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# Texas Register

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Pages 4557 - 4594

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## Highlights

The Office of the Secretary of State proposes new sections concerning private use of the Great Seal of Texas. Earliest possible date of adoption - December 27... **page 4564**

The Texas Savings and Loan Department

proposes amendment concerning record of hearings. Earliest possible date of adoption - December 27. . . . **page 4565**

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**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.

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

## Texas Administrative Code

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

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

TAC stands for the *Texas Administrative Code*;

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



## Texas Register Publications

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# The Governor

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

## Appointments Made November 13

### Texas Commission on the Arts

For terms to expire August 31, 1991:

Aaronetta H. Pierce  
209 Canada Verde  
San Antonio, Texas 78232

Ms. Pierce is replacing Jocelyn Levi Straus of San Antonio, whose term expired.

Henry S. Miller  
4412 Lakeside Drive  
Dallas, Texas 75205

Mr. Miller is replacing Dr. Francis A. Morris of Austin, whose term expired.

### Coordinating Board, Texas College and University System

For a term to expire August 31, 1991:

George Bramblett, Jr.  
4515 Highland Drive  
Dallas, Texas 75205

Mr. Bramblett is being reappointed.

Issued in Austin, Texas, on November 13, 1985

TRD-8510844      Mark White  
Governor of Texas

★      ★      ★

## Appointments Made November 14

### Texas Commission on the Arts

For a term to expire August 31, 1989:

Ann K. Stool  
401 East Greenwood  
Del Rio, Texas 78840

Ms. Stool is replacing E. J. Grivetti of Houston, who resigned.

### Credit Union Commission

For a term to expire February 15, 1991:

Gerald R. Sheets  
101 Ashburn  
Robstown, Texas 78380

Mr. Sheets is replacing Calvin Phillips of Dallas, whose term expired.

### Texas Board of Licensure for Nursing Home Administrators

For a term to expire January 31, 1991:

Jarmese Morris  
5010 Briscoe House  
Houston, Texas 77033

Ms. Morris is replacing Clint L. Hines of Newton, whose term expired.

## Board of Tax Professional Examiners

For a term to expire March 1, 1991:

Michael C. Frazier  
9230 Caddo  
Houston, Texas 77028

Mr. Frazier is replacing Roy Barton Sinclair of Lufkin, whose term expired.

### Coordinating Board, Texas College and University System

For a term to expire August 31, 1991:

Jess Ben Latham III  
2613 Harmony  
Amarillo, Texas 79106

Mr. Latham is replacing R. F. Juedeman of Odessa, whose term expired.

### Texas Tourist Development Board

For a term to expire August 23, 1989:

Gerard J. Inzerillo  
3501 North McArthur  
Irving, Texas 75062

Mr. Inzerillo is replacing Susan Sanford Richardson of Amarillo, whose term expired.

Issued in Austin, Texas, on November 14, 1985

TRD-8510844      Mark White  
Governor of Texas

★      ★      ★

# 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 IV. Office of the Secretary of State Chapter 71. Office of the Secretary Private Use of the Great Seal of Texas

### ★1 TAC §§71.41-71.48

The Office of the Secretary of State proposes new §§71.41-71.48, concerning the private use of the Great Seal of Texas. The new sections implement efficient licensing and monitoring of the commercial/private use of the Great Seal of Texas

Hyattye O Simmons, assistant general counsel, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The anticipated effect on state government will be an estimated increase of \$39,672 in 1986, and \$22,887 each year in 1987-1990. There will be no fiscal implications for local government as a result of enforcing or administering the sections. The cost of compliance with the sections for small businesses will be a \$35 fee per application, a \$250 fee per license, and 3.0% of the annual gross license receipts in excess of \$5,000. The cost of compliance for the largest businesses affected by the sections will be the same as that for the small businesses, since the fees will be the same.

Mr. Simmons 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 efficient licensing and monitoring of the commercial/private use of the Great Seal of Texas. The economic cost to individuals who are required to comply with the sections as proposed will be based on application fees, license fees, and royalties. The estimated increase will be \$285,000 for 1986 and \$250,000 each year in 1987-1990.

Comments on the proposal may be submitted to Hyattye O Simmons, Office of

the Secretary of State, Executive Division, P.O. Box 12697, Austin, Texas 78711.

The new sections are proposed under the Texas Business and Commerce Code, §17.08(d), which provides the Office of the Secretary of State with the authority to adopt rules relating to the use of the Great Seal of Texas.

§71.41. *Definitions.* The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

**Abuse**--Any departure from reasonable use; immoderate or improper use; use contrary to customary or accepted practices and protocols such as would be a misuse of the Great Seal of Texas.

**Agency**--Any administrative department, or commission established by the State of Texas Constitution, the governor or the Texas legislature.

**Application**--The act of making a formal request for licensed permission to use the Great Seal of Texas.

**Benefit**--Anything reasonably regarded as an economic gain or an economic advantage.

**Commercial purpose**--A purpose that is intended to result in a profit or other tangible benefit but does not include an official use in a state function or the use of the Great Seal of Texas or a representation of the Great Seal of Texas for a political purpose by an elected official of this state.

**Deceptively similar representation**--Any representation which appears to contain at least two elements similar to the Great Seal of Texas.

**Denial**--A refusal to grant a license.

**Great Seal of Texas**--A seal which contains a five-point star encircled by olive and live oak branches, and the words "the State of Texas."

**License**--Permission by the secretary of state to conduct the use, manufacture, distribution, mass production, replication, sale or incorporation into advertisement, draft, or design the Great Seal of Texas within the accepted criteria of this title.

**Licensed product**--A Great Seal of Texas product which has been approved by a license.

**Licensee**--The applicant who receives permission to use the Great Seal of Texas.

**Manufacturer**--Any individual, partnership, corporation, or other legal entity which transforms raw or prepared materials into a product for trade or sale, including a publisher, printer, or advertiser.

**Nonexact representation**--A deceptively similar representation of the Great Seal of Texas, including a state agency's seal which incorporates the Great Seal of Texas.

**Nonofficial use**--Any use of the Great Seal of Texas that is not an official use.

**Official use**--The use of the Great Seal of Texas by an officer or employee of this state in performing a state function.

**Person**--An individual or legal entity, including a corporation, partnership, or an association.

**Political purpose**--Any purpose designed to obtain or publicize a public officer or position.

**Representation of the Great Seal of Texas**--A nonexact representation that the Secretary of State determines is deceptively similar to the Great Seal of Texas.

**Revocation**--An unconditional cancellation and nullification of an existing license by the Office of the Secretary of the State of Texas.

**State function**--A state governmental activity authorized or required by law.

**Suspension**--A temporary stop order to previously licensed uses.

**The statute**--Texas Business and Commerce Code, §17.08.

### §71.42. *Application Process.*

(a) Any person not a state public official or under the express direction of a state public official and conducting official state business must prior to any use of the Great Seal of Texas in any commercial reproduction, distribution, advertisement, manufacture, promotion, replication, sale, or any such activity reasonably construed to be embraced by this description:

(1) complete and file with the Office of the Secretary of State, on a form prescribed by that office, an application for a license for the private nonofficial use of the Great Seal of Texas;

(2) obtain such license from the Office of the Secretary of State



(b) A complete application must:

(1) be legibly printed or typewritten;

(2) include a specific description of the intended usage involving the Great Seal of Texas;

(3) be accompanied by a precise description and specification of the requirements of the actual product to bear the Great Seal of Texas in architectural drawing or an engineer's draft to scale.

(c) Drawings and drafts must be done on standard size paper (8½ inches by 11 inches). Drawings and drafts will become a permanent part of the application file.

(d) Upon approval of an application, payment of the licensing fee (as set forth in §71.44 of this title (relating to Fees; Payment of Money; Exemptions)), and execution of a licensing agreement on a form prescribed by the secretary of state's office, the licensee shall receive from the secretary of state a certificate bearing an identification number. Such number will be composed of:

(1) letters representing the initials of the name of the current secretary of state of Texas;

(2) four digits indicating the numerical month and year in which the license was issued, and

(3) three digits for the sequential number of the license.

(e) State government agencies and officials who use the Great Seal of Texas in an official capacity have no application or fee requirement; however, in an effort to achieve uniformity and continuity, state agencies and officials are encouraged to submit their intended uses and renditions of the Great Seal of Texas to the secretary of state.

(f) Except as otherwise provided by law, no seal of any state agency, which incorporates the Great Seal of Texas, may be used for a nonofficial use by any person including any official or employee of said state agency. Unless a license is first obtained pursuant to the procedures herein described, a person may not use a state agency's representation of the Great Seal of Texas for a commercial purpose.

(g) Only elected officials may use the Great Seal of Texas for political purposes.

**§71.43. Denial of Application.** An original or renewal application may be denied for any of the following reasons:

(1) failure of the application to comply with the statute and these administrative regulations;

(2) failure to include the required fee;

(3) where the intended use is deemed by the secretary of state to be detrimental to the image of the state and not in its best interest.

**§71.44. Fees; Payment of Money; Exemptions.**

(a) Application fees are required to be paid at the time of presenting the original

or renewal application for license. Licensing fees must be paid within 21 days of the approval of the original or renewal license. Royalty fees must be received with each quarterly report and in accordance with the deadlines set forth under §71.46(c) of this title (relating to Quarterly Report). A fee shall be deemed delinquent if not received within 10 days after it is due. State government agencies are exempt from the fee requirements since governmental utilization of the Great Seal of Texas is permitted as an official use.

(b) All fees paid to the secretary of state shall be in United States currency, cashier checks, money orders, certified checks, or personal or corporate checks. Payment tendered in any other form will result in the delay or cancellation of either the application or license.

(c) A mere change of purpose after the payment of fees, as when a party desires to withdraw an application from filing, will not entitle a party to a refund.

(d) Fee schedule is as follows:

(1) Original or renewal application fee (nonrefundable)—\$35;

(2) Original or renewal license fee—\$250;

(3) Royalty fee—3.0% of annual gross license receipts in excess of \$5,000.

(e) Gross receipts received from the sale of a licensed product are exempt from the royalty fee required by the statute and these administrative regulations where a royalty is paid to the Texas Sesquicentennial Commission (Texas Civil Statutes, Article 6145-11) for the sale of the licensed product.

**§71.45. Licensing.**

(a) Grant of license. Upon approval of an application, payment of the licensing fee (as set forth in §71.44 of this title (relating to Fees; Payment of Money; Exemptions)), and the execution of a licensing agreement on a form prescribed by the secretary of state's office, any individual or corporation may be granted a license which will certify to all, that such person has complied with the requirements of application and filing. Licensees may engage in the reproduction of the Great Seal of Texas for private and public nonofficial uses. It is accepted that the licensee will use the Great Seal of Texas in an exemplary manner. Any and all transactions which involve the vendor, manufacturer or distributor of the Great Seal of Texas, and the public are expected to be handled in an honest and conscientious fashion. A licensee must display the license in a conspicuous manner in the licensee's office or place of business.

(1) The manufacturer of a product bearing the Great Seal of Texas bears the responsibility for obtaining the necessary license and the payment of all fees required by the statute and these administrative regulations.

(2) Vendors or resellers are exempt from the licensing and fee requirements of

the statute and these administrative regulations where the manufacturer of the product transferred has obtained the required Great Seal of Texas license, provided the vendor or reseller, prior to resale, obtains from the manufacturer, on a form prescribed by the secretary of state's office, a certification of the manufacturer's license.

(A) The certification shall contain the manufacturer's name, license number, and the type and number of items purchased.

(B) The certification must be kept and maintained at the vendor's or reseller's place of business for four years and made readily available for inspection by the secretary of state's office upon request.

(C) A vendor or reseller who fails to obtain, maintain, or make readily available for inspection the certifications of the manufacturer's license shall be responsible for obtaining the necessary license and the payment of all fees required by the statute and these administrative regulations.

(b) Renewal of license. A renewal of license must take place annually on the renewal form provided by the secretary of state's office. A renewal may not be granted if licensee:

(1) has used the Great Seal of Texas in a manner that is detrimental to the image of the state and not in its best interests, or

(2) has violated either the statute or these administrative regulations.

(c) Suspension of license. The licensee's use of the Great Seal of Texas must not be detrimental to the image of the state and its best interests, by virtue of its draft, design, presentation, association, distribution, manufacture, or sale. Any such use, or late payment, or nonpayment of a required fee will result in the suspension of the license.

(1) A suspension may not take place until the licensee has been sent notice and given an opportunity at a hearing to there show that there is no basis for a suspension.

(2) A suspension constitutes a stop order. Any further distribution, manufacture, and, or sale fulfilled or contemplated is unlawful.

(3) Failure to observe a suspension or accompanying directive may result in a revocation of the license.

(d) Revocation of an existing license.

(1) A license may be revoked for, but not limited to, the following reasons:

(A) use detrimental to the image of the state and not in its best interests;

(B) abusive use of the Great Seal of Texas,

(C) criminal use of the Great Seal of Texas;

(D) willful failure to observe reporting requirements;

(E) a violation of the statute or these administrative regulations;

(F) a continuing violation after notice thereof;

(G) failure or refusal to allow monitoring under §71.47 of this title (relating to Monitoring).

(2) A revocation may not take place until the licensee has been sent notice and given an opportunity at a hearing to show that there is no basis for a revocation.

**§71.46. Quarterly Report.**

(a) Licensees must file with the Office of the Secretary of State a statement (i.e., quarterly report), on a form prescribed by that office, containing the following:

(1) a statement of the total quantity of licensed products sold;

(2) a statement of the total quantity of licensed products sold upon which a royalty was paid to the Texas Sesquicentennial Commission;

(3) the total amount of gross receipts received from the sale of licensed products during the quarter;

(4) the total amount of gross receipts received from the sale of licensed products during the quarter upon which a royalty was paid to the Texas Sesquicentennial Commission;

(5) the total amount of gross receipts derived by the licensee from other uses of the Great Seal of Texas during the quarter;

(6) the amount of any royalty fee due for the quarter.

(b) The licensee shall remit with each quarterly report the amount of any royalty fee due or a statement as to the reason no royalty fee is due.

(c) A quarterly report must be filed with the Office of the Secretary of State in each quarter in accordance with the following schedule:

(1) first quarter (January 1-March 31)—quarterly report due April 15 of the current calendar year;

(2) second quarter (April 1-June 30)—quarterly report due July 15 of the current calendar year;

(3) third quarter (July 1-September 30)—quarterly report due October 15 of the current calendar year;

(4) fourth quarter (October 1-December 31)—quarterly report due February 15 of the following calendar year.

**§71.47. Monitoring.** The Office of the Secretary of State may conduct at its discretion, random, unannounced examinations of the licensee's records during normal business hours (8 a.m. - 5 p.m.) to determine the licensee's compliance with the statute and these administrative regulations. All records related to the statute and these administrative rules shall be kept in accordance with generally accepted accounting principles at the licensee's place of business or a place designated by written notification by certified mail, return receipt requested and maintained for four years. If

the licensee fails to keep and make readily available accurate records or file quarterly reports under §71.46 of this title (relating to Quarterly Report), the Secretary of State may estimate the royalty fee due based on any information available, including, but not limited to, records of vendors, resellers, or manufacturers. Information contained in quarterly reports filed with the Office of the Secretary of State pursuant to §71.46 of this title (relating to Quarterly Report) will be disclosed to the state comptroller, the state auditor, or any similar state investigatory agency upon request.

**§71.48. Enforcement.** In addition to the suspension or revocation of a Great Seal of Texas license, the Office of the Secretary of State may:

(1) request that the Texas attorney general bring a civil action to enjoin either a violation of the statute or these administrative regulations relating to the Great Seal of Texas, or to collect delinquent fees;

(2) refer any criminal violations to the appropriate prosecuting authority under the statute.

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 November 19, 1985

TRD-8510847 Myra A McDaniel  
Secretary of State

Earliest possible date of adoption:  
December 27, 1985  
For further information, please call  
(512) 475-2015



## TITLE 7. BANKING AND SECURITIES

### Part IV. Texas Savings and Loan Department

#### Chapter 61. Hearings

##### ★ 7 TAC §§61.1-61.4

The Texas Savings and Loan Department proposes amendments to §§61.1-61.4, concerning record of hearings; conduct of hearings; proposal for decision; and action after proposal for decision. The sections address hearings on all types of applications which require hearings under the Texas Savings and Loan Act or rules of the Texas Savings and Loan Department

L. L. Bowman III, Texas savings and loan commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. There

will be no effect on state or local government. The cost of compliance with the sections for small business will be determined by the number and type of applications filed, and by whether the applications are formally protested. Small savings and loan associations may have larger compliance costs, depending on how aggressively they seek to expand their offices.

Mr. Bowman 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 clarity of the rules, as the rules are being amended to accurately reflect changes in the Texas Savings and Loan Act, which were effected by amendments passed during the 69th Legislature, 1985. The anticipated economic cost to individuals who are required to comply with the proposed sections is the charter application costs of \$10,000 each year in 1985-1989.

Comments on the proposal may be submitted to L. L. Bowman III, Texas Savings and Loan Commissioner, Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705

The amendments are proposed under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend the same; and under Texas Civil Statutes, Article 852a, §8.01(2), which authorize the Savings and Loan Section to adopt rules relating to the fees and procedures for processing, hearing, and deciding applications filed with the commission or the Savings and Loan Department pursuant to the Texas Savings and Loan Act

**§61.1. Record of Hearings.** The Texas savings and loan commissioner (hereinafter referred to as commissioner) shall secure the services of a competent reporter, who is authorized to administer an oath under the laws of this state, who shall keep a formal record of the proceedings of any hearing held under the provisions of the Texas Savings and Loan Act. The reporter shall administer the customary oath taken by witnesses in courts of competent jurisdiction to all witnesses offering testimony at any such hearing.

##### §61.2. Conduct of Hearings.

(a) All hearings [on charter applications] conducted pursuant to the Texas Savings and Loan Act (Act), §2.07, or pursuant to Chapter 71 of this title (relating to Change of Control) shall be conducted in accordance with this chapter [61] by a hearing officer designated by the commissioner. [Hearings on cease and desist orders conducted pursuant to the Act, §8.13, shall be conducted in accordance with this Chapter 61 by a hearing officer designated by the

Savings and Loan Section of the Finance Commission (the section), which hearing may be conducted without the presence of section members, so long as review of the hearing record or proposal for decision is accomplished in accordance with this Chapter 61.]

