Federal Railroad Administration (FRA) with a recommendation that the FRA seek either imposition of civil penalties or an injunction against further railroad safety violations, or both.

(b) State enforcement action. The commission may, through the attorney general of Texas, bring an action in any court of competent jurisdiction and proper venue seeking either imposition of a civil penalty or an injunction, or both, against violation of a railroad safety regulation or order issued under the provisions of Texas Civil Statutes, Article 6448a. The commission may also, through the attorney general of Texas, bring an action in the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office seeking either imposition of a civil penalty or an injunction, or both, against violation of a railroad safety regulation adopted under the provisions of §5.613(b) of this title (relating to Railroad Safety Requirements), if the director of transportation has requested such action and the FRA has failed to take timely action on a request. Federal Railroad Administration action on a request that it seek to impose a civil penalty is timely if, within 60 days after receipt of the request, FRA has either assessed a civil penalty or determined, in writing, that no violation has occurred. Federal Railroad Administration action on a request that it seek an injunction against further violation of a rail safety requirement is timely if, within 15 days after receipt of the request, the FRA has referred the matter to the United States attorney general for institution of litigation, has undertaken other enforcement action, or has determined, in writing, that no violation has occurred.

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 September 30, 1985.

TRD-860220

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

Effective date: October 25, 1985
Proposal publication date: June 21, 1985
For further information, please call
(812) 463-7122.

★ ★ ★

**Part II. Public Utility
Commission of Texas
Chapter 23. Substantive Rules
Quality of Service**

★ 16 TAC §23.66

The Public Utility Commission of Texas adopts an amendment to §23.66, with changes to the proposed text published in the August 23, 1985, issue of the *Texas Register* (10 TexReg 3207).

The amendment further defines guidelines as they relate to wheeling of power between independent power producers and the electric utilities, and billing and metering of electricity consumed and produced by small independent power producers.

The amended section establishes a standard method of setting wheeling costs so that independent power producers and electric utilities will have a basis from which to negotiate wheeling contracts. Section 23.66 requires utilities to offer more billing and metering options to small independent power producers.

Comments received regarding the amendment were generally supportive of the need for a section that defines a framework for wheeling power from independent power producers to remote utilities. There were several alternate wheeling rate methodologies proposed by commenters. The portion of the section that refers to billing for small independent power producers allowed net billing was opposed by several utilities as over-compensating those producers.

Those making comments about the amendment included Northeast Texas Electric Cooperative; Tex-La Electric Cooperative; Southwestern Electric Power; Texas Utilities Electric; Texas Cogenerators Group; Central Power and Light; West Texas Utilities; Texas Cooperative Group; Central Power and Light; West Texas Utilities; Texas-New Mexico Power Cogenerators Group; South Texas Electric Cooperative; Houston Lighting and Power; City of Brownsville; City of Austin; City of San Antonio; Texas Electric Cooperative; Medina Electric Cooperative; Brazos Electric Cooperative; Lower Colorado River Authority; El Paso Electric; Dow Chemical; Sky Power; Applied Energy Services; City of Houston; Gulf States Utilities; Texas Industrial Energy Consumers; Applied Energy Services; and Valley View Energy.

The commission disagreed with the negative comments, as there was no rate method proposed by commenters that did not have flaws. The amended section represents a compromise between the several diverse methods proposed. Reverse the meter billing for small power producers is appropriate, since it is limited to producers using renewable resources of less than 50 KW capacity

and thus should encourage use of alternate fuels instead of depletable fossil fuels.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce sections reasonably required in the exercise of its power and jurisdiction, and in administering the provisions of this Act.

§23.66. Arrangements between Qualifying Facilities and Electric Utilities.

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

(1) Avoidable generating unit—A power plant or set of power plants in a utility's commission-approved generation expansion plan that may be displaced or deferred due to firm capacity provided to the utility by qualifying facilities.

(2) Avoided costs—The incremental costs to an electric utility of electric energy or capacity or both, which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

(3) Back-up power—Electric energy or capacity supplied by an electric utility to replace energy or capacity ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the qualifying facility.

(4) Committed unit basis (CUB) methodology—A means of identifying avoided capacity costs. Under the CUB methodology, the expected revenue requirement stream associated with an avoidable generating unit, or set of avoidable units, is defined. The expected net present value of this cash flow stream represents an upper bound to the net present value of the payment stream that shall be offered to a qualifying facility in exchange for capacity with characteristics identical to the avoided unit(s).

(5) Cost of decremental energy—The cost savings to a utility associated with the utility's ability to back-down some of its units or to avoid firing units, or to avoid purchases of power from another utility because of purchases of power from qualifying facilities.

(6) Firm power—From a qualifying facility, power or power-producing capacity that is available to the electric utility pursuant to a legally enforceable obligation for scheduled availability over a specified term.

(7) Host utility—The utility with which the qualifying facility is directly interconnected.

(8) Interconnection costs—The reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, engineering, and administrative costs incurred by the electric utility

directly related to the installation of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs that the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

(9) **Interruptible power**—Electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(10) **Maintenance power**—Electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(11) **Nonfirm power from a qualifying facility**—Power provided under an arrangement that does not guarantee scheduled availability, but instead provides for delivery as available.

(12) **Parallel operation**—A mode of operation which enables a qualifying facility to export automatically any electric capacity which is not consumed by the qualifying facility or the user of the qualifying facility's output. Parallel operation results in three possible states of operation at any point in time.

(A) The qualifying facility is generating an amount of capacity that is less than the customer's load. The customer is therefore a net consumer.

(B) The qualifying facility is generating an amount of capacity that is more than the customer's load. The customer is therefore a net producer.

(C) The qualifying facility is generating an amount of capacity that is equal to the customer's load. The customer is therefore neither a net producer nor a net consumer.

(13) **Purchase**—The purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(14) **Purchasing utility**—The utility which is purchasing a qualifying facility's capacity and/or energy.

(15) **Qualifying facility**—A cogeneration facility or a small power production facility which is a qualifying facility under Subpart B of the Federal Energy Regulatory Commission's regulations under the Public Utility Regulatory Policies Act of 1978, §201, as enacted on the date of adoption of that section, with regard to cogeneration and small power production.

(16) **Quality of firmness of a qualifying facility's power**—The degree to which the capacity offered by the qualifying facility is an equivalent quality substitute for the utility's own generation or firm purchased power. At a minimum, the following factors should be considered in determining the quality of firmness:

(A)-(J) (No change.)

(17) **Rate**—Any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale, purchase, or transmission of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

(18) **Renewable resources**—Non-fossil fuels such as solar, wind, hydro, geothermal, biomass, and municipal solid waste.

(19) **Sale**—The sale of electric energy or capacity or both supplied by an electric utility to a qualifying facility.

(20) **Supplementary power**—Electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(21) **System emergency**—A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

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

(d) **Electric utility obligations.**

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

(4) **Transmission to other electric utilities.** If a qualifying facility with a rated capacity greater than one megawatt interconnected with the host utility at a voltage greater than 60,000 volts measured phase to phase requests, an electric utility shall transmit energy and/or capacity from the qualifying facility to any other electric utility designated by the qualifying facility, provided that such transmittal is not in violation of federal law or other jurisdictional authority. No electric utility is required to enter into any transmission agreement, if solely by reason of such transmission agreement, the electric utility would become subject to regulation as a public utility under the Federal Power Act, Part II. Any electric utility to which such energy and/or capacity is transmitted shall purchase such energy and/or capacity as if the qualifying facility were supplying energy and/or capacity directly to such electric utility. Transmission to other electric utilities shall be governed by the following:

(A) **Transmission arrangements.** The qualifying facility is responsible for all necessary transmission arrangements with utilities whose transmission systems are impacted by the transmission of the qualifying facility's energy and/or capacity. However, at the qualifying facility's request, the purchasing utility shall make all such arrangements including, but not limited to, negotiation of contract terms and conditions and determination of additional facilities, if any, required to facilitate wheeling of the energy and/or capacity. Furthermore, if the host utility and the qualifying facility agree, then the host utility shall make all such arrangements. The qualify-

ing facility shall be notified of all negotiations and have the right to participate fully in all negotiations and be a party to each wheeling agreement. In addition, all information pertaining to such arrangements shall be furnished to the qualifying facility or purchasing utility upon request.

(B) **Payment of transmission charges.** All utilities that can show that their transmission systems are impacted by the transmission of a qualifying facility's energy and/or capacity (impacted utilities) are entitled to payment for transmission wheeling service as defined in paragraph (5) of this subsection. At the option of the qualifying facility, all transmission wheeling charges by impacted utilities are payable by the qualifying facility or the purchasing utility. If the purchasing utility pays the transmission charges the sum of such payments and the payments to the qualifying facility for energy and/or capacity shall not exceed the purchasing utility's avoided cost.

(C) **System additions.** Reasonable costs of interconnecting facilities provided by the host utility shall be borne by the qualifying facility as provided in subsection (k)(1) and (2) of this section. The cost of all other additions or improvements to impacted utilities systems necessitated by the provision of planned capacity transmission wheeling service for energy and/or capacity from the qualifying facility as described in paragraph (5) of this subsection will be the responsibility of the impacted utility. The impacted utility shall construct such system additions or improvements as expeditiously as possible. For provision of as available transmission wheeling service under paragraph (5) of this subsection, the cost of system additions or improvements reasonably needed to accommodate the transaction may be borne by the qualifying facility or by the purchasing utility at the purchasing utility's option.

(D) **Interruption of transmission wheeling service.** Planned capacity transmission wheeling service may only be interrupted in case of a system or area emergency when the continuance of such service would contribute to the emergency. As available transmission wheeling service shall be subject to interruption in the same circumstances or when continuation of such service would impair the ability of the utility providing such service to provide reliable service to its firm customers. In the event interruption of transmission wheeling service is anticipated or experienced, each utility providing such service shall notify all affected qualifying facilities as soon as practicable. Such notice shall include the time at which the interruption becomes effective, the estimated duration of the interruption, and the reasons for the interruption.

(E) **Tariffs and agreements.**

(i) Each utility that charges for transmission wheeling service subject to this section shall, within 30 days of the effective date of the section, file a tariff that

specifies the facilities rate per megawatt for planned capacity transmission wheeling service and the charge per megawatt-mile for as available transmission service as calculated according to paragraph (5)(C) of this subsection. The tariff shall also include general terms and conditions for providing transmission wheeling service for capacity and/or energy from a qualifying facility to a purchasing utility in accordance with these rules. Notice of the initial tariff filing shall be made by a one-time publication in a newspaper of general circulation published within each city or town with a population of 25,000 within the utility's service area. The tariff and charges are subject to review and change in each subsequent rate case of the utility. Utilities that do not reasonably expect to be required to provide transmission wheeling service under this section shall be exempt from the initial filing requirement, but shall file an appropriate tariff within 30 days after a request to provide transmission wheeling service is received.

(ii) Nothing in this subsection shall prohibit an impacted utility and a qualifying facility or its representative from agreeing to a rate and terms and conditions for provision of transmission wheeling service for capacity and/or energy from the qualifying facility to a purchasing utility that differ from those specified in this section. To the extent required by the Public Utility Regulatory Act, such agreements are subject to review and approval by the commission.

(iii) All utilities filing applications for approval of wheeling tariffs with the Federal Energy Regulatory Commission (FERC) or any other federal agency having jurisdiction of wheeling tariffs shall give notice to the commission of such filing by providing the commission with a duplicate copy of any and all such documents filed with the FERC or other federal agency within 20 days of such filing. Tariffs currently on file with any agency shall be filed with the commission within 20 days of the effective date of this section.

(F) General obligations.

(i) The host utility shall notify the qualifying facility upon request of all utilities potentially entitled to compensation under this rule for the proposed wheeling transaction. At the qualifying facility's request and expense, the host utility shall conduct preliminary impact studies for specified wheeling transactions. Any utility subject to this section shall, upon request by the commission staff, provide the commission with annual impact and loss studies for hypothetical wheeling transactions as specified by the staff.

(ii) All requests for transmission wheeling service under this section shall be made in writing and shall provide information in sufficient detail to allow evaluation of the transaction. An impacted utility shall respond in writing to such request within 60 days of receipt of the request un-

less the power transfer is of such magnitude, duration, and/or complexity that additional time is needed to evaluate its impact. Under no circumstances shall a response be made later than 120 days following the date of the request.

(iii) The impacted utility shall use its best efforts to include in its response cost and schedule information reasonably necessary to enable the qualifying facility to evaluate the impact of the transmission charges on its proposed sales or, in the case of denial of transmission service as allowed in paragraph (5) of this subsection, an explanation of the reasons for denial. Such information shall include, but not necessarily be limited to, all pertinent load flow data, parameters used and cost and schedule information for necessary system additions and improvements. The normal Electric Reliability Council of Texas summer peak load data base shall be provided to the qualifying facility upon request under mutually agreeable arrangements.

(iv) Upon request of the qualifying facility, an impacted utility shall provide information on terms and conditions of existing contracts for transmission wheeling service to other utilities.

(5) Charges for transmission wheeling service. Transmission wheeling service shall be offered on a planned capacity or on an as available capacity basis at the option of the qualifying facility. However, for any single transaction, wheeling contracts with impacted utilities must all be of the same time (i.e., planned capacity or as available capacity). Planned capacity transmission wheeling service shall be provided with the same level of resource commitment, the same priorities, similar contractual conditions in accordance with this section and other treatment similar to that provided to other customers of the utility who use firm services provided by the utility. Planned capacity transmission wheeling service can only be denied if an impacted utility successfully petitions the commission and shows that the cost and/or scheduling of needed system improvements are such that there would be a significant detrimental effect on their other customers or that such service is prohibited by actions of any regulatory authority having jurisdiction. As available capacity transmission wheeling service may be denied under the same circumstances or if there is insufficient capacity available on the transmission system of the impacted utility or if the transaction will create an undue interference on the utility's obligation to serve its existing firm customers. Charges for transmission wheeling service shall be determined as follows.

(A) Cost of transmission service. The annual cost of providing transmission service on the system of each impacted utility shall be determined from the utility's cost of service as approved by the commission in the utility's most recent rate case. If such a study is not available, the cost shall be

based on the annual expenses found in FERC expense accounts 560-564 and 566-573 (or accounts with similar contents) plus the depreciation, federal income taxes, other taxes, and the commission-allowed rate of return based on FERC plant accounts 350-359 (or accounts with similar contents) less accumulated depreciation and associated deferred taxes. In addition, the cost shall include portions of administrative and general expenses and return on portions of general plant and other rate base items such as construction work in progress (CWIP), materials, and supplies and prepayments allocated to transmission service in a manner consistent with the utility's cost of service study. It is recommended, though not required by the commission, that municipally owned utilities providing wheeling service use the cost of service study most recently approved by their regulatory body or, in the absence of such a study, the expenses and plant accounts as outlined in this subparagraph.

(B) Billing units. The billing units for planned capacity transmission wheeling service to be used in this calculation shall be equal to the highest monthly system total peak demand (including both firm and interruptible load and losses) experienced during the same annual period used for cost determination in subparagraph (A) of this paragraph, plus the sum of the contracted capacity of planned capacity transmission wheeling service obligations in effect during that same period for which the utility is receiving compensation as a designated contract path utility as described in subparagraph (D) of this paragraph. Billing units for as available transmission wheeling service shall be the megawatt-miles for the transmission system used in calculating the cost of transmission service. The megawatt-miles for a system shall be the sum of the products of 80% of the thermal rating of each line (75°C conductor, 25° air, 1.4 miles per hour wind, and emissivity of 0.5) times the length in miles of the line for transmission lines whose nominal operating voltage is at least 60,000 volts measured phase to phase.

(C) Facilities rates. The annualized facilities rate for providing planned capacity transmission wheeling service is found by dividing the annual cost of providing transmission service as found in subparagraph (A) of this paragraph by the planned capacity billing units as found in subparagraph (B) of this paragraph. The annualized facility rate for as available transmission wheeling service is found by dividing the annual cost of providing transmission service as found in subparagraph (A) of this paragraph by the as available capacity billing units found in subparagraph (B) of this paragraph. These rates shall be specified in the utility's tariff as required in paragraph (4)(E)(i) of this subsection.

(D) Facilities charges for planned capacity transmission wheeling service. The

facilities charge for planned capacity wheeling by contract path utilities shall be the facilities rate for planned capacity wheeling as calculated in subparagraph (C) of this paragraph multiplied by contract capacity of the power contract with the purchasing utility. Contract path utilities will include the host utility and other utilities as selected by the qualifying facility whose transmission lines of sufficient capacity to handle the transaction are necessary to make a direct electrical connection with the purchasing utility's system. Planned capacity wheeling facilities charges for all other impacted utilities shall be calculated according to subparagraph (E) of this paragraph.

(E) Facilities charge for as available transmission wheeling service. The charge for as available transmission wheeling service shall be the as available facilities rate as calculated in subparagraph (C) of this paragraph multiplied by the megawatt-mile change on the impacted utility's transmission system due to the transaction. The megawatt mile change on the utility's system shall be determined by multiplying the increase in power flow in each line by the length of the line and summing the resultant products for each line on the system. Lines that have no change or decreases in power flows shall be ignored in this calculation. Power flow changes due to the transaction shall be determined annually by the end of the first quarter of the calendar year from peak load period power flow studies that employ the most recently revised data base and applicable programs maintained by the Electric Reliability Council of Texas Engineering Subcommittee and should include all other existing and planned wheeling transactions. Impacts for simultaneous transactions shall be based on the megawatt flow changes resulting from the separate addition of each transaction to the peak load power flow base case.

(F) Provision for losses. Increases or decreases in losses incurred by an impacted utility due to a transaction shall be determined from the scheduled transfer used in conjunction with loss matrices produced by the Electric Reliability Council of Texas Engineering Subcommittee or upon average system losses for increased losses at the option of the qualifying facility. Increases or decreases in losses shall be repaid in kind at the time of the transfer if practical or if such payment is not practical, accumulated in peak and off-peak accounts for later payback. If both the impacted utility and the purchasing utility agree, payments and credits for losses may be in cash.

