

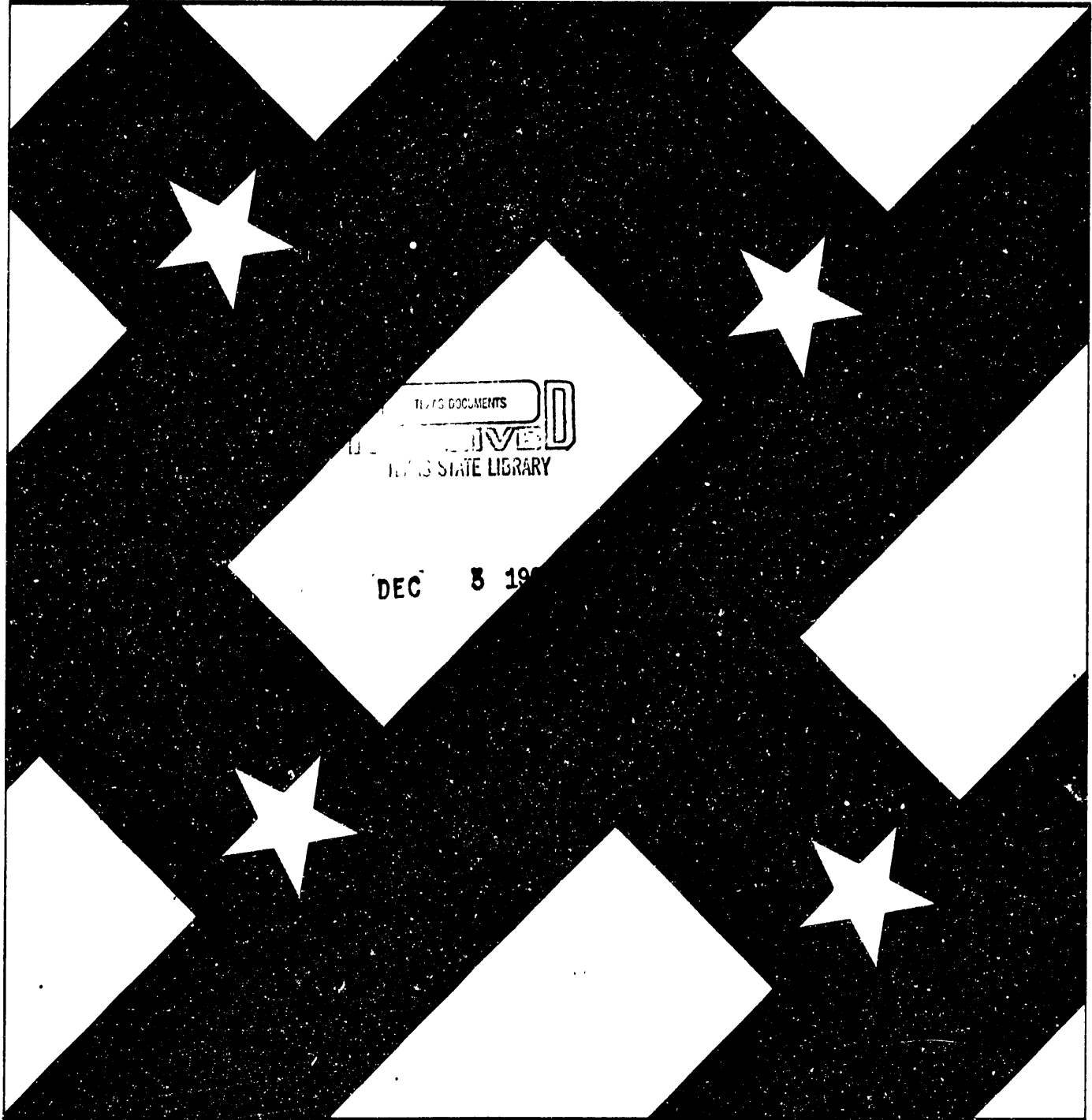
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Texas Register

Volume 10, Number 89, November 29, 1985

Pages 4595 - 4666



Highlights

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

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

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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).



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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 19

Texas Amusement Machine Commission

For a term to expire January 31, 1991:

Charles M. Bradshaw, Sr.
3 Briarwood Circle
Richardson, Texas 75080

Mr. Bradshaw is replacing Hall E. Timanus, Sr., of Houston, whose term expired.

Texas Commission on the Arts

For a term to expire August 31, 1991:

Kenneth E. Bentsen
2933 Del Monte
Houston, Texas 77019

Mr. Bentsen is replacing Manuel A. Sanchez III of Houston, whose term expired.