(b) For purposes of this chapter [61], decision-maker shall mean the commissioner; [in a proceeding under the Act, §2.07, or under Chapter 71 of these rules (relating to Change of Control), and shall mean a majority of the section in a proceeding under the Act, §8.13; a] Basic fact shall mean a determination from the evidence and matters officially noticed that relates to the criteria for action by the decision-maker set out in the Act, [§2.08 or §8.13,] or [Chapter 71 of] this title [(relating to Change of control)], as applicable. [, and] Ultimate fact shall mean the criteria for action by the decision-maker set out in the Act, [§2.08 or §8.13,] or **Title 7, Part IV**, [Chapter 71 of this title (relating to Change of Control)] as applicable.

(c)-(g) (No change.)

### §61.3. Proposal for Decision.

(a) (No change.)

(b) In his discretion, and after notification to all parties, the hearing officer or one who has read the record may permit or require a party to draft and submit proposed findings of fact on the matters in issue under the Act, [§2.07 or §8.13,] or **Title 7, Part IV**, [under Chapter 71 of this title (relating to Change of Control)] as applicable. The requester may limit his request for proposed findings to any particular issue or issues of fact. The party's proposed findings of fact shall be supported by concise and explicit statements of basic facts developed from the record with specific reference to the record. Only if the requester required the filing of proposed findings of fact or a proposal for decision shall the decision-maker be required to rule on each of the proposed findings of fact as provided in the APA, §16.

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

(f) Unless requested or permitted by the commissioner [or section], briefs may be filed after issuance of a proposal for decisions only if the commissioner [or a majority of the section] did not hear the case or read the record. The time for filing briefs and reply briefs under this section shall be the same as provided for the filing of exceptions and replies under subsection (d) of this section.

### §61.4. Action After Proposal for Decision.

(a) At any time after the expiration of time for filing exceptions and replies as provided by these sections, or notification by all parties that further filings are waived, the entire record or the proposal for decision or both may be considered by the commissioner, without further hearing or meetings [, or if applicable, by the section in

open meeting]. The decision-maker may adopt the proposal, in whole or in part, or it may decline to adopt the proposal, in whole or in part. The decision-maker may remand the proceeding for further consideration by a hearing officer to be accomplished with or without reopening the hearing. If, on remand, additional evidence is received which results in a substantial revision of the hearing officer's report, a new proposal for decision shall be prepared, in whole or in part, unless the decision-maker has attended the hearing or read the record on remand. If a new proposal for decision is prepared, it shall be clearly labeled as such, and all parties of record shall have the right to file exceptions, replies, and briefs, as if the new proposal were the original proposal for decision. The decision-maker is not limited to the specific types of actions outlined in this section and may take any other action it deems to be just and reasonable.

(b)-(e) (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 November 18, 1985

TRD-8510d29

Russell Olliver  
General Counsel  
Texas Savings and Loan  
Department

Earliest possible date of adoption.

December 27, 1985

For further information, please call  
(512) 479-1250.



## Chapter 63. Fees and Charges

### ★7 TAC §63.5

The Texas Savings and Loan Department proposes an amendment to §63.5, concerning fee for examination or audit. The section addresses fees and charges for examinations of savings and loan associations

L. L. Brown III, Texas savings and loan commissioner, 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 as a result of enforcing or administering the section. The cost of compliance for small businesses will be determined by the fee set annually by the Savings and Loan Section of the State Finance Commission, and by the length and complexity of each examination.

Mr. Bowman 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 clarity of the rules, as the rules are being amended to accurately reflect

changes in the Texas Savings and Loan Act, which were effected by amendments passed during the 69th Legislature, 1985. 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 L. L. Bowman III, Texas Savings and Loan Commissioner Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

The amendment is proposed under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the State Finance Commission with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend the same; and under Texas Civil Statutes, Article 852a, §8.01(2), which authorize the Savings and Loan Section to adopt rules relating to the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department pursuant to the Texas Savings and Loan Act

### §63.5. Fee for Examination or Audit.

Each association subject to the Savings and Loan Act shall pay to the savings and loan commissioner an examination and audit fee based upon a per day rate, as shall be set annually by the Savings and Loan Section of the State Finance Commission, for each day during which each examiner is engaged in the examination or audit of the affairs of such association under the provisions of the Texas Savings and Loan Act, §8.02 or §8.05 [§§8.10-8.12] and an additional fee, for office processing and preparation of the examination and audit report, as shall be set annually by the Savings and Loan Section of the State Finance Commission.

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 November 18, 1985.

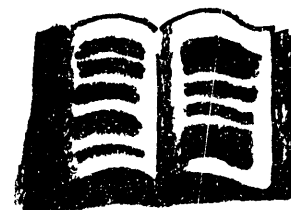
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L. L. Bowman III  
Commissioner  
Texas Savings and Loan  
Department

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For further information, please call  
(512) 479-1250.



## Chapter 69. Reorganization, Merger, and Consolidation

★7 TAC §§69.2, 69.4, 69.5, 69.8, 69.9

The Texas Savings and Loan Department proposes amendments to §§69.2, 69.4, 69.5, 69.8, and 69.9, concerning form and content of application, notice and hearing, publication, exemption for supervisory merger, and designation as supervisory merger. The amendments provide procedures and substantive requirements for processing applications by a savings and loan association to reorganize, merge, or consolidate with other associations.

L. L. Bowman III, Texas savings and loan commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. There will be no effect on state or local government. The cost of compliance with the sections for small business will be determined by the number of offices in the association involved in the applications, under fee rules contained in §63.9. Small savings and loan associations will have lower costs, as the plans involved in the applications will be less complex, and department fees, outlined previously, will be lower.

Mr Bowman 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 clarity of the rules, as the rules are being amended to accurately reflect changes in the Texas Savings and Loan Act which were effected by amendments passed during 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 L. L. Bowman, Texas Savings and Loan Commissioner, Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

The amendments are proposed under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the State Finance Commission with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same; and under Texas Civil Statutes, Article 852a, §8.01(2), which authorize the Savings and Loan Section to adopt rules relating to the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department pursuant to the Texas Savings and Loan Act.

**§69.2. Form and Content of Application.** The application for approval of the plan shall be titled "Application to Reorganize,

Merge, and/or Consolidate" and shall contain proof that the plan was adopted by the board of directors of each association involved; documentation showing that the plan has been approved by each association by a majority of the total vote; the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting association shall possess the same incidents as that of an association which has converted in accordance with the Texas Savings and Loan Act; [a statement regarding common ownership; and in the case of prior common ownership,] and a statement that the home office of the largest applying association shall be the home office of the resulting association unless otherwise approved by the commissioner. A true copy of the plan, as adopted, shall be filed as part of the application. All documents and their contents shall be subscribed and sworn to by an officer of each association involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

**§69.4. Notice and Hearing.** Each application will be set to be heard within 90 days of filing [, and] Notice will be sent by mail to the associations involved and those associations with offices in the same counties as any of the offices of the applying association. If, from the evidence adduced at hearing, the commissioner finds that the applicable criteria for approval of the application set forth in the Texas Savings and Loan Act are met, [plan is equitable to the members of each association and does not impair the usefulness and success of any properly conducted association,] he shall enter an order approving the plan [and at the same time notify all associations in the county or counties in which the reorganizing, merging, acquiring, and/or consolidating association have offices, giving them 10 days from delivery within which to request a hearing on the issue of whether the approved plan would materially constrict their ability to compete. The order and notice shall be deemed delivered three days after placing it in the United States mail properly addressed and postage prepaid. If hearing is timely requested, it shall be set to be heard within 90 days, otherwise the order is final].

**§69.5. Publication.** The associations involved in a plan must publish notice at least 20 days before the date of hearing in a newspaper or newspapers of general circulation in the county or counties where said associations have offices, and file proof of such publication with the commissioner at least 10 days prior to hearing. The form of notice shall be as follows:

Notice is hereby given that application has been made to the savings and loan commissioner of Texas by (association(s)) for approval to (reorganize, merge, and/or consolidate) pursuant to §10.03 of the

Texas Savings and Loan Act, Texas Civil Statutes, Article 852a. A plan of (reorganization, merger, and/or consolidation) and related documents have been filed with the commissioner.

Notice is further given that a hearing on this application has been set for (date) at (time) in (place) pursuant to authority and jurisdiction granted by Texas Civil Statutes, Article 852a. The particular sections of the statute involved are 2.11 [2.13], 10.03, and 11.11.

The applicants assert that [(1) the plan or (reorganization, merger, and/or consolidation) meets the criteria for approval set forth in the statutory sections cited in this notice [is equitable to the members of the association(s) and (2) the plan does not impair the usefulness and success of other properly conducted associations]

A party desiring to present testimony or evidence in opposition to this application may do so by appearing at the scheduled hearing. Parties desiring to oppose the application should notify the commissioner at least 10 days prior to the date of hearing at 2601 North Lamar, [P.O. Box 1089,] Austin, Texas 78705 [78767]

If no appearance in opposition is made at the time this application comes on for hearing, hearing may be dispensed with by the commissioner. Issued this (date) at Austin, Travis County, Texas.

**§69.8. Exemption for Supervisory Merger.** When the commissioner designates a merger to be a supervisory merger, the provisions of this chapter relating to reorganization; merger, and/or consolidation, §§69.1-69.7 of this title (relating to Filing of Plan; Form and Content of Application; Use of Approved Forms; Notice and Hearing; Publication; Time of Decision; and Appeal), shall not be applicable, and the merger shall be effected pursuant to the Texas Savings and Loan Act, §2.13 [10.03], Texas Civil Statutes, Article 852a.

**§69.9. Designation as Supervisory Merger.**

(a) The commissioner may designate a merger to be a supervisory merger when:

(1) the commissioner has placed one or more of the associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act, Chapter 8 [§2.18], Texas Civil Statutes, Article 852a; or

(2) the commissioner has determined that one or more of the association involved is in an unsafe condition [falls within the provisions of subsections (1), (2), (3), (4), or (5) of the Texas Savings and Loan Act, §8.16, Texas Civil Statutes, Article 852a; and]; or

(3) the commissioner has certified to the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board that one (or more) of the associations involved is in imminent danger of default; or]

(3)(4) the Federal Home Loan Bank Board has determined, and certified to the commissioner, that the merger of a federal association having its home office in the state and an association subject to this Act is necessary to prevent the failure or possible failure of the federal association.

(b) For purposes of this section, unsafe condition shall mean that the association (or associations) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth; or that the association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the association and the commissioner; or that the association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the association by the commissioner or other duly authorized personnel of the Savings and Loan Department; or any other condition affecting the association which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

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 November 18, 1985.

TRD-8510831

Russell R. Oliver  
General Counsel  
Texas Savings and Loan  
Department

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December 27, 1985

For further information, please call  
(512) 479-1250.

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## Chapter 71. Change of Control

### ★ 7 TAC §§71.2, 71.3, 71.5

The Texas Savings and Loan Department proposes amendments to §§71.2, 71.3, and 71.5, concerning definitions, acquisition of an association, and retention of control. The amendments provide definitions of control, filing requirements for a change of control, and the commissioner's authority to investigate and remedy suspected unauthorized changes of control.

L. L. Bowman III, Texas savings and loan commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. There is no anticipated effect on state or local government. The cost of compliance with the sections for small businesses will be \$5,000 per application for change of control as set out in §63.11. A small business seeking to acquire control of a savings and loan association will incur substantially the same costs as a large business.

Mr. Bowman 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 clarity of the rules, as the rules are being amended to accurately reflect changes in the Texas Savings and Loan Act which were effected by amendments passed during the 69th Legislature, 1985. The possible economic cost to individuals who are required to comply with the proposed sections is \$5,000 per application as set by §63.11.

Comments on the proposal may be submitted to L. L. Bowman III, Texas Savings and Loan Commissioner, Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

The amendments are proposed under Texas Civil Statutes, Article 432-114, which provide the Savings and Loan Section of the State Finance Commission with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same; and under Texas Civil Statutes, Article 852a, §8.01(2), which authorize the Savings and Loan Section to adopt rules relating to the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department pursuant to the Texas Savings and Loan Act.

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

Control—The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an association by either direct or indirect means [a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person]. Control shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of an

association [or authority of any other person]. The commissioner may determine, based upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of an association as to make it necessary or appropriate in the public interest and for the protection of the account holders of an association that the person be deemed to control the association.

§71.3. *Acquisition of an Association.* The following procedures shall be followed when a person desires to acquire control of an association.

(1) General filing requirements. No person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, [from the shareholders or any other person controlling an association,] any voting security or any security convertible into a voting security of an association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such association, unless such person has filed with the commissioner all of the following information on an application form approved by the commissioner and which application form is deemed by the commissioner to be complete, accompanied by the application fee prescribed in §63.11 of this title (relating to Fee for Change of Control), and has received a written order from the commissioner approving such acquisition or change of control:

- (A)-(J) (No change.)
- (2)-(5) (No change.)

§71.5. *Retention of Control.*

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

(c) The commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the association, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of an association. If the commissioner finds that such unauthorized control exists he may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the commissioner may issue any other supervisory order which he deems appropriate.

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

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TRD-8510832      Russell R. Oliver  
General Counsel  
Texas Savings and Loan  
Department

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For further information, please call  
(512) 479-1250

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## Chapter 75. General Administration

### ★ 7 TAC §75.1

The Texas Savings and Loan Department proposes new §75.1, concerning exempting vehicles owned by the Texas Savings and Loan Department from requirements of identification inscriptions. The new section provides for exemption of vehicles owned by the Texas Savings and Loan Department from the requirements of identification inscriptions.

L. L. Bowman III, Texas savings and loan commissioner, 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. Bowman 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 elimination of unwarranted public concern which could be caused by parking marked department vehicles at or near savings and loan associations during examination or supervisory visits. 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 L. L. Bowman III, Texas Savings and Loan Commissioner, Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705, or hand-delivered to the same address.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the State Finance Commission with the authority to promulgate rules and regulations not inconsistent with the constitution and statutes of this state, and, from time to time, to amend the same; and under Texas Civil Statutes, Article 6701m-1, which exempt department vehicles from making requirements when used for legitimate purposes specified in rules and regulations.

### §75.1. Exempting Vehicles Owned by the Texas Savings and Loan Department from Requirements of Identification Inscriptions.

(a) Exempt vehicles. State-owned vehicles of the Texas Savings and Loan Department shall be exempt from the identification requirements of Texas Civil Statutes, Article 6701-m.

(b) Use of exempt vehicles. Vehicles exempted from identification inscription requirements will be used exclusively for the examination and regulatory activities training necessary for enforcement of the Act or as authorized by the commissioner.

(c) Operation of department vehicles. All vehicles owned by the Texas Savings and Loan Department, regardless of whether the inscription is displayed, will be operated in accordance with seat belt requirements, posted speed limits, and all other applicable requirements and laws. No vehicle exempted from the inscription requirement will be used by any person for any reason except as provided by this section. No employee will allow any vehicle owned by the Texas Savings and Loan Department to be used by any person other than persons under jurisdiction of the State Finance Commission. Failure to comply with this section will be sufficient reason for disciplinary action or termination of the responsible employee.

(d) Purpose served by not printing inscriptions on department vehicles. The Texas Savings and Loan Department recognizes that prolonged or repeated parking at or near a state-chartered savings and loan association of vehicles bearing the department's insignia may cause unwarranted concern to or speculation by depositors. The elimination of the identification inscription allows the department to fulfill its mandate to regulate and examine state-chartered savings and loan associations without causing concern to public depositors.

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

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General Counsel  
Texas Savings and Loan  
Department

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For further information, please call  
(512) 479-1250.

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## Chapter 77. Terminology

### ★ 7 TAC §77.1, §77.2

The Texas Savings and Loan Department proposes new §77.1 and §77.2, concerning general and definitions. The new sec-

tions provide definitions of terms used in the Texas Savings and Loan Act and department regulations.

L. L. Bowman III, Texas savings and loan commissioner, 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. Bowman 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 clarity and uniformity of regulation of the savings and loan industry through consistent definition of terms. 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 L. L. Bowman III, Texas Savings and Loan Commissioner, Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the State Finance Commission with the authority to promulgate rules and regulations not inconsistent with the constitution and statutes of this state, and, from time to time, to amend the same.

§77.1. *General.* The Savings and Loan Section of the Finance Commission of Texas may, from time to time, define in this chapter certain terms which are used in the Texas Savings and Loan Act (Act), but which are not defined in the Act. The definitions set forth in this chapter shall apply throughout Title 7, Part IV.

§77.2. *Definitions.* The following words and terms, when used in this part of Title 7, Part IV, shall have the following meanings, unless the context clearly indicates otherwise.

Insolvent—For purposes of supervision and regulation under the Act, Chapter 8, when the assets of the savings and loan association are less than its liabilities or other obligations to its creditors and others, including its savings liability.

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 November 19, 1985

TRD-8510834      Russell R. Oliver  
General Counsel  
Texas Savings and Loan  
Department

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For further information, please call  
(512) 479-1250



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### ★ 10 TAC §13.15

The Texas Department of Community Affairs (TDCA) proposes new §13.15, concerning filing fee. The new section addresses procedures relating 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, 1954, §103A, (26 United States Code §103A).

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

Mr. Brown 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 to establish procedures for the collection of a fee for the issuance of reservation certificates 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 section

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 new section is proposed under Texas Civil Statutes, Article 1269I-8, §5, which provide the TDCA with the authority to administer the process whereby housing finance corporations created pursuant to Texas Civil Statutes, Article 1269I-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.