(G) Term of transmission wheeling contracts. For planned capacity transmission wheeling contracts impacted utilities shall offer a term at least as long as the term of the qualifying facility's purchase power contract with the purchasing utility. For as available transmission wheeling contracts the impacted utility shall not be required to offer a term longer than one year.

(6) Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility within its service area.

(e) (No change.)

(f) Standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.

(1) There shall be included in the tariffs of each electric utility standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. The rates for purchases under this paragraph:

(A) (No change.)

(B) shall consider the aggregate capacity value provided by dispersed qualifying facilities with a design of 100 kilowatts or less. If an aggregate capacity value can be reasonably estimated, a capacity payment shall be included in the standard rates provided there is an avoided capacity cost; and

(C) (No change.)

(2) Terms and conditions unique to qualifying facilities with a design capacity of 100 kilowatts or less such as metering arrangements, safety equipment requirements, liability for injury or equipment damage, access to equipment and additional administrative costs, if any, shall be included in a standard tariff.

(3) The standard tariff shall offer at least the following options:

(A) parallel operation with interconnection through a single meter that measures net consumption;

(i) net consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs;

(ii) net production will not be metered or purchased by the utility and therefore there will be no interconnection charge and no additional customer charge imposed on the qualifying facility;

(B) parallel operation with interconnection through two meters with one measuring net consumption and the other measuring net production;

(i) net consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs;

(ii) net production for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) and (B) of this subsection;

(C) interconnection through two meters with one measuring all consumption by the customer and the other measuring all production by the qualifying facility;

(i) all consumption by the customer for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the customer would belong in the absence of the qualifying facility;

(ii) all production by the qualifying facility for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) and (B) of this subsection.

(4) In addition, each electric utility shall offer qualifying facilities using renewable resources with an aggregate design capacity of 50 kilowatts or less the option of interconnecting through a single meter that runs forward and backward.

(A) Any consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs.

(B) Any production for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) of this subsection.

(5) Interconnection requirements necessary to permit interconnected operations between the qualifying facility and the utility and the costs associated with such requirements shall be dealt with in a manner consistent with subsection (k) of this section.

(6) The rates, terms, and conditions contained in the standard tariff for qualifying facilities with a design capacity of 100 kilowatt hours or less shall be subject to review and revision by the commission.

(7) Requirements for the provision of insurance under this subsection shall be of a type commonly available from insurance carriers in the region of the state where the customer is located and for the classification to which the customer would belong in the absence of the qualifying facility.

(g)-(m) (No change.)

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

Issued in Austin, Texas, on October 2, 1985.

TRD-850170

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

Effective date: October 23, 1985

Proposal publication date: August 23, 1985

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

★ ★ ★

Part IV. Texas Department of Labor and Standards Chapter 65. Boiler Division Administration

★ 16 TAC §65.20

The Texas Department of Labor and Standards adopts an amendment to §65.20, without changes to the proposed text

published in the April 19, 1985, issue of the *Texas Register* (10 TexReg 1256).

Upon request, the Boiler Division will conduct special inspections at boiler plant facilities. The prepayment for special inspections will decrease revenue short fall due to uncollectible accounts for which special inspections have been conducted.

The entity requesting a special inspection must deposit \$500 with the department prior to the department sending out inspectors to conduct the special inspection.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221c, §6, which provide the Texas Department of Labor and Standards with the authority to promulgate rules and regulations necessary to effectuate the purposes of this Act.

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

Issued in Austin, Texas, on October 3, 1985.

TRD-859210

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

Effective date: October 25, 1985

Proposal publication date: April 19, 1985

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

★ ★ ★

TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System

Chapter 25. Administrative Council

Subchapter C. Administration of Retirement Annuity Programs

★ 19 TAC §25.72

The Administrative Council of the Coordinating Board, Texas College and University System adopts an amendment to §25.72, without changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2388).

This amendment ensures that only public institutions of higher education in Texas are included within the context of the rule. The amendment clarifies which institutions of higher education are included by adding the words "in Texas."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 3.50-3, provides the Administrative Council with the authority to develop policies, practices, and procedures as necessary in accordance with applicable statutes to provide for greater uniformity in the administration of retirement annuity insurance programs available under the Optional Retirement Program.

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

Issued in Austin, Texas, on October 1, 1985.

TRD-859197

James McWhorter
Executive Secretary
Administrative Council
Coordinating Board,
Texas College and
University System

Effective date: October 24, 1985

Proposal publication date: July 26, 1985

For further information, please call
(512) 475-2033.

★ ★ ★

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug Retail Food Store Sanitation

★ 25 TAC §§229.231-229.239

The Texas Department of Health adopts new §§229.231, 229.232, and 229.234-229.239, with changes to the proposed text published in the May 21, 1985, issue of the *Texas Register* (10 TexReg 1618). New §229.233 is adopted without changes and will not be republished.

The new sections provide uniform minimum standards for food store operations as patterned after the model code developed by the Association of Food and Drug Officials and the U. S. Food and Drug Administration, which are intended to ensure that food obtained from a retail food store is free of contaminants.

These new sections cover definitions, food care, personnel, equipment and utensils, cleaning and sanitization, and storage of equipment and utensils, sanitary facilities and controls, construction and maintenance of physical facilities, and compliance procedures and enactment provisions.

Concerning §229.231(b), a commenter suggested that additional definitions be provided for the words adulterated, microwave oven, misbranded, and vending machine. The agency disagrees as

the words are defined by state law and/or other rules. A commenter suggested that definitions be included for mobile retail food store and temporary retail food store. The agency disagrees as any such operations should be considered as retail food stores irrespective of their mobile or temporary nature.

Concerning §229.231(b)(3), a commenter suggested that the display area in retail food stores encompasses much more than just the bulk food area. The commenter suggested that there are numerous areas where food is displayed. The agency agrees and has modified subsection (b)(3) accordingly.

Concerning §229.231(b)(16), a commenter suggested that the definition of person-in-charge be expanded to include the statement, "If no individual is the apparent supervisor, then any employee present is the person-in-charge." The agency agrees and has added this statement to subsection (b)(16).

Concerning §229.231(b)(17), a commenter suggested that the pH level for potentially hazardous food is given as 4.6 or below, and conflicts with the department's section on food service sanitation, §229.162, which gives the pH level as 4.5 or below. The agency agrees and has changed the pH level to 4.5 or below in subsection (b)(17).

Concerning §229.231(b)(20), a commenter suggested that farmers markets should not be considered as retail food stores. The agency agrees and has included an exemption for farmers markets in §229.238 (b)(20) and has provided a definition of farmers markets in §229.231(b)(7).

Concerning §229.231(b)(25), a commenter suggested that the definition of single-service articles be expanded for clarification purposes by adding the statement to the definition "one time, one person use and then discarded." The agency agrees and has incorporated this statement into subsection (b)(25).

Concerning §229.232(a)(2)(A), a commenter suggested that the word "all" be placed at the beginning of the paragraph pertaining to milk products. The agency disagrees as the word would not alter the requirement of this paragraph, and would not contribute to the further clarification of the paragraph. A commenter suggested that all fluid milk and fluid milk products should be pasteurized and should comply with the Grade A standards as established by law. The agency agrees; however, no change has been made to subsection (a)(2)(A) because it already contains this provision. A commenter stated that there is a big taste difference between raw milk and pasteurized milk, and suggested that raw milk be allowed in retail food stores due to better taste. The agency disagrees as taste is a transient sensation, varying from person to person. The purpose of this section is to

afford the consuming public the greatest possible protection from disease. The greatest protection is provided by pasteurized milk products. A commenter stated that raw milk is healthier and more beneficial than pasteurized milk. The agency disagrees as there is no scientific data available to support such a claim. The nutritional difference between raw milk and pasteurized milk is negligible. The potential for disease is much higher from raw milk, thereby making pasteurized milk the safer, healthier product. A commenter suggested that the consumption of raw milk was not a proven health hazard. The agency disagrees as numerous disease outbreaks have been associated with the consumption of raw milk products. A commenter suggested that the Animal Health Commission, and the Milk and Dairy Division of the Texas Department of Health, together adequately address milk sanitation and safety in this state. The agency disagrees as the Animal Health Commission addresses the health of dairy animals on a periodic basis, and the Milk and Dairy Division regulates only the production aspects of milk and dairy products. There are no rules in place which adequately cover milk and dairy products offered for sale at retail. A commenter stated that there are no true records on injuries from raw milk consumption, and therefore there is no need for requiring Grade A pasteurized fluid milk and fluid milk products. The agency disagrees as there are numerous documented cases of food borne disease associated with raw milk consumption.

A commenter suggested that the entire subsection covering fluid milk and fluid milk products be stricken from the section as pasteurization was no longer needed due to refrigeration of milk products. The commenter suggested that pasteurization destroys enzymes, immune globulins, and factor X which are important components of milk. The agency disagrees as refrigeration alone is not adequate to control infectious organisms which may be present in raw milk. While pasteurization may inactivate some enzymes, these enzymes are probably inactivated by pepsin and/or gastric acidity anyway. Immune globulins are not destroyed by pasteurization, nor are they absorbed in the human intestinal tract. The hormone content of cow milk is uncertain, but hormones are not inactivated by pasteurization temperatures. Pasteurization is the best method available for achieving safety in fluid milk and fluid milk products. A commenter suggested that pasteurized milk is mixed with chemicals which cannot be tolerated by many individuals, and therefore raw milk should be available for sensitive individuals. The agency disagrees as no chemicals are added to milk for pasteurization purposes. Pasteurized milks are often fortified with vitamins A and D, but these vitamins are also present in raw milk. A commenter suggested that there

are properties in raw milk which protect individuals against any pathogens which may be present, and therefore raw milk should be allowed for sale at retail food stores. The agency disagrees as there are no identified properties of raw milk which protect against pathogens. Quite the contrary, milk is an excellent vehicle of infection because its fat content protects pathogens from gastric acid, and, being fluid, it has a relatively short gastric transit time. Thus, low level contamination, which would be readily controlled by pasteurization, presents an important hazard. A commenter suggested that certified Grade A raw milk should be permitted to be sold at retail as it is adequately inspected and safe for human consumption. The agency disagrees as modern sanitation and health standards observed by the dairy industry have not solely eliminated contamination caused by symptomatic or asymptomatic infection in the milk-producing animal. It is only with the addition of pasteurization that an adequate margin of safety exists. A commenter suggested that certain raw-milk cheeses which are produced in conformance with the Code of Federal Regulations are permitted for interstate distribution, and therefore, should be permitted for retail sale. The agency agrees and has modified subsection (a)(2)(A) accordingly. A commenter suggested that raw milk should be available for those individuals who cannot tolerate pasteurized milk and particularly those young patients referred by their physicians. The agency disagrees as there is no scientific data supporting any need for raw milk over pasteurized milk due to sensitivities to specific elements in pasteurized milk. The Center for Disease Control and the American Academy of Pediatrics support the pasteurization of milk and other dairy products. A commenter suggested that raw milk dairies have cleaner milk than pasteurized milk dairies and undergo more product testing, and therefore raw milk should be available for purchase at retail food stores. The agency disagrees as all dairies are inspected under the same guidelines, and all milk products are routinely sampled. Grade A raw milk for retail must meet the same bacterial standards as Grade A pasteurized milk. These standards do not preclude the presence of a pathogen in the milk. Pasteurization provides the additional margin of safety essential to the consuming public. There are no statutes or rules which regulate the sale of ungraded milk, for which there are no bacterial standards. This section will provide a standard for sale at the retail food store level.

A commenter suggested that rather than requiring the pasteurization of milk products in retail food stores, a simple warning statement should be placed on the label of raw milk products. The agency disagrees as this is not an effective way of protecting the public health. Some consumers cannot read, or do not

possess sufficient knowledge of the English language, to understand the warning statement. A commenter suggested that the entire subsection should be stricken since the quality of fluid milk and fluid milk products has nothing to do with retail food store sanitation. The agency disagrees as the ultimate purpose of the section is to protect the public health by ensuring that all food products purchased at retail food stores are wholesome, are safe for human consumption, and are not misbranded. A commenter suggested that if fluid milk and fluid milk products are required to be Grade A pasteurized in retail food stores, then advocates of raw milk will purchase their raw milk products from producers. These products, according to the commenter, may be inferior to products currently offered for sale. The agency agrees and has amended this subsection to require that all raw milk products sold by producers meet the Grade A raw milk for retail standards. A commenter suggested that everyone should have a freedom of choice in determining if they desire raw milk or pasteurized milk, and that this subsection should be stricken or amended to provide for that choice. The agency agrees with the individual's right to free choice, when based on informed consent, but incorrect information on the purported benefits of drinking raw milk and eating raw-milk products is so widespread that truly informed consent is difficult to achieve. Also, children who are provided with raw milk and raw milk products are exposed to the risks of infectious diseases without a full comprehension of the dangers. The agency proposes to provide a choice to consumers by amending this subsection to permit the sale of raw milk at the point of production. A commenter suggested that this subsection be amended to permit the sale of raw fluid milk and raw milk products at the point of production. The agency agrees and has amended this subsection accordingly.

Concerning §229.232(a)(2)(B), a commenter suggested that the term "repacker" is confusing and should be deleted from the paragraph. The agency disagrees as the word "repacker" addresses the person involved in repacking shellfish, and is an integral part of the section.

Concerning §229.232(a)(2)(C), a commenter suggested that a shellstock tag should include date of harvesting and bay. The agency disagrees as this would differ from the requirement in the department's §229.163(a)(2)(B), and would impose a more stringent requirement on retail food stores than on retail food service establishments.

Concerning §229.232(b)(1)(A), a commenter suggested dust and dirt be included with other potential contaminants listed in this paragraph. The agency agrees, but has substituted the term

"foreign matter" among the listed potential contaminants in subsection (b)(1)(A). has substituted the term "foreign matter" among the listed potential contaminants in subsection (b)(1)(A).

Concerning §229.232(b)(2), a commenter suggested that sewage backup be included as a significant emergency occurrence. The agency agrees and has included it in subsection (b)(2).

Concerning §229.232(c)(1)(B), a commenter suggested that no food products should be stored on the floor even if in waterproof containers due to exposure to water from mopping operations and routine spillages. The agency disagrees as the waterproof containers would preclude contamination of contents, and floor storage is permitted only in areas where floor moisture is not a problem and the area is kept clean. A commenter suggested that cased foods to be stored on the floor should specify "unopened" cases of food. The agency disagrees as the individual containers of food are securely packaged in glass, cans, etc.

Concerning §229.232(c)(2) and (3), a commenter suggested that thermometers be located in the warmest parts of coolers, and the coldest parts of hot holding devices, rather than an area representative of the temperature in the cold or hot holding unit. The commenter suggests that it would be better to lean in the direction of greater safety for the food. The agency agrees and has revised this requirement and included it in subsection (c)(2) and (3). A commenter suggested that "shall" should be changed to "should" in maintaining potentially hazardous foods at 0°F. The commenter states that not all retail stores keep their frozen foods below 0°F. The agency disagrees as the recognized industry standard for frozen foods is 0°F and below. Most retail grocers, and the food marketing institute, recommend rejection of frozen foods shipments when the temperature is in excess of 0°F. A commenter suggested that soups, cheeses, and other such food should receive some elaboration in this section as to how they may be displayed. The agency disagrees as these potentially hazardous foods are prohibited from customer self-service, and are required to be properly packaged and stored for display. No further elaboration is necessary.

Concerning §229.232(d)(4)(A)(i), a commenter suggested that bakery products having a pH of 4.6 or above, or a water activity value greater than 0.85, bear a label indicating the need for refrigeration. The agency disagrees as such a requirement would have to be carried over to all potentially hazardous foods. Since many of these foods are packaged after sale, it would be difficult to require labeling to the extent of "keep refrigerated." Prepackaged foods are fully labeled, and, where necessary, include a statement to keep them frozen or refrigerated.

Concerning §229.232(d)(5), a commenter suggested that a time limit, similar to the one for cooling foods, should be imposed on the reheating of foods. The agency disagrees as reheating times are extremely variable, and are influenced by such things as food consistency, heating surface, quantity of food to be reheated, etc. By requiring that food should be reheated rapidly, the regulatory authority may then use its own determination of what is adequate for reheating the many varieties of foods.

Concerning §229.232(d)(6) and §229.234(b)(4), a commenter suggested that thermometer accuracy should be made to conform with the accuracy requirement in the retail food service regulations. The agency agrees and has changed the range on thermometer accuracy to conform with the requirements in department sections on food service sanitation and, has changed §229.232(d)(6) and §229.234(b)(4) accordingly.

Concerning §229.232(e)(3)(A), a commenter suggested that the restriction "Potentially hazardous food shall not be provided for consumer self-service" should not apply to salad bar operations. The agency agrees that salad bar operations which are intended for individual portion service fall under the department's §§229.161-229.171, and an exemption has been provided for this type of operation in subsection (e)(3)(A).

Concerning §229.232(e)(4), a commenter suggested changing language to clarify the intent of the section without precluding the potential development of more sanitary dispensing utensils and methods. The agency agrees with the changed language and has incorporated it into subsection (e)(4).