Coordinating Board, Texas College and University System

For a term to expire August 31, 1991:

Jack T. Trotter
2148 Troon Road
Houston, Texas 77019

Mr. Trotter is replacing Harrison M. Daugherty, Jr., of El Paso, whose term expired.

Texas Board of Land Surveying

For a term to expire January 31, 1987:

James D. Johnson
2622 Vista Circle
San Angelo, Texas 76904

Mr. Johnson is replacing W. T. Satterwhite of Dallas, who resigned.

State Board of Registration for Professional Engineers

For a term to expire September 26, 1991:

Joseph J. Beal
4709 Toreador
Austin, Texas 78746

Mr. Beal is replacing Edwin H. Blaschke of Channelview, whose term expired.

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

TRD-8510919 Mark White
Governor of Texas

★ ★ ★

Appointments Made November 20

State Banking Board

For a term to expire January 31, 1987:

Henry A. Sauer, Jr.
503 Westminster
Houston, Texas 77024

Mr. Sauer is replacing R. E. Reamer of Houston, whose term expired.

Coordinating Board, Texas College and University System

For a term to expire August 31, 1991:

Regina J. Rogers
121 North Post Oak Lane, #2401
Houston, Texas 77024

Ms. Rogers is replacing Preston Smith of Lubbock, whose term expired.

Lamar University

To the Board of Regents for a term to expire October 4, 1991:

Wayne A. Reaud
355 Summerwood Drive
Beaumont, Texas 77705

Mr. Reaud is replacing B. A. "Mark" Steinhagen of Beaumont, whose term expired.

State Board of Registration for Professional Engineers

For a term to expire September 26, 1989:

Charles Finnell
5590 Bigner Road
Beaumont, Texas 77708

Mr. Finnell is replacing Jack M. Webb of Houston, whose term expired.

For a term to expire September 26, 1991:

James Ken Newman
3100 Carmel
Denton, Texas 76205

Mr. Newman is being reappointed.

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

TRD-8510919 Mark White
Governor of Texas

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Attorney General

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

Request for Opinion

RQ-685. Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether \$424 million reimbursed to the State of Texas by the federal government for offshore oil and gas leases should be placed in the general revenue fund or the permanent and available school funds.

TRD-8510870

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Opinions

JM-367 (RQ-589). Request from Lloyd Criss, chairman, Committee on Labor and Employment Relations, Texas House of Representatives, Austin, concerning residency status of a student whose parent is assigned out of state by the United States Public Health Service.

Summary of Opinion. A court would probably not distinguish the position of a Public Health Service officer from that of a military officer for purposes of domicile but would rather find that the positions of both create a presumption that such persons, when transferred to and involuntarily assigned to duty in a state, are presumed not to establish a legal residence in that state when their presence there is involuntary. The presumption is rebuttable by facts that prove a clear and unequivocal intention to establish a new domicile during active services.

TRD-8510863

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JM-368 (RQ-598). Request from Oscar Mauzy, chairman, Committee on Jurisprudence, Texas Senate, Austin, concerning whether a ticket-vending computer terminal which merely dispenses tickets is a gambling device under the Penal Code, Chapter 47, and related questions.

Summary of Opinion. A gambling device, as defined in §47.01(3) in conjunction with §47.06 (a) and (b), does not apply to the Syntech PAT-2000, a ticket-vending computer terminal which merely dispenses tickets. Such a device lacks the element of chance essential to a gambling device under §47.01(3).

TRD-8510864

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JM-369 (RQ-615). Request from Robert Bernstein, commissioner, Texas Department of Health, Austin, concerning whether a foreign corporation may receive a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons.

Summary of Opinion. Texas Civil Statutes, Article 4476-11, §4, does not authorize a foreign corporation to receive a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons.

TRD-8510865

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JM-370 (RQ-592). Request from Wilhelmina Delco, chairman, Higher Education Committee, Texas House of Representatives, Austin, concerning interpretation of teaching assistant and research assistant in the Education Code, §54.063.

Summary of Opinion. The terms "teaching assistant" and "research assistant," as used in the Texas Education Code, §54.063, are not intended as titles of positions that determine the entitlement of nonresident student employees to a waiver of nonresident tuition at institutions of higher education but are intended to describe the academic positions of the student employees who are entitled to such a waiver under that section.

TRD-8510866

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JM-371 (RQ-606). Request from W. N. Kirby, commissioner of education, Texas

Education Agency, Austin, concerning whether a teacher may be promoted to registrar in a school district where her husband serves on the board of trustees, and related questions.