**§13.15. Filing Fee.** The housing bond reservation request filed with the executive director shall be accompanied by a certified check or cashier's check in the amount of \$500 made payable to the Texas Department of Community Affairs. In the event that an issuer rescinds its reservation request or otherwise does not receive a reservation certificate during the calendar year, the \$500 fee shall be refunded to the issuer. In order for a refund to be processed, each issuer will be required to have a vendor identification number issued by the Office of the Comptroller of Public Accounts. If an issuer does not have a vendor identification number, an application for vendor identification

number may be obtained from the Texas Department of Community Affairs or from the Office of the Comptroller of Public Accounts.

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 November 18, 1985

TRD-8510805 Douglas C Brown  
General Counsel  
Texas Department of  
Community Affairs

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For further information, please call  
(512) 834-6060

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## TITLE 19. EDUCATION

### Part II. Texas Education

#### Agency

### Chapter 69. Proprietary Schools and Veterans Education

#### Subchapter E. Guidelines and Minimum Standards for Operation of Texas Proprietary Schools

#### ★ 19 TAC §69.127

The Texas Education Agency proposes an amendment to §69.127, concerning minimum standards for operation of proprietary schools. The proposed amendment to subsection (b)(5)(E) provides that refund computations shall be based on hours of attendance. Leaves of absence, suspensions, and school holidays shall not be counted as a part of the elapsed time for the purposes of calculating a student's refund.

Proprietary schools are required to submit a student progress policy for approval. The policy must define satisfactory and unsatisfactory progress as well as the points at which a student will be placed on probation, suspended, and terminated. The proposed amendment to subsection (b)(8)(A)(i)(V) deletes the term "failing" in determining whether a student is progressing adequately, since, in some cases, a student may not be failing but would not meet a school's standards for satisfactory progress. The proposed section also requires the suspension or termination of a student who is on probation for two grading periods.

These changes are recommended by the Proprietary School Advisory Commission.

Lynn Moak, deputy commissioner for research and information, 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

Dr. Beverly J. Bardsley, director for policy development, and Mr. Moak, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is clarification of requirements concerning student refunds and strengthening of the provisions concerning student progress. There is no anticipated economic cost to individuals who are required to comply with the proposed section

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9212. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §32.22, which authorizes the State Board of Education to make rules that carry out the Texas Proprietary School Act.

#### §69.127. Minimum Standards for Operation of Proprietary Schools.

- (a) (No change.)
- (b) Schools desiring issuance and renewal of certificates of approval shall adhere to the following standards:
  - (1)-(4) (No change.)
  - (5) Cancellation and refund policy.
    - (A)-(D) (No change.)
    - (E) Refund computations shall be based on scheduled hours of class attendance. Leave of absence, suspensions, and school holidays shall not be counted as part of the elapsed time for the purpose of calculating a student's refund in accordance with this paragraph.
  - (6)-(7) (No change.)
  - (8) Minimum progress and attendance standards.
    - (A) Progress. Appropriate standards must be implemented to ascertain the progress of the students enrolled.
      - (i) Progress standards must meet the following requirements:
        - (I)-(IV) (No change.)
        - (V) The progress evaluation policy shall stipulate what is considered [failing or] unsatisfactory progress. A student who is [failing or] making unsatisfactory progress shall be placed on probation for the next grading period with the date of the action clearly indicated on the appropriate permanent records and the student advised of this action. Students on proba-

tion who do not have satisfactory progress status [have not regained a passing average] at the end of the probationary period may be continued on probation at the discretion of the school director for another grading period, if the student has demonstrated improvement in comprehension and effort. Students who are continued on probation for two consecutive grading periods and who do not maintain satisfactory progress during or at the end of the second probationary period shall be suspended for a maximum of 30 school days during a 12-month period or terminated [suspended for a maximum of 30 school days per academic year]. The student's progress and other appropriate records shall clearly indicate the reason for suspension and that the student has been advised of this action. If a student fails to return from suspension, the student shall be terminated and any refunds due shall be consummated within 30 calendar days after the student fails to return. A student who returns from suspension shall be placed on probation for the next grading period. The student shall be advised of this action, and the student's file shall be documented accordingly. Students on probation after having been suspended, who do not maintain satisfactory progress during or at the end of the probationary period, shall be terminated. [Students on probation who have not regained a passing average at the end of the probation period may be continued on probation at the discretion of the school director for another grading period, if the student has demonstrated improvement in comprehension and effort.]

(9)-(15) (No change.)

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

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TRD-8510854 W N Kirby  
Commissioner of  
Education

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

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## Chapter 78. Occupational Education and Technology

### Subchapter B. Vocational Education by Contract or Agreement

#### ★ 19 TAC §78.21

The Texas Education Agency proposes an amendment to §78 21, concerning occupational education for public school students by contract. The proposed amendment modifies the process by which the Central Education Agency approves programs and qualifications of post-secondary institutions providing contracted instruction for public secondary students.

Senate Bill 911, 69th Legislature, 1985, transferred administrative responsibility for post-secondary vocational-technical programs from the State Board of Education to the Coordinating Board, Texas College and University System.

Under the proposed amendment, programs and instructors for contracted secondary students in post-secondary institutions are required to meet approval criteria prescribed by the State Board of Education. The process for ensuring that such programs and teachers meet these criteria would be the responsibility of the coordinating board.

Lynn Moak, deputy commissioner for research and information, 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.

Dr. Beverly J. Bardsley, director of policy development, and Mr. Moak have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that agency sections will be in compliance with current law concerning responsibility for post-secondary vocational education. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9212. All requests for public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21 111, which authorizes the board of trustees of a school district to contract for provision of voca-

tional classes to students in the school, subject to rules of the State Board of Education.

#### §78.21. Occupational Education for Public School Students by Contract.

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

(c) Each [The] program providing contracted instruction shall meet the approval criteria established [be approved] by the Central Education Agency and shall operate in accordance with the sections in this title.

(d) Requirements for contracted instruction teachers are as follows. [Contracted instruction teachers shall meet the requirements for public secondary vocational teachers in Chapter 141, Subchapter A, of this title (relating to Certification of Teachers in General) or shall be approved by the Central Education Agency and employed by a public post-secondary institution to teach vocational subjects.]

(1) Contracted instruction teachers employed by public school districts, private post-secondary institutions, or trade or technical schools shall meet the certification requirements for public secondary teachers in Chapter 141 of this title (relating to Teacher Certification).

(2) Contracted instruction teachers employed by public post-secondary institutions shall meet the initial approval requirements for public secondary vocational teachers as prescribed by the Central Education Agency in §141.295 of this title (relating to Vocational Education Emergency Teaching Permits; Requirements and Procedures).

(e) Public school students must be taught in classes specifically designed or designated for them. Students from more than one school district may be in the same class. [A written request may be made for combining] Secondary and post-secondary students in a public post-secondary institution may be taught in the same class when there are too few secondary students to justify a full class [where there are too few to justify a full class of secondary students].

(f)-(g) (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 November 18, 1985

TRD-8510852 W N Kirby  
Commissioner

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

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**Subchapter D. Secondary  
School Vocational Education  
Program Standards**

**★ 19 TAC §78.122**

The Texas Education Agency proposes an amendment to §78.122, concerning specific program requirements for vocational education programs. This proposed amendment will permit senior students in their last semester of high school who have completed three semesters of pre-employment training to be placed with business or industry for on-the-job training. For students in need of remedial work, remediation must be available in the pre-employment laboratory.

Lynn Moak, deputy commissioner for research and information, 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.

Dr. Beverly J. Bardsley, director for policy development, and Mr. Moak have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be another training option for vocational education students. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9212. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21.111, which authorizes the State Board of Education to make rules for vocational education programs in Texas public schools.

**§78.122. Specific Program Requirements.**

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

(c) Pre-employment laboratory and technical education program units.

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

(3) **At local option, senior students in their last semester of high school who have completed three semesters of training may be placed with business or industry for paid or unpaid employment on a training station provided:**

(A) **the training station is directly related to the occupational area for which the student has received training;**

(B) **an approved training plan is on file with the local education agency within three weeks after the date of placement; and**

(C) **remediation for identified needs is available in the pre-employment laboratory.**

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

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

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TRD-8510855      W. N. Kirby  
Commissioner of  
Education

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(512) 463-9212

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

**★ 19 TAC §89.229**

The Texas Education Agency proposes an amendment to §89.229, concerning notice requirements and complaint procedures. The proposed amendment deletes the reference to §89.235(g), concerning the discipline of handicapped students, and instead refers to the new sections concerning discipline, in Chapter 133, Subchapter B. The amendment also clarifies the types of activities for which reasonable notice of at least five school days must be given to parents of handicapped students. These activities include proposing or refusing to conduct an assessment, holding an ARD meeting, initiating special education services, or changing the educational placement of a handicapped student except for actions in accordance with Chapter 133, Subchapter B, of this title, (relating to discipline management).

Lynn Moak, deputy commissioner for research and information, 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.

Dr. Beverly J. Bardsley, director for public development, and Mr. Moak have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing

ing the section will be to ensure that parents of special education students have reasonable notice of actions concerning their children. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9212. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21.501, which authorizes the State Board of Education to make rules for the administration and funding of the special education program.

**§89.299. Notice Requirements and Complaint Procedures.**

(a) (No change.)

(b) Specific notice.

(1) (No change.)

(2) [Except as provided in subsection (g) of §89.235 of this title (relating to General Program Requirements) concerning student discipline,] Specific notice shall be given a reasonable time prior to **proposing or refusing to conduct an assessment, holding an ARD meeting, initiating special education services, or changing the educational placement of a handicapped student. Except for actions in accordance with Chapter 133, Subchapter B of this title (relating to Discipline Management),** reasonable time is defined as at least five school days; however, the parents may agree to **waive the five school day notice period to which they are entitled [an earlier meeting]**

(c) (No change.)

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

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Commissioner of  
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For further information, please call  
(512) 463-9212.

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services Chapter 48. CCAD Support Documents

### ★40 TAC §48.9801

The Texas Department of Human Services proposes new §48.9801, concerning reimbursement methodology for special services for handicapped adults—shared attendant care, in its community care for aged and disabled (CCAD) chapter. Proposed new §48.9801 represents a methodology for reimbursing providers of shared attendant care for clients receiving special services to handicapped adults. The new section specifies requirements for completing and submitting cost reports and provisions for performing desk and on-site audits of the cost reports. In addition, the new section outlines the requirements for determining a reimbursement rate ceiling and defines allowable and unallowable costs for cost analysis and rate ceiling determination.

Clifton Martin, associate commissioner for programs, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section.

Mr. Martin also has determined that for each year of the first five years the section is in effect the public benefit will be improved fiscal management of contracts subject to this reimbursement methodology. There are no economic costs to individuals required to comply with the proposed section.

Comments may be sent to Cathy Rossberg, Administrator, Policy Development Support Division-644, Texas Department of Human Services 153-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

#### §48.9801. *Reimbursement Methodology for Special Services for Handicapped Adults—Shared Attendant Care.*

##### (a) Cost reporting.

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

(2) Cost report due date. The provider must submit the cost report no later than 90 days following receipt of the cost report forms. An extension of the due date may be granted for good cause. Good cause

is that cause outside the control of the provider. The provider must submit a request in writing for an extension of the due date.

(3) Reporting period. The provider must prepare the cost report to reflect the activities of the provider during his fiscal year. Cost reports may be required for other periods at the discretion of the department.

(4) Failure to file an acceptable cost report. Failure to file a cost report according to all applicable rules and instructions can result in the State of Texas withholding all provider payments until the provider submits an acceptable report.

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

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

(7) Record-keeping requirements. The provider must maintain records for a period of not less than three years and 90 days following the date of submission of the cost report to the department. Records must be accurate and in sufficient detail to support the financial and statistical information in cost reports.

(8) Failure to maintain records. A provider not maintaining adequate records to support the financial and statistical information in cost reports is given 90 days to bring his record keeping into compliance. Failure to correct deficiencies within 90 days from the date of notification of deficiency can result in the cancellation of the provider's contract for services.

(b) Reimbursement rate ceiling determination.

(1) The reimbursement rate ceiling applies to all providers uniformly, regardless of geographic location or other factors.

(2) The reimbursement rate ceiling is determined on a per diem basis.

(3) A recommended reimbursement rate ceiling is determined initially by the analysis of financial and statistical data currently submitted by the providers to the department. Future recommended rate ceilings are determined through the analysis of provider-submitted cost reports.

(4) The reimbursement rate ceiling is determined prospectively by projecting

expenses reported on cost reports for a specific cost report year to the next ensuing rate period.

(5) The cost report analysis process recasts reported expense data in a consistent manner to determine the allowable expense per day of service. The allowable expense per day of service is adjusted by economic inflators or adjusters determined reasonable and appropriate by the department to calculate a prospective expense per day of service.

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

(7) The reimbursement rate ceiling may not exceed the intermediate care facility (ICF) reimbursement rate set by the TDHS board.

(c) Contract-specific unit rate. The actual rate for each contract is determined through the procurement process with the department staff and the provider. In no instance may the rate exceed the ceiling set by the TDHS board.

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

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

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

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

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

(5) treated consistently using generally accepted accounting principles appropriate to the circumstances;

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

(7) the net of all applicable credits.

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

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

(2) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(3) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the

government, his employees, clients, shareholders, or members, and the fulfillment of the purpose for which the business was organized.

(f) Unallowable costs. The following list of expenses is not intended to be inclusive of all possible unallowable costs. It is a general guide to the various unallowable costs frequently encountered in cost reports submitted by providers. Unallowable costs are expenses incurred by a provider which are not directly or indirectly related to the provision of contracted services according to applicable laws, rules, and standards. Unallowable costs are:

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

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

(3) business expenses from business operations not related to the provision of services contracted for by the department;

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

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

(6) dues and membership fees;

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

(8) expenses incurred for services not related to the provision of services for which the department has contracted;

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

(10) expenses which are not the legal obligation of the provider;

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

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

(13) fines and other penalties for violation of statute or ordinance; penalties for late payment of taxes, utilities, mortgages, and other similar penalties;

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

(15) insurance expenses for life insurance premiums if the beneficiary is the provider organization; for insurance on assets not related to the delivery of services for which the department has contracted;

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

(17) personal compensation paid to individuals not providing services contribu-

tory to the delivery of services for which the department has contracted;

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

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

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

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

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

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 November 20, 1985.

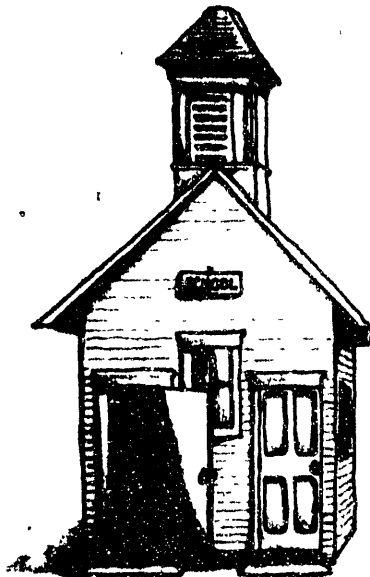
TRD-8510874

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption:

January 1, 1986

For further information, please call  
(512) 450-3766.



## Part III. Texas Commission on Alcohol and Drug Abuse

The following proposals submitted by the Texas Commission on Alcohol and Drug Abuse will be serialized in the November 29, 1985, issue of the *Texas Register*. The proposed date of adoption for the documents is December 27, 1985.

### Chapter 141. General Provisions

§141.1

(repeal)

§§141.1-141.6, 141.21-141.24, 141.31-141.34,  
141.41, 141.51, 141.61, 141.62

(new)

§141.71

(repeal)

### Chapter 143. Introduction

§143.1-143.4

(repeal)

§§143.11-143.35

(new)

### Chapter 145. Amendment and Records

§145.1-145.5

(repeal)

### Chapter 147. State Planning

§147.1

(repeal)

### Chapter 149. Project Support Procedures

§§149.21-149.25

(repeal)

## Part VI. Texas Commission for the Deaf

### Chapter 181. General Rules of Practice and Procedure

#### Special Services Operation

★ 40 TAC §181.41

The Texas Commission for the Deaf (TCD) proposes an amendment to §181.41, concerning the Telecommunication Device for the Deaf (TDD) Program. In compliance with Senate Bill 384, §13, 69th Legislature, 1985, the commission has the authority to remove TDDs placed in the state agencies under prior law that have not been used to communicate with a deaf or hearing-impaired person in any six-month period after September 1, 1983, and reassign those TDDs to other state agencies or entities where the greatest number of deaf and hearing-impaired persons will receive maximum benefits by placement.

Larry D. Evans, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications

for small businesses as a result of enforcing or administering the section. The effect on state government will be an estimated reduction in cost of \$41,000 each year in 1986-1990. There will be an estimated reduction in cost to local government of \$3,000 each year in 1986 and 1987, \$5,000 each year in 1988 and 1989, and \$6,000 in 1990.

Mr. Evans also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased direct communication accessibility between deaf and hearing-impaired consumers and state agencies, emergency response centers, and other entities. This will reduce the necessity of securing interpreters for agency and entity contact purposes, and more immediate response time of police, ambulance, and firefighter assistance in emergencies involving deaf and hearing-impaired persons. 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 William F. Eckstein, Texas Commission for the Deaf, P.O. Box 12904, 510 South Congress Avenue, Suite 300, Austin, Texas 78711.

The amendment is proposed under the Human Resources Code, Chapter 81, §81.011, as amended by Senate Bill 384, 69th Legislature, 1985, which provides the Texas Commission for the Deaf with the authority to remove telecommunication devices for the deaf from state agencies, under prior law, that have not been used to communicate with deaf or hearing-impaired persons in any six-month period after September 1, 1983, and reassign those devices if the commission determines that reassignment is necessary to maximize their use.

**§181.41. Telecommunications Device for the Deaf (TDD) [Placement] Program.** Definitions. The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Contact person**—Designated representative of the receiving agency, [or] emergency response center, or entity.

(2) (No change.)

(3) **Entities**—Any agencies, organizations, or establishments other than state agencies and units of local government.

(4)[(3)] **Placement site**—Office within the receiving agency or receiving emergency response center designated for initial placement of the TDD prior to September 1, 1983.

(5) **Reassignment site**—Office within the receiving agency, receiving emergency response center, or entity designated for reassignment of the TDD after September 1, 1983, in order to maximize its use.