Concerning §229.233(a), a commenter suggested that, in addition to employee hygiene, all personnel should have a working knowledge of their job as it applies to the section. The agency agrees that this would be desirable, but proposes to take no action as this would be most difficult to regulate. The section places the burden for all personnel hygiene and conduct on the food store management. In addition, any training of employees is the responsibility of management. To require otherwise would place the burden of training and certification on the regulatory agency. A commenter suggested that single-use articles should be included with single-service articles in prohibited reuse. The agency agrees and has included a statement prohibiting the reuse of single-use articles in new subsection (a)(6). A commenter suggested that this section does not specifically exempt retail food stores that do not prepare any foods or dispense unpackaged food. The commenter suggests that this is confusing as an exemption is provided in §229.235(a)(6), and that an exempting statement should be made in

§229.235(a)(3) and (6). The agency disagrees as the exemption in §229.235(a)(6) covers §229.235(a)(3) and §229.235(a)(4), and is placed in such a manner as to cover both sections without being redundant. A commenter suggested that the proposed section should be modified to allow for a two-step sanitization sequence. The agency disagrees as there is a state sterilization law, Texas Civil Statutes, Article 4476-9, which requires a three-step sanitization sequence. A two-step sequence would conflict with this law. A commenter suggested that a means of drying other than air drying should be permitted for rapid reuse of utensils in meat markets. The agency disagrees as the use of towels and other substances promotes the spread of microorganisms, and increase the risk of cross contamination. No safe alternative to air drying has been presented to regulatory agencies. A commenter suggested that retail food stores without equipment and utensil cleaning facilities should not be allowed to sell potentially hazardous foods. The agency agrees and has included this prohibition within subsection (a)(6).

Concerning §229.236(d)(3), a commenter suggested that any louvers which are included in toilet room doors that are necessary for ventilation systems should be properly screened for insect and vermin control. The agency agrees and has added this requirement to subsection (d)(3).

Concerning §229.236(e), a commenter suggested that a retail food store with no food preparation and no dispensing of unpackaged food would be required to have a compartment sink and two handwashing sinks, which is excessive. The agency disagrees as this is an incorrect statement. A facility such as the one described would not be required to have a warewashing sink, and would be required to have only one handwashing sink located in each restroom. A commenter suggested that the use of common bar soap should be prohibited. The agency disagrees as numerous studies have been conducted of common bar soap usage, and no evidence of disease transmission has been uncovered. A commenter suggested that when employee restrooms are provided for customer use, the use of these restrooms should not permit customers into unauthorized areas of the store such as the meat market, bakery, delicatessen, etc. The agency agrees and has included a statement prohibiting customer use of restrooms in unauthorized areas in subsection (e)(5).

Concerning §229.237(b)(4), a commenter suggested that utility lines and pipes installed through walls and ceilings be sealed so as not to present an open space of more than 1/32 inch. The agency agrees and has added a provision for

wall and ceiling installation in subsection (b)(4).

Concerning §229.237(e)(1), a commenter suggested this section be expanded to require mechanical ventilation to the outside in rooms from which obnoxious odors, vapors, or fumes originate for all new or extensively remodeled establishments. The commenter states that this would improve ventilation over time, and improve ventilation in restroom facilities. The agency disagrees as a requirement is made for all rooms to have sufficient ventilation to keep them free of heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. No stipulation is made as to the type of ventilation so that any means may be employed to accomplish this requirement.

Concerning §229.238(a)(3)(A), a commenter suggested that a classification is needed so that when an imminent health hazard exists, operations away from the affected area may be resumed. The agency disagrees as the section only applied to the affected area, and only a competent health authority can determine when a hazard no longer exists. A commenter suggested that in the event of an imminent health hazard, the establishment should immediately notify the regulatory authority. The agency agrees and has included this requirement in subsection (a)(3)(A).

Concerning §229.238(b)(1), a commenter suggested that the words "failure to correct" be removed from this paragraph because it would force the authority to always give notice prior to filing charges. The agency agrees and has reworded subsection (b)(1) to include any violations of the sections. Minor changes were made throughout the sections for clarification.

The City of Dallas, Texas Department of Agriculture, Austin-Travis County Health Department, South Plains Public Health District, Waco-McLennan County Public Health District, Tarrant County Health Department, City of Garland, Dallas County Health Department, Texas Retailers Association, Galveston County Health District, H. E. Butt Grocery Company, Keene Distributing, Southwestern Ice Association, Southwestern Health Organization, Associated Milk Producers Incorporated, Hungry Wolf Cooperative, Texas Health Distributors, Flatland Dairy, Warnocks Dairy, and Lubbock City Health Department commented on the sections. None of the groups or associations opposed adoption of the sections. However, some of these commenters had questions and recommendations covering parts of the sections.

The new sections are adopted under Texas Civil Statutes, Article 4476-5, §20, which provide the Texas Board of Health with the authority to promulgate reasonable and necessary rules for the efficient

enforcement of Texas Civil Statutes, Article 4476-5.

§229.231. General Provisions.

(a) Purpose. These sections shall be liberally construed and applied to promote the underlying purpose of protecting the public health.

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

(1) Bulk food—Unpackaged or unwrapped, processed, or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include fresh fruits, fresh vegetables, nuts in the shell, salad bars, and potentially hazardous foods.

(2) Corrosion-resistant materials—Those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(3) Display area—A location or locations, including physical facilities and equipment, where bulk food, and other products, are offered for customer self-service.

(4) Easily cleanable—That surfaces are readily accessible and made of such material and finish and so fabricated that residue be effectively removed by normal cleaning methods.

(5) Employee—The permit holder, individual having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food store.

(6) Equipment—Items other than utensils used in the storage, preparation, display, and transportation of food such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators and freezers, sinks, ice makers, and similar items used in the operation of a retail food store. This item does not include fork lift trucks or dollies.

(7) Farmers market—An establishment or location used by producers and vendors primarily for the distribution and sale of raw and custom-shelled agricultural products directly to consumers and wholesalers. The sale of other food products at such market shall not disqualify it as a farmers market provided that such food products meet all applicable federal, state, and local health laws regulating the manufacture and sale of such food products. The occasional sale of nonfood products not regulated by the Texas Department of Health shall not disqualify it as a farmers market.

(8) Food—Any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for

sale in whole or in part for human consumption.

(9) Food-contact surfaces—Those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

(10) Food-service establishment—Any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes delicatessens that offer prepared food in individual service portions. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

(11) Hermetically sealed container—A container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(12) Law—Applicable federal, state, and local statutes, ordinances, and regulations.

(13) Packaged—Bottled, canned, cartoned, bagged, or securely wrapped.

(14) Permit—The document issued by the regulatory authority which authorizes a person to operate a retail food store.

(15) Person—Any individual, partnership, corporation, association, or other legal entity.

(16) Person in charge—The individual present in a retail food store who is the supervisor of the retail food store at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

(17) Potentially hazardous food—Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include: clean, whole, uncracked, odor-free shell eggs; foods that have a pH level of 4.5 or below or a water activity (aw) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.

(18) Product module—A food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

(19) Regulatory authority—The state and/or local enforcement authority or authorities having responsibility for enforcing these sections.

(20) **Retail food store**—Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; farmers markets; or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication (FDA) 78-2091.

(21) **Safe materials**—Articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in the Federal Food, Drug, and Cosmetic Act, §201(s) or §201(t), amended May 1980, Department of Health and Human Services Publication (FDA) 80-1051, as used, they are safe only if they are used in conformity with regulations established pursuant to that Act §409 or §706. Other materials are safe only if, as used, they are not food additives or color additives as defined in the Federal Food, Drug, and Cosmetic Act §201(s) or §201(t), amended May 1980, Department of Health and Human Services Publication (FDA) 80-1051, and are used in conformity with all applicable regulations of the Food and Drug Administration.

(22) **Sanitization**—Effective bactericidal treatment as defined in the Procedures for the Bacteriological Examination of Food Utensils and/or Food Equipment Surfaces, Technical Information Bulletin 1, 1967, Public Health Service Publication 1631, by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on cleaned food-contact surfaces of utensils and equipment.

(23) **Sealed**—Free of cracks or other openings that permit the entry or passage of moisture.

(24) **Servicing area**—A designated location or locations equipped for cleaning, sanitizing, drying, or refilling product modules or for preparing bulk food.

(25) **Single-service articles**—Items used by the retailer or consumer such as cups, containers, lids, and packaging materials, including bags and similar articles, intended for contact with food, and designed for one-time, one person use and then discarded. The term does not include single-use articles such as number 10 cans, aluminum pie pans, bread wrappers, and similar articles into which food has been packaged by the manufacturer.

(26) **Transportation** (transport-

ed)—Movement of food within the retail food store or delivery of food from that retail food store to another place while under the control of the person in charge.

(27) **Utensil**—Any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

(28) **Warewashing**—The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

§229.252. Food.

(a) Food supplies.

(1) **General.** Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. Food prepared in a home shall not be used or offered for sale. Bulk food product modules shall be labeled with either:

(A) the manufacturer's or processor's bulk container labeling plainly in view; or

(B) a counter card, sign, or other appropriate device bearing prominently and conspicuously the common name of the product, a list of ingredients in proper order of predominance and declaration of artificial color or flavor and chemical preservatives if contained in the product.

(2) **Special requirements.**

(A) Fluid milk and fluid milk products used or offered for sale shall be pasteurized and shall comply with the Grade A standard as established by The Texas Milk Grading and Labeling Law, Texas Civil Statutes, Article 165-3. Raw milk may be sold by the producer directly to the consumer at the point of production, i.e., at the farm, provided that such producer has been issued a Grade A raw milk for retail permit, and complies with all the standards for Grade A raw milk for retail. Dry milk and dry milk products used or offered for sale shall be made from pasteurized milk and milk products. Raw milk cheeses, not requiring pasteurization, produced in accordance with 21 Code of Federal Regulations Part 133, shall be exempt from the provisions of this subsection.

(B) Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be received and/or repacked in nonreturnable packages identified with the name and address of the shell-stock processor, shucker-packer, or repacker, and the state certification number issued according to law. Shucked shellfish shall be kept in the container in which they were received until used or sold.

(C) Each original container of unshucked shellfish (oysters, clams, or mussels) shall be identified by an attached tag, to be retained for a period of 90 days, that states the name and address of the original shellfish processor, the date and bay of harvest, the kind and quantity of shellfish and the certification number issued by the state or foreign shellfish control agency, where applicable.

(D) Only clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used or offered for sale.

(E) Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged and shall meet all of the requirements in the department's, §§229.181-229.184 of this title (relating to the Registration of Manufacturers of Foods).

(b) Food protection.

(1) **General.**

(A) At all times, including while being stored, prepared, displayed, dispensed, packaged, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling, flooding, draining, and overhead leakage or condensation, foreign matter, or other agents of public health significance. The temperature of potentially hazardous foods shall be 45°F (7°C) or below, or 140°F (60°C) or above, at all times, except as otherwise provided in these sections. Hermetically sealed packages shall be handled so as to maintain product and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have been returned to, or are being detained by, the retail food store because of spoilage, container damage, or other public health considerations, shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the regulatory authority.

(B) Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling, and storage.

(C) Containers of bulk pet foods and bulk nonfood items shall be separated from other foods by a barrier or open space from product modules.

(D) Bulk food returned to the store by the customer shall not be offered for resale.

(E) Only containers provided by the store in the display area shall be filled with bulk foods.

(2) **Emergency occurrences.** The person in charge of a retail food store that is affected by a fire, flood, extended power outage, sewage backup, or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the regulatory authority of the emergency.

(c) Food storage.

(1) General.

(A) Food packaged in an immediate closed container, once the container is opened in the retail food store prior to use or retail sale, shall be kept covered. Food, whether raw or prepared, if removed from the immediate closed container in which it was originally packaged prior to use or retail sale, shall be stored in a clean, covered container, except during necessary periods of preparation. Whole and unprocessed fresh raw vegetables and fresh raw fruits shall be exempted from this requirement. Container covers shall be impervious and nonabsorbent. During periods of storage, subprimal cuts of meat shall be covered with single-service wrapping material. Primal cuts, quarters or sides of meat, or processed meats such as country hams, slab bacon, and smoked or cured sausages, may be hung uncovered on clean, sanitized hooks or placed on clean, sanitized metal racks in such a manner as to preclude contamination of any food products in storage.

(B) Containers of food shall be stored a minimum of six inches (152 millimeters (mm)) above the floor or stored on dollies, skids, racks, or open-ended pallets, provided such equipment is easily movable either by hand or with the use of a pallet-moving equipment that is on the premises and used. Such storage areas shall be kept clean. Cased food packaged in cans, glass, or other waterproof containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean.

(C) Food and containers of food shall not be stored under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

(D) Packaged foods shall not be stored in contact with water or undrained ice.

(E) A food ingredient, such as flour, sugar, salt, baking powder, cooking oil or vinegar, that is not stored in the original package and is not readily identifiable on sight, shall be stored in a container identifying it by common name.

(F) Labels or marking pens shall be available to customers to identify their take-home containers with the common name of the product unless the product is readily identifiable on sight.

(G) Toilet rooms and their vestibules, and garbage or mechanical rooms shall not be used for the storage of food.

(2) Refrigerated/frozen storage.

(A) Refrigeration units or effectively insulated units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during stor-

age. Each mechanically refrigerated unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F (1°C). The sensing element shall be located to measure the air temperature in the warmest part of the unit. The thermometer scale shall be located to be easily readable. Recording thermometers, accurate to 3°F (1°C) may be used in lieu of indicating thermometers.

(B) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F (7°C) or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed four hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 45°F (7°C) or below unless maintained in accordance with the hot storage requirements of these sections.

(C) Potentially hazardous frozen foods shall be kept frozen and shall be stored at an air temperature of 0°F (-18°C) or below except for defrost cycles and brief periods of loading or unloading.

(D) Ice used as a cooling medium for food storage shall not be used or sold for human consumption.

(3) Hot storage.

(A) Hot food storage units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at the required temperature during storage. Each hot food storage unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F (1°C). The sensing element shall be located to measure the air temperature in the coolest part of the unit. The thermometer scale shall be located to be easily readable. Recording thermometers accurate to 3°F (1°C) may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as heat lamps, calrod units, or insulated food transport carriers, a food product thermometer shall be available and used to check internal food temperature.

(B) The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F (60°C) or above, except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140°F (60°C) or above unless maintained in accordance with the refrigerated storage requirements of these rules.

(d) Food preparation.

(1) General.

(A) Food shall be prepared with a minimum of manual contact. Food shall be prepared on food-contact surfaces and with utensils which are clean and have been sanitized.

(B) Each time there is a change in processing between raw beef, raw pork, raw poultry, or raw seafood, or a change in processing from raw to ready-to-eat foods, each new operation shall begin with food-contact surfaces and utensils which are clean and have been sanitized. Salads and other ready-to-eat foods should be prepared in separate rooms or in areas that are separated by a barrier or open space from areas used for processing potentially hazardous raw products.

(C) Potentially hazardous foods that are in a form to be consumed without further cooking such as salads, sandwiches, and filled pastry products should be prepared from chilled products.

(2) Raw fruits and raw vegetables. Raw fruits and raw vegetables that will be cut or combined with other ingredients or will be otherwise processed into food products by the retail food store will be thoroughly cleaned with potable water before being used.

(3) Cooking potentially hazardous foods.

(A) Potentially hazardous foods being processed within the retail food store by cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F (60°C), except that:

(i) poultry, poultry stuffings, stuffed meats, and stuffings containing meat, shall be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process;

(ii) pork and pork products shall be cooked to heat all parts of the food to at least 150°F (66°C), or, if cooked in a microwave oven, to at least 170°F (77°C);

(iii) when beef roasts under 10 pounds (five kilograms (kg)) in weight are cooked in a still dry heat oven, the oven shall be preheated to and held at an air temperature of at least 350°F (177°C) throughout the process. If cooked in a convection oven, the oven shall be preheated to and held at an air temperature of at least 325°F (163°C) throughout the process.

(B) When beef roasts of 10 pounds (five kilograms (kg)) or over in weight are cooked in a dry heat oven, the oven shall be preheated to and held at an air temperature of at least 250°F (122°C) throughout the process.

(C) Further, in order to meet public health requirements for the processes cited in subparagraphs (A)-(B) of this paragraph, the following table lists the minimum internal temperature of the beef roast for the minimum time the roast needs to be held at such temperature.

**Minimum Holding Times for Beef Roasts
at Various Internal Temperatures**

Minimum internal temperature		Minimum holding time	Minimum internal temperature		Minimum holding time
°F	°C	Minutes	°F	°C	Minutes
130	54.4	121	138	58.9	19
131	55.0	97	139	59.5	15
132	55.6	77	140	60.0	12
133	56.1	62	141	60.6	10
134	56.7	47	142	61.1	8
135	57.2	37	143	61.7	6
136	57.8	32	144	62.2	5
137	58.4	24			

(D) Beef roasts, if cooked in a microwave oven, shall be cooked to an internal temperature of at least 145°F (63°C).

(4) Bakery product fillings.

(A) Custards, cream fillings, and similar products, including synthetic fillings, shall meet the temperature requirement in subsection (c)(2)(B) of this section following preparation and be maintained at that temperature during storage, transportation, and display. Products with synthetic fillings may be excluded from this requirement if:

(i) the food, including the interface between the bakery product and its filling, has a pH level of 4.5 or below, or a water activity (aw) value of 0.85 or less under standard conditions;

(ii) it is handled in such a manner as to preclude contamination with and the growth of pathogenic microorganisms after heat processing; or

(iii) other scientific evidence is on file with the regulatory authority demonstrating that the specific product will not support the growth of pathogenic microorganisms.

(B) Bakery products with synthetic fillings, which meet the criteria in subparagraph (A) of this paragraph, may be labeled to state that refrigeration is not required.

(5) Reheating. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F (74°C) or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

(6) Food product thermometers. Metal stem-type numerically scaled indicating thermometers, accurate to 2°F (1°C) shall be provided and used to assure attainment and maintenance of proper temperatures during preparation of all potentially hazardous foods.

(7) Thawing potentially hazardous foods. Potentially hazardous foods shall be thawed:

(A) in refrigerated units at a temperature not to exceed 45°F (7°C);

(B) under potable running water at a temperature of 70°F (21°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food;

(C) in a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(D) as part of the conventional cooking process.

(e) Food display.

(1) Potentially hazardous foods. Potentially hazardous foods shall be held at an internal temperature of 45°F (7°C) or below or at an internal temperature of 140°F (60°C) or higher during display, except that rare roast beef which is offered for sale hot shall be held at a temperature of at least 130°F (55°C).

(2) Frozen foods. Foods intended for sale in a frozen state shall be displayed at an air temperature of 0°F (-18°C) or below, except for defrost cycles and brief periods of loading or unloading. Frozen foods should be displayed below or behind product food lines according to cabinet manufacturers' specifications.