Summary of Opinion. Under Texas Civil Statutes, Article 5996a, as amended by the 69th Legislature, a school teacher with one year of continuous employment prior to her husband's election as school trustee may continue to serve the district as a teacher. The school board may change her employment status and compensation, but her relative may not deliberate or vote thereon.

TRD-8510867

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JM-372 (RQ-608). Request from Lowell C. Holt, criminal district attorney, Gilmer, concerning whether a vehicle with a valid dealer's temporary cardboard tags must have properly operating tail and brake lights.

Summary of Opinion. A vehicle operated with a valid dealer's temporary cardboard tag, as authorized by Texas Civil Statutes, Article 6686(a)(4), is required to have properly operating tail lights and brake lights as required by Texas Civil Statutes, Article 6701d, §111 and §118.

TRD-8510868

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JM-373 (RQ-516). Request from Mike Driscoll, Harris County attorney, Houston, concerning authority of a county and/or district clerk to affix a judge's signature to a judgment in a criminal case.

Summary of Opinion. A judge may sign a document by allowing another person to place a mark on a document that constitutes the judge's approval of the document only if the other person does so in the presence of and under the direction of the judge.

TRD-8510869

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Emergency

Rules

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

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 139. Abortion Facilities

The Texas Department of Health adopts on an emergency basis the repeal of §139.1 and new §§139.1-139.12, concerning abortion facilities. The new sections are intended to implement the requirements of House Bill 2091, 69th Texas Legislature, 1985, concerning the regulation of abortion facilities. The new sections cover purpose; definitions; fees; standards for operation of an abortion facility; unlicensed facilities, exemptions; initial applicants; inspections, renewals; annual reporting requirements; annual licenses; and license denials, suspensions, or revocations. Section 139.1 is being repealed and renumbered as §139.3 in this adoption with some minor changes from the existing text.

The repeal and new sections are adopted on an emergency basis because House Bill 2091 requires the department to adopt rules to regulate abortion facilities beginning September 1, 1985. Therefore, to implement this statutory requirement as soon as possible after September 1, 1985, the Board of Health is adopting these sections on an emergency basis.

★ 25 TAC §139.1

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

The repeal is adopted on an emergency basis under authority of the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provides the Texas Board of Health with the authority to adopt rules to implement the Act, and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the board to adopt rules on an emergency basis.

§1.9.1. Fees.

Issued in Austin, Texas, on November 22, 1985.

TRD-9510929

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

Effective date: November 22, 1985
Expiration date: March 22, 1986
For further information, please call
(512) 458-7245.

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Abortion Facility Reporting and Licensing

★ 25 TAC §§139.1-139.12

The emergency adoption is under authority of The Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provide the Texas Board of Health with the authority to adopt rules to implement the Act, and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the board to adopt rules on an emergency basis.

§139.1. Purpose and Scope.

(a) The purpose of these sections is to implement the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8.

(b) These sections provide minimum standards concerning abortion facility licenses; procedures for granting, denying, suspending, and revoking a license; fees; requirements for reporting abortions performed; complaints; and reporting incidents.

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

Abortion—Any act or procedure performed after pregnancy has been medically verified with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus, and shall not include birth control devices or oral contraceptives.

Act—Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8.

Administrator—A person who is designated to provide daily supervision and the administration of the abortion facility. This person should be a health care professional, have a baccalaureate or postgraduate degree; or has one year of administrative experience.

Board—The Texas Board of Health.

Clinical note—A dated and written notation by facility personnel of personal contact with a patient, containing a description of signs and symptoms, treatment and/or medication given, the patient's reaction, other health services provided, and any changes in physical and/or emotional condition.

Counselor—May be a professional or nonprofessional person who is trained to provide information on abortion procedures, alternatives, informed consent, and family planning services.

Department—The Texas Department of Health.

Director—The director of the Health Facility Licensure and Certification Division of the Texas Department of Health or his or her designee.

Discharge summary—A statement on the condition of the patient at the time of discharge.

Facility—A place where abortions are performed.

Health assessment—A determination of a patient's physical and mental status through inventory of systems.

Licensed vocational nurse—A person who is currently licensed under the laws of this state as a licensed vocational nurse.

Nonprofessional personnel—Personnel of the abortion facility who are not licensed or certified under the laws of this state to provide a service and who require supervision by a professional person.

Patient—A female on whom an abortion is performed, but shall in no event be construed to include a fetus.