(6)[(4)] **Receiving agency**—State agency with whom the Texas Commission for the Deaf has placed a TDD or has agreed to reassign a TDD to maximize its use [agreed to place a TDD].

(7)[(5)] **Receiving emergency response center**—An emergency center, such as a police station, fire station, or hospital with whom the Texas Commission for the Deaf has placed a TDD or has agreed to reassign a TDD to maximize its use [agreed to place a TDD].

(8) **Receiving entity**—An entity, such as an agency, organization, or establishment other than state agency and unit of local government with whom the TCD has agreed to reassign a TDD to maximize its use.

(9)[(6)] **TCD**—Texas Commission for the Deaf.

(10)[(7)] **TDD**—A generic term used in reference to telecommunication devices for the deaf and hearing-impaired, whereby telephone communication is made possible.

[(8)] **Transfer agency**—An agency which has a TDD on its inventory to be transferred to the inventory of the Texas Commission for the Deaf.]

(b) **Use of TDDs.** [Acquisition of TDD units. The Texas Commission for the Deaf, in consultation with the State Purchasing and General Services Commission, will establish specifications for each unit which must be met before TCD will purchase, lease, rent, or otherwise acquire a TDD. The devices will be acquired by TCD in accordance with the State Purchasing and General Services Act. All units will remain the sole property of TCD.]

(1) The TCD will administer a program for the use of TDDs in selected state agencies and in emergency dispatch communication centers in selected units of local governments, including counties, municipalities, and other political subdivisions that administer emergency response systems. The program will cover the use of TDDs placed in selected state agencies and emergency response centers under prior law, but will not authorize further initial placements after September 1, 1985.

(2) The TCD will remove all TDDs placed in selected state agencies under prior law that have not been used to communicate with a deaf or hearing-impaired person in any six-month period after September 1, 1983. The TCD will reassign a TDD if it determines that reassignment is necessary to maximize its use. The TCD will determine appropriate placements for those TDDs removed from selected state agencies due to nonuse. The primary criteria for making these placements will be a determination of where the greatest number of deaf and hearing-impaired persons will receive maximum benefits by the placement and will include placements in entities other than state agencies and units of local government.

(3) The TCD will notify, in writing, the commissioner or executive director, or head of each selected state agency of the intent to remove the TDDs from offices of the receiving agency.

(c) **Placement or reassignments of TDDs.** [Agency and emergency response center selection and responsibilities.

[(1) The Texas Commission for the Deaf will confer with other state agencies as well as state organizations of and for the deaf to determine:

[(A) the state agencies and emergency response centers in which to place TDDs; and

[(B) the number of TDDs to place within the agency and emergency response center.]

(1)[(2)] The Texas Commission for the Deaf will notify, in writing, the commissioner or executive director, or head of each selected state agency, [or] receiving emergency response center, or entity of the intent and desire to coordinate the effort of placement or reassignment of the TDDs in offices of the receiving agency, [or] receiving emergency response center, or receiving entity. The state agency, [and] emergency response center, and entity will designate a contact person within their offices to coordinate with TCD. The Texas Commission for the Deaf will designate a time and place for meetings to discuss the placement or reassignment with the contact person of the receiving agency, [or] emergency center, or entity.

(2)[(3)] The receiving agency, [or] emergency response center, or entity will:

(A) select or designate a contact person to represent the agency, [or] emergency response center, or entity who will:

(i) (No change.)

(ii) provide information regarding the TDD [placement] program to appropriate personnel of the receiving agency, [or] receiving emergency response center, or receiving entity;

(iii) recommend sites for placement or reassignment of the TDDs; and

(iv) inform TCD in writing of the recommended sites and number of the TDDs suggested to be placed or reassigned at each site.

(B) ensure cooperation of personnel during placement or reassignment training;

(C)-(D) (No change.)

(3)[(4)] The Texas Commission for the Deaf will:

(A) reassign [purchase] TDDs used in the [placement] program;

(B) be responsible for the repair, upkeep and proper functioning of all TDDs listed on TCD inventory;

(C) meet with the designated contact person from the receiving agency, [or] emergency response center, or entity to fully discuss the program, including infor-

information regarding numbers of TDDs available for placement or reassignment;

(D) assist the receiving agency, [or] emergency response center, or entity in determining the areas of the state in which to place or reassign TDDs;

(E) notify each selected site of the date and time of placement or reassignment;

(F) train personnel at the placement or reassignment site in the proper use and care of the TDD;

(G) (No change.)

(H) publish a directory of agencies, [and] emergency response centers, and entities participating in the TDD [placement] program, having phone numbers of placement or reassignment sites and services provided available for the user.

(4) A placed or reassigned TDD remains the sole property of the Texas Commission for the Deaf.

**[(d) Transfer of TDDs.**

[(1) Any state agency may transfer existing equipment to the TCD inventory. Once the transfer is accepted, the equipment becomes part of the TCD network, is subject to rules governing the program, and becomes the property of the Texas Commission for the Deaf. Agencies wishing to transfer TDDs to the commission must:

[(A) inform TCD in writing of its intent; and

[(B) provide the following information to TCD:

[(i) name, address, and phone number of the agency;

[(ii) name of contact person representing the agency;

[(iii) information on use and condition of the TDD; and

[(iv) quantity and identification of TDDs to be transferred to TCD.

[(2) The Texas Commission for the Deaf will promptly notify the donor agency as to the acceptance and intended use of the TDD in becoming part of the total network. Units transferred to the inventory of TCD will be used for the central purpose of providing increased telecommunication accessibility to the deaf community within the geographic areas serviced by the transfer agencies.]

[(d)[(e)] Reporting system. The Texas Commission for the Deaf shall provide the receiving agency, [or] emergency response center, or entity with forms and format for recording and reporting TDD calls on a monthly basis. These forms will be used to monitor utilization of each unit. If a placed, or reassigned unit in a certain location receives few TDD calls or is otherwise underutilized, TCD will decide whether to relocate the unit within the receiving [recipient] agency, [or] emergency response center, or entity or to remove the unit completely.

[(e)[(f)] Maintenance and repair. The receiving agency, [or] emergency response center, or entity shall promptly notify TCD of any malfunctioning equipment and shall explain the malfunction. The Texas Commission for the Deaf will bear the responsibility for cost of repair to all TDD equipment used in the [placement] program. The commission has an inhouse repair shop and will provide loaner units to the agency, [or] emergency response center, or entity will

bear the responsibility for daily care in handling and safekeeping of the TDD and will furnish appropriate paper after the initial supply furnished by TCD has been exhausted.

[(f)[(g)] Postage and handling costs. The receiving agency, [or] emergency response center, or entity will bear the responsibility for cost of postage and handling in the event shipment to TCD is required for repair or replacement. The Commission for the Deaf will bear the responsibility for returning the equipment and assume the cost of postage after repair.

[(g)[(h)] Publication of TDD phone numbers. The Texas Commission for the Deaf will publish the receiving, [and] emergency response center, and entity phone numbers in a statewide TDD network directory. The directory will be updated at least annually. The Texas Commission for the Deaf will distribute to deaf and hearing-impaired persons and other interested individuals a listing of the receiving agency, [and] emergency response center, and entity phone numbers.

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 November 18, 1985.

TRD-8510801

Larry D. Evans  
Executive Director  
Texas Commission for  
the Deaf

Earliest possible date of adoption:  
December 27, 1985  
For further information, please call  
(512) 475-2492.

# Withdrawn

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

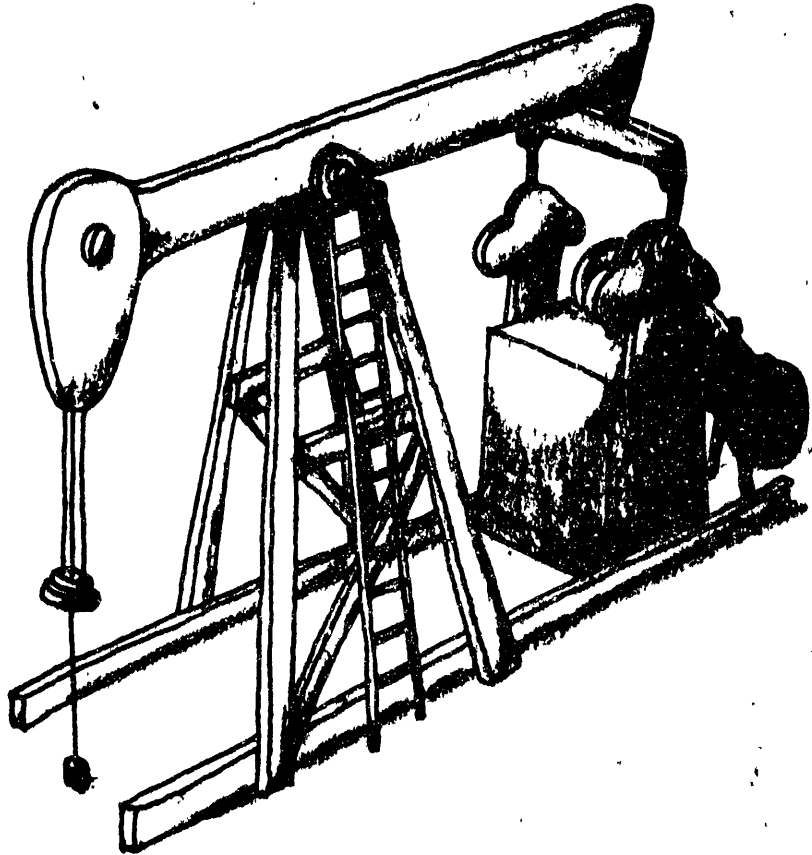
### Part X. Texas Water Development Board Chapter 333. Area Water Quality Management Surface Water Quality Standards

#### ★ 31 TAC §333.21

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §333.21 submitted by the Texas Water Development Board has been automatically withdrawn, effective November 19, 1985. The text of the amended section as proposed appeared in the May 17, 1985, issue of the *Texas Register* (10 TexReg 1578).

TRD-8510884  
Filed: November 19, 1985

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# Adopted

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

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

## TITLE 10. COMMUNITY AFFAIRS

### Part IV. Texas Housing Agency

#### Chapter 147. 1985 Single Family Mortgage Purchase Program

##### ★ 10 TAC §§147.1-147.22

The Texas Housing Agency adopts an amendment to §147.14, with changes to the proposed text published in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2496). Sections 147.1-147.13 and 147.15-147.22 are adopted without changes and will not be republished.

Section 147.14(b) is changed for clarity, and the word "conventional" is inserted in the second sentence.

The new sections establish procedures for administering the agency's Single Family Mortgage Purchase Program.

The new sections provide guidelines and procedures under which this agency will administer the program.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, §7(b)(2), which authorizes this agency to adopt rules governing the administration of the agency and its programs.

##### §147.14. *Qualifying Residences.*

(a) Each residence must be a single family owner-occupied attached or detached structure, a single family condominium unit, or a single unit in a planned unit development. Attached structures must meet the requirements of the FNMA home mortgage selling contract supplement or other applicable document. Duplexes, triplexes, and fourplexes may not be financed under the program, unless specified in the agreement.

(b) As set forth in the agreement, certain additional limitations apply to any residence that is a unit of a condominium development or of a planned unit development, as defined in the agreement. In addition, no conventional mortgage loan may be made with respect to such a unit unless a qualified private mortgage insurer has ap-

proved the applicable condominium or planned unit development; provided, however, for a de minimis planned unit development as defined in the agreement, the agency may waive the restrictions in this section.

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 November 18, 1985.

TRD-8510837

Earline Jewett  
Executive Administrator  
Texas Housing Agency

Effective date: December 10, 1985  
Proposal publication date: August 6, 1985  
For further information, please call  
(512) 475-0812

★ ★ ★

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 78. Occupational Education and Technology

##### Subchapter D. Secondary School Vocational Education

#### Vocational Program Approval

##### ★ 19 TAC §78.63, §78.69

The Texas Education Agency adopts amendments to §78.63 and §78.69, without changes to the proposed text published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2447).

These amendments create the vocational program in technical education internship to provide occupational training in high technology areas. This training concept has been pilot tested for two years and has been found to be successful.

School districts may establish a vocational program unit in technical education internship for students to be given occupational training in high technology areas. Program units may be approved for 10 or 11 months.

No comments were received regarding adoption of the amendments.

These amendments are adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program, and §16.155, which includes vocational education as part of the Foundation School 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 November 18, 1985.

TRD-8510858

W. N. Kirby  
Commissioner of  
Education

Effective date: December 10, 1985  
Proposal publication date: July 30, 1985  
For further information, please call  
(512) 463-9212.

★ ★ ★

### Vocational Students

##### ★ 19 TAC §78.103

The Texas Education Agency adopts an amendment to §78.103, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2448).

In subsection (a), the cross-references in the second sentence have been changed from (b)-(e) to (b)-(h). In subsection (b), the requirements for the number of hours per week have been revised to be consistent with a previous amendment to this subsection which was not effective at the time this amendment was proposed.

This amendment creates the vocational program in technical education internship to provide occupational training in higher technology areas. This training concept has been pilot tested for two years, and has been found to be successful.

Each student enrolled in the technical internship program must be serving as an unpaid part-time intern in an approved technical occupation. To receive three units of credit, a student must be in training 15 hours per week, of which 10 must be during the school week. Students must train 10 hours per school week for

two units of credit. Prerequisites for the program include two years of mathematics, two years of science, and a program related to the area of placement or a 30-hour technical education internship summer program.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program, and §16.155, which includes vocational education as part of the Foundation School Program.

**§78.103. Student Eligibility—Specific Requirements.**

(a) Specific requirements for students by vocational program area are shown in the following table. Subsections (b)-(h) of this section provide additional information about eligibility requirements for students.

**Eligibility Requirements for Students by Vocational Program Area**

	Grade Range	Minimum Age	Supervised Occupational Experience	Employed In Approved Occupation	Laboratory Experience
Agriculture through Pre-Technical		No change			
Technical Education Internship	12	16		See (g)	Prerequisite See (h)

(b) Each student, while enrolled, must be employed part time in one of the approved occupations listed under the appropriate program of vocational education. To receive three units of credit, a student must be employed 15 hours per week. At least 10 of the required hours must be during the school week. For two units of credit, the student must be employed 10 hours per school week. Districts shall identify cooperative program units as either two credit or three credit units. All students enrolled in the same cooperative program unit shall be eligible to receive the same units of credit. A student may be counted as an eligible student from the date of employment provided an approved training plan is on file with the local education agency within three weeks after the date of employment. Cooperative education training plans shall be developed by the cooperative training teacher/coordinator in consultation with the person responsible for providing on-the-job training experiences to the student involved. Training stations shall be reputable business or industrial establishments willing to provide each student with a broad range of meaningful training activities. Approvable training plans shall be competency based and shall include the appropriate essential elements identified in Chapter 75 of this title (relating to Curriculum).

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

(g) Each student, while enrolled, must be serving as an unpaid part-time intern in an approved technical occupation.

To receive three units of credit, a student must be in training 15 hours per week; at least 10 of the required 15 hours must be during the school week. For two units of credit, the student must be in training 10 hours per school week. Districts shall identify technical education internship program units as either two-credit or three-credit units. All students enrolled in the same technical education internship program unit shall be eligible to receive the same units of credit. A student may be counted as an eligible student from the date of placement as an intern provided an approved training plan is on file with the local education agency within three weeks after the date of placement. Technical education internship training plans shall be developed by the teacher/coordinator in consultation with the person responsible for providing intern training experiences to the student involved. Training stations shall be reputable business or industrial establishments willing to provide each student with a broad range of technical training activities. Approvable training plans shall be competency based and shall include the appropriate essential elements identified in Chapter 75 of this title (relating to Curriculum).

(h) Students enrolled in technical education internship must have previously completed:

- (1) two years of mathematics, including algebra II or geometry;
- (2) two years of science; and
- (3) a program specifically related to the area of internship placement or a

30-hour (minimum) technical education internship summer 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 November 18, 1985.

TRD-8510853

W. N. Kirby  
Commissioner of  
Education

Effective date: December 10, 1985  
Proposal publication date: July 30, 1985  
For further information, please call  
(512) 483-9212.

★ ★ ★

**Program Standards**

**★ 19 TAC §78.122**

The Texas Education Agency adopts an amendment to §78.122, without changes to the proposed text published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2489).

This amendment creates the vocational program in technical education internship. This training concept has been pilot-tested for two years, and pilot-test results indicate that this is a successful way to provide vocational training in high technology areas.



Technical education internship units may be approved on a 10- or 11-month basis. Teachers assigned to the program must visit each student training station at least eight times each school year, including on visit each grading period. Up to two hours per day of intern supervision may be counted toward the minimum teaching duty requirement.

No comments were received regarding adoption of the amendment.

These amendments are adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program and §16.155, which includes vocational education as part of the Foundation School 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 November 15, 1985.

TRD-8510857

W. N. Kjrby  
Commissioner of  
Education

Effective date: December 10, 1985

Proposal publication date: July 30, 1985

For further information, please call  
(512) 463-9682

★ ★ ★

## Chapter 133. Pupil-School Relations

### Subchapter B. Discipline Management

#### ★ 19 TAC §§133.26-133.28

The Texas Education Agency adopts new § 133.26 and §133.28, with changes to the proposed text as published in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2527). Section 133.27 is adopted without changes and will not be republished.

In §133.26(a), "In-school suspension for three days or less" is added to the definition of the term "discipline management technique" as one option school districts may use.

Section 133.26(b)(5) is edited for clarity and a provision is added for a hearing, in accordance with §133.26(c), if a student is returned to the same class without the teacher's permission after two or more removals by the teacher.

Section 133.26(c)(4)(D) is edited to clarify that students who commit a disciplinary infraction are expected to complete any course work assigned. Such students may not be assessed an academic penalty based solely on the disciplinary infraction.

In §133.28(3)(D), the phrase "prior to removing a student from class" has been changed to "prior to removing a student from school premises."

In §133.26(a)(11), the word "a" is inserted before the word "school-sponsored." In §133.28(6)(A), the word "a" is inserted before the word "handicapped."