(3) Food display.

(A) Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by being packaged, by display cases, by covered containers for self-service, or by similar protective equipment. All food shall be displayed above the floor in a manner that will protect the food from contamination. Hot or cold food units shall be provided to assure the maintenance of

potentially hazardous food at the required temperature during display. Potentially hazardous food shall not be provided for consumer self-service except in salad bar operations intended for individual portion service.

(B) Bulk foods shall be dispensed only from product modules which are protected by close fitting, individual covers. If opened by the customer, the covers shall be self-closing and shall remain closed when not in use.

(C) Customer access to bulk food in product modules shall be limited and controlled to avoid the introduction of contaminants. Means considered suitable include, but are not limited to:

(i) providing a product-module depth of no more than 18 inches (457 millimeters (mm)), and

(ii) either locating product modules with access from the top so that there is at least 30 inches (762 mm) between the access point and the floor; or, if the product module access point is less than 30 inches (762 mm) off the floor, providing access from the side or at an angle provided that when the product module is open, the cover extends across the surface of the product and provides overhead protection.

(4) Dispensing utensils. To avoid unnecessary manual contact with the food, suitable dispensing utensils and single-service articles shall be used by employees. Consumers who serve themselves bulk food shall be provided suitable dispensing utensils. Manual contact of bulk foods by the customer during dispensing shall be avoided. Methods considered suitable are:

(A) mechanical dispensing devices including gravity dispensers, pumps, extruders, and augers;

(B) manual dispensing utensils including tongs, scoops, ladles and spatulas; and

(C) wrapping or sacking.

(5) Manual use of utensils. If the

dispensing devices and utensils listed in subparagraphs (A) and (B) of this paragraph do not prevent manual customer contact with certain bulk foods, then these foods must be wrapped or sacked prior to display.

(6) Protection from contamination. Manual dispensing utensils listed in subparagraph (B) of this paragraph shall be protected against becoming contaminated and serving as vehicles for introducing contamination into bulk food. Means considered suitable include, but are not limited to:

(A) using a tether which is constructed of easily cleanable material, is of such length that the utensil cannot contact the floor, and is designed to prevent interference with the requirement for close fitting covers, or

(B) storing the utensil in a sleeve or protective housing attached or adjacent to the display unit when not in use, or utilizing a utensil designed so that the handle cannot contact the product if left in the product module. Since it is not practical to store ladles and spatulas used in other than dry foods in sleeves or protective housings, they shall be stored in the food with handles extending to the outside of the product module. Handles shall not prevent lids from being self-closing.

(C) Storing the utensil in running potable water.

(7) Food sample demonstrations and food promotions. When food sample demonstrations and food promotions are authorized in the retail food store, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of these sections.

(f) Food transportation by the retail food store. Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables, shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of these sections relating to food protection and food storage. Foods packaged in immediate closed containers do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

§229.234. *Equipment and Utensils.*

(a) **Materials.** Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food. Product modules and utensils shall be constructed of safe materials; and shall be corrosion resistant, nonabsor-

bent, smooth, easily cleanable and durable under conditions of normal use.

(1) **Solder.** If solder is used, it shall be composed of safe materials and be corrosion resistant.

(2) **Wood.** Hard maple or equivalent nonabsorbent wood that meets the general requirements set forth in this subsection may be used for cutting blocks, cutting boards, and bakers' tables. Wood shall not be used as a food-contact surface under other circumstances, except for contact with raw fruits, raw vegetables, and nuts in the shell.

(3) **Plastics and rubber materials.** Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods, and which meet the general requirements set forth in this subsection are permitted for repeated use.

(4) **Cutting surfaces.** Cutting surfaces subject to scratching and scoring must be resurfaced so as to be easily cleaned, or be discarded when these surfaces can no longer be effectively cleaned and sanitized.

(5) **Single-service articles.** Single-service articles shall not be reused.

(6) **Single-use articles.** Single-use articles shall not be reused.

(b) **Design and fabrication.**

(1) **General.** All equipment and utensils, including plastic-ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. As a general principle, the specifications for design and fabrication of equipment should maintain uniformity with equipment design criteria found in food codes and national equipment standards.

(A) **Food-contact surfaces** shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is used for cooking. Threads shall be designed to facilitate cleaning; ordinary V type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers, hot oil cooking equipment, or hot oil filtering systems, such threads shall be minimized.

(B) **Equipment containing bearings and gears** requiring lubricants not made of safe materials shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces shall be lubricated with materials meeting the requirements of 21 Code of Federal Regulations Part 178.3570.

(C) **Sinks and drain boards** shall be sloped to drain and be self-draining.

(D) **Product modules, lids, dispensing units and utensils** shall be designed and fabricated to meet the requirements for food-contact surfaces.

(2) **Accessibility.** Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(A) without being disassembled;
(B) by disassembling without the use of tools; or

(C) by easy disassembling with the use of only simple tools, such as mallets, screwdrivers, or open-end wrenches which are kept near the equipment.

(D) **Individual product modules** shall be designed to be easily removable from the display unit for servicing unless the modules are so designed and fabricated that they can be effectively cleaned (and sanitized when necessary) through a manual in-place cleaning procedure that will not contaminate or otherwise adversely affect bulk food or equipment in the adjoining display area.

(3) **Cleaned in place (CIP).** Equipment designed and constructed for CIP shall meet requirements equivalent to those contained in the department's rules on food service sanitation, §229.165(b)(3) of this title (relating to Equipment and Utensils).

(4) **Food product thermometers.** Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to 2°F (1°C).

(5) **Nonfood-contact surfaces.**

(A) **Surfaces of equipment** not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(B) **Surfaces of product module display units, tethers, and all display equipment** not intended for food-contact, but which are exposed to splash, food debris, or other soiling, shall be designed and fabricated to be smooth, cleanable, and durable under conditions of normal use and free of unnecessary ledges, projections, or crevices.

(C) **Tethers** shall be designed to be easily removable from the products module for cleaning.

(D) **The materials for nonfood-contact surfaces** shall be nonabsorbent or made nonabsorbent by being finished and sealed with a cleanable coating.

(6) **Ventilation hoods.** Ventilation hoods and devices, where installed, shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-con-

tact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement, if not designed to be cleaned in place.

(7) Maintenance of equipment and utensils. All equipment and utensils shall be maintained in good repair to comply with the requirements of this code.

(c) Equipment installation and location.

(1) General. Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, water lines that are leaking or on which condensed water has accumulated, open stairwells, or other sources of contamination.

(2) Table-mounted equipment.

(A) Table-mounted equipment shall be installed to facilitate the cleaning of the equipment and the adjacent areas.

(B) Equipment that is mounted on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a four-inch (102 mm) clearance between the table or counter, except that if no part of the table under the equipment is more than 18 inches (457 mm) from cleaning access, the clearance space shall be three inches (76 mm) or more; or if no part of the table under the equipment is more than three inches (76 mm) from cleaning access, the clearance space shall be two inches (51 mm) or more.

(C) Equipment is portable within the meaning of subparagraph (B) of this paragraph if:

(i) it is small and light enough to be moved easily by one person;

(ii) it has no utility connection, has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning;

(iii) it is table-mounted, such as powered mixers, grinders, slicers, tenderizers, and similar equipment, which does not exceed 80 pounds (36 kilograms (kg)), or which is equipped with a mechanical means of safely tilting the unit for cleaning.

(3) Floor-mounted equipment.

(A) Floor-mounted equipment, unless easily moveable, shall be:

(i) sealed to the floor; or

(ii) elevated on legs to provide at least a six-inch (152 mm) clearance between the floor and equipment, except that equipment may be elevated to provide at least a four-inch (102 mm) clearance between the floor and equipment if no part of the floor under the equipment is more than six inches (152 mm) from cleaning access.

(B) Display shelving units, display refrigeration units, and display freezer units are exempt from the provisions of clauses (i) and (ii) of this subparagraph if they are installed so that the floor beneath the units can be cleaned.

(C) Equipment is easily movable if:

(i) it is mounted on wheels or casters; and

(ii) it has no utility connection, has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

(D) Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch (0.8 mm) and, if exposed to seepage, the space shall be sealed.

(4) Aisles and working spaces. Aisles and working spaces between units of equipment and between equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as dollies, skids, racks, and open-ended pallets shall be positioned to provide accessibility to working areas.

§229.235. *Cleaning, Sanitization, and Storage of Equipment and Utensils.*

(a) Equipment and utensil cleaning and sanitization.

(1) Cleaning frequency.

(A) Utensils and food-contact surfaces of equipment shall be cleaned and sanitized as follows:

(i) each time there is a change in processing between raw beef, raw pork, raw poultry, or raw seafood, or a change in processing from raw to ready-to-eat foods;

(ii) after any interruption of operations during which time contamination may have occurred; and

(iii) after final use each working day.

(B) Tongs, scoops, ladles, spatulas, other appropriate utensils, and tethers used by customers shall be cleaned and sanitized at least daily or at more frequent intervals based on the type of food and amount of food particle accumulation or soiling.

(C) Product modules, lids, and other equipment shall be cleaned prior to restocking, when soiled or at intervals on a schedule based on the type of food and amount of food particle accumulation.

(D) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(E) The food-contact surfaces of cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once each day of use, except that this shall not apply to hot oil cooking equip-

ment and hot oil filtering systems. The food-contact surfaces of all baking equipment and pans shall be kept free of encrusted grease deposits and other accumulated soil.

(F) Food-contact surfaces shall be cleaned and sanitized immediately if contamination is observed or suspected.

(G) Nonfood-contact surfaces of equipment, including transport vehicles, shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(2) Wiping cloths.

(A) Cloths or sponges used for wiping food spills on food-contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in paragraph (3)(G) of this subsection and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

(B) Cloths or sponges used for cleaning nonfood-contact surfaces of equipment shall be clean and rinsed as specified in subparagraph (A) of this paragraph and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

(C) Single-service disposable towels are permitted in lieu of wiping cloths or sponges if they are discarded after each use.

(3) Manual cleaning and sanitizing.

(A) Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids, and dispensing utensils.

(B) For manual cleaning and sanitizing of equipment and utensils, a sink with two or three compartments shall be provided and used. Sink compartments shall be large enough to accommodate the immersion of most equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Where immersion in sinks is impracticable (e.g., because equipment is too large), equipment and utensils shall be cleaned and sanitized manually or by pressure spray methods.

(C) Drain boards or easily moveable utensil tables of adequate size shall be provided for proper storage and handling of soiled utensils prior to cleaning and for cleaned utensils following sanitizing and shall be located so as not to interfere with proper use of the warewashing facilities.

(D) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove food particles and soil.

(E) The sinks shall be cleaned before use.

(F) When a three-compartment sink is utilized for warewashing, the operation shall be conducted in the following sequence:

(i) equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label;

(ii) equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and

(iii) equipment and utensils shall be sanitized in the third compartment according to one of the methods included in subparagraph (H) of this paragraph.

(G) When a two-compartment sink is utilized for warewashing, a three-step sanitization sequence must be followed which is acceptable to the regulatory authority.

(H) The food-contact surfaces of all equipment and utensils shall be sanitized by one of the following methods:

(i) immersion for at least 1/2 minute in clean, hot water of a temperature of at least 170°F (77°C);

(ii) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and having a temperature of at least 75°F (24°C);

(iii) immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine, having a pH range which the manufacturer has demonstrated to be effective and at a temperature of at least 75°F (24°C);

(iv) immersion for at least one minute in a clean solution containing 200 parts per million of a quaternary ammonium compound and having a temperature of at least 75°F (24°C). The quaternary ammonium compound used shall have been compounded by the manufacturer to assure effectiveness in waters up to 500 parts per million hardness at use concentration;

(v) immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 Code of Federal Regulations Part 178.1010, that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75°F (24°C) for one minute;

(vi) treatment with steam free from materials or additives other than those specified in 21 Code of Federal Regulations Part 173.310, in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(vii) rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under clauses (ii), (iii), and (v) of this subparagraph in the case of equipment too large to sanitize by immersion.

(I) When hot water is used for sanitizing, the following equipment shall be provided and used:

(i) an integral heating device

or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C);

(ii) a numerically scaled indicating thermometer, accurate to 3°F (1°C) convenient to the sink for frequent checks of water temperature; and

(iii) utensil racks or baskets of such size and design to permit complete immersion of utensils and equipment in the hot water.

(J) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 Code of Federal Regulations Part 178.1010, and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used.

(4) Mechanical cleaning and sanitizing.

(A) Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids, and dispensing utensils.

(B) Mechanical cleaning and sanitizing equipment and practices shall conform to the provisions contained in the department's rules on food service sanitation, §229.166(a)(4) of this title (relating to Cleaning, Sanitation, and Storage of Equipment and Utensils).

(5) Drying. Unless used immediately after sanitization all equipment and utensils shall be air dried. Towel drying shall not be permitted.

(6) Retail food stores without equipment and utensil cleaning facilities. Retail food stores that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense potentially hazardous food or unpackaged food other than raw fruits and raw vegetables.

(b) Equipment and utensil handling and storage.

(1) Handling. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination.

(2) Storage.

(A) Cleaned and sanitized utensils and equipment shall be stored at least six inches (152 mm) above the floor in a clean, dry location in a way that protects them from splash, dust, and other means of contamination. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

(B) Utensils shall be air dried before being stored or shall be stored in a self-draining position.

(C) Stored utensils shall be covered or inverted wherever practical.

(3) Single-service articles.

(A) Single-service articles shall be stored in closed cartons or containers at least six inches (152 mm) above the floor or on easily movable dollies, skids, racks, or open-ended pallets. Such storage shall protect the articles from contamination and shall not be located under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

(B) Single-service articles shall be handled in a manner that prevents contamination of surfaces that may come in contact with food.

(C) Take-home containers (bags, cups, lids, etc.) provided in the display area for customer use shall be stored and dispensed in a sanitary manner.

(4) Prohibited storage areas. Food equipment, utensils, or single-service articles shall not be stored in locker rooms, toilet rooms or their vestibules, garbage rooms, or mechanical rooms.

§229.236. *Sanitary Facilities and Controls.*

(a) Water supply.

(1) General. Sufficient potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to law.

(2) Water delivery. All potable water not provided to the retail food store directly from the source by pipe shall be delivered in a bulk water transport system and shall be transferred to a closed water system. Both of these systems shall be constructed, maintained, and operated according to law.

(3) Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

(4) Steam. Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 Code of Federal Regulations Part 173.310.

(b) Sewage—general. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated according to law. Nonwater carried sewage disposal facilities are prohibited, except as permitted by the regulatory authority.

(c) Plumbing.

(1) General. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any other system containing:

(A) water of unknown or questionable origin, or

(B) contaminating or polluting substances.

(2) Nonpotable water system. A nonpotable water system is permitted for air conditioning, equipment cooling, and fire protection, and shall be installed according

to law. Nonpotable water shall not directly or indirectly contact food or equipment or utensils that contact food. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) Backflow. The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and the fixture's flood level rim. No hose shall be attached to a faucet that is not equipped with a backflow prevention device.

(4) Grease traps. Grease traps, if used, shall be located to be easily accessible for cleaning.

(5) Garbage grinders. Garbage grinders, if used, shall be installed and maintained according to law.

(6) Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a warewashing machine is located within five feet (152 centimeters (cm)) of a trapped floor drain, then warewasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if permitted by law.

(d) Toilet facilities.

(1) Toilet installation. Toilet facilities shall be installed according to law, shall be at least one and not less than the number required by law, shall be conveniently located, and shall be accessible to employees at all times.

(2) Toilet design. Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet rooms. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing solid doors, except for screened louvers that may be necessary for ventilation systems.

(4) Toilet facility maintenance. Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

(e) Handwashing facilities.

(1) Handwashing facility installation. Handwashing facilities shall be installed according to law, shall be at least one and not less than the number required by law, and shall be conveniently located to permit use by all employees in food preparation and warewashing areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to

toilet rooms or their vestibules. Sinks used for food preparation or for warewashing shall not be used for washing of hands or for any other purpose.

(2) Handwashing facility faucets. Each handwashing facility shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

(3) Handwashing supplies. A supply of hand-cleansing soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

(4) Handwashing facility maintenance. Handwashing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

(5) Handwashing available at bulk food display area. When handwashing facilities are not available at the bulk food display area, customers, upon request, are permitted access to handwashing facilities located in employee restroom(s), provided that access to employee restrooms does not allow customers into unauthorized areas such as the meat market, bakery, and delicatessen. Accessibility may be required by state or local authority.

(6) Waste receptacle(s). When sanitary paper towels or disposable towelettes are provided, easily cleanable waste receptacle(s) shall be conveniently provided in the display area.

(f) Garbage and refuse.

(1) Containers.

(A) Garbage and refuse shall be held in durable, easily cleanable, insect-resistant, and rodent-resistant containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers. Such bags and durable plastic garbage and refuse containers may be used for storage inside the retail food store.

(B) Containers used in food preparation and utensil washing areas shall be kept covered during nonworking hours and after they are filled.

(C) Containers stored outside the establishment, including dumpsters, compactors, and compactor systems, shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

(D) There shall be a sufficient number of containers to hold all the gar-

bage and refuse that accumulates.

(E) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food equipment, utensils, or food preparation areas. Suitable facilities, detergent, and hot water or steam, shall be provided and used for cleaning containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

(2) Storage.

(A) Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of nonrodent-resistant plastic containers, unprotected plastic bags, wet strength paper bags, or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(B) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect and rodent resistant and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency.

(C) Outside storage areas or enclosures, if used, shall be kept clean and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency. Garbage and refuse containers, dumpsters, and compactor systems located outside, shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(3) Disposal.

(A) Garbage and refuse shall be disposed of often enough to prevent the development of objectionable odors and the attraction of insects and rodents.

(B) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration in accordance with law. Areas around incineration units shall be kept clean and orderly.

(g) Insect and rodent control.