Person—Any individual, firm, partnership, corporation, or association.

Physician—A person who is currently licensed under the laws of this state to practice medicine and who holds a doctor of medicine or doctor of osteopathy degree.

Presurvey conference—A conference held with department staff and the applicant and/or his or her representative to review licensure standards, survey documents, and provide consultation prior to the on-site licensure survey.

Primarily—As used in the Act, §6(f), and in §139.6(a) and (b) of this title (relating to Exemptions), the term "primarily" refers to the number of patients having abortions which represents 51% or more of the patients actually treated within the previous calendar year.

Professional personnel—Patient care personnel of the abortion facility currently licensed or certified under the laws of this state to use a title and provide the type of service for which they are licensed or certified.

Registered nurse—A person who is currently licensed under the laws of this state as a registered nurse.

Standards—Minimum requirements under the Act and these sections.

Supervision—Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity that includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

Technician—An individual trained to provide services to assist the physician and/or nurse.

§139.3 Fees

(a) The Texas Board of Health has established the following schedule of fees for licensure of an abortion facility:

(1) initial license fee—\$1,000;

(2) renewal license fee—\$1,000.

(b) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) Fees paid to the department are not refundable.

(d) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check, money order, or personal check and made payable to the Texas Department of Health.

(e) The board shall make periodic reviews of its fee schedule to ensure that the fees imposed are in amounts reasonable and necessary to defray the cost to the department of administering the Act.

§139.4. Standards for the Operation of an Abortion Facility. An abortion facility shall meet the following standards.

(1) The facility must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the facility's total operation and for ensuring that these policies are administered so as to provide quality health care in a safe environment.

(2) The administrator of a facility shall supervise the operation of the facility. A person who meets the qualifications of an administrator shall be authorized in writing by the administrator to act in his or her absence.

(3) The facility must have written personnel policies which contain at least the following:

(A) provisions for orientation of all personnel to the policies and objectives of the facility and participation by all personnel in appropriate employee training;

(B) provision for periodic evaluation of employees' performance;

(C) provisions for written job descriptions, including job qualifications; and

(D) all licensed personnel shall have current CPR training.

(4) A personnel record shall be maintained on each employee and shall include documentation of each employee's orientation and training, as well as verification of current licenses for physicians, RNs, LVNs, and licensed counselors.

(5) The facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of two years.

(6) The facility shall maintain a clinical record for each patient which is maintained according to professional standards. Identifying information required for the annual abortion report should be readily retrievable from the clinical record.

(7) The clinical record shall contain patient identifying information; name of physician; diagnosis; history and physical; laboratory reports; tissue reports; anesthesia, allergies/drug reactions; physician's orders; clinical notes; counseling notes; patient consent form; medication administration records; and discharge summary. All pharmaceutical agents administered shall be timed, dated, and signed by the person making the entry.

(8) Clinical records for adults shall be retained for five years from the time of discharge and clinical records for minors shall be retained for five years past the age the patient reaches majority. All clinical records shall be safeguarded against loss and unofficial use.

(9) An abortion shall be performed only by a physician as defined by the provisions of the Texas Medical Practice Act, Texas Civil Statutes, Article 4495b.

(A) The patient care service of the abortion facility must be provided under the direction of a registered nurse or licensed vocational nurse. A registered nurse or licensed vocational nurse must be in the abortion facility whenever there is a patient in the operating room or recovery room.

(B) Professional and nonprofessional personnel providing patient care in the facility should be given the training and orientation period appropriate to the needs and level of preparation as required by the individual job description. Job descriptions for licensed personnel shall require CPR training.

(10) The attending physician shall be responsible for obtaining and documenting an adequate pre-operative history, physical exam, and appropriate laboratory studies.

(11) Appropriate counseling shall be provided by counselors, who must be qualified by education and/or training to provide counseling services, to each patient to:

(A) assure informed consent by establishing that the patient understands the nature and consequences of the procedure;

(B) prepare the patient for surgery in a manner that facilitates her safety and comfort; and

(C) assist the patient in reaching a decision about the method of post procedure birth control she will use, if any, respecting her choices.

(12) Operative care shall be provided according to acceptable surgical standards.

(13) The recovery room(s) at the facility must be supervised by a registered nurse, a licensed vocational nurse, or a physician who is immediately available in the facility.

(14) A physician must be immediately available to the facility while any patient is in the recovery room.

(15) A patient must be fully reactive and her vital signs must be stable before she can be discharged from the facility.