These new sections implement the revised discipline procedures in the Texas Education Code, §21.301 and §21.3011, which were enacted into law as part of House Bill 72, 68th Legislature, 2nd Called Session, 1984.

School districts may use a variety of discipline management techniques, including student-teacher conferences, suspension of participation in extracurricular activities, detention, in-school suspension for three days or less, or others. No hearing is required prior to the use of discipline management technique which does not constitute expulsion or removal to an alternative education program

The board of trustees or the board's designee may find that a student is incorrigible, in accordance with criteria in the rule, and, after a hearing, may remove the student to an alternative education program. The removal of a student to an alternative education program may not exceed the end of the semester in which the conduct occurred, unless the conduct occurred during the final six weeks of a semester, in which case the removal may not exceed the end of the following semester.

A student may be expelled only by written order setting the term of the expulsion. Before a student is expelled, a hearing must be provided in accordance with §139.27(b). Expulsion may not extend beyond the end of the school year unless the conduct occurred during the final six weeks of the year, in which case expulsion may not extend beyond the end of the following fall semester.

No comments were received regarding adoption of the new sections.

These new sections are adopted under the Texas Education Code, §21.701, which directs the Central Education Agency to review and approve or reject discipline management programs developed by school districts, and requires the agency to monitor, through the accreditation process, the development, implementation, and enforcement of discipline management programs.

#### §133.26. Removal of Incurrigible Pupils; Alternative Education Program.

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

(1) Class disruption—Any behavior, including tardiness, which violates the rules of a particular classroom and inter-

feres with the teacher's opportunity to present material or the other students' opportunity to concentrate on the material or their assignments.

(2) Community-based alternative school—A program for students who have been removed from the students' assigned campus for incorrigible conduct and placed in a supervised educational setting operated by a school district in cooperation with other school districts, juvenile agencies, or other governmental entities.

(3) Discipline management technique—Any action which is intended to promote proper behavior and/or discourage misconduct other than expulsion or removal to an alternative education program, including, but not limited to, student-teacher conferences, suspension of extracurricular activities, detention, in-school suspension for three days or less, etc.

(4) Expulsion/suspension—The total deprivation of educational services for disciplinary reasons except as modified for handicapped students outlined in §133.28 of this title (relating to Discipline of Handicapped Students).

(5) Home-based instruction—An unsupervised educational setting whereby a student removed for incorrigible conduct is given assignments to be completed at home. Instructional services shall be provided and may include access to school facilities.

(6) In-school suspension program—An on-campus setting for students who commit disciplinary infractions, where the student continues to receive instruction in each course to the extent possible.

(7) Parents—Includes single parent, legal guardian, or person in lawful control.

(8) Proceeding—Any hearing required by law which may result in a student's expulsion or removal to an alternative education program.

(9) Reassignment of classes—The removal of a student for incorrigible conduct from his or her assigned classroom to another class on the same campus. To the extent possible, the student should continue to receive instruction in the courses he or she was enrolled in when the removal became effective.

(10) School-community guidance center—A program that meets the requirements for school-community guidance centers as specified under the Texas Education Code, §§21.601-21.606.

(11) School property—Any property owned by the school district or over which the school district or its personnel exert lawful authority, including property visited by students in connection with a school-sponsored activity, such as a field trip or extracurricular activity.

(12) Serious offenses on school property—Serious offenses include, but are not limited to:

(A) assaulting a teacher or other individual;

(B) selling, giving, or delivering to another person or possessing or using:

- (i) marijuana or a controlled substance, as defined by the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, or by 21 United States Code §801 *et seq*;

- (ii) a dangerous drug, as defined by the Texas dangerous drug law, Texas Civil Statutes, Article 4476-14; or

- (iii) a firearm as defined by the Penal Code, §46.01(3); an illegal knife as defined by the Penal Code, §46.01(6); a club as defined by the Penal Code, §46.01(1); or a weapon listed as a prohibited weapon under the Penal Code, §46.06; or
- (iv) an alcoholic beverage, as defined by the Alcoholic Beverage Code, §1.04, or commits a serious act or offense while under the influence of alcohol.

(C) being under the influence of any of the substances listed in subsections (a)(12)(B)(i), (ii), and (iv) of this section. A student need not be legally intoxicated to be considered "under the influence," but the student's faculties must be impaired to a noticeable extent; or

(D) committing arson as defined by the Penal Code, §28.02.

(13) Transfer to a different school campus—The removal of a student for incorrigible conduct from his or her assigned campus to another campus within the same school district.

(14) Unsupervised educational setting—For the purpose of this section an unsupervised educational setting shall be home-based instruction.

(b) Removal from class for reasons other than removal to an alternative education program.

(1) The board of trustees or its designee may remove a student from his or her regular classes or from school district premises for nondisciplinary reasons whenever the board or its designee determines that a compelling reason exists for doing so. Reasons which may be considered compelling include, but are not limited to, the fact that the student is under the influence of alcohol or drugs, highly agitated, or suffering from any other condition which temporarily threatens his or her welfare, other individuals' welfare, or the efficient operation of the school. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel.

(2) The board of trustees or its designee may remove a student from his or her regular classes or school premises pending any hearing required by law. Such removal must be for as short a time as is reasonable under the circumstances.

(3) Prior to removing a student from school premises under this subsection, the student shall be informed of the reason for the removal and given an opportunity to state any objections to such action.

(4) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(5) A teacher may remove any student from class for a serious class disruption or for repeated class disruptions. Each school district shall develop procedures in its discipline management program for the removal of students from class for reasons other than to place a student in an alternative education program. These procedures shall include methods to allow teacher recommendations and shall provide for conferences scheduled by the principal at the teacher's request, among the teacher, the student, the student's parent or guardian, and the principal or his designee. If a student is returned to the same class without the teacher's permission after two or more removals by the teacher, the district shall conduct an expedited hearing to determine whether the student should be placed in an alternative education program in accordance with subsection (c) of this section. The student may be placed in an alternative program pending the hearing.

(6) A student who is removed from his or her regular classes pursuant to this section must be allowed to perform his or her regular assignments as if the removal had not occurred and shall not receive an unexcused absence.

(7) No removal pursuant to this section shall be considered a removal to an alternative education program.

(c) Removal to an alternative education program.

(1) Removal permitted. The board of trustees or its designee may conclude that a student is incorrigible if the student, on school property, has committed one or more serious offenses listed in subsection (a)(12)(A)-(D) of this section.

(2) Procedure at the hearing.

(A) No hearing is required prior to the use of any discipline management technique which does not constitute expulsion or removal to an alternative education program.

(B) Prior to the imposition of any removal to an alternative education program, a hearing must be conducted, at which the following minimum requirements must be met:

- (i) the student shall be advised of the conduct with which he or she is charged;

- (ii) the student shall be given the opportunity to explain his or her version of the incident; and

- (iii) the pupil's parents, guardian, or a representative designated by rules adopted by the board of trustees is entitled to notice of and to participate in a disciplinary proceeding under this section.

(C) Any hearing may be recorded using any reliable means by any party to the proceeding.

(3) Appeals. Where an initial decision to remove a student to an alternative education program is made by the board's designee, the decision may be appealed to the board of trustees.

(4) Assessment.

(A) Placement in home-based instruction should be used only when there is no reasonable alternative less severe and shall not exceed 10 consecutive school days in any one semester.

(B) The removal of a student to an alternative education program may not exceed the end of the semester in which the conduct occurred, unless the conduct occurred during the final six weeks of a semester, in which case the removal may not exceed the end of the following semester. If the conduct occurred during the final six weeks of the school year, the removal may not exceed the end of the following fall semester.

(C) As an exception to subsection (c)(4)(A) of this section, placement in home-based instruction shall be considered appropriate for the maximum term of removal set forth in subsection (c)(4)(B) of this section for the students who engage in the following incorrigible conduct on school property:

- (i) assaults a teacher or other individual;

- (ii) sells, gives, or delivers to another person or possesses or uses a prohibited weapon as defined in subsection (a)(12) of this section;

- (iii) sells, gives, or delivers to another person or possesses with the intent to sell or distribute alcohol, marijuana, controlled substance, or a dangerous drug as defined in subsection (a)(12) of this section;

- (iv) repeatedly possesses for personal use or uses alcohol, marijuana, controlled substance, or a dangerous drug as defined in subsection (a)(12) of this section; or

- (v) commits arson as defined in subsection (a)(12) of this section.

(D) A student who commits a disciplinary infraction under this section shall be expected to complete any course work assigned and may not be assessed an academic penalty based solely on the disciplinary infraction.

(5) Removal during appeal. During the pendency of any appeal to the state commissioner of education, a removal to an alternative education program by the board of trustees may be effected.

§133.28. *Discipline of Handicapped Students.* Disciplinary actions regarding handicapped students shall be in accordance

with §133.26 of this title (relating to Removal of Incurable Pupils; Alternative Education Program) and §133.27 of this title (relating to Expulsion), except as noted in this section.

(1) Handicapped student. For the purpose of this section, a handicapped student is a student who has been evaluated in accordance with 34 Code of Federal Regulations §§300.530-300.534 and §89.233 of this title (relating to Comprehensive Individual Assessment) and determined by an admission, review, and dismissal (ARD) committee as being orthopedically handicapped, other health impaired, auditorially handicapped, visually handicapped, deaf-blind, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, multiply handicapped, or pregnant, who because of those impairments needs special education and related services.

(2) Removal to an alternative education program.

(A) Removal to an alternative education program for a period not to exceed 10 consecutive school days may be effected if a qualified group of professionals first determines that the alleged behavior in question was not related to the handicapping condition or an inappropriate placement. The qualified group of professionals must consist of at least the following members:

(i) a special education teacher who is familiar with the student and the student's individual educational plan (IEP) and is reasonably available;

(ii) a special education support person (all reasonable efforts shall be made to ensure that the person chosen is qualified to interpret assessment data relative to the behavior-handicap-placement link in the case of the individual student being considered); and

(iii) the designated building administrator.

(B) If the qualified group of professionals determines there is a connection, the ARD Committee must review the decision and determine what action is appropriate.

(C) The term of a handicapped student's removal to an alternative education program shall be assessed in accordance with the requirements of §133.26(c)(4) of this title (relating to Removal of Incurable Pupils; Alternative Education Program). However, removal for more than 10 consecutive school days may be effected only through ARD committee action.

(3) Removal for reasons other than to an alternative education program.

(A) Removal of a handicapped student from a class or school for reasons other than to an alternative education program may only be done for compelling reasons as noted in §133.26(b)(1) of this title (relating to Removal of Incurable Pupils; Alternative Education Program) and shall not exceed five consecutive school days.

Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel.

(B) Removal under this section is intended to be used in emergency situations only and consecutive five school day removals are prohibited.

(C) Prior to removing a student from school premises under this subsection, the student shall be informed of the reason for the removal and given an opportunity to state any objections to such action.

(D) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(4) Removals totaling 15 school days. When the total number of days a handicapped student is removed to an alternative education program, or removed from school premises for reasons other than removal to an alternative education program, or both totals 15 school days in any one school year, an ARD committee review of the student's IEP shall be conducted unless such removal is warranted in the student's discipline management plan specified in the student's IEP.

(5) Sanctions specified in students' IEP. The requirements of §133.26 of this title (relating to Removal of Incurable Pupils; Alternative Education Programs), §133.27 of this title (relating to Expulsion), and paragraph (2) and paragraph (3) of this subsection shall not apply to disciplinary sanctions implemented in accordance with specifications in the student's IEP.

(6) Expulsion of handicapped students.

(A) Expulsion may be effected for a handicapped student who is engaging in conduct which would warrant such action for nonhandicapped student under §133.27 of this title (relating to Expulsion) only if the ARD committee determines the misconduct is not related to the handicapping condition or inappropriate placement.

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

(C) The ARD committee shall determine the educational services to be provided during the time of expulsion. The student's IEP shall include goals and ob-

jectives designed to assist in returning the student to school and preventing significant regression.

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

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

(8) Local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for assessment. However, a regular education student is not entitled to avoid disciplinary action pending any assessment.

(9) The exclusion of a handicapped student from his or her home campus pending appeal of an expulsion may not exceed 10 days without ARD Committee action to determine appropriate services in the interim.

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 November 15, 1985.

TRD-8510850

W. N. Kirby  
Commissioner of  
Education

Effective date: December 10, 1985  
Proposal publication date: August 6, 1985  
For further information, please call  
(512) 483-9212.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services Chapter 11. Commodity Program

The Texas Department of Human Services (DHS) adopts the repeal of §§11.801-11.804 and 11.9802, without changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3311).

The sections being repealed concern the Child Care Food Program. The DHS is adopting in this issue of the *Texas Register* new Chapter 12, concerning child nutrition programs, that clarifies the requirements of the Child Care Food Program and replaces the obsolete sections. The repeals will enable DHS to operate

the Child Care Food Program under the new chapter which replaces the sections that were formerly in Chapter 11, concerning the Commodity Program.

No comments were received regarding adoption of the repeals.

### Child Care Food Program

#### ★40 TAC §§11.801-11.804

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on November 19, 1985.

TRD-8510839

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: December 10, 1985  
Proposal publication date: September 3, 1985  
For further information, please call  
(512) 450-3786.

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### Support Documents

#### ★40 TAC §11.9802

The repeal is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on November 19, 1985.

TRD-8510840

Marlin W. Johnston  
Commissioner  
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Effective date: December 10, 1985  
Proposal publication date: September 3, 1985  
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## Chapter 12. Child Nutrition Programs

### Child Care Food Program

#### ★40 TAC §§12.1-12.6

The Texas Department of Human Services (DHS) adopts new §§12.2-12.16, 12.18-12.20, and 12.22-12.26, with changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3312). Sections 12.1, 12.17, and 12.21 are adopted without changes and will not be republished.

In §12.25, DHS has incorporated provisions of deleted §12.24(b). Other substantive changes to the sections are discussed in the comment/response section which follows.

The sections are established to provide the guidelines necessary to ensure that children enrolled in child care facilities receive the same high quality meal service as provided in public and private schools through the National School Lunch and Breakfast Programs.

The sections clarify the requirements of the Child Care Food Program including selection of contractors, participation, meal service, payment, audits, program sanctions, and appeals. These requirements were formerly based on an adoption by reference of the federal regulations for the national program (7 Code of Federal Regulations §226).

During a public hearing held in Austin on September 10, 1985, DHS received oral comments on 12 of the 26 sections from two individuals representing the Association for Children's Nutritional Growth, a Child Care Food Program sponsoring organization. DHS received 147 written comments on §12.18(d) from individuals participating in the Child Care Food Program under the sponsorship of one contractor and from the contractor. The following is a summary of the comments and DHS' response to the comments.

Concerning §12.4(a), (c), and (d), commenters stated the provisions as proposed provide insufficient guidance to ensure a contractor's compliance. The DHS believes that any additional guidance necessary to ensure compliance with these provisions is available in program materials provided to contractors participating in the Child Care Food Program.

Concerning §12.5(a) and §12.7(b), commenters stated that these provisions when combined would require contractors to submit a monthly budget and would diminish the effectiveness of the budget as a planning document. The DHS disagrees with the conclusion of the commenters. These provisions, separately or combined, do not require the submission of a budget every month. The DHS believes that program materials provided to contractors adequately identify

the circumstances under which an adjustment to a contractor's budget is appropriate.

Concerning §12.6(e), commenters stated that this provision would create burdensome documentation requirements for program participants and deny program benefits to children enrolled in child care facilities on weekends. The DHS disagrees that children enrolled in child care facilities on weekends will be denied program benefits. The DHS has adopted minor editorial changes to clearly express the intent of the section. The only additional documentation requirement is to obtain approval through the application process.

Concerning §12.6(f), commenters stated this provision would deny program participants (day home providers) freedom of choice in selecting a sponsoring organization. The DHS disagrees with the commenters' conclusion. The DHS believes that this provision enhances program integrity. This provision can contribute to more efficient use of program funds by encouraging expansion of program benefits to day home providers not currently participating in the program. The DHS believes that this provision does not restrict the day home provider's freedom of choice.

Concerning §12.7(f) and §12.25, commenters stated that the responsibility for determining the limits of a reasonable budget for a day home sponsoring organization should rest with the sponsoring organization. The DHS cannot delegate its authority to determine the limits of a reasonable budget. The amount of administrative costs approved by DHS in the day home sponsoring organization's budget is one of four factors used to determine the sponsoring organization's monthly administrative reimbursement. Section 12.7(f) includes a minor editorial change.

Concerning §12.7(g), commenters expressed concern that, because of the uniqueness of day home sponsoring organizations, DHS would be unable to establish a data base from comparable nonprofit organizations that would be useful in determining reasonable day home sponsoring organization budgets. The DHS believes a useful data base for the purpose of determining reasonable day home sponsoring organization budgets can be created. However, since this involves internal DHS administrative processes, it is deleted from the sections.

Concerning §12.8(a) and §12.10, commenters stated that these provisions which require adherence to cited sections of 7 Code of Federal Regulations Parts 226 and 3015 in procurement practices and implementation and support of DHS's financial management system should include references to specific Office of Management and Budget (OMB) circulars and Food and Nutrition Service

(FNS) instructions. When performance according to a specific OMB circular is required, the OMB circular is cited in 7 Code of Federal Regulations Parts 226 and 3015. The DHS has incorporated into Child Care Food Program guidance materials, pertinent information from relevant FNS instructions

Concerning §12.15(b), commenters stated that this provision should be changed to permit the submission of claims after the established deadline when the contractor could demonstrate good cause for late submission. The DHS agrees with this comment. Section 12.15(b) is reworded to specify that DHS may approve payment of a claim postmarked or received by DHS later than 30 days after the end of the claim month provided that a contractor submits a written request for payment of a claim submitted late for good cause beyond the control of the contractor, and the late claim and a written request for payment are postmarked or received by DHS no later than 60 days after the end of the claim month.