(1) General. Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents, flies, cockroaches, or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

(2) Openings. Openings to the outside shall be effectively protected against the entry of rodents. Outside openings shall be protected against the entry of insects by tight-fitting, self-closing doors; closed windows; screening; controlled air currents; or other means. Screen doors shall be self-closing, and screens for windows, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-

fitting and free of breaks. Screening material shall be not less than 16 mesh to the inch.

§229.237. Construction and Maintenance of Physical Facilities.

(a) Floors.

(1) Floor construction.

(A) Except as specified in paragraph (2) of this subsection, floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms, and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight-fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(B) Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain.

(C) In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials or where water flush cleaning methods are used, the junctures between walls and floors shall be coved and sealed. In all other cases, the juncture between walls and floors shall be coved so as not to present an open seam of more than 1/32 inch (0.8 mm).

(2) Floor carpeting. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting shall not be used in food preparation and warewashing areas, in food storage areas, or in toilet room areas where urinals or fixtures are located.

(3) Prohibited floor covering. Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as floor coverings; however, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

(4) Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained in good repair.

(5) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. Utility service lines and pipes installed through the floor shall be effectively sealed so as not to present an open space. In all new or extensively remodeled establishments, installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

(b) Walls and ceilings.

(1) Maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(2) Construction. The walls, wall coverings, and ceilings of walk-in refrigeration units, food preparation areas, warewashing areas, and toilet rooms and their vestibules shall be smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth easily cleanable surface.

(3) Exposed construction. Studs, joists, and rafters shall not be exposed in those areas listed in paragraph (2) of this subsection. If exposed in other rooms or areas they shall be finished to provide a cleanable surface.

(4) Utility line installation. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in paragraph (2) of this subsection. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes installed through walls and ceilings shall be effectively sealed so as not to present an open space.

(5) Attachments. Light fixtures, vent covers, wall mounted fans, decorative materials, and similar attachments to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(6) Covering material installation. Wall and ceiling covering materials shall be attached and sealed in a manner to be easily cleanable.

(c) Cleaning physical facilities.

(1) General. Cleaning of floors, walls, and ceilings shall be done as often as necessary, but preferably during periods when the least amount of food is exposed, such as after closing. Only dustless methods of cleaning floors, walls, and ceilings shall be used, such as vacuum cleaning, wet cleaning, treated dust mops, or the use of dust-arresting sweeping compounds with brooms. Floors, mats, duckboards, walls, ceilings, and attachments (e.g., light fixtures, vent covers, wall mounted fans, and similar equipment), and decorative materials (e.g., signs and advertising materials) shall be kept clean.

(2) Service sinks. At least one service sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. Handwashing or warewashing facilities, or food preparation sinks shall not be used for this purpose.

(d) Lighting.

(1) General.

(A) Permanently fixed artificial light sources shall be installed to provide at

least 50 footcandles of light on all food preparation surfaces and at warewashing work levels.

(B) Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches (762 mm) from the floor:

(i) at least 30 footcandles of light in sales areas, utensil and equipment storage areas, and in handwashing and toilet areas; and

(ii) at least 20 footcandles of light in walk-in refrigeration units, dry food storage areas, and in all other areas.

(2) Protective shielding.

(A) Lamps located over or within food storage, food preparation, and food display facilities, and facilities where utensils and equipment are cleaned and stored shall be shielded, coated, or otherwise shatter resistant.

(B) Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

(e) Ventilation.

(1) General. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create a harmful or unlawful discharge. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

(f) Dressing rooms and locker areas.

(1) Dressing rooms and areas. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, food storage, food display, warewashing, or storage of utensils and equipment.

(2) Locker areas. Lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may only be located in the designated dressing rooms or areas or, in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

(g) Poisonous or toxic materials.

(1) Materials permitted. Only those poisonous or toxic materials necessary and intended for the maintenance of the establishment, including the cleaning and sanitization of equipment and utensils, and the control of insects and rodents, shall be present in retail food stores, except those items being stored or displayed for retail sale as described in paragraph (5) of this subsection.

(2) Labeling of materials. Containers of poisonous or toxic materials necessary for operational maintenance of the estab-

lishment shall be prominently and distinctly labeled in accordance with law. Small working containers of bulk cleaning agents shall be individually labeled for easy identification of contents.

(3) Storage of materials. Poisonous or toxic materials necessary for the maintenance of the establishment consist of the following two categories:

(A) insecticides and rodenticides;

(B) detergents, sanitizers, related cleaning or drying agents, and caustics, acids, polishes, and other chemicals.

(4) Location of materials. Materials in subparagraphs (A) and (B) of this paragraph shall be stored and located to be physically separated from each other; shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose; and, to preclude potential contamination shall not be stored above or intermingled with food, food equipment, utensils, or single-service articles, except that this latter requirement does not prohibit the convenient availability of detergent sanitizers, or sanitizers at warewashing facilities.

(5) Use of materials.

(A) Sanitizers, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees or other persons.

(B) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way other than in full compliance with the manufacturer's labeling.

(6) Storage and display of materials for retail sale. Poisonous or toxic materials stored or displayed for retail sale shall be separated from food and single-service articles by spacing, partitioning, or dividers. These materials shall not be stored or displayed above food or single-service articles.

(7) First-aid supplies and personal medications. Retail food store employee first-aid supplies and personal medications shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

(h) Premises.

(1) General.

(A) Retail food stores and all parts of the property used in connection with operations of the establishment shall be reasonably free of litter and articles not essential to the operation or maintenance of the establishment.

(B) The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to facilitate drainage.

(2) Living areas. No operation of a retail food store shall be conducted in any

room used as living or sleeping quarters. Retail food store operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

(3) Laundry facilities.

(A) If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work clothes used in the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

(B) Separate rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

(4) Linens and work clothes storage.

(A) Clean work clothes and linens, including articles such as wiping cloths, shall be stored in a clean place and protected from contamination until used.

(B) Soiled work clothes and linens, including articles such as wiping cloths, shall be kept in nonabsorbent containers or washable laundry bags until removed for laundering and shall be stored to prevent contamination of food, food equipment and utensils.

(5) Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

(6) Animals.

(A) Live animals shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store under the control of the permit holder. This exclusion does not apply to edible fish, crustacea, shellfish, or fish in aquariums.

(i) Live or dead fish bait shall be stored separately from food or food products.

(ii) Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas, and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons. Guide dogs accompanying blind persons shall be permitted in sales areas.

(B) While on duty, persons employed in the food preparation areas of an establishment shall not care for or handle any pets, or patrol/sentry dogs.

§229.238. Compliance Procedures.

(a) Inspections.

(1) Access. Agents of the regulatory authority, after proper identification, shall be permitted to enter any retail food store at any reasonable time, for the purpose of making inspections to determine compliance with these sections. The agents

shall be permitted to examine the records of the establishments to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(2) Report of inspection. Whenever an inspection is made of a retail food store, the findings shall be recorded on the inspection report form referred to in subsection (c) of this section. A copy of the inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of these sections, and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

(3) Correction of violations. The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions.

(A) If an imminent health hazard exists, such as complete lack of sanitization, refrigeration, an extended loss of water supply, an extended power outage, or sewage backup into the establishment, the establishment shall immediately cease affected retail food store operations and shall immediately notify the regulatory authority. Such operations shall not be resumed until authorized by the regulatory authority.

(B) All violations of four- or five-point weighted items shall be corrected within a time specified by the health authority, but in any event, not to exceed 10 days.

(C) All one- or two-point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(D) When rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections shall be conducted at reasonable time intervals to assure correction.

(4) Examination and condemnation of food. The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these sections. The regulatory authority shall, upon written notice to the owner or person in charge specifying the reason therefor, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Texas Civil Statutes, Article 4476-5, §6 and §21(2).

(5) Procedure when infection is suspected. When the regulatory authority

has reasonable cause to suspect the possibility of disease transmission from any retail food store employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:

- (A) the immediate exclusion of the employee from all retail food stores;
- (B) the immediate closing of the retail food store concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists;
- (C) restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;
- (D) adequate medical and laboratory examination of the employee, of other employees, and of the body discharges of such employees.

(b) Enforcement.

(1) Penalties. Any person (or responsible agent of that person) who operates a retail food store, and who violates any of the provisions of these sections or who creates a public health hazard because of a failure to correct the violations stated in subparagraphs (A)-(C) of this paragraph is subject to prosecution under the provision of the Texas Food, Drug, and Cosmetic Act, Texas Civil Statutes, Article 4476-5.

(A) all four- or five-point violations within the time specified by the regulatory authority;

(B) violations of these sections within a specified time when the retail food store rating score falls below 60;

(C) repeated violations of the same provisions of these sections.

(2) Injunctions. The regulatory authority may seek to enjoin violators of these sections under the provisions of the Texas Food, Drug and Cosmetic Act, Texas Civil Statutes, Article 4476-5.

(c) Inspection report form. The department adopts by reference the department form titled, "Retail Food Store Inspection Report," described in subsection (a) (2) of this section and available in the department's Food and Drug Division Office, 1100 West 49th Street, Austin, Texas, 78756.

§229.239. *Enactment Provisions.*

(a) Exceptions.

(1) Building facilities and equipment. Building facilities and equipment in use before the effective date of these sections and which do not meet fully all of the design and fabrication requirements of these sections shall be acceptable if they are in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces (if any) are in compliance with the definition of safe materials in §229.231(b) of this title (relating to General Provisions).

(2) New building facilities and new equipment. New building facilities and new

equipment for which contractual obligations are incurred before the effective date of these sections, and which do not fully meet all the design and fabrication requirements of these sections shall be acceptable if they are capable of being maintained in a sanitary condition and the food-contact surfaces (if any) are in compliance with the definition of safe materials in §229.231(b) of this title (relating to General Provisions).

(b) Separability. If any provision or application of any provision of these sections is held invalid, that invalidity shall not affect other provisions or applications of these sections.

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 October 2, 1985.

TRD-859109

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

Effective date: December 1, 1985
Proposed publication date: May 21, 1985
For further information, please call
(512) 458-7248

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter L. Motor Fuels Tax

★ 34 TAC §3.173

The Comptroller of Public Accounts adopts an amendment to §3.173, with changes to the proposed text published in the July 16, 1985, issue of the *Texas Register* (10 TexReg 2277). The amendment eliminates the requirement to submit invoices and other documentation with refund claims and allows tax refund on fuel used in power take-off operations by gasoline-powered ready mix concrete trucks and solid waste refuse trucks.

The change consists of the addition of a provision concerning proposals for establishing the amount of fuel used in power take-off operations or in auxiliary power units by methods other than those specified in this section. The new provision parallels that which appears in §3.194. The new language appears in subsection (d)(9) of this section. Former subsection (c)(9) has been renumbered as (c)(10).

No comments were received regarding adoption of the amendment.

The amendment is adopted 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 motor fuels tax.

§3.173. *Refunds on Gasoline and Diesel Fuel Tax.*

(a) (No change.)

(b) Time limitation. A claim for refund must be filed before the expiration of one year from the first day of the calendar month following:

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

(c) Filing forms and documentation. Each type of claim for refund must be filed on a form furnished by the comptroller and documentation must be maintained to fully substantiate the claim, including identification of each vehicle or type of equipment in which the fuel was used. Categories of refund claims are:

(1) Exports from Texas nonpermitted purchaser. A claim for refund can be filed only on gasoline or diesel fuel exported in quantities of 100 gallons or more. Invoices reflecting that the tax was assessed and documentation that the fuel was exported must be maintained. Proof of export must be one of the following:

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

(2) Sales by dealers to the federal government. For the purposes of this section, the federal government means any department, board, bureau, agency, corporation, or commission created or wholly owned by the United States government. Evidence that sales were made to the federal government must be maintained and must consist of:

(A) (No change.)

(B) copies of the invoice(s) when a U.S. National Credit Card—Standard Form 149 was used for the purchase, and including the license number or official vehicle designation if fuel is delivered into the fuel supply tank of a motor vehicle; or

(C) (No change.)

(3) Loss by fire or other accident. A loss for which tax refund is claimed must be caused either by fire or other accident, and the claimant must maintain a complete record documenting the incident which occurred, and establishing that the exact quantity of the fuel claimed as lost was actually lost as result of that incident.

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

(4) Claim for refund on gasoline or diesel fuel used off highway. A claim for refund on fuel used solely for off-highway purposes must list each off-highway vehicle or piece of equipment the total number of gallons which have been used. Documentation showing that the state tax was assessed and a schedule listing the number of gallons of fuel used in both on and off highway vehicles and equipment must be maintained.

(5) **Incidental highway use.** A refund claim may be filed by a person who used gasoline or diesel fuel in motor vehicles incidentally on the highway when the incidental travel on the public highway is infrequent, unscheduled, and is insignificant to the total operation of the motor vehicle.

(A) A record showing the date and miles traveled during each highway trip must be maintained.

(B) (No change.)

(6) **Sales by diesel fuel dealer for off-highway use.** Diesel fuel dealers who have paid the state tax to their supplier and thereafter made a tax-free sale on which a refund claim is filed must maintain copies of invoices issued on each tax-free sale. The invoices must have the name and address of the dealer stamped or preprinted on the invoice, and be completed including:

(A)-(F) (No change.)

(7) **Gasoline or diesel-powered motor vehicles equipped with power take-off or auxiliary power units with metering devices.** A person filing a refund claim for gasoline or diesel fuel used to propel motor vehicles with approved measuring or metering devices which measure or meter the fuel used in the stationary operations must maintain records on each vehicle so equipped and the records must reflect:

(A) the miles driven as shown by any type of odometer;

(B) the gallons delivered to each vehicle; and

(C) the gallons used as recorded by the meter or other measuring device.

(8) **Gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units.** Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. Records must be maintained reflecting:

(A) each motor vehicle so equipped;

(B) the miles traveled by each vehicle as recorded by any type of odometer;

(C) the gallons delivered to each vehicle; and

(D) the date of delivery.

(9) **Proposed alternate methods.** Proposals for the use of methods not specifically covered by this section to determine the amount of fuel used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval.

(10) **Federal agency claim for refund on tax-paid purchase.** A federal government agency may file a claim for refund on state taxes paid on gasoline and diesel fuel used exclusively by that agency. Records maintained by the agency must include:

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

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

Issued in Austin, Texas, on October 7, 1985.

TRD-859293

Bob Bullock
Comptroller of Public
Accounts

Effective date: October 28, 1985

Proposal publication date: July 16, 1985

For further information, please call
(512) 463-4606.

★ ★ ★

★34 TAC §3.194

The Comptroller of Public Accounts adopts an amendment to §3.194, without changes to the proposed text published in the July 16, 1985, issue of the *Texas Register* (10 TexReg 2278). The amendment authorizes a percentage refund of tax for fuel used by power take-off units or auxiliary power units mounted on solid waste refuse trucks. This percentage has been determined by the comptroller to be 30% of the taxable diesel fuel used by each solid waste refuse truck.

No comments were received regarding adoption of the amendment.

This amendment is adopted 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 motor fuels tax.

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

Issued in Austin, Texas, on October 7, 1985.

TRD-859294

Bob Bullock
Comptroller of Public
Accounts

Effective date: October 28, 1985

Proposal publication date: July 16, 1985

For further information, please call
(512) 463-4606.

★ ★ ★

Subchapter S. Interstate Motor Carrier Sales and Use Tax

★34 TAC §3.449

The Comptroller of Public Accounts adopts an amendment to §3.449, without changes to the proposed text published in the May 17, 1985, issue of the *Texas Register* (10 TexReg 1581). This amendment increases the minimum tax liability needed to qualify for yearly filing

status from \$500 or less to \$1,000 or less. This amendment provides the convenience of filing yearly rather than quarterly to a greater number of taxpayers, and will further reduce the paperwork and administrative burden for the comptroller. This procedure is permitted by the Texas Tax Code, §157.202.

No comments were received regarding adoption of the amendment.

This amendment is adopted 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 interstate motor carrier sales and use tax.

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

Issued in Austin, Texas, on October 7, 1985.

TRD-859295

Bob Bullock
Comptroller of Public
Accounts

Effective date: October 28, 1985

Proposal publication date: May 17, 1985

For further information, please call
(512) 463-4606.

★ ★ ★

Subchapter V. Bingo Regulation and Tax

★34 TAC §3.549

The Comptroller of Public Accounts adopts an amendment to §3.549, without changes to the proposed text published in the August 27, 1985, issue of the *Texas Register* (10 TexReg 3257). This amendment eliminates language relating to the distribution of net proceeds so that this section will coincide with a change in §3.556. That change provides specific guidelines and requirements for charitable distributions. This amendment eliminates inconsistent language.

The amendment is adopted as an exercise of the comptroller's broad authority to regulate bingo through the exercise of close supervision as authorized by the legislature and are intended to provide clear direction to affected licensees and to ensure proper compliance with reporting requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on October 7, 1985.

TRD-859298

Bob Bullock
Comptroller of Public
Accounts

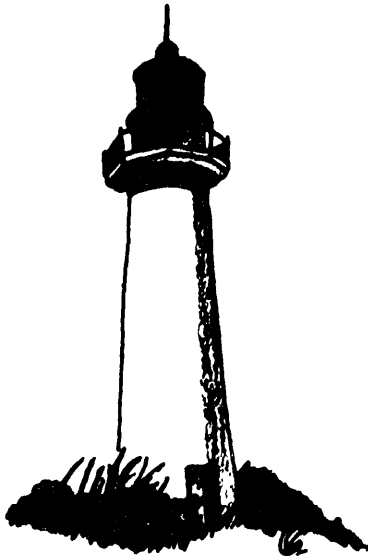
Effective date: October 28, 1985

Proposal publication date: August 27, 1985

For further information, please call

(512) 463-6406.

★ ★ ★



Part V. Texas County and District Retirement System

Chapter 103. Calculation or Types of Benefits

★34 TAC §103.1

The Texas County and District Retirement System adopts an amendment to §103.1, without changes to the proposed text published in the August 13, 1985, issue of the *Texas Register* (10 TexReg 3065).