(16) All fetal tissue must be examined grossly at the time of the procedure by the attending physician or a trained assistant under the supervision of a physician. The results of the tissue examination shall be recorded in the patient's chart.

(17) In the absence of visible fetal parts or placenta, the tissue may be examined under a low power microscope for the detection of villi. If this examination is inconclusive, the tissue shall be sent to a pathology lab.

(18) Tissue not sent to a laboratory shall be disposed of according to state and local ordinances.

(19) The facility must have an effective procedure for the immediate transfer of patients requiring emergency care to a licensed hospital.

(20) The facility must be in compliance with all state and federal laws pertaining to handling of drugs.

(21) The facility must have the necessary equipment and gases for artificial ventilation and for cardio and pulmonary resuscitation.

(22) The facility must have at a minimum, the following emergency equipment:

(A) oxygen;

(B) airways and manual breathing bag; and

(C) emergency drugs and supplies, as specified by the physician(s).

(23) Surgical instruments must be sufficient in number to permit individual sterilization of the instruments used for each procedure and adequate to perform conventional cervical dilatation and curettage.

(24) Equipment for vacuum aspiration must be electrically safe and designed to prevent reverse pump action.

(25) The physical plant must be clean and in good repair at all times. To promote a functional and sanitary environment, the facility must:

(A) design and equip each treatment room so that procedures can be performed in a manner that assures the physical safety of all individuals in the area;

(B) have a separate recovery room and waiting area; and

(C) have a written protocol for emergency evacuation for fire and other disasters.

(26) Reporting of complications. Complications that result in the death of a patient must be reported immediately to the director.

§139.5. *Unlicensed Facility.*

(a) If the director has reason to believe that a person or facility may be providing abortion services without a license as required by the Act, the person or facility shall be so notified in writing by certified mail, return receipt requested; and shall submit to the department the following information within 10 days of receipt of the notice:

(1) an application for a license and the license fee, which is nonrefundable;

(2) a claim for exemption under §139.6 of this title (relating to Exemptions);

(3) any and all documentation necessary to establish that abortion services are not being provided.

(b) The director shall notify the person or facility in writing of the department's determination of whether or not the facility requires a license. This notice will be within 90 days following receipt of the documents required by subsection (a) of this section.

(c) If the department determines that a license is required and the person or facility has submitted an application for a license, the application will be processed in accordance with §139.7 of this title (relating to Application and Issuance of License for Initial Applicants).

(d) If the department determines that the person or facility is exempt from licensure under the Act, the department will provide written notification to the person or facility.

(e) If a person or facility fails to respond as required by subsection (a) of this section, the provisions of §139.12(e) and (f) of this title (relating to License Denial, Suspension, or Revocation) will govern.

§139.6. *Exemptions.*

(a) If a facility is licensed under the Texas Hospital Licensing Law, Texas Civil Statutes, Article 4437f, and is not utilized primarily for the purpose of performing abortions, the facility shall be exempt from the licensing requirements of the Act, but not from the reporting requirement.

(b) If the office of a physician who is licensed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, is not

utilized primarily for the purpose of performing abortions, the physician's office shall be exempt from the licensing requirements of the Act, but not from the reporting requirement.

(c) If a person or facility is uncertain about whether or not licensing under the Act is required, a written claim for exemption, including all documentation supporting the exemption claim, may be submitted to the department.

(1) This documentation shall be a notarized affidavit attesting to one or more of the following:

(A) time spent on abortion procedures is less than 51% as opposed to other activities;

(B) number of abortions performed is less than 51% as opposed to other procedures, and

(C) revenue derived from abortions is less than 51% as opposed to other activities.

(2) The affidavit document will be provided by the department.

(d) The director shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 90 days following receipt of the claim for exemption.

(e) If the proposed decision is to grant the claim for exemption, the department will provide written notice according to subsection (d) of this section.

(f) If the claim for exemption is proposed to be denied, the person or facility so affected shall have the right to appeal the determination to the director by a written letter with the reasons for exemption within 90 days following receipt of the proposed denial.

(g) If the person or facility does not respond as required by subsection (f) of this section, the right to appeal the proposed denial of the exemption becomes final 30 days following the person or facility's receipt of the proposed denial.

§139.7. *Application and Issuance of License for Initial Applicants.*

(a) All initial applications for licensure are applications for an annual license.

(b) Upon written request, the director shall furnish a person with an application form for an abortion facility license. The applicant shall submit to the director the application form and the nonrefundable license fee.

(1) The applicant shall provide the name and address of the owner of the facility or a list of names and addresses of persons who own an interest in the facility.