Concerning §12.15(e), commenters stated that this provision would deny benefits to otherwise eligible program participants. The DHS believes that any negative impact of this provision will be minimal and that this provision is necessary to ensure that eligibility documentation is obtained for all children for whom USDA family size and income criteria is a condition for participation. However, DHS has adopted minor editorial changes to clearly express the intent of the section

Concerning §12.17(c), commenters stated support of the intent of this provision and suggested that DHS should take steps to enforce this section. The DHS intends to meet its obligation to enforce this section as well as all the other sections

Concerning §12.18(d), commenters stated that the implementation of this provision could potentially deny children enrolled in day homes access to bonus commodities by eliminating sources for funding the distribution of commodities. The DHS agrees with this comment. Section 12.18(d) has been rewritten to permit day home providers to share in costs associated with the distribution of bonus commodities and to permit some of the costs to be incorporated into a sponsoring organization's approved administrative budget

Concerning §12.23(b), commenters supported this provision but raised questions about its implementation. The DHS believes that any additional guidance necessary to ensure compliance with this provision is available in program materials provided to contractors participating in the Child Care Food Program. The specific reasons cited for returning recovered funds to DHS represent examples only and, therefore, DHS deletes that portion of this provision.

Concerning §12.24(e), commenters stated that sponsoring organizations should be permitted to submit amended claims without being suspended. The DHS believes that this provision does not impede the submission of an amended claim when warranted by circumstances beyond the control of the sponsoring organization. This provision addresses sponsoring organizations that repeatedly submit amended claims. The DHS will review amended claims individually if there are two or more amended claims in any month, there is an amended claim in two or more consecutive months, or a pattern of amended claims submission becomes evident for a particular contractor in a 12-month period

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

**§12.2. Definitions of Program Terms.** Terms used in the administration and operation of the Child Care Food Program in Texas are defined in 7 Code of Federal Regulations §226.2 and 7 Code of Federal Regulations Part 3015, and appropriate Office of Management and Budget circulars. Exception: The term "contractor" is substituted for the term "institution" as defined in 7 Code of Federal Regulations §226.2.

**§12.3. Eligibility of Contractors and Facilities.**

(a) To participate in the Child Care Food Program, contractors must meet the definitions in 7 Code of Federal Regulations §226.2 and the appropriate requirements of 7 Code of Federal Regulations §§226.6 and 226.15-226.19 and DHS licensing minimum standards. Exception: Contractors on military bases and Indian reservations are not required to meet DHS licensing minimum standards.

(b) The DHS requires contractors to submit as proof of eligibility one or more of the following forms of documentation of tax-exempt status:

(1) letter from the IRS notifying the contractor that he has been granted tax-exempt status under the Internal Revenue Code of 1954;

(2) proof of participation in another federal program that requires nonprofit status;

(3) letter from the IRS acknowledging acceptance of the contractor's application for tax-exempt status under the Internal Revenue Code of 1954; and/or

(4) letter certifying that at least 25% of the children enrolled in the institution making application received Title 20 benefits in the month before the month in which the application is submitted.

(c) The DHS requires contractors to submit copies of a current license or registration to operate a child care facility when they:

- (1) apply to participate in the CCFP, or
- (2) receive a renewed or amended license or registration.

**§12.4. Day Home Facilities.**

(a) Day home providers participating in the CCFP may not be actively engaged in the day-to-day operations of any sponsoring organizations, either full- or part-time. These day home providers may be board members of sponsoring organizations if they are not engaged in day-to-day operations of any sponsoring organization.

(b) If a contractor applies and is approved for program participation as a new sponsor of day homes, DHS places an initial cap on the number of day homes the contractor may sponsor. The DHS approves sponsorship of additional homes only if the sponsoring organization provides an expansion plan and evidence of administrative and financial capability.

(c) For sponsoring organizations of day home facilities already participating in the program, DHS may place a cap on the number of day homes an organization may sponsor. DHS takes this action if the staffing pattern and management plan indicate insufficient administrative capability to administer more homes. DHS approves additional homes commensurate with the organization's capabilities.

(d) The DHS must make in writing any adjustments to the cap it places on the number of day homes the organization may sponsor. The DHS bases the adjustment on the organization's administrative and financial capability and DHS-approved expansion plan.

**§12.5. Application for Program Benefits—Contractors.**

(a) To participate in the Child Care Food Program, contractors must submit applications to DHS. The contractor must submit an amended application to DHS when changes occur. The DHS approves or denies application for participation according to 7 Code of Federal Regulations §§226.6(b)-(e), (h),(j), and (n), 226.15(b), 226.16(b), 226.23(a)-(d) and (f).

(b) Each contractor must submit to DHS as part of its program application the names of all officers, agents, consultants, and other employees of the sponsoring organization involved in any aspect of the Child Care Food Program.

(c) If a contractor's application for participation is incomplete, DHS will deny the application if the requested additional information is not submitted to DHS within 30 days of the date of the written request. The contractor may reapply when all required information and documentation is available.

**§12.6. Agreement.**

(a) To participate in the Child Care Food Program, contractors must enter into an agreement with DHS, and facilities

must enter into an agreement with a sponsoring organization according to 7 Code of Federal Regulations §§226.6(b), (e), and (n); 226.15(g); 226.16(f); 226.17(b)(6); 226.18 (b); and 226.23(a)

(b) Contractors that purchase meals from a food service management company or school food authority must enter into an agreement according to 7 Code of Federal Regulations §§226.17(b)(6), 226.19(b)(10), and 226.21.

(c) A contractor may participate in the program under only one contract at a time. This limitation applies to a contractor that is legally distinct from another contractor but is identifiable through the contractor's board of directors or organization personnel as essentially the same organization as a currently participating contractor.

(d) To receive payment for the month of application, contractors must ensure DHS receives the application and supporting documentation by the 25th of the month. This is the day home's initial month of participation, if DHS approves the application. The earliest effective date of day home participation may not precede:

(1) the date of the sponsoring organizations's pre-approval visit;

(2) the date of execution of the agreement between the sponsoring organization and the day home;

(3) the beginning effective date of the day home's license or registration; or

(4) the first day of the month in which a complete and correct application is received.

(e) DHS approves applications for participation submitted by sponsoring organizations for day homes for weekdays (Monday-Friday) only, unless the sponsoring organization, on behalf of the day home, provides DHS with justification for the participation on weekends (Saturday and/or Sunday). The approval must be obtained before any food service on weekends is eligible for payment.

(f) Day home providers may not transfer from one sponsoring organization to another during any fiscal year without prior DHS approval. DHS grants approval only if a day home provider submits to DHS a request for transfer explaining a good cause justification. Day home providers may not participate with more than one sponsoring organization in the same month.

#### §12.7. Budget.

(a) Contractors must submit administrative budgets for DHS approval according to 7 Code of Federal Regulations §§226.6(b)(6) and (e)(2), 226.7(g), and 226.15(b)(3).

(b) DHS considers adjustments to the budget as amendments to the application. Amendments must be approved or denied by DHS. Sponsoring organizations must submit to DHS written justifications for the original budget and for any amendments, before the planned effective date. Budget changes are not approved retroactively.

(c) If the budgeted administrative costs exceed the allowable amounts calculated under 7 Code of Federal Regulations §226.12(a), the day home sponsoring organization must submit to DHS one or more of the following as required by DHS:

(1) documentation providing the source and amount of income to support the additional expenses;

(2) a revised administrative budget reflecting reduced costs;

(3) a statement explaining how the excess administrative costs will be handled.

(d) Day home sponsoring organizations must submit to DHS a budget that demonstrates the organization's ability to maintain a balanced budget. Contractors sponsoring day homes and operating at a deficit must submit an amended budget to DHS.

(e) Contractors must report donations at zero value on their budget.

(f) DHS determines the limits of a reasonable day home sponsoring organization's budget and may establish upper limits for salaries, overhead, and other administrative costs, depending upon the size of the program, staff duties, and economic conditions of the locale.

#### §12.8. Financial Management System.

(a) Contractors must implement and maintain records supporting the financial management system established by DHS according to 7 Code of Federal Regulations §§226.6(e)(2), 226.7(m), and 226.11(e).

(b) DHS considers as income to the program interest earned on program funds. Contractors may use the interest only for CCFP-related activities for which the original funds were issued and approved by DHS in the budget.

#### §12.9. Record Retention.

(a) The contractor must keep financial and supporting documents, statistical records, and any other records of services for which the contractor submits a claim in the manner and detail prescribed by DHS. The contractor's staff must keep records and documents for at least three years and 90 days after the termination of the contract period. If any litigation, claim, audit, or investigation involving these records begins before the stipulated time period expires, the contractor must keep the records and documents for not less than three years and 90 days after the termination of the contract period and until all litigation, claims, audits, or investigation findings are resolved. DHS considers the case resolved when a final order is issued in litigation or a written agreement is signed between DHS and the sponsoring organization. Contract period means the beginning date through the ending date specified in the original contract, or earlier if the contract is terminated before the end of the contract period. DHS considers extensions as separate contract periods.

(b) The contractor and his facilities must allow DHS, the United States Department of Agriculture (USDA), and Government Accounting Office officials and other officials, determined appropriate by DHS, to inspect facilities and records and to audit, examine, and copy records at a reasonable time.

(c) A sponsoring organization with more than one approved facility participating in the program must maintain separate records for each facility or maintain the records in a way that makes the information for each facility easy to identify and retrieve. Organizations must maintain CCFP records separately from other program records.

(d) Each sponsoring organization must ensure that a daily count of all children in attendance is taken and recorded daily. The organization must ensure that the record includes, at a minimum, the full, proper name of each child in attendance and the total number of children in attendance.

(e) Sponsoring organizations must use DHS forms in the administration and operation of the program, unless DHS clearly indicates otherwise.

(f) Unless indicated otherwise in §12.10(a)-(b) of this title (relating to Procurement Standards), contractors must maintain records according to 7 Code of Federal Regulations §§226.6(h) (2) and (5), 226.7(m), 226.10(c) and (d), 226.11(e), 226.15(e), 226.16(e), 226.16(d)(4) and (e), 226.17(b)(7) and (8), 226.18(b)(4) and (d)-(f), 226.19(b)(3)(ii) and (9), 226.20(h) and (j), 226.22(d) and (k), and 226.23(c) and (e).

#### §12.10. Procurement Standards.

(a) Contractors must obtain foods, supplies, equipment, and other goods and services for the Child Care Food Program according to 7 Code of Federal Regulations §§226.2, 226.6(h) and (i), 226.21, and 226.22, and Part 3015.

(b) Contractors must obtain title to, use, and dispose of equipment according to 7 Code of Federal Regulations §226.24 and Part 3015.

#### §12.11. Participant Eligibility for Free and Reduced-Price Meals.

(a) Contractors must determine eligibility of children for free and reduced-price meals according to 7 Code of Federal Regulations §§226.2, 226.6(e)(7) and (8), 226.15(b)(5) and (e)(2) and (3), 226.17(b)(7), 226.18(e)(3) and (f), 226.19(b)(9)(i), and 226.23.

(b) DHS and contractors must verify eligibility of children for free and reduced-price meals according to 7 Code of Federal Regulations §§226.2, 226.6(e)(8), 226.23(e)(1)(ii)(F) and (3)(i) and (h).

§12.12. Civil Rights/Nondiscrimination. The benefits of the Child Care Food Program are available without discrimination on the basis of race, color, national origin, age, sex, or handicap according to 7 Code of Federal Regulations §§226.6(d)



(2)(i)(B), (e)(1) and (k), 226.22(k), 226.23(b)-(d) and (e)(2)(iv), and 7 Code of Federal Regulations Parts 15, 15(a), and 15(b).

**§12.13. Health Standards.** Contractors and facilities must ensure that all health, safety, and sanitation standards are enforced according to 7 Code of Federal Regulations §§226.6(d)(2)(i)(c)-(f) and (3) and (m), 226.20(k), DHS licensing minimum standards, and applicable rules as issued by the Texas Department of Health.

**§12.14. Meal Requirements.**

(a) Contractors must ensure that all program meals served and claimed for reimbursement fulfill the requirements of 7 Code of Federal Regulations §§226.2, 226.6(h), 226.15(e)(9) and (11), 226.16(d)(4), 226.17(b)(3)-(6), 226.18(b)(1)-(4) and (6) and (c) and (d), 226.19(b)(4)-(10), 226.20, and 226, Appendix A, Alternate Foods for Meals.

(b) For meal service in day homes, three hours must elapse between the beginning of one meal service and the beginning of another. At least two hours must elapse between a meal service and a supplement. Suppers must be served after 5 p.m. and before 8 p.m. Infants under one year of age may be fed more frequently.

**§12.15. Reimbursement Methodology.**

(a) DHS reimburses contractors and contractors reimburse facilities according to 7 Code of Federal Regulations §§226.2, 226.4, 226.6(c), 226.7, 226.9-226.14, 226.15(e), 226.16(e)(1), 226.16(g) and (h), 226.17(b)(3) and (4), 226.18(b)(6) and (7), 226.19(b)(6) and (8) and (9), and Part 3015. To assign rates of reimbursement for contractors, DHS uses the option in 7 Code of Federal Regulations §226.9(b)(3). DHS reimburses contractors according to the options in 7 Code of Federal Regulations §226.9(c)(1). DHS does not use the option described in 7 Code of Federal Regulations §226.9(d). DHS computes reimbursement for approved child care centers and outside-hours-care centers according to the option in 7 Code of Federal Regulations §226.11 (c)(3).

(b) To be eligible for reimbursement, contractors must ensure that claims for reimbursement are postmarked or received by DHS no later than 30 days after the end of the claim month. Persons who sign the DHS certificate of authority form as the authorized representative of the contractor must sign claims. DHS may approve payment of a claim postmarked or received by DHS later than 30 days after the end of the claim month provided that:

(1) a contractor submits a written request for payment of a claim submitted late for good cause beyond the control of the contractor, and

(2) the late claim and written request for payment are postmarked or received by DHS no later than 60 days after the end of the claim month.

(c) Contractors serve and claim second meals for reimbursement according to 7 Code of Federal Regulations §226.20(j). Contractors that serve meals family style are not eligible for reimbursement for second meals.

(d) Day homes must participate at least 10 days a month to be eligible for payment and to make the sponsoring organization eligible for administrative payment.

(e) Day home providers may not claim Child Care Food Program reimbursement for another day home provider's own children.

**§12.16. Advance Payments.**

(a) DHS issues and monitors advance payments to eligible contractors, and contractors account for these funds according to 7 Code of Federal Regulations §§226.2, 226.6(b)(10), 226.7(i) and (j), 226.10(a), (b), and (d), and 226.16(g) and (i).

(b) For contractors with a claim history, DHS issues monthly advance payments based on the contractors' most recent claim received and processed. For contractors with no claim history, DHS bases the amount of advance payments on the amount of reimbursement the contractor is projected to earn during the month for which the advance is to be issued. DHS estimates the amount of advance payments based on the number of day homes participating, the number of children enrolled and served approved meals, or both. DHS issues no retroactive advances. If USDA does not make available sufficient funds for DHS to pay both advance payments and claims for reimbursement in full, DHS pays only claims for reimbursement. DHS recoups advance payments from the claim for reimbursement for the month for which the advance is issued. If the advance payment exceeds the reimbursement earned in the month for which the advance is issued, DHS deducts the excess amount from subsequent advances issued or claim paid, as appropriate.

**§12.18. Commodities/Cash-in-Lieu.**

(a) DHS provides USDA-donated foods or cash-in-lieu of commodities according to 7 Code of Federal Regulations §§226.5, 226.6(g), 226.15(h), and 226.20(i).

(b) DHS conducts an annual survey to determine the preference of each contractor for commodities or cash-in-lieu of commodities, according to 7 Code of Federal Regulations §226.6(g). If a majority of contractors choose cash-in-lieu of commodities, DHS issues cash-in-lieu of commodities to all eligible contractors.

(c) Day home sponsoring organizations choosing to distribute bonus commodities to their day homes must distribute the bonus commodities based on the number of children the day home provider keeps.

(d) Day home sponsoring organizations that choose to distribute bonus commodities may pass on to the day home pro-

vider the reasonable and necessary costs associated with the distribution of the bonus commodities. In addition, sponsoring organizations may include as an element of their Child Care Food Program budget administrative costs associated with the distribution of bonus commodities. No cost may be charged to any day home provider without prior:

(1) DHS approval of a detailed bonus commodity cost allocation plan submitted by the sponsoring organization, and

(2) written consent of the day home provider.

(e) Contractors may not require facilities to receive bonus commodities.

**§12.19. Program Reviews.**

(a) Contractors must monitor their program operations and conduct administrative reviews according to 7 Code of Federal Regulations §§226.15(c) and (d) and 226.16(d), and (e)(2).

(b) Day home sponsoring organizations conduct their reviews of day home providers according to 7 Code of Federal Regulations §226.16(d)(4)(ii). DHS does not use the averaging option described in 7 Code of Federal Regulations §226.16(d)(4)(ii).

(c) Day home sponsoring organizations must ensure that at least one of their three monitoring reviews of day home providers participating on weekends is conducted on Saturday or Sunday. Day home providers must be providing day care services on the day of the review.

**§12.20. Training/Technical Assistance.**

Contractors must provide training and technical assistance to sponsored facilities according to 7 Code of Federal Regulations §§226.6(d)(2)(i)(G), 226.16(d), and 226.18 (b)(2).

**§12.22. Audits.** DHS conducts audits of Child Care Food Program contractors and facilities according to 7 Code of Federal Regulations §§226.7(b) and (c), and 226.8, Part 3015, and §79.506 of this title (relating to Methods for Auditing Contractors).

**§12.23. Overpayments.**

(a) DHS overpayment of claims for reimbursement, advance payments, and start-up payments are handled according to 7 Code of Federal Regulations §§226.6(c), 226.7(j), 226.8(e), 226.10(b), 226.12(c) and (e), 226.14, and §79.507 of this title (relating to Recoupment of Improper Payments).

(b) Day home sponsoring organizations that recover program funds from day home provider payments, or do not disburse program funds to day home providers, must return the funds to DHS.

(c) Day home sponsoring organizations may not use Child Care Food Program funds to recruit day home providers already participating in the program with another approved sponsoring organization.