The section sets forth the actuarial tables on the basis of which annuities and other benefits payable by the system during the lifetime of one or more persons are calculated. As the section existed prior to amendment, it assumed shorter life expectancies for retired members of the system and beneficiaries of retired members of the system than has actually been experienced in recent years. The amendment was therefore necessary to bring the tables more closely in line with the actual mortality experience of retirees and annuitants of the system to avoid establishment of inadequate reserves for such benefits.

The amended mortality tables will be used to calculate more accurately each benefit allowed after October 1, 1985, which is payable by the system during the lifetime of one or more persons, and will operate to assure the adequacy of the reserves required for such benefits.

No comments were received regarding the adoption of the amendment.

The section is adopted under Texas Civil Statutes, Title 110B, 1925, Subtitle F, §55.110, which provide the board with authority to adopt rates and tables considered necessary for operation of the system in the light of the actuary's investigation of the mortality experience of the system's members and annuitants, and is also authorized by Texas Civil Statute, Title 110B, Subtitle F, §55.102, empowering the board to adopt rules necessary or desirable for efficient of the system.

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 October 2, 1985.

TRD-859198

J. Robert Brown
Director
Texas County and
District Retirement
System

Effective date: October 24, 1985

Proposal publication date: August 13, 1985

For further information, please call

(512) 476-6651.

★ ★ ★ ★ ★ ★ ★

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 149. Project Funding Uniform Administrative Requirements

★40 TAC §149.26

The Texas Commission on Alcohol and Drug Abuse adopts new §149.26, without changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 7676).

This section varies from the uniform grant and contract management standards (UGMS) adopted by the Office of the Governor because the General Appropriations Act requires that the commission collect data monthly, rather than quarterly, as required in UGMS.

All recipients of commission funds who provide individual client services will be required to submit billing, services, and client information on a monthly basis.

No comments were received regarding adoption of the new section.

This new section is adopted under House Bill 20, 69th Legislature, 1985, which requires the commission to collect data monthly.

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 October 4, 1985.

TRD-859267

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: October 25, 1985

Proposal publication date: September 3, 1985

For further information, please call

(512) 475-2577.

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 Aeronautics Commission

Tuesday, October 15, 1985, 11:30 a.m. The Texas Aeronautics Commission will meet in the Wine Room, Wyndham Southpark Hotel, 4140 Governor's Row, Austin. According to the agenda summary, members of the commission plan to have lunch which is primarily a social event. No formal action is planned, however the commission may discuss items on the meeting agenda scheduled for 1:30 p.m., October 15, 1985.

Contact: Thomas L. Butler, 410 East Fifth Street, Austin, Texas 78701, (512) 476-9262.

Filed: October 4, 1985, 9:50 a.m.
TRD-859208

Tuesday, October 15, 1985, 1:30 p.m. The Texas Aeronautics Commission will meet in Room 221, Anson Jones Building, 410 East 5th Street, Austin. Items on the agenda summary include the Air Carrier Administration report, staff attorney's report, aviation facilities development report, director's report, and election of officers.

Contact: Thomas L. Butler, 410 East Fifth Street, Austin, Texas 78701, (512) 476-9262.

Filed: October 4, 1985, 9:50 a.m.
TRD-859209

★ ★ ★

Texas Department of Agriculture

Wednesday, October 16, 1985, 3 p.m. The Texas Department of Agriculture will meet in Room 1033, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the department will conduct a public hearing to take public comments on a proposed amendment to Texas Department of Agriculture seed certification standards in 4 TAC §§21.3, 21.11, and 21.31.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 8, 1985, 8:56 a.m.
TRD-859323

★ ★ ★

Automated Information and Telecommunications Council

Friday, October 18, 1985, 9:30 a.m. The Board of Directors of the Automated Information and Telecommunications Council rescheduled a meeting to be held in the Committee Council Room, 510 South Congress Avenue, Austin. According to the agenda, the board will meet in executive session to consider personnel matters. The meeting originally was scheduled for October 8, 1985.

Contact: Charlotte Craig, 510 South Congress Avenue, Room 216, Austin, Texas 78704, (512) 463-5530.

Filed: October 7, 1985, 3:34 p.m.
TRD-859316

★ ★ ★

State Banking Board

Friday, October 11, 1985, 10 a.m. The State Banking Board will meet at 2601 North Lamar, Austin. Items on the agenda summary include approval of previous minutes; applications for charter; a conversion application; interim charter applications; a change of control application; domicile change applications; and review of applications approved, but not yet open. The board also will meet in executive session to discuss pending litigation.

Contact: William F. Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Filed: October 3, 1985, 1:46 p.m.
TRD-859182

★ ★ ★

Texas Commission for the Deaf

Saturday, October 19, 1985, 9 a.m. The Texas Commission for the Deaf will meet at 510 South Congress Avenue, Austin. Items on the agenda include approval of

previous minutes; a report from the Board for Evaluation of Interpreters; a report on fiscal matters; approval of interpreter training contracts; and the and chairman's report. The commission also will meet in executive session to consider personnel matters.

Contact: Larry D. Evans, 510 South Congress Avenue, Austin, Texas 78704, (512) 475-2492.

Filed: October 8, 1985, 8:55 a.m.
TRD-859324

★ ★ ★

Texas State Board of Dental Examiners

Thursday-Saturday, October 10-12, 1985, 8 a.m. daily. The Texas State Board of Dental Examiners made an emergency addition to the agenda for a meeting held in the Marriott Hotel, 6121 IH 35 North at 290, Austin. The addition concerned the licensure request of Dr. Gerardo De La Garza. The emergency status was necessary because if continuing education courses are needed to qualify for examination, this doctor needed to know immediately so he could make preparations for these courses.

Contact: William S. Nail, Suite 503, 411 West 13th Street, Austin, Texas 78701, (512) 475-2443.

Filed: October 4, 1985, 2:06 p.m.
TRD-859255

★ ★ ★

Interagency Council on Early Childhood Intervention

Tuesday, October 15, 1985, 8:30 a.m. The Interagency Council on Early Childhood Intervention will meet in the conference room, second floor, Texas Department of Health, 1101 East Anderson Lane, Austin. Items on the agenda summary include approval of minutes; a review of federally funded early

childhood training grants and a request for assistance in information dissemination; review of the fiscal year 1986 management plan (no council action required); an update on a state planning grant; a request for review of a comprehensive mental retardation plan and council endorsement; a report on an annual early childhood intervention workshop; an Advisory Committee report; assignment of a council member for January, April, and July Advisory Committee meetings; a review of recommendations on procedure for applying for lapsed funds and a tracking system; and review of a fiscal year 1987 request for proposal.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: October 3, 1985, 1:57 p.m.
TRD-859187

★ ★ ★

Texas Economic Development Commission

Wednesday, October 16, 1985, 3 p.m. The Texas Small Business Industrial Development Corporation of the Texas Economic Development Commission will meet in Room 318, Anson Jones Building, 410 East 5th Street, Austin. According to the agenda, the corporation will consider the proposed issuance of its revenue bond in an amount not to exceed \$600,000 to finance the cost of the acquisition and construction of an office/display/warehouse facility consisting of approximately 32,140 square feet for the display and storage of floor coverings and other accessories, together with certain equipment and other items which are functionally related and subordinate to the project, to be owned by G.C.G.G. Joint Venture and leased to House of Carpets, Inc./Casa Carpet Distributors and to be located at 3737 Gateway West, El Paso. 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) 472-5059.

Filed: October 4, 1985, 2:11 p.m.
TRD-859247

★ ★ ★

Texas Education Agency

Friday, October 4, 1985, 9:30 a.m. The Committee for Finance and Programs of the State Board of Education of the Texas Education Agency met in emergency session in Room 2-107-C, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee reviewed the TRW tender offer. The emergen-

cy status was necessary because the decision had to be made regarding this offer prior to the next regularly scheduled meeting of this committee.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: October 3, 1985, 4:22 p.m.
TRD-859194

Friday, October 11, 1985, 4 p.m. The State Board of Education of the Texas Education Agency and Rio Grande Valley School Board Association and Administrators will meet at Porter High School Cafeteria, 3500 International Boulevard, Brownsville. According to the agenda, the board will consider public school education in the Rio Grande Valley.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: October 3, 1985, 4:23 p.m.
TRD-859195

★ ★ ★

Texas Employment Commission

Tuesday, October 15, 1985, 8:30 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 101 East 15th Street, Austin. Items on the agenda summary include prior meeting notes, internal procedures of commission appeals, and consideration and action on higher level appeals in unemployment compensation cases in commission Docket 42.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: October 7, 1985, 1:22 p.m.
TRD-859300

★ ★ ★

Texas Department of Health

Friday and Saturday, October 11 and 12, 1985, 1 p.m. and 8:30 a.m. respectively. The State Primary Care Program Advisory Committee of the Texas Department of Health will meet in Room G-107, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda summary include an overview of indigent care legislation; the role of the Texas Department of Human Services in Indigent Health Care Program implementation; an overview of the Maternal and Infant Health Improvement Act and Texas Department of Health program development; the legislative intent of Indigent Health Program; and Primary Care Program systems integration.

Contact: Clift Price, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7321.

Filed: October 3, 1985, 4:10 p.m.
TRD-859191

Saturday, October 12, 1985, 8:30 a.m. The State Primary Care Program Advisory Committee of the Texas Department of Health will meet in Room G-107, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda summary include Primary Care Program goals and objectives; an Advisory Committee work plan and schedule for long range and short range plan; a draft of Primary Care Program rules; committee organization; and selection of next meeting date.

Contact: Clift Price, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7321.

Filed: October 3, 1985, 4:09 p.m.
TRD-859192

Thursday, October 17, 1985, 10 a.m. The Advisory Committee on Nursing Home Affairs will meet in Room G-107, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda summary include approval of minutes; subcommittee reports on a recommendation for standard changes to permit licenses/registered dietitians to accept verbal diet orders from physicians, and a recommendation on emergency/proposed rules on procedures on long term care facilities and a recommendation on final rules for amendments of licensing standards; report on status of implementation of legislative actions; and the next scheduled meeting.

Contact: Howard C. Allen, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: October 3, 1985, 1:57 p.m.
TRD-852186

★ ★ ★

Texas Historical Commission

Saturday, October 19, 1985, 9:30 a.m. The State Board of Review of the Texas Historical Commission will meet at Town Hall Meeting Room, First Victoria Bank Building, 101 South Main Street, Victoria. Items on the agenda include election of officers; including the chairman, vice-chairman, and secretary; approval of minutes of last meeting; and review of National Register nominations.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 475-3094.

Filed: October 7, 1985, 12:01 p.m.
TRD-859299

★ ★ ★

University of Houston System

Tuesday, October 8, 1985, 8:30 a.m. The Board of Regents of the University of Houston System revised the agenda for a meeting held in Room 220, Ezekiel Cullen Building, 4800 Calhoun, Houston. According to the revised agenda, the board considered an emergency contract change order to extend a contract with Mission Construction Company for partial reroofing to include roofing repairs not previously apparent and remedy extreme leakage problems downtown.

Contact: Micheal T. Johnson, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: October 4, 1985, 8:50 a.m.
TRD-859205

★ ★ ★

State Board of Insurance

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings at 1110 San Jacinto Street, Austin. Days, times, rooms, and dockets follow.

Tuesday, October 15, 1985, 9 a.m. In Room 353, Docket 9090—application for amendment to the articles of incorporation of Hill Country Life Insurance Company, Austin.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6524.

Filed: October 4, 1985, 4:17 p.m.
TRD-859276

Tuesday, October 15, 1985, 9 a.m. In Room 342, Docket 9080—whether disciplinary action should be taken against Kyle Moye Sterling, Beaumont, who holds a Group I combination or industrial agent's license.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6498.

Filed: October 4, 1985, 4:17 p.m.
TRD-859277

Tuesday, October 15, 1985, 1:30 p.m. In Room 353, Docket 9081—whether disciplinary action should be taken against Billy Ray Hickman, Beaumont, who holds a Group I health and accident agent's license and Group II, legal reserve life insurance agent's license.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6498.

Filed: October 4, 1985, 4:17 p.m.
TRD-859278

Monday, October 21, 1985, 1:30 p.m. In Room 353, Docket 9085—application of Jonathan J. McMahon, Austin, for a legal reserve life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6524.

Filed: October 4, 1985, 4:17 p.m.
TRD-859279

★ ★ ★

Lamar University

Monday, October 7, 1985. Committees of the Board of Regents of Lamar University (LU) met in emergency session in the Lamar Room, Mary and John Gray Library, Lamar University, Beaumont. Times, committees, and agendas follow.

1:15 p.m. The Personnel Committee met in executive session to discuss personnel matters. The emergency status was necessary to conform with posting time-limit requirements.

1:45 p.m. The Finance and Audit Committee considered approval of August 1985 monthly financial reports for LU-Beaumont, LU-Orange, LU-Port Arthur, the LU-System, and John Gray Institute; recommendation to increase Setzer Student Center fees; at LU-Beaumont; recommendation on a bank depository for state and local funds for LU-Orange; Lamar-Port Arthur; and approval of a proposed resolution for signature authority, approval of a bond resolution, and an official statement for bids on bonds for the LU System. The committee also met in executive session. The emergency status was necessary to conform with posting time-limit requirements.

2:15 p.m. The Buildings and Grounds Committee considered acceptance of property for the LU System; bids for ROTC roof and North Central Plant Cooling Tower replacement, an architect selection for a classroom/office building and liberal arts building renovation, and preliminary plans and cost estimates on art building renovation at LU-Beaumont; and a request to develop plans and specifications to complete renovation and secure bids for A. J. M. Vuylsteke home at LU-Port Arthur. The committee also met in executive session. The emergency status was necessary to conform with posting time-limit requirements.

2:45 p.m. The Academic Affairs Committee considered approval of history and mission statement for Lamar-Beaumont. The committee also met in executive session. The emergency status was necessary to conform with posting time-limit requirements.

Contact: Dr. George McLaughlin, Lamar University System, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 4, 1985, 3:55 p.m.
TRD-859268-859271

Thursday, October 10, 1985, 10 a.m. The Finance/Audit Committee of Lamar Uni-

versity (LU) met in the Board of Directors Room, First City National Bank, Beaumont. According to the agenda, the committee considered approval for the sale of bonds for LU System. The committee also met in executive session.

Contact: Dr. George McLaughlin, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 4, 1985, 3:55 p.m.
TRD-859272

Thursday, October 10, 1985, 1:15 p.m. The Board of Regents of Lamar University met in the Spindletop Room, Mary and John Gray Library, Lamar University, Beaumont. According to the agenda, the board considered the chancellor's report and announcements; approval of Finance/Audit Committee recommendations; approval of Buildings and Grounds Committee recommendations; approval of Personnel Committee recommendations; approval of Academic Affairs Committee recommendations; and approval of the Development/Public Relations Committee recommendations. The board also met in executive session.

Contact: Dr. George McLaughlin, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 4, 1985, 3:56 p.m.
TRD-859273

★ ★ ★

Long Term Care Coordinating Council for the Elderly

Thursday, October 31, 1985, 10 a.m. The Long Term Care Coordinating Council for the Elderly will meet at City Hall, 201 North Ector Drive, Eules. Items on the agenda include approval of minutes of the July 30, 1985 meeting; public comment on long-term care services in Texas; a committee report on long-term care coordination and services; update on the development of area-wide committees; a committee report on provider partnerships; a State Board of Insurance report on the insurance study; Alzheimer's Task Group report; a staff report on information and data base; and scheduling of future committee and council meetings.

Contact: Ann Ammons, 1949 IH 35 South, Austin, Texas, (512) 444-2727.

Filed: October 7, 1985, 4:23 p.m.
TRD-859317

★ ★ ★

Texas Optometry Board

Wednesday, October 16, 1985, 2 p.m. The Texas Optometry Board will meet at Wyndham Southpark, IH 35 at Ben White, Austin. Items on the agenda summary include reports of secretary-treasurer, legal counsel, executive director, and committee chairman; old business to cover consideration of the National Board examination; new business to consider correspondence from International Association of Boards of Examiners in Optometry, licensees, Army and Air Force Exchange Services, a request for duplicate license, and discussion regarding use of prescription forms by optometrists for nonprescription medication; the board will also meet in executive session in compliance with the Open Meetings Act, Texas Civil Statutes, Article 6252-17 §2(e). At 10 a.m. on October 16, 1985, the Rules Committee will meet. At 8 a.m. on October 17, 1985, the Investigation-Enforcement Committee will hold an informal conference with a licensee.

Contact: Lois Ewald, 1300 East Anderson Lane, Suite C-240, Austin, Texas 78752.

Filed: October 8, 1985, 8:26 a.m.
TRD-859321

★ ★ ★

Board of Pardons and Paroles

Monday-Friday, October 14-18, 1985, 1:30 p.m. daily Monday-Thursday and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners and inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713.

Filed: October 4, 1985, 11:06 a.m.
TRD-859225

Tuesday, October 15, 1985, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons and restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other re-

prieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2704.

Filed: October 4, 1985, 11:07 a.m.
TRD-859226

Wednesday, October 16, 1985, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will conduct full board interviews, meet with interested parties in connection with cases of Willie Houston, TDC 350,000; and Julian Griego, TDC 244,735, subject to the board's jurisdiction.

Contact: Daniel R. Guerra, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2700.

Filed: October 3, 1985, 10:20 a.m.
TRD-859176

★ ★ ★

Governor's Commission on Physical Fitness

Friday-Sunday, October 11-13, 1985, 6:30 p.m. Friday, 7:30 a.m. Saturday, and 8 a.m. Sunday. The Board of Directors of the Governor's Commission on Physical Fitness will meet at Vista Grande, Resort and Conference Center, Lago Vista. Items on the agenda summary include a reception; review of the conflict of interest policy; review of last board minutes; orientation of the commission; review of Executive Committee action and recommendations; review of the commission long-range plan and issue consideration; review of the Youth Fitness Task Force and activities; review of the Employee Fitness Task Force and activities; review of the Senior Citizen Fitness Task Force and activities; review of public information and public affairs; and executive director's report. The board also will meet in executive session.