(2) Upon receipt of the application, the director shall review the material to determine whether it is complete and complies with standards. All documents submitted to the department must be originals. The address provided on the application must be the address at which the facility is operating.

(3) A representative of the department shall schedule a presurvey conference with the applicant in order to inform the applicant of the standards for the operation of the facility.

(4) If the director determines that the application is complete and correct and a presurvey conference has been held, the department will schedule an on-site licensure survey to be conducted in accordance with §139.8 of this title (relating to Inspections).

(5) The director may propose to deny the issuance of a license and so notify the applicant if the department is unable to obtain a properly completed application form according to the standards.

(6) The department shall issue an annual license upon receipt of the license survey report that indicates compliance with licensing standards. The first annual license shall expire one year from the date the license is issued.

(7) If an applicant decides not to proceed with an application for an annual license, the application must be withdrawn by written request. If a license has already been issued to an applicant who has decided to withdraw, the applicant shall return the license to the director with a written request to withdraw. The director shall acknowledge receipt of the request to withdraw.

§139.8. *Inspections.*

(a) The department shall conduct on-site inspections to determine if standards for licensure are being met. Prior to the inspection, the surveyor shall notify the applicant in writing of the date and time of the inspection. The department will evaluate the facility on a standard-by-standard basis before the first annual license is issued. An on-site inspection may be conducted for license renewal if the facility has not demonstrated compliance with standards or if complaints have been received by the department.

(b) After an inspection is completed, the surveyor shall prepare a survey report which contains the following:

(1) a completed survey report form;

(2) a statement of which standards were evaluated;

(3) a statement of deficiencies, if any;

(4) an acceptable plan of correction and the date(s) by which correction(s) will be made;

(5) any comments by the applicant or person in charge concerning the survey; and

(6) the signature of the applicant or person in charge.

(c) If there are deficiencies, the surveyor shall request the applicant or person in charge to sign the statement of deficiencies as an acknowledgement of receipt of a copy of the statement of deficiencies.

Signing the statement of deficiencies does not indicate agreement with any deficiencies. If the applicant or person in charge declines to sign the form, the surveyor shall note the declination on the statement of deficiencies and the name of the person so declining. The surveyor shall leave a copy of the statement of deficiencies at the facility and, if the person in charge is not the applicant, mail a copy of the statement of deficiencies to the applicant.

(d) The surveyor shall prepare a survey report and submit it to the director for evaluation and decision. If the director determines that the facility is not meeting standards, the director shall notify the applicant within 45 days in writing of the deficiencies and the plan of correction necessary for compliance.

(1) If the inspection is for the issuance of the first annual license, the facility shall come into compliance no later than 90 days after the initial on-site inspection. The first annual license shall be issued to a facility that is in compliance at the time of the survey. The department will issue a license to a facility if the health and safety of patients is not threatened and contingent upon an acceptable plan of correction for deficiencies cited. If a license has been issued under the condition of an acceptable plan of correction and the facility does not comply with the plan within 90 days after issuance of license, the department may propose to revoke the license. If the director decides to deny issuing an annual license, the applicant shall be notified of the proposed denial of the first annual license in accordance with §139.12 of this title (relating to License Denial, Suspension, or Revocation).

(2) If the inspection is conducted for the renewal of a license, the facility shall come into compliance in accordance with the dates designated in the plan of correction. If the facility fails to comply, the director may propose to deny the renewal of the license in accordance with §139.12 of this title (relating to License Denial, Suspension, or Revocation).

(3) The department shall verify the correction of deficiencies by mail or by an on-site inspection.

(e) If the inspection is conducted for the purpose of investigating complaints and deficiencies are cited, the facility shall come into compliance in accordance with the dates designated in the plan of correction. If the facility fails to comply, the director may propose to deny the renewal of the license in accordance with §139.12 of this title (relating to License Denial, Suspension, or Revocation).

(1) The department will evaluate all complaints against all licensed abortion facilities. Only those allegations determined to be relevant to the Act will be authorized

for investigation. All information pertaining to a complaint is strictly confidential.

(2) The department or its authorized representative may enter the premises of a licensed applicant or licensed holder during normal business hours as necessary to assure compliance with the statute. The department or its authorized representative may enter the premises of a licensed applicant or licensed holder as the department considers it necessary to insure compliance with this Act and the rules adopted under this Act. The investigation may be conducted on-site; unannounced, or announced, or may be investigated by phone or mail.