**§12.24. Sanctions and Penalties.**

(a) DHS investigates program deficiencies, program irregularities, or evidence of violations of criminal law or civil fraud statutes according to 7 Code of Federal Regulations §§226.6(c), (j), (l), and (m), 226.8(e) and 226.10(b)(2), (d), and (f).

(b) If, during a review or an audit, DHS cites a day home sponsoring organization for deficiencies in administrative or financial capabilities because of an excessive number of day home providers, DHS places a cap on the number of day home providers the organization may sponsor. DHS identifies the number of day home providers the sponsoring organization can properly administer and immediately notifies the sponsor. The sponsor has 10 days to submit a plan to DHS to reduce the number of day home providers to the level of the approved cap.

(c) DHS approves no additional day home providers for day home sponsoring organizations identified through audit or review as deficient in program operations

until the sponsoring organization submits to DHS an acceptable plan to correct the deficiency.

(d) DHS suspends payments to day home sponsoring organizations submitting repeated amended claims until the sponsoring organization demonstrates that it can produce a final claim on time each month. DHS ensures that no future adjustments in claims are paid beyond the claiming time frames, except when justified by on-site DHS/USDA reviews or independent audits.

**§12.25. Denials and Terminations.** DHS denies applications for participation and terminates agreements between DHS and contractors for failure to meet basic eligibility requirements, and according to 7 Code of Federal Regulations §§226.6(b)-(e), (h), (j), and (n), 226.15(b), 226.16(b), 226.23(a)-(d) and (f), 226.25, and Part 3015. In addition, DHS denies applications for participation and terminates agreements with contractors sponsoring day homes for failure to submit a balanced and reasonable budget.

**§12.26. Appeals.** Contractor appeals of DHS decisions are conducted according to 7 Code of Federal Regulations §226.6(j) and §79.1603 of this title (relating to Right to Appeal). Appeals of denial of eligibility for free and reduced-price meals must be provided by contractors according to 7 Code of Federal Regulations §§226.23(c)(4) and (e)(5).

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 November 19, 1985.

TRD-8510838

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: December 10, 1985  
Proposal publication date: September 3, 1985  
For further information, please call  
(512) 450-3766.

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**State Board of Insurance Exempt Filings**

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**State Board of Insurance  
Notification Pursuant to the  
Insurance Code, Chapter 5,  
Subchapter L**

*(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.*

*These actions become effective 15 days after the date of publication or on a later specified date.*

*The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)*

Under board Order 47839 dated November 20, 1985, the State Board of Insurance has determined that a deficit was sus-

tained by the Texas Medical Liability Insurance Underwriting Association for the 1984 calendar year and ordered that the association be directed to levy an assessment upon its members in an amount which will finally recoup the deficit, pursuant to the Insurance Code, Articles 21.49-3, §§4, 5, and 5.97, and Rule 059.21.50.004 of the Rules of Operation of the Texas Medical Liability Insurance Underwriting Association.

The order of the board respecting the assessment is expressly made contingent upon the prior exhaustion of the policyholders' stabilization reserve fund for calendar year 1984, and the levying of an assessment upon policyholders who held policies in the association within the 1983 and 1984 calendar years toward recouping the deficit pursuant to, and as required by, the Insurance Code, Articles 21.49-3, §§4, 4A, 5, and 5.97, and Rule 059.21.50.004 of the Rules of Operation of the Texas Medical Liability Insurance Underwriting Association.

The rate of interest for reimbursement of the assessment of the members of the association, pursuant to the Insurance

Code, Article 21.49-3, §4(b)(5), and Rule 059.21.50.004(d)(4)(A) of the Rules of Operation of the Texas Medical Liability Insurance Underwriting Association, as well as for a credit against premium taxes under the Insurance Code, Article 4.10, pursuant to the insurance Code, Article 21.49-3, §4(b)(3), and Rule 059.21.50.004(e) of the Rules of Operation of the Texas Medical Liability Insurance Underwriting Association, is 10%.

This board action is effective 15 days after it is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

TRD-8510877

James W. Norman  
Chief Clerk  
State Board of  
Insurance

Effective date: December 11, 1985  
For further information, please call  
(512) 475-2950.



# 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*.

## State Bar of Texas

**Thursday, November 21, 1985, 9:30 a.m.** The Executive Committee of the State Bar of Texas made an emergency addition to the agenda for a meeting held in the Texas Law Center, 1414 Colorado Street, Austin. The addition concerned a report on the print shop by David F. Chappell. The emergency status was necessary because this matter only became apparent on November 20, 1985, and public necessity requires that the matter be dealt with in the meeting of November 21, 1985.

**Contact:** Evelyn Avent, 1414 Colorado Street, Austin, Texas 78711, (512) 475-4746.

**Filed:** November 20, 1985, 11:22 a.m.  
TRD-8510879

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## Texas Economic Development Commission

**Wednesday, November 20, 1985, 10 a.m.** The Texas Small Business Industrial Development Corporation of the Texas Economic Development Commission met in emergency session in Room 318, Anson Jones Building, 410 East Fifth Street, Austin. According to the agenda, the corporation held a public hearing on the proposed issuance of its revenue bond (the bond) in an amount not to exceed \$750,000 to finance the cost of the acquisition of approximately 51,117.5 square feet of land and the construction thereon of a building consisting of approximately 18,750 square feet to be used as a facility for the wholesale distributor of plumbing supplies, together with certain equipment and various other items which are functionally related and subordinate to the foregoing (the project), to be owned and operated by All-Tex Plumbing Supply, Inc. The project will be located at 9743 Brockbank Drive in Dallas. The emergency status was necessary because of the legal posting requirements for compliance with federal regulations.

**Contact:** John H. Kirkley, 410 East Fifth Street, Austin, Texas 78701, (512) 472-5059.

**Filed:** November 20, 1985, 7:49 a.m.  
TRD-8510860

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## State Board of Insurance

**Wednesday, November 20, 1985, 11:15 a.m.** The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board considered the United Fidelity Life Insurance Company's appeal of commissioner's order placing the company in conservatorship. The emergency status was necessary because the relevant statute requires that this matter be heard in the very near future.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

**Filed:** November 20, 1985, 8:59 a.m.  
TRD-8510861

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## Texas Department of Labor and Standards

**Tuesday, November 26, 1985, 10:30 a.m.** The Industrialized Housing and Building Section of the Manufactured Housing Division of the Texas Department of Labor and Standards will meet in emergency session in Room 105, John H. Reagan Building, 100 West 15th Street, Austin. According to the agenda, the section will receive comments from the public regarding the new rules proposed under Texas Civil Statutes, Article 5221f-1, §6; subsequently rules will be adopted to implement the legislative intent of Texas Civil Statutes, Article 5221f-1, which are the proposed rules for industrialized housing and buildings in Texas. The emergency status is necessary because of imminent peril to the safety and health of the public.

**Contact:** Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 475-0155.

**Filed:** November 19, 1985, 12:26 p.m.  
TRD-8510848

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## Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

**Wednesday, November 27, 1985, 9 a.m.** An open meeting at which the commissioners will consider Dockets: 6040, 6365, 6394, 6143, 6477 and 6525, 6281, 6146, 6240, 5071 and 4943, 6028, 5992, 6178, 6156, 6064, 6262, 6479, 6349, 6351, 6355, 6177, 6235, 6341, and 6446. The division also will meet in executive session to consider pending litigation and personnel matters.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** November 19, 1985, 2:20 p.m.  
TRD-8510850

**Monday, April 7, 1986, 1:30 p.m.** A rescheduled hearing on the merits in Docket 6527—application of Southwest Texas Telephone company to change rates and to revise its tariff. The hearing originally was scheduled for December 9, 1985.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** November 19, 1985, 2:20 p.m.  
TRD-8510849

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## Texas Sesquicentennial Commission

**Tuesday, December 3, 1985, 10 a.m.** The Texas Sesquicentennial Commission will meet in the Crystal Ballroom, Driskill Hotel, Sixth and Brazos Street, Austin. Items on the agenda include approval of minutes; applications for sanctioning of communities/counties, associations and the private sector; the directors report and other business.

**Contact:** Lynn Nabers, P.O. Box 1986, Austin, Texas 78767, (512) 475-1986.

**Filed:** November 20, 1985, 4:42 p.m.  
TRD-8510882

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## Office of the Secretary of State

**Friday, November 22, 1985, 10 a.m.** The Elections Division of the Office of the Secretary of State met in emergency session in Room 916, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the division examined for certification a voting device pursuant to the Texas Election Code, Article 7.15. Thornber Election Systems, Inc. has made application for certification of its Megascan and device, an optical scanning ballot tabulations device. The emergency status was necessary because the division was not able to verify scheduling of meeting with all examiners until November 19, 1985.

**Contact:** Sharon Hanko, P.O. Box 12887, Austin, Texas 78711-2887, (512) 463-5650 or (800) 252-8683.

**Filed:** November 20, 1985, 4:27 p.m.  
TRD-8510881

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## Texas A&M University System

**Tuesday, November 26, 1985.** Committees of the Board of Regents of the Texas A&M University System will meet in the MSC Annex, Texas A&M University, College Station. Times, committees, and agendas follow.

**1:30 p.m.** The Planning and Building Committee will consider the cancellation of unexpended balances of appropriations; the report of contract actions by the chancellor; the report of construction project appropriations/authorizations by the chancellor; the report of contract actions by the deputy chancellor or presidents; the initiation of major construction projects; action on bids; appropriations for designs; and the adjustment to appropriation.

**Contact:** Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

**Filed:** November 21, 1985, 8:36 a.m.  
TRD-8510888

**3 p.m.** The Committee for Service Units will consider authorization to close three research stations; agreements, easements, land, and investment matters; the transfer of funds; and resolutions.

**Contact:** Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

**Filed:** November 21, 1985, 8:37 a.m.  
TRD-8510886

**3:10 p.m.** The Committee for Academic Campuses will consider the revision of tuition and fees emergency loan program; the establishment of centers; the granting of emeritus titles; the revised instructions for completing the faculty workload compliance report; the revision of guidelines for matching private grants; the adjustment of fees; and easements, land, and investment matters.

**Contact:** Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

**Filed:** November 21, 1985, 8:35 a.m.  
TRD-8510895

**3:25 p.m.** The Executive Committee will consider the appropriations of funds, the naming of facilities and roads; personnel matters, appointments to advisory boards; agreements, easements, land and investment matters; the acceptance of gifts, grants, loans and bequests; litigation; land acquisition; academic tenure; confirmation of appointments, promotions, terminations, budget and fiscal changes and personnel actions; financial disclosures; and resolutions. The meeting will continue Wednesday, November 27, 1985, at 8:30 a.m.

**Contact:** Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

**Filed:** November 21, 1985, 8:36 a.m.  
TRD-8510887

**Wednesday, November 27, 1985, 3 p.m.** The Board of Regents of the Texas A&M University System will meet in the MSC Annex, Texas A&M University, College Station. Items on the agenda summary include buildings and grounds matters including authorization for projects, approval of preliminary and final plans; the award of contracts; the authorization to close three research stations; agreements, easements, land and investment matters; the transfer of funds; the revision of tuition and fees-emergency loan program; the establishment of centers; granting of emeritus titles; the revised instructions for completing the faculty workload compliance report; the revision of guidelines for matching private

grants; the adjustment of fees; the appropriation of funds; naming of facilities and roads; personnel matters; appointments to advisory boards; the acceptance of gifts, loans and bequests; litigation; land acquisition; academic tenure; the confirmation of appointments, promotions, terminations, budget and fiscal changes; financial disclosures; and resolutions.

**Contact:** Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

**Filed:** November 21, 1985, 8:37 a.m.  
TRD-8510885

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## Texas Tech University

**Friday, November 22, 1985.** Committees of the Board of Regents of Texas Tech University and the Board of Regents of Texas Tech University Health Science Center rescheduled emergency meetings held in the board suite, Administration Building, Texas Tech University campus, Lubbock. Times, committees, and agendas follow.

**8 a.m.** The Public Affairs and University Relations Committees jointly considered reports. The committees also met in executive session. The emergency status was necessary so that the board would be adjourned before 11 a.m. for the George Mahon funeral. The meeting originally was scheduled to be held at 8:30 a.m. on the same day.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** November 21, 1985, 8:33 a.m.  
TRD-8510898, 8510899

**8:30 a.m.** The Academic and Student Affairs Committees considered reports and also met in executive session.

The Academic and Student Affairs Committee of the Texas Tech University Board of Regents considered the determination of professional librarian status; policy offering courses in shortened formats; proposed degree options for Doctor of Philosophy in Education; the appointment of Jack Maddox, Professor of Law; the ratification of leaves of absence, conferral of December commencement degrees; and centers and institutes. The emergency status was necessary so that the board would be adjourned before 11 a.m. for the George Mahon funeral. The meeting originally was scheduled for 9 a.m. on the same day.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** November 21, 1985, 8:32 a.m.  
TRD-8510901, 8510900

**9:15 a.m.** The Board of Regents considered reports and action on minutes; academic and student affairs; finance and administration; and development. The boards also met in executive session.

The Board of Regents of Texas Tech University also considered campus and building. The emergency status was necessary in order that the board would be adjourned before 11 a.m. for the George Mahon funeral. The meeting originally was scheduled for 11:15 on the same day.

**Contact:** Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

**Filed:** November 21, 1985, 8:34 a.m.  
TRD-8510896, 8510897

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### **Texas Water Commission**

**Tuesday, November 26, 1985, 10 a.m.** The Texas Water Commission made an emergency revision to the agenda for a meeting to be held in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. The revision concerns Permit 11402-01 issued to Robert A. Morris, George Yonge, Nathan Morris, and J. B. Fooshee, doing business as Hill Country Utilities, for consideration of a motion for rehearing. The emergency status is necessary because as the 45-day period within which to consider the motion will expire on November 30, 1985, and all other parties concur with proposed revisions to improve operations of the facility, it is necessary to consider this matter at its next regular session.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** November 20, 1985, 1:43 p.m.  
TRD-8510880

**Tuesday, December 10, 1985, and Friday, December 20, 1985, 9 a.m. daily.** The Texas Water Commission will meet in Room 1-100, William B. Travis Building and Room 118, 1701 North Congress Avenue, Austin, and the Stephen F. Austin Building, 1700 North Congress Avenue, respectively, Austin. According to the agenda summary, the commission will consider an application by City of Austin, P.O. Box 1088, Austin, Texas 78767, for amendments to Permits 10543-03, Govalle Wastewater Treatment Plant; 10543-04, Hornsby Bend Wastewater Treatment Plant; 10543-11, Walnut Creek Wastewater Treatment Plant.

**Contact:** Martin Wilson, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

**Filed:** November 19, 1985, 2:39 p.m.  
TRD-8510851

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### **Regional Agencies Meetings Filed November 19**

**The Deep East Texas Regional Mental Health and Mental Retardation Services,** Board of Trustees, will meet at 4101 South Medford Drive, Lufkin, on November 26, 1985, at 10:30 a.m. The board also will meet at the Shelby County Mental Health and Mental Retardation Center, Loop 500 at Brown Road, Center, on the same date at 5 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

**The Region VIII Education Service Center,** Board of Directors, will meet at the Ramada Inn Restaurant, Mount Pleasant, on November 26, 1985, at 7 p.m. Information may be obtained from Scott Ferguson, 100 North Riddle Street, Mount Pleasant, Texas 75455.

**The Lower Colorado River Authority,** Board of Directors, met in emergency session at 3700 Lake Austin Boulevard, Austin, on November 21, 1985, at 9 a.m. Information may be obtained from Elof H. Soderberg, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

**The Red River Authority of Texas,** Board of Directors, rescheduled a meeting to be held in Room 215, Activity Center, 1001 Indiana, Wichita Falls, on November 26, 1985, at 10 a.m. Information may be obtained from Ronald J. Glenn, 302 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

TRD-8510846

### **Meetings Filed November 20**

**The Atascosa County Appraisal District,** Appraisal Review Board, met at 1010 Zanderson, Jourdanton, on November 25, 1985, at 8 a.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas, (512) 769-2730.

**The Deep East Texas Council of Governments,** Board of Directors, met at CHOYEH Camp and Conference Center, 2200 South Washington, Livingston, on November 21, 1985. Information may be obtained from Betty Snowden, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704.

**The Lower Colorado River Authority,** Board of Directors, met in emergency session at 3700 Lake Austin Boulevard, Austin, on November 21, 1985, at 9 a.m. Information may be obtained from Elof H. Soderberg, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

**The Lubbock Regional Mental Health and Mental Retardation Center,** Board of Trustees, rescheduled a meeting held at 3800 Avenue H, Lubbock, on November 25,

1985, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 763-4213.

**The Sulphur River Basin Authority,** Board of Directors, will meet in the Community Room, Guaranty Bank, Mount Pleasant, on November 26, 1985, at 2 p.m. Information may be obtained from R. R. Morrison, 849 Webb Street, Daingerfield, Texas 75638, (214) 645-2349.

TRD-8510878

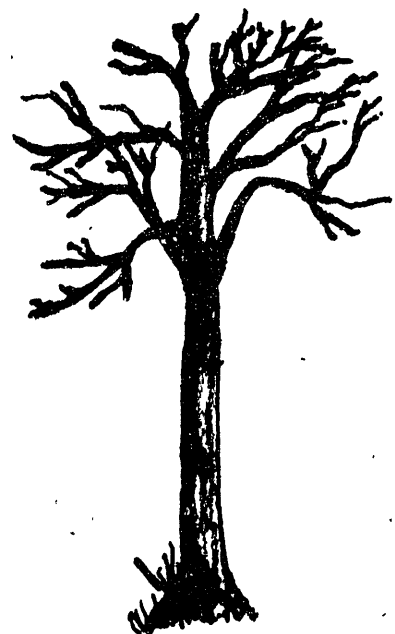
### **Meetings Filed November 21**

**The Region XVIII Education Service Center (ESC),** Board of Directors, will meet at Region XVIII ESC, LaForce Boulevard, Midland, on December 5, 1985, at 7:30 p.m. Information may be obtained from J. W. Donaldson, Region 18 ESC, LaForce Boulevard, Midland, Texas.