Contact: Donald Haydon, Suite 508, 7703 North Lamar, Austin, Texas 78752, (512) 467-7141.

Filed: October 3, 1985, 4:23 p.m.
TRD-859196

★ ★ ★

Texas State Board of Public Accountancy

Wednesday, October 9, 1985, 9:30 a.m. The Entry and Reentry Screening Committee met in a rescheduled emergency session in Suite 1700, 2121 San Jacinto Street, Dallas.

According to the agenda, the committee changed the meeting site only. The meeting originally was scheduled to be held in Suite 340, 1033 La Posada, Austin. The emergency status was necessary because the committee members were able to meet in Dallas but not Austin.

Contact: Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752, (512) 451-0241.

Filed: October 4, 1985, 2:26 p.m.
TRD-859258

★ ★ ★

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.

Wednesday, October 16, 1985, 8:30 a.m. A prehearing conference in Docket 6510—application of Grayson-Collin Electric Cooperative, Inc. for authority to change rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 4, 1985, 2:54 p.m.
TRD-859260

Wednesday, October 16, 1985, 1:30 p.m. A prehearing conference in Docket 4545—application of Southwestern Bell Telephone Company for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 3, 1985, 3:43 p.m.
TRD-859188

Friday, October 18, 1985, 9 a.m. An open meeting in Docket 6095—application of AT&T Communications of the Southwest, Inc., to increase rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:56 p.m.
TRD-859308

Monday, October 21, 1985, 10 a.m. A prehearing conference in Docket 6525—application of Gulf States Utilities Company for authority to change rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 3, 1985, 3:43 p.m.
TRD-859189

Monday, October 21, 1985, 2 p.m. A prehearing conference in Docket 6529—application of Romark Utility Co, doing

business as Oak Terrace Water System for a rate increase in Polk County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:55 p.m.
TRD-859309

Tuesday, October 22, 1985, 2 p.m. An informal meeting in Docket 6508—customer protest in the matter of §43(h) rate increase of Branch Creek Estates in Travis County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 4, 1985, 2:54 p.m.
TRD-859261

Wednesday, October 23, 1985, 1:30 p.m. An open meeting to consider permanent adoption of substantive rule 16 TAC §16.28 published in the September 3, 1985, issue of the *Texas Register*.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:55 p.m.
TRD-859310

Monday, November 4, 1985, 10 a.m. A hearing on the merits in Docket 6122—in the matter of the §43(h) rate increase b Martin Water Company.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:55 p.m.
TRD-859311

Thursday, November 7, 1985, 10 a.m. A prehearing conference in Docket 6526—application of Texas Utilities Electric Company for Certification of Combustion Turbine Generating Units in Ward, Mitchell, and Hood Counties.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 3, 1985, 3:43 p.m.
TRD-859190

Friday, November 8, 1985, 10 a.m. A prehearing conference in Docket 6431—petition of Texas Gulf Chemicals Company against Houston Lighting and Power Company regarding avoided cost calculations.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:57 p.m.
TRD-859312

Friday, November 15, 1985, 10 a.m. A hearing on the merits in Docket 6398—petition of Jonestown Improvement Corporation for authority to terminate water utility service.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 4, 1985, 2:53 p.m.
TRD-859262

Monday, November 18, 1985, 10 a.m. A rescheduled hearing on the merits in Docket 6375—application of Central Power and Light Company for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:56 p.m.
TRD-859313

Monday, December 9, 1985, 10 a.m. A hearing on the merits in Docket 6517—application of Big Bend Telephone Company, Inc., for authority to reduce certain rates and to make other revisions in its tariff.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:56 p.m.
TRD-859314

Tuesday, December 10, 1985, 9 a.m. A hearing on the merits in Docket 6500—petition of Lower Colorado River Authority for approval of a fuel overrecovery refund and for reduction of fixed fuel factor.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 4, 1985, 2:54 p.m.
TRD-859263

Tuesday, December 10, 1985, 2 p.m. A hearing on the merits in Docket 6476—application of Glenwood Acres Water System for a rate increase within Upshur County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 4, 1985, 2:54 p.m.
TRD-859264

Wednesday, December 18, 1985, 1:30 p.m. A hearing on merits in Docket 6265—application of City of Castroville to amend certificated area service boundaries.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 3, 1985, 3:42 p.m.
TRD-859185

Wednesday, January 29, 1986, 10 a.m. A hearing on the merits in Docket 5604—application of Harlingen Waterworks System for a certificate of convenience and necessity to provide sewer service within Cameron County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 7, 1985, 2:55 p.m.
TRD-859315

Wednesday, February 5, 1986, 10 a.m. A hearing on the merits in Docket 6204—complaint of Robert Lynn against Hill County Electric Cooperative, Inc.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 4, 1985, 2:54 p.m.
TRD-859265

★ ★ ★

Railroad Commission of Texas

Monday, October 7, 1985, 9 a.m. The Transportation Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held in the first floor auditorium, east, 1701 North Congress, Austin. According to the revised agenda, the Commission considered applications of S.D. Diver in Dockets 05.167A1AR and 05.361A2AR to amend 16 TAC §5.167 and §5.361, concerning lease-related activities of motor carriers and definitions. The emergency status was necessary because this matter was properly posted for conference on September 30, 1985, but was passed.

Contact: Mike James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: October 4, 1985, 1:33 p.m.
TRD-859230

Monday, October 14, 1985, 9 a.m. The Railroad Commission of Texas will meet in the first floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: October 4, 1985, 1:31 p.m.
TRD-859236

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: October 4, 1985, 1:32 p.m.
TRD-859232

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512)

463-7149.

Filed: October 4, 1985, 1:33 p.m.
TRD-859242

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: October 4, 1985, 1:32 p.m.
TRD-859231

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: October 4, 1985, 1:33 p.m.
TRD-859243

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters, and the signing of final orders in Docket 414-Hughes 66 Oil, Inc.; Docket 416-Propane Unlimited; Docket 418-Del Rio Mobile Home Sales, Inc; and Docket 419-Western Mobile Air-Maze Refrigeration Company.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: October 4, 1985, 1:32 p.m.
TRD-859235

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: October 4, 1985, 1:31 p.m.
TRD-859239

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: October 4, 1985, 1:31 p.m.
TRD-859237

Consideration of All American Pipeline Company for a pipeline permit across various counties in Texas.

Contact: Susan Cory, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6922.

Filed: October 4, 1985, 1:31 p.m.
TRD-859238

The Oil and Gas Division hearing on Oil and Gas Docket 2-83,804-administrative penalty default PFD in the consideration of whether or not to enter a commission order assessing administration penalties and/or requiring compliance with commission regulations on the Midway Oil Corp.,

Schorre Lease, Well 1 (231575), Runge, West Field, Karnes County; and Oil and Gas Docket 1-83,415-administrative penalty default PFD in the consideration of whether or not to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on the Midway Oil Corp., Weldon Williams Lease, Well 1, Wildcat Field, Milam County.

Contact: Glenn Jordan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6762.

Filed: October 4, 1985, 1:32 p.m.
TRD-859233

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: October 4, 1985, 1:32 p.m.
TRD-859234

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: October 4, 1985, 1:34 p.m.
TRD-859241

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: October 4, 1985, 1:34 p.m.
TRD-859240

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: October 4, 1985, 1:34 p.m.
TRD-859244

Consideration of various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Mike James, P. O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: October 4, 1985, 1:33 p.m.
TRD-859245

★ ★ ★

Texas Savings and Loan Department

Wednesday, October 16, 1985, 9 a.m. The Texas Savings and Loan Department will

meet at 2601 North Lamar, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of Goliad Savings and Loan Association, Goliad, Goliad County, for a branch office at 23490 IH 10 West 5, Leon Springs, Bexar County, Texas, from which record the commissioner shall determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: October 7, 1985, 4:44 p.m.
TRD-859320

★ ★ ★

School Land Board

Tuesday, October 15, 1985, 10 a.m. The School Land Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Items on the agenda include consideration of a bid on marginal #382 received at October 1, 1985, lease sale; pooling applications; pooling agreement amendments; good faith claimant applications; coastal public lands easement applications; and a motion to reissue cabin permits.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 837, Austin, Texas 78701, (512) 475-0219.

Filed: October 7, 1985, 4:41 p.m.
TRD-859318

★ ★ ★

Texas Sesquicentennial Commission

Thursday, October 10, 1985, 10 a.m. The Executive Committee of the Texas Sesquicentennial Commission met in emergency session in the conference room, Texas Commission for the Deaf, 510 South Congress Street, Austin. Items on the agenda included approval of last Executive Committee minutes of September 10, 1985; consideration of applications for sanctioning of Texas independence associations, Texas independence communities, private sector applications; other business; and public forum. The committee also met in executive session to consider products applications. The emergency status was necessary to close Commemorative Products Program.

Contact: Patrick Terry, P.O. Box 1986, Austin, Texas 78767, (512) 475-1986.

Filed: October 3, 1985, 3:01 p.m.
TRD-859193

★ ★ ★



Structural Pest Control Board

Friday, October 18, 1985, 8:30 a.m. The Structural Pest Control board revised the agenda for a meeting to be held in Suite 250, Building C, 1300 East Anderson Lane, Austin. Items on the revised agenda include appearances by Dennis Green, doing business as Green's Tree Service; Jim Jolly, doing business as Austin City Pest Control; Hugh Whaley, doing business as Whaley Pest Control; John Wavada, to request permission to take the exam and be a licensed certified applicator; setting the 1986 examination dates; and miscellaneous.

Contact: David A. Ivie, Suite 250, Building C, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-4066.

Filed: October 4, 1985, 2:26 p.m.
TRD-859259

★ ★ ★

University of Texas System

Thursday and Friday, October 10 and 11, 1985, 1 p.m. and 9 a.m. respectively. The Board of Regents and Standing Committees of the University of Texas System (UT) met in Concho and Red River Rooms, second floor, E. H. Hereford University Center, UT Arlington, 511 West Street, Arlington. Items on the agenda summary included proposed amendments to regents' rules and regulations; advance funding of permanent university fund (PUF) bonds; issuance of PUF commercial paper; guidelines for awarding grants through Texas Public Educational Grants Program; proposed capital development program; proposed changes in policy regarding settlement of litigation; various insurance contracts; building and grounds matters including authorization for projects, approval of preliminary and final plans; award of contracts; chancellor's docket (submitted by system administration); appointments to endowed positions and to development boards/advisory councils; fee increases; agreements, easements, land and investment matters, acceptance of gifts, bequests, and estates; establishment of endowed positions and funds, pending litigation, personnel matters, land acquisition, and negotiated contracts.

Contact: Arthur H. Dilly, P.O. Box N, Austin, Texas 78713-7328, (512) 499-4402.

Filed: October 4, 1985, 1:38 p.m.
TRD-859227

★ ★ ★

Texas Tech University

Friday, October 11, 1985. Committees of the Board of Regents for Texas Tech University (TTU) will meet in the Board Suite, Administrative Building, TTU, Lubbock. Committees, times, and agendas follow.

8 a.m. The Board of Regents will consider reports and action on finance and administration; academic and student affairs; campus and building; development; and athletic affairs. The board also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:52 a.m.
TRD-859211

8:10 a.m. The Finance and Administration Committee of the Board of Regents will consider approval of resolution authorizing the issuance of Board of Regents of Texas Tech University constitutional appropriation bonds, Series 1985, \$36 million (approximately), and acceptance of the low bid for the bonds, sick leave policy for faculty members, assessment of transcript analysis for teacher certification fees, ratify delegation of officers and/or employees to approve official travel reimbursements from appropriated funds; authorize and approve expenditures from appropriated funds; specify officers and/or employees to sign cashier's checks only; specify officers and/or employees to sign financial aid cashier's checks only; and commissioning of peace officers, reports, and review of Texas Tech University Research Center-east campus facility, co-generation report. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:53 a.m.
TRD-859213

8:40 a.m. The Campus and Building Committee of the Board of Regents will consider amending a contract for multipurpose athletic and physical education facility; award of contract for renovation of the east campus research center; appoint project architect for business administration computer facility repair of library roof and columns, meats lab renovation, install a second deck in the Industrial Gallery of Museum, renovate four residence halls, renovate exterior doors and windows in the residence halls, residence halls apartment renovations, renovation of the lobby in Stangel/Murdough Halls; appoint project engineer for the renovation natatorium in the men's gym, install and renovate fire alarms in the general education buildings, install air conditioning for the housing office in Doak Hall; appoint project architect/engineer for renovation of the serving counters in residence hall complexes; proceed planning to replace Chitwood/Weymouth Halls doors; rename civil and mechanical engineering building; receive bids to construct cotton classing facility at east campus; approve campus development plan; dispose of metal portions of engineering research building; ratify completion dates, rename men and women gym buildings; and reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:54 a.m.
TRD-859215

9:40 a.m. The Public Affairs and University Relations Committee of the Board of Regents will review reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:54 a.m.
TRD-859217

10 a.m. The Development Committee of the Board of Regents will review reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:54 a.m.
TRD-859219

10:45 a.m. The Academic and Student Affairs Committee of the Board of Regents will consider granting academic tenure with appointment, granting of emeritus status, finding of facts regarding appointment of an employee of one state agency to another position of honor, trust, or profit with a second state agency, ratify leaves of absence and centers and institutes, new administrative structure of the museum, advanced technology proposals submitted to the Coordinating Board, the Malaysia Project, Welch Foundation research funding, and review of reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:53 a.m.
TRD-859221

11:30 a.m. The Athletic Affairs Committee of the Board of Regents will consider consolidation of men's and women's intercollegiate athletic departments into a department of intercollegiate athletics, and review of reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:55 a.m.
TRD-859223

Texas Tech University Health Science Center

Friday, October 11, 1985. Committees of the Board of Regents of the Texas Tech University Health Sciences Center (TTUHSC) will meet in the Board Suite, Administrative Building, TTUHSC, Lubbock. Committees, times and agenda summaries follow.

8 a.m. The Board of Regents will discuss reports and action on finance and administration; academic and student affairs;

campus and building; development; and athletic affairs. The board also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:52 a.m.
TRD-859212

8:10 a.m. The Finance and Administration Committee of the Board of Regents will consider approval of the resolution authorizing the issuance of Board of Regents to Texas Tech University Health Sciences Center constitutional appropriation bonds, Series 1985, \$10 million (approximately), and acceptance of the low bid for the bonds; sick leave policy for faculty members; agreement with R. E. Thomason General Hospital to provide pathology diagnostic services; addendum to master coordinating agreement with El Paso County Hospital District, doing business as R. E. Thomason General Hospital and School of Medicine, for emergency room physician services; establishment of professional liability committees pursuant to Texas Civil Statutes, Article 4447d; approval of amendments to professional medical malpractice self-insurance plan; establish special reserve fund for medical professional malpractice self-insurance plan; board policy establishing and authorizing monetary settlement authority to settle claims and suits arising under professional medical malpractice self-insurance plan; ratify administrative actions, co-generation report; and review of reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:53 a.m.
TRD-859214

8:40 a.m. The Campus and Building Committee of the Board of Regents will consider authorization for the president to proceed with planning, establish project budget, and appoint project architect to construct Phase I of El Paso Clinical Educational Building, and the New Diagnostic Center adjacent to the Health Sciences Center Building and Lubbock General Hospital; authorize the president to convey land to Lubbock General Hospital for construction of radiation therapy unit; and review of reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:54 a.m.
TRD-859216

9:40 a.m. The Public Affairs and University Relations Committee of the Board of Regents will review reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:54 a.m.
TRD-859218

10 a.m. The Development Committee of the Board of Regents will review reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:54 a.m.
TRD-859220

10:45 a.m. The Academic and Student Affairs Committee of the Board of Regents will consider granting academic tenure with appointment, ratification of leave of absence and rescind previously approved leave of absence, and review reports. The committee also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 4, 1985, 9:53 a.m.
TRD-859222

★ ★ ★

Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Days, times, and agendas follow.

Tuesday, October 15, 1985, 10 a.m. According to the agenda, the commission will consider water district bond issues, use of surplus funds, water quality proposed permits, amendments and renewals, and water use applications.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 4, 1985, 2:07 p.m.
TRD-859248

Wednesday, October 16, 1985, 10 a.m. According to the agenda, the commission will consider Application 4577 of George Bingham and Juanita Sue Bingham, and Bryan Bingham and Kellie Bingham for a Texas Water Code, §11.143, permit to divert 40 acre-feet of water per year for irrigation purposes from an existing domestic and livestock reservoir on an unnamed tributary of Martins Creek, tributary of Copperas (Rush) Creek, tributary of Leon Creek, tributary of Little River, tributary of Brazos River, Brazos River Basin, Comanche County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 4, 1985, 2:07 p.m.
TRD-859249

Tuesday, October 22, 1985, 2 p.m. According to the agenda, the commission will consider an application by Camfield Municipal Utility District for an amendment to Per-

mit 12304-01 to expand treatment capacity and discharge volume for a three-phase sewage treatment plant, Harris County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 4, 1985, 2:08 p.m.
TRD-859250

Wednesday, October 23, 1985, 10 a.m. According to the agenda, the commission will consider an application by H. W. Treadway, Jr., doing business as Waukegan Estates, for proposed Permit 12985-01 to authorize discharge of treated domestic wastewater effluent, Montgomery County, San Jacinto River Basin; an application by SDC Services, Inc. for proposed hazardous waste Permit HW500059-001 to authorize storage, handling, and recycling by blending of waste oils and spent solvents which contain hazardous wastes, Nueces County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 4, 1985, 2:09 p.m.
TRD-859251

Wednesday, October 23, 1985, 2 p.m. According to the agenda, the commission will consider an application by Denton County Levee Improvement District 1 for approval of an engineering report which, if approved, will become the plan of reclamation of the district (RE-0239) and approval of preliminary reclamation project plans, Denton and Dallas Counties.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 4, 1985, 2:09 p.m.
TRD-859252

Wednesday, November 13, 1985, 9 a.m. The Texas Water Commission will meet in the Study Room, Southwest Center, 3222 West Seventh, Texarkana. According to the agenda summary, the commission will consider and application by International Paper Company, P.O. Box 578, New Boston, Texas 75570, for proposed Permit 02776 to authorize collection of stormwater runoff and runoff from a wet log storage area in a 200,000-gallon pond for recycling to the wet log storage area. During periods of extreme rainfall when the pond fills to capacity the wastewater is to be discharged via Outfall 001. Treatment consists of settling in the pond and passing wastewater through a screen to prevent discharge of debris having dimensions exceeding one inch in diameter.