(3) Conduct of the on-site investigation will include but not be limited to:

(A) a conference prior to commencing the on-site inspection for the purpose of explaining the nature and scope of the inspection between the department's authorized representative, and the administrator of the abortion facility;

(B) an inspection of the facility;

(C) an inspection of medical and personnel records, administrative files, reports, records or working papers; and

(D) an interview with any recipient of abortion services. The interview may be conducted in the recipient's home if the recipient grants permission in writing, or verbally if verbal permission is documented by department representative;

(E) an interview with any physician or other health care practitioner, including abortion facility personnel who care for the recipient of abortion services;

(F) a conference at the conclusion of the inspection between the department's representative and the administrator of the facility;

(G) the department's representative will identify any documents that have been duplicated;

(H) the department will review the report of the investigation and determine the validity of the complaint.

§139.9. *Renewal of Annual License.*

(a) The department will send written notice of expiration of an annual license to an applicant at least 60 days before the expiration date. If the applicant has not received notice of expiration 45 days prior to the expiration date, it is the duty of the applicant to notify the department and request a renewal application.

(b) The applicant shall submit to the department a renewal application form, self survey, the nonrefundable license fee, and the annual abortion report postmarked no later than 30 days prior to the expiration date of the license. The department shall issue a renewal license to a facility which meets the standards for a license.

(c) If an applicant fails to timely submit an application, fee, self survey, and annual abortion report in accordance with subsection (b) of this section, the depart-

ment shall notify the applicant that the facility must cease providing abortion services on the expiration date of the license and immediately thereafter return the license, by certified or registered mail, to the department. If the applicant wishes the facility to provide abortion services after the expiration date of its license, the applicant must reapply for an annual license under §139.7 of this title (relating to Application and Issuance of License for Initial Applicants).

§139.10. *Annual Reporting Requirements.*

(a) The annual abortion report must be submitted to the department by all facilities, including hospitals and physician offices whether they are licensed under this Act or not, on each abortion that is performed. The reporting period for each unlicensed facility will be the department's fiscal year, September 1 through August 31 of each year. The report shall not identify, by any means, the physician performing the abortion or the patient on whom the abortion was performed. The report must be submitted on a form provided by the department and shall include the following information:

(1) whether or not the facility at which the abortion is performed is licensed under this article;

(2) patient's year of birth, race, marital status, and state and county of residence;

(3) type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the period of gestation based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient.

(b) All annual abortion reports are strictly confidential under the Act, §6, and may not be released except as authorized under §6.

§139.11. *Conditions of Annual License.*

(a) No license may be transferred or assigned from one person to another person. If a person is considering acquisition of 51% or more of ownership of a licensed facility, in order to ensure continuity of patient services, the person shall inform the department in writing of the acquisition and submit a license application at least 90 days prior to the acquisition for each facility. The procedure shall be handled in accordance with §139.7 of this title (relating to Application and Issuance of License for Initial Applicants), with the exception of the presurvey conference and the survey, unless

issued by the department. An initial license will be issued to the new owner effective the date of acquisition of the facility. The license held by the previous owner will be void on the date of acquisition.

(b) No license may be transferred from one facility location to another without prior written approval from the department. If a facility is considering relocation, the facility shall complete and submit a form provided by the department at least 30 days prior to the intended relocation. The department will provide written notification to the facility amending the current facility license to reflect the new location.

(c) A facility must notify the department in writing of any change in telephone number within 30 days after the number has changed.

(d) If a facility undergoes a name change, it must notify the department in writing within 30 days after the effective date of the name change.

§139.12. License Denial, Suspension, or Revocation.

(a) The department may refuse to issue or renew a license for a facility if the facility fails to comply with any provisions of the Act or these sections.

(b) The department may suspend the license of a facility for one or more of the following reasons:

(1) violation of any provision of the Act or these sections;

(2) misstatement or concealment of material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the Act;

(3) materially altering any license issued by the department; or

(4) failure to correct deficiencies according to the plan of correction.

(c) The department may revoke the license of a facility for one or more of the following reasons:

(1) a violation which resulted in the suspension of a license is repeated within 2 months following the suspension;

(2) an act has been committed by the facility or its employees which affects the health and safety of a patient.

(d) If the director proposes to deny, suspend, or revoke a license, the director shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 30 days after the date the applicant receives notice. The request must be in writing and submitted to the director, Health Facility Licensure and Certification Division, Texas Department of Health, 100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.32 of this title

(relating to Formal Hearing Procedures). If the applicant does not request a hearing in writing within 10 days after receiving notice of the proposed action, the applicant is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(e) If the department finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of the patients of a facility, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(f) If the provisions of Texas Civil Statutes, Articles 6252-13c and 6252-13d, apply to a facility, any procedures covering the denial, suspension, or revocation of a license shall be governed by the provisions in those statutes.