**The Gonzales County Appraisal District,** Board of Directors, met at 928 St. Paul Street, Gonzales, on November 25, 1985, at 5 p.m. Information may be obtained from Sherian Cleveland, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

**The Central Appraisal District of Johnson County,** Board of Directors, will meet at 109 North Main, Cleburne, on November 27, 1985, at 7:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986.

TRD-8510889



# In **Addition**

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## State Banking Board Public Hearing

The hearing officer of the State Banking Board will conduct a hearing at 9 a.m. on Thursday, December 19, 1985, at 2601 North Lamar, Austin, on the charter application for First Bank of Borger, Borger. The Application is a conversion application from First National Bank of Borger, Borger, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar, Austin, Texas 78701, (512) 475-4451.

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

TRD-8510802 William F. Aldridge  
Director  
State Banking Department

Filed: November 18, 1985  
For further information, please call (512) 475-4451.

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## 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 November 15, 1985, the banking commissioner received an application to acquire control of The First State Bank, Gustine, by Raymond L. McMinn, San Antonio.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

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

TRD-8510803 William F. Aldridge  
Director of Corporate  
Activities  
Banking Department of  
Texas

Filed: November 18, 1985  
For further information, please call (512) 475-4451.

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## Texas Department of Community Affairs

### Request for Proposals

The Texas Department of Community Affairs (TDCA), administering agency for the Weatherization Assistance for Low-Income Persons (WALFIP) Program in Texas, announces a request for proposals (RFP) to arrange for the delivery of weatherization services in El Paso County effective not earlier than January 15, 1986.

Selected offerors will be expected to deliver weatherization services to eligible households in accordance with 10 Code of Federal Regulations Part 440, issued under the Energy Conservation and Production Act, Title IV, as amended, Public Law 94-385, 90 Statute 1150 (42 United States Code 6861 *et seq.*). Services and activities solicited via this RFP are those that weatherize houses to make them more energy efficient, thereby reducing energy consumption and utility costs. Examples include weatherstripping; caulking; installation of wall, floor, or attic insulation; and other weatherproofing as allowed by program regulations promulgated by the U.S. Department of Energy.

The designated service area for this solicitation is the County of El Paso; the proposed contract performance period is from not earlier than January 15, 1986-September 30, 1986. The funds estimate, including monies for administration, liability insurance coverage, materials, and program support, is \$235,000.

Offerors responding to this notice must become familiar with the WALFIP program regulations set forth in 10 Code of Federal Regulations Part 44, including those regulations issued in the 50 FedReg 708 (January 4, 1985) and prepare a proposal that includes planned publicity and outreach for the program, a description of the organization's financial accounting system and audit records history, the type(s) of work force (existing staff, new-hire staff, subcontractors, etc.) to be used, and any other information required by the RFP packet.

Selection of an offer(s) is competitive and will be based on a grading system that awards points to proposals in the areas of organization purpose(s); planned outreach methods; financial accounting system; audit history; actual history; actual work force and task planning; interagency coordination; and compliance with RFP submission requirements.

**Qualifications.** Offerors eligible to respond to this request are political subdivisions of Texas, and private, non-profit community-based corporations.

Offerors must be able to document their capability to accomplish the proposed services. Preference will be given to those organizations whose past performance record

demonstrates effectiveness in providing tangible assistance to low-income households or in the actual provision of weatherproofing services. Furthermore, offerors will be requested to include documentation of their legal authority and eligibility to contract with the TDCA.

**Deadline.** The request for proposals period will close at 5 p.m. on December 27, 1985, except for proposals received officially postmarked on or before December 20, 1985, and received on or before January 2, 1986.

Complete proposals may be mailed to the Economic Opportunity Division of the Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711. Proposals by special mailing or hand-carried may be delivered to the Economic Opportunity Division at 8317 Cross Park Drive, third floor, Austin, Texas 78754-5124.

**General Information.** The TDCA reserves the right to accept or reject any or all proposals submitted. The TDCA is under no legal requirement to execute a contract on the basis on this notice and intends this material only as a means of identifying the various contractor alternatives. The TDCA intends to use responses as a basis for further negotiation of specific project details with potential contractors. If the TDCA selects a contractor(s) to provide the delivery of services, the TDCA will base its choice(s) upon criteria including, but not limited to, the demonstrated effectiveness to serve the low-income population sector; experience in weatherproofing services; and the capability to establish a weatherization service delivery system intended to meet the needs of the target population-households with annualized income at 125% of poverty with priority to the elderly and handicapped.

Selection will be for one or more contractor organizations for serving the County of El Paso. This request does not commit the TDCA to pay for any costs incurred prior to the execution of a contract and is subject to the availability of federal fiscal year 1986 WAFLIP program funds from the U.S. Department of Energy, the U.S. Department of Health and Human Services, Low-Income Home Energy Assistance Program block grant, and any other sources.

The TDCA specifically reserves the right to vary any or all provisions at any time prior to the execution of a contract(s) if the TDCA deems such variances to be in the best interest of the state, and to otherwise act as it determines in its sole discretion.

For a request for proposals packet or additional information regarding this notice, please contact Edmundo M. Zaragoza, Texas Department of Community Affairs; Economic Opportunity Division, P.O. Box 13166, Austin, Texas 78711, (512) 834-6215.

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

TRD-8510876 Douglas C. Brown  
General Counsel  
Texas Department of Community  
Affairs

Filed: November 20, 1985  
For further information, please call (512) 834-6060.

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## Comptroller of Public Accounts

### Decision 14,134

For copies of the following opinion selected and summarized by the Administrative Law Judges, contact the Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

**Summary of Decision.** A foreign corporation closed down an office in Texas, selling some of the assets in that office to a buyer (in two transactions) and transferring other assets to other locations within taxpayer's organization. It sought exemption of the sales of assets to the outsider as occasional sales. The comptroller held that the occasional sale exemption was not available. Whatever its intention, the taxpayer did not sell its entire operating assets to one purchaser in one transaction; it sold most such assets to one purchaser in two transactions, and kept some for itself. The taxpayer also sought exemption for a part of lease payments on equipment as payments for software. The comptroller held that the software exemption was not available. Documentation to establish separate charges for software was insufficient, and did not show that lease involved anything other than hardware and such so-called software as is an inherent part of such electrical on computerized equipment.

Issued in Austin, Texas, on October 25, 1985.

TRD-8510875 Bob Bullock  
Comptroller of Public Accounts

Filed: November 20, 1985  
For further information, please call (512) 463-4606.

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### Decision 16,799

For copies of the following opinion selected and summarized by the Administrative Law Judges, contact the Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

**Summary of Decision.** The taxpayer performed repair, remodeling, and completion services upon aircraft, at space it rents at airport. The lease for this space called for both a fixed lease payment and an add-on charge equal to 1.0% of taxpayer's gross receipts. The taxpayer passed the add-on charge through to its customers, separately stating the charge. The petitioner did not collect tax on the add-on charge because it did not consider it to be part of the sales price for sales tax purposes. The comptroller held that the Texas Tax Code, §141.007, does not exclude gross commission charges passed on by a retailer to his customers. A percentage gross receipts add-on is usually treated as part of rent and is generally passed through in the overall selling price of a product; it is merely a portion of a retailer's overhead. Separately stating the charge does not make it any less a part of the base for sales tax purposes. Therefore, the gross commission charge is includible as part of the sales price.

Issued in Austin, Texas, on November 8, 1985.

TRD-8510872 Bob Bullock  
Comptroller of Public Accounts

Filed: November 20, 1985  
For further information, please call (512) 463-4606.

## Decision 18,071

For copies of the following opinion selected and summarized by the Administrative Law Judges, contact the Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

**Summary of Decision.** The petitioner contends penalty assessed should be waived. The comptroller held that there would be no waiver. The Texas Tax Code, §111.103, grants the comptroller the authority to waive the penalty upon finding that a taxpayer exercised reasonable diligence to comply with the tax laws. The petitioner previously was subjected to a sales tax compliance audit resulting in liability representing some 1.1% of tax reported during the audit period. In contrast, the petitioner's present deficiency represents 6.71% of all tax reported during the audit period. The administrative law judge noted the prior audit should have alerted petitioner to its errors in efforts to properly accrue tax. Also, considering the petitioner made relatively few taxable sales, it was not unreasonable to expect careful attention to be paid to the sales that were taxable. Therefore, the judge concluded petitioner did not exercise reasonable diligence.

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

TRD-8510871      Bob Bullock  
Comptroller of Public Accounts

Filed: November 20, 1985  
For further information, please call (512) 483-4808.

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## Texas Department of Human Services Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c. The Texas Department of Human Services (DHS) furnishes this notice of consultant contract award. The notice for request for proposals was published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2487).

**Description of Services.** The contractor will provide statewide awareness conferences/workshops on sexual abuse that may lead to status offense or delinquency, the problems of incarcerating children in adult jails, and services needed by runaways, truants, and older adolescents. The contractor will also serve as a resource for local groups or communities wanting to take initiatives to combat these problems.

**Name of contractor and value of contract.** The contractor selected is the Texas Coalition for Juvenile Justice, 2906 Maple Avenue, Suite 204, Dallas, Texas, 75201, (214) 871-3001. The contract value is \$64,176.31.

**Effective Date of Contract.** The contract began November 1, 1985 and will end August 31, 1986.

**Due date of reports.** No reports are due under the terms of this contract.

Issued in Austin, Texas, on November 19, 1985.

TRD-8510842      Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: November 19, 1985  
For further information, please call (512) 450-3768.

## Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) is requesting proposals for consulting services.

**Description.** Twenty counties of TDHS Region 01 use the services provided by specialists in the treatment of children and families in TDHS conservatorship. These specialists are licensed professionals who have demonstrated a great deal of expertise in dealing with child abuse and neglect and in testifying as expert witnesses in court proceedings in behalf of TDHS. The expertise of these qualified professionals cannot be matched by any state agency in the area and is needed by the department to fulfill its responsibilities to protect children.

**Limitations.** The contract period will be March 1, 1986, through August 31, 1986, and funding will not exceed \$30,000.

**Contact Person.** The contact person is John Noyes, Texas Department of Human Services, Mail Code 005-2, Contract Management Specialist, P.O. Box 3700, Amarillo, Texas, 79116-3700, (806) 376-7214.

**Evaluation and Selection.** Procedures to be used to evaluate offers will include evaluation of the range of services; accessibility to clients; client flow/time frames; uniqueness and innovativeness; staff qualifications; examples of work; and cost.

Final selection will be based upon the department's evaluation of the above criteria. This proposed consultation is a continuation of a current program and the department intends to contract with the current provider unless a substantially better offer is received.

**Closing Date.** The last day to receive offers is December 30, 1985.

Issued in Austin, Texas, on November 19, 1985.

TRD-8510842      Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: November 19, 1985  
For further information, please call (512) 450-3768.

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## Home Energy Assistance Program

As stipulated in 40 TAC §8.2, concerning the Home Energy Assistance Program (HEAP) income eligibility criteria, the department announces the new monthly income limits for HEAP eligibility for state fiscal year 1986.

Family Size	Income Limit
1	\$ 547.49
2	733.49
3	919.49
4	1105.49
5	1291.49
6	1477.49

Issued in Austin, Texas, on November 19, 1985.

TRD-8510843      Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: November 19, 1985  
For further information, please call (512) 450-3768.

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## Public Information

The Texas Department of Human Services (TDHS) published rules in the February 8, 1985, issue of the *Texas Register* that concerned the director qualifications in minimum standards for day care centers, minimum standards for kindergartens and nursery schools, and minimum standards for drop-in care centers. Sections 81.205, 81.405, and 81.705 stated one option for qualification as an administrator's credential issued by a professional organization or an educational institution and recognized by the Licensing Branch.

The department has developed procedures to recognize credentials. Any professional organization or educational institution interested in obtaining recognition may request a copy of the department's procedures by contacting Jean English, Licensing Branch, Texas Department of Human Services-160-W, P.O. Box 2960, Austin, Texas 78769.

Plans to issue credentials should be submitted to Cris Ros-Dukler, Assistant Commissioner for Licensing, Texas Department of Human Services-160-W, P.O. Box 2960, Austin, Texas 78769.

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

TRD-8510873      Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: November 20, 1985  
For further information, please call (512) 450-3766.

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## Railroad Commission of Texas Request for Proposals

The Railroad Commission of Texas (RRC) invites offers for consulting engineering services. This request is exempt from the advertising and reporting requirements of Texas Civil Statutes, Article 6252-11c, which does not apply to the employment of registered professional engineers.

The RRC is the designated state rail planning agency and as such it is the recipient of Federal Railroad Administration (FRA) grant funds to be applied on a matching basis towards railroad branch line reconstruction. The next such rehabilitation project is to be on 15.5 miles of the Oklahoma, Kansas, and Texas Railroad Company (OKT) between Boyd (milepost 584.0) and Bridgeport (milepost 568.5) in Wise County. The OKT is a subsidiary of the Missouri-Kansas-Texas Railroad Company (MKT).

This project will upgrade the line for safe and efficient operation at 40 miles per hour (FRA Track Safety Class 3). All reconstruction work will be performed by OKT and all materials will be provided by OKT on a force account basis. All reconstruction work will be based on engineering specifications of OKT and/or MKT.

**Services Required.** The consulting engineer or engineering firm will be required to:

(1) provide a qualified and experienced resident project representative on-site each working day during the duration of construction work, estimated not to exceed 90 working days;

(2) the engineer's project manager, a PE registered in Texas, is to visit the project site on a monthly basis, examine the work, and prepare the monthly billing;

(3) upon completion of construction work, prepare a final report.

**Starting Date.** The contract for these services will begin in February, 1986.

**Deadline for Submission of Proposals.** This proposal request will close at 3 p.m. on Friday, December 20, 1985.

To obtain a complete request for proposals (RFP), contact Railroad Commission of Texas, Transportation Division, P.O. Drawer 12967, Austin, Texas 78711-2967, Attention: Edward Kasparik, State Rail Planner. The street address is William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

**General Information.** The RRC reserves the right to accept or reject any or all proposals submitted. In the event that RRC selects a contractor to provide the delivery of services described, its choice will be based on demonstrated competence, qualifications, and the reasonableness of the fee for services.

Issued in Austin, Texas, on November 19, 1985.

TRD-8510862      Walter Earl Lille  
Special Counsel  
Railroad Commission of Texas

Filed: November 20, 1985  
For further information, please call (512) 463-7140.

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## Texas Savings and Loan Department Application for Change of Control of an Association

Texas Civil Statutes, Article 852a, §11.20, require any person who intends to acquire control of a state-chartered savings and loan association to file an application with the savings and loan commissioner for approval of the transaction. A hearing may be held if the application is denied by the commissioner.

On November 18, 1985, the savings and loan commissioner received an application for approval of the acquisition of control of Southern Savings and Loan Association, Brownwood, by Richard P. Seib, Dallas.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca Street, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on November 19, 1985.

TRD-8510827      Russell R. Oliver  
General Counsel  
Texas Savings and Loan  
Department

Filed: November 19, 1985  
For further information, please call (512) 475-7991.

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## Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of November 12-15, 1985.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal

#### Period of November 12-15, 1985

Chambers County Municipal Utility District 1, Houston; wastewater treatment plant; adjacent to Cedar Bayou approximately 0.6 mile south of the IH 10 crossing of Cedar Bayou in Chambers County; 12345-01; amendment

Texas Utilities Generating Company, Dallas; North Main steam electric station; Forth Street and North Houston Street intersection in the City of Fort Worth, Tarrant County; 00555; renewal

Northwoods Mobile Home Park, Inc., Waco; wastewater treatment facilities; north of FM Road 2417 approximately one mile northeast of the intersection of FM Road 2417 and IH 35 in McLennan County; 13198-01; new permit

Harry O. Hallows, Jr., San Antonio; sewage treatment plant; approximately 6,200 feet east of RM Road 685 and 500 feet north of Kelly Lane in Travis County; 13219-01; new permit

Excel Corporation, Friona; slaughter house and beef packing plant; immediately south of U.S. Highway 60 and the Santa Fe Railroad approximately 3 1/2 miles southwest of the City of Friona in Parmer County; 01350; amendment

Northwest Independent School District, Justin; wastewater treatment plant; approximately 1,500 feet southwest of the intersection of State Highway 114 and FM

Road 156, and approximately 2.3 miles due west of the intersection of IH 35 West and State Highway 114 in Denton County; 11760-02; renewal

Amoco Chemicals Corporation, Texas City; plant dock; on the north bank of the Texas City Barge Canal approximately 3,200 feet east of the termination of the Barge Canal in Texas City, Galveston County; 00452; renewal

Amoco Pipeline Company, Fort Worth; terminal for loading and unloading tankers and barges; approximately 2,500 feet northeast of the intersection of U.S. Highway 69 and State Highway 347, and approximately six miles southeast of the City of Beaumont, Jefferson County; 01473; renewal

The City of Galena Park, Galena Park; wastewater treatment plant; at 1802 Dunaway Street in the City of Galena Park in Harris County; 10831-02; amendment

The City of Newark, Newark; wastewater treatment facilities; on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street in Wise County; 11626-01; renewal

The City of Stratford, Stratford; wastewater treatment plant; south of Stratford and west of U.S. Highway 287, approximately 4,000 feet southeast of the intersection of U.S. Highway 54 and 287 in Sherman County; 10293-01; renewal

The City of Huntsville, Huntsville; wastewater treatment plant; approximately 3.5 miles south of the intersection of FM Road 1374 and IH 45, and approximately 1.4 miles southwest of the Elkins Lake Dam, south of the City of Huntsville in Walker County; 10781-02; renewal

Missouri-Kansas-Texas Railroad Company, Denison; railroad diesel fuel and service area; north of the intersection of Ray Drive and Dove Lane in the City of Denison, Crayson County; 02268; renewal

Fort Bend Utilities Company, Sugar Land; steam electric generating station; in the northwest quadrant formed where U.S. Highway 59 and 90-A cross Oyster Creek in the City of Sugar Land, Fort Bend County; 01893; renewal

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

TRD-8510806

Mary Ann Hafner  
Chief Clerk  
Texas Water Commission

Filed: November 18, 1985

For further information, please call (512) 463-7875.

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