Contact: Douglas P. Roberts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 4, 1985, 2:09 p.m.
TRD-859253

★ ★ ★

Regional Agencies Meetings Filed October 3

The Concho Valley Council of Governments, Executive Committee, met at 5002 Knickerbocker Road, San Angelo, on October 9, 1985, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666.

The Garza County Appraisal District, Board of Directors, met at the courthouse, Post, on October 10, 1985, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Golden Crescent Service Delivery Area, Private Industry Council, will meet in the meeting room, Town Hall, First Victoria National Bank 101 South Main, Victoria, on October 15, 1985, at 6:30 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Hays County Central Appraisal District, Board of Directors, met at the Courthouse Annex, San Marcos, on October 8, 1985, at 6:30 p.m. Information may be obtained from Lynnell Sedlar, Hays County Courthouse Annex, San Marcos, Texas.

The Lampasas County Appraisal District met at 403 East Second Street, Lampasas, on October 9, 1985, at 3 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550.

The Middle Rio Grande Development Council, Regional Review Committee, will meet at the Civic Center Reading Room, Uvalde, on October 17, 1985, at 11 a.m. Information may be obtained from Michael M. Patterson, P.O. Box 702, Carrizo Springs, Texas 78834, (512) 876-3533.

The South Plains Association of Governments, Executive Committee, met at 3424 Avenue H, Lubbock, on October 8, 1985, at 9 a.m. The Board of Directors met at the same location on the same day at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 2787, Lubbock, Texas 79708.

The Tyler County Tax Appraisal District, Appraisal Review Board, met at 103 Pecan, Woodville, on October 7, 1985, at 4 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

The Upshur County Appraisal District, Board of Directors, will meet at Warren and Trinity Streets, Gilmer, on October 14, 1985, at 7:30 p.m. Information may be obtained from Louise Stracener, Upshur County Appraisal District Office, Gilmer, Texas, (201) 843-3041.

The Wise County Appraisal District, Board of Directors, met at 206 South State, Decatur, on October 10, 1985, at 9 a.m. Information may be obtained from Angela Smith, P.O. Box 509, Decatur, Texas 76234, (817) 627-3081.
TRD-859177

★ ★ ★

Meetings Filed October 4

The Bell County Appraisal District will meet on the second floor, commissioners courtroom, Bell County Courthouse, Belton, on October 23, 1985, at 7 p.m. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 410.

The Brazos River Authority, Administrative Policy Committee, met at 4400 Cobbs Drive, Waco, on October 8, 1985, at 11 a.m. Information may be obtained from Mike Bukala, 4400 Cobbs Drive, Waco, Texas 76714-7555, (817) 776-1441.

The Dallas Area Rapid Transit, Board of Directors, met at 601 Pacific Avenue, Dallas, on October 8, 1985, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Eastland County Appraisal District, Board of Directors, will meet at the Appraisal District, Eastland, on October 16, 1985, at 1 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597.

The Region XX Education Service Center, Board of Directors, will meet at 1314 Hines Avenue, San Antonio, on October 17, 1985, at 3 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 271-7611.

The Central Appraisal District of Rockwall County, Board of Directors, met in the small courtroom, Rockwall County Courthouse, Rockwall, on October 8, 1985, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 722-2034.
TRD-859224

★ ★ ★

Meetings Filed October 7

The Capital Area Planning Council, Executive Committee, will meet in Suite 100, 2520 IH 35 South, Austin, on October 15, 1985, at 2 p.m. Information may be obtained from Richard G. Bean, 2520 IH 35 South, Suite 100, Austin, Texas 78704, (512) 443-7653.

The Capital Area Rural Transportation System (CARTS), Board of Directors, will meet in the conference room, Suite 100, 2520 IH 35 South, Austin, on October 17, 1985, at 9:30 a.m. Information may be obtained from Edna Burroughs, 5021 East First Street, Austin, Texas 78702, (512) 478-7433.

The Deep East Texas Private Industry Council, met in emergency session at the commissioners courtroom, Angelina County Courthouse, Lufkin, on October 7, 1985, at 3 p.m. Information may be obtained from C. Crumpler, P.O. Box 1463, Lufkin, Texas 75901, (409) 634-4432.

The Region I Education Service Center, Board of Directors, met in emergency session at 1900 West Schunior, Edinburg, on October 8, 1985, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on October 10, 1985, at 7 p.m. Information may be obtained from Gray Chamberlain, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Hamilton County Appraisal District, will meet at Hamilton County Courthouse, Hamilton, on October 17, 1985, at 7 p.m. Information may be obtained from Doyle Roberts, P.O. Box 446, Hamilton, Texas 76531, (817) 386-8945.

The Hunt County Tax Appraisal District, Board of Directors, met in the boardroom, 4815-B King Street, Greenville, on October 10, 1985, at 7 p.m. Information may be obtained from Henry J. Popp or Jeanette Jordan, 4815-B King Street, Greenville, Texas 75401, (214) 454-3510.

The Lower Neches Valley Authority, Board of Directors, will meet at 7850 Eastex Freeway, Beaumont, on October 15, 1985, at 10:30 a.m. Information may be obtained from J. D. Nixon, P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Swisher County Appraisal District, Board of Directors, met in emergency session at Conestoga Restaurant, Tulia, on October 10, 1985, at 7 a.m. Information may be obtained from Rose Lee Powell, 130 North Armstrong, Tulia, Texas 79088, (806) 995-4118.

The Tyler County Tax Appraisal District, Board of Directors, will meet at 103 Pecan, Woodville, on October 15, 1985, at 4 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.
TRD-859297

★ ★ ★

Meetings Filed October 8

The Central Counties Center for Mental Health and Mental Retardation Services, Board of Trustees, will meet at 302 South 22nd Street, Temple, on October 15, 1985, at 7:45 p.m. Information may be obtained from Steven B. Schnee, P.O. Box 518, Temple, Texas 76503.

The Copano Bay Soil and Water Conservation District 329, will meet at Dudley Campbell Ranch, Highway 239, Refugio, on October 16, 1985, at noon. Information may be obtained from Jim Wales, P.O. Drawer 340, Regugio, Texas 78377, (512) 526-2334.

The Region XVI Education Service Center, Board of Directors, will meet in the Petroleum Room, Amarillo Club, Texas American Bank Building, Seventh and Taylor Streets, Amarillo, on October 17, 1985, at 1 p.m. Information may be obtained from Dr. Kenneth M. Laycock, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521.

The Grayson Appraisal District, Board of Directors, will meet at 205 North Travis, Sherman, on October 16, 1985, at noon. Information may be obtained from Sandra Bollier, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on October 14, 1985, at noon. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Hansford County Appraisal District, Regular Meeting Board, met at 709 West Seventh Street, Spearman, on October 10, 1985, at 7 p.m. Information may be obtained from Alice Peddy, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575.

The Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on October 17, 1985, at 9 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas, (915) 823-2422.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on October 17, 1985, at 8:30 p.m. Information may be obtained from B. H. Penny, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Palo Pinto Appraisal District, Board of Directors, will meet at Palo Pinto Courthouse, Palo Pinto, on October 16, 1985, 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 South East Texas Regional Planning Commission, Executive Committee, will meet at Beaumont City Council Chambers, Beaumont, on October 16, 1985, at 7:30 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384.

TRD-859322

★ ★ ★



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 Consultant Proposal Request

In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Adult Probation Commission is requesting proposals for services of a consultant.

Proposal Specification. A person with experience in probation and program evaluation is sought to direct and coordinate the Misdemeanor Probation: Managing the Change project of the Texas Adult Probation Commission. Project activities include: survey research; writing; understanding of intergovernmental relations; delivering technical assistance; public speaking, coordinating workshops; and ability to work effectively with a task force. The position requires producing work products on schedule, travel to adult probation departments, and generating relevant research reports.

Contact. Resumes addressing the experience required and providing information demonstrating ability to perform project activities are to be submitted to Ed Peterson, Director of Fiscal Services, TAPC, 8100 Cameron Road, Building B, Suite 600, Austin, Texas 78753.

Deadline for Resumes. Resumes must be received at the specified address no later than 5 p.m. on October 18, 1985.

Evaluation Criteria. Resumes will be judged on the basis of the information contained therein which demonstrates experience in probation and program evaluation, strong written and oral communication skills, ability to work independently, willingness to travel, and ability to manage. Finalists will be contacted by telephone if additional information is needed to make the final evaluation and to schedule interviews if necessary.

Contract Award. The contract will be awarded to the individual who best meets the qualifications. The contract award will not exceed \$17,550 for the consultant fee and time frame for accomplishing the objectives of the project will be negotiated. Travel and per diem expenses will be paid for by the project.

Notice of Contract Award. The notice of contract award will be sent to the consultant selected and will be by letter which will be issued no later than November 18, 1985.

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

TRD-859258 Virginia Grote
Administrative Secretary
Texas Adult Probation Commission

Filed: October 4, 1985
For further information, please call (512) 834-8188.

★ ★ ★

State Banking Board Hearing Cancellation

As no opposition has been noted in the application for domicile change by Texas Independent Bank, Dallas, the hearing previously scheduled for October 11, 1985, has been cancelled. This application will be scheduled for Banking Board action on October 11, 1985.

Issued in Austin, Texas, on October 2, 1985.

TRD-859174 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: October 3, 1985
For further information, please call (512) 475-4451.

★ ★ ★

Banking Department of Texas Application to Acquire Control of a State Bank

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On October 3, 1985, the banking commissioner received an application to acquire control of First Security Bank and Trust, Coppell, Texas, by Donald J. Carter of Dallas.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on October 3, 1985.

TRD-859181 William F. Aldridge
Director of Corporate
Activities
Banking Department of
Texas

Filed: October 3, 1985
For further information, please call (512) 475-4451.

★ ★ ★

Office of Consumer Credit Commissioner Rate Ceilings

The consumer credit commissioner of Texas has ascer-

tained 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) 10/14/85-10/20/85	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 10/01/85-10/31/85	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
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 10/01/85-12/31/85	14.46%	N/A
Standard Annual Rate— Article 1.04(a)(2) ⁽²⁾ 10/01/85-12/31/85	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 10/01/85-12/31/85	18.00%	N/A
Annual Rate Applica- ble to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/85-12/31/85	18.00%	N/A
Judgment Rate— Article 1.05, §2 09/01/85-09/30/85	10.00%	10.00%

- (1) For variable rate commercial transactions only
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on September 7, 1985.

TRD-859286 Sam Kelley
Consumer Credit
Commissioner

Filed: October 7, 1985
For further information, please call (512) 479-1299.

★ ★ ★

Texas Commission for the Deaf Consultant Proposal Request

The 67th Session of the Texas Legislature enacted Senate Bill 57 authorizing the Texas Commission for the Deaf to establish an outdoor training program for deaf students. In compliance with Texas Civil Statutes, Article 6252-11C, the Texas Commission for the Deaf is re-

questing proposals for the operation of a summer camp program for deaf and hearing impaired school aged children.

The commission is seeking a camp program designed to provide a broad range of recreational and educational camping experiences for deaf and hearing impaired campers eight to fifteen years old. In conjunction, the commission desires to include a counselor-in-training (CIT) program. The CIT program is to focus on the development and preparation of future camp counselors. Such counselors-in-training will be 16 and 17 years old and deaf or hearing impaired.

Description of Recommended Services. Respondents should be licensed by the Texas Department of Health, have an approved camp advisor with experience with deaf children, and have a director with experience as a director in camping for deaf children. Respondents should provide three meals daily and one snack; make available safe, comfortable, and well-maintained facilities and have comprehensive camp-site insurance. Programs should be planned and provided for deaf campers eight to fifteen years old and counselors-in-training (CITs) 16 and 17 years old. An orientation program should be conducted for counselors and CITs.

Respondents should provide a broad spectrum of camping activities including, but not limited to water sports, i.e., swimming, fishing, canoeing, etc., in a natural water setting; horseback riding, with a minimum of 65 horses; archery; riflery on a National Riflery Association or equivalent affiliated rifle range; arts and crafts; nature trail hikes; evening programs, i.e., skits, movies, campfire stories, etc.; life-long sports, i.e., golf, tennis, soccer; and other related camping experiences.

The respondents must employ a camp advisor recommended by the Texas Commission for the Deaf and employ staff who have knowledge of sign-language and experience working with deaf and hearing impaired children.

The Texas Commission for the Deaf will consider proposals for a one-week camping session for approximately 150 deaf and hearing impaired students.

Funding. Respondents should provide a complete estimated budget of expenditures. The budget should specify expected costs, minimum and maximum number of campers and shall not exceed a cumulative total of \$34,500.

Deadline for Proposals. Proposals must be postmarked by 5 p.m. on Friday, November 15, 1985. Proposals postmarked after this established deadline cannot be considered for selection. Proposals are to be addressed to: Texas Commission for the Deaf, Attention: Sha Cowan, Program Specialist, P.O. Box 12904, Capitol Station, Austin, Texas 78711.

Proposal Evaluation Criteria. Proposals will be evaluated by a screening committee on submission of proposal on or before the established deadline; operation of the program within the monetary limits established; submission of proposal utilizing provided format; minimum and maximum number of campers allowed within specified budget; respondents' program plan; respondents; ability to provide a sound, high quality recreational and educational program specifically directed to, and suited for deaf and hearing impaired youngsters; willingness of respondent to employ staff and camp advisor with knowledge of and experience in working with the deaf.

Person to Contact for Further Information. Further information and format guidelines for submitting proposals may be obtained by contacting Sha Cowan, Program Specialist, at (512) 475-2492.

Issued in Austin, Texas, on October 2, 1985.

TRD-859138 Larry D. Evens
Executive Director
Texas Commission for the Deaf

Filed: October 2, 1985
For further information, please call (512) 475-2492.

★ ★ ★

Texas Economic Development Commission Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Economic Development Commission on behalf of the Texas Small Business Industrial Development Corporation (TSBIDC) is requesting proposals from banks having the powers of trust companies (the bank) to serve as trustee under a trust indenture (one or more) applicable to the private placement of one or more series of industrial development revenue bonds (the bonds) issued from time to time by the TSBIDC pursuant to its General Bond Program (Private Placement). A bank will be eligible to serve as trustee only with respect to bonds to be acquired by: the bank for its own account or in trust for the account of one or more accredited investors; any member bank (the member bank) of the bank's holding company for the member banks' own account or in trust for the account of one or more accredited investors; any accredited investor who is an original purchaser signing an investment letter and on whose behalf the bank or any member bank has issued a letter of credit or any other form of credit facility securing full or partial repayment of the bonds; or any combination of the foregoing. A bank holding company may submit a proposal on behalf of its member banks.

Scope of Services. The bank will be expected to perform the functions and trust services customarily performed by a trustee in an industrial development revenue bond issue. The bank may also be required to review certain aspects of program compliance by the borrowers.

Contact Person. Copies of the program guidelines and other information may be obtained from John Kirkley, Texas Small Business Industrial Development Corporation, c/o Texas Economic Development Commission, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

Closing Date. Proposals will be accepted no later than 5 p.m. on December 31, 1985. Each proposal should be submitted to the TSBIDC at the time the bank or member bank files its bond purchase commitment or credit facility agreement or both with the TSBIDC.

Other. Proposals submitted will be evaluated on the basis of the qualifications of the bank and the reasonableness of the proposed fees for services. The TSBIDC may reject any proposal and further reserves the right to negotiate fees and services with the bank. All fees for services rendered will be payable only out of funds made available from time to time from sources other than state appropriated funds.

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

TRD-859246 John H. Kirkley
Administrator
Texas Small Business Industrial
Development Corporation
Texas Economic Development
Corporation

Filed: October 4, 1985
For further information, please call (512) 472-5059.

★ ★ ★

Public Utility Commission of Texas Consultant Proposal Request

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Public Utility Commission of Texas (PUCT) issues this invitation for consulting services.

The commission requests proposals from qualified engineering firms, public agencies, or individuals to provide engineering reviews for technical assistance (TA) reports which will be submitted to the PUCT as part of the U.S. Department of Energy's grant program for schools and hospitals. Technical assistance requests are comprehensive engineering studies which analyze recommended capital retrofit energy efficiency projects for institutional buildings.

The contractor will be expected to complete the following tasks: review and assess the current technical review process, including grading forms, scoring criteria, and problem resolution procedures; review each TA report for technical accuracy, soundness of engineering principles, and cost analyses; prepare a written critique on each report, including suggested changes; assign an overall technical review score to each report; contact applicants and technical analysts as necessary to resolve technical problems and other inconsistencies in reports; and work with the Department of Energy's technical review team, as necessary, to help resolve problems encountered during the federal review of the TA Reports.

Bid specifications and additional information regarding this request for proposals may be obtained by contacting Mel Roberts, Energy Efficiency Division, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, (512) 458-0313.

To be considered, written proposals must arrive at the PUCT office no later than 3 p.m. on October 31, 1985. Five copies of the proposal should be sent to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, Attention: Sandy Becker, Bid Identification UC-6-180100. Bid identification number and the date filed should be clearly marked on the outside of the proposal package.

Final selection will be made by a review committee. Contractor selection will be made on or before November 15, 1985.

Issued in Austin, Texas, on October 3, 1985.

TRD-859207 Rhonda Colbert Ryan
Secretary
Public Utility Commission of Texas

Filed: October 4, 1985
For further information, please call (512) 458-0100.

★ ★ ★