(g) If a person violates the licensing requirements or the standards prescribed by the Act, the department may petition the district court for an injunction to prohibit the person from continuing the violations or to restrain or prevent the establishment or operation of a facility without a license issued under the statute.

Issued in Austin, Texas, on November 22, 1985.

TRD-8510930

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

Effective date: November 22, 1985

Expiration date: March 22, 1986

For further information, please call
(512) 458-7245

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

★ 34 TAC §3.542

(Editor's note: The text of the following section repealed on an emergency basis will not be published. The section may be examined in the offices of the Comptroller of Public Accounts, LBJ Building, 111 East 17th Street, Austin, or in the Texas Register office, Room 303E, Sam Houston Building, 201 East 14th Street, Austin.)

The Comptroller of Public Accounts adopts on an emergency basis the repeal of §3.542, concerning investigation of ap-

plicants for licenses. This repeal is necessary so that a substantially revised section can be adopted. The revised section is being adopted concurrent with this repeal.

This section is adopted on an emergency basis as an exercise of the comptroller's broad authority to closely regulate the conduct of bingo. Recently effective legislation authorizes the comptroller to receive criminal history information from out-of-state law enforcement agencies, and new provisions are necessary to implement that authority, so that the comptroller can more effectively carry out his duty of investigating applicants for licenses under the Bingo Enabling Act, Texas Civil Statutes, Article 179d. This repeal is adopted on an emergency basis so that the new provisions may be adopted.

This repeal is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.542. Investigation of Applicants for Licenses.

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

TRD-8510995

Bob Bullock
Comptroller of Public
Accounts

Effective date: November 25, 1986

Expiration date: March 25, 1986

For further information, please call
(512) 463-4606.

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The Comptroller of Public Accounts adopts on an emergency basis new §3.542, concerning investigation of applicants for licenses. The section previously in effect is being repealed simultaneously. The new section notifies potential applicants that criminal history investigations will be conducted and requires the applicants to submit information which will enable the appropriate authorities to conduct this investigation.

This section is adopted on an emergency basis as an exercise of the comptroller's broad authority to closely regulate the conduct of bingo. Recently effective legislation authorizes the comptroller to receive criminal history information from out-of-state law enforcement agencies, and new provisions are necessary to implement that authority, so that the comptroller can more effectively carry out his duty of investigating applicants for licenses under the Bingo Enabling Act, Texas Civil Statutes, Article 179d.

This new section is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provides that the comptroller may prescribe, adopt, and

enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.542. Investigation of Applicant for Licenses. Applications of the rule are as follows:

(1) Each person required to be named in an application for a license under the Bingo Enabling Act, Texas Civil Statutes, Article 179d, is subject to a criminal history record inquiry.

(2) Each person required to be named in an application for any license under the Act shall promptly furnish all information requested by the comptroller to obtain criminal history record information from the Texas Department of Public Safety, Federal Bureau of Investigation, or other law enforcement agency. Falsification or nondisclosure of requested information shall result in the denial, revocation, or suspension of a license under the Bingo Enabling Act.

(3) The comptroller shall refuse to issue a license or revoke an existing license if it is determined that the applicant or licensee or other person required to be named in an application for any license under the Act has a criminal conviction which under the Act, would disqualify the applicant or licensee.

(4) The existence of a disqualifying conviction on records obtained by the comptroller is prima facie evidence of disqualification. The burden of proof is on the applicant to show otherwise.

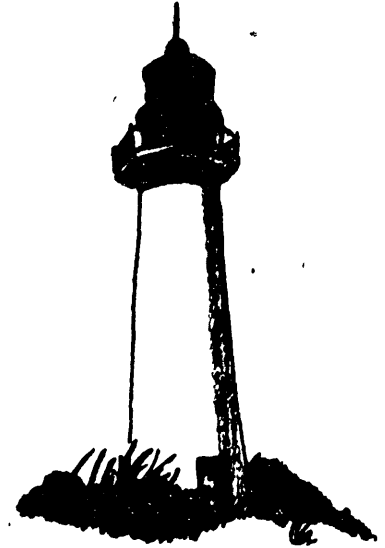
Issued in Austin, Texas, on November 20, 1985.

TRD-8510994

Bob Bullock
Comptroller of Public
Accounts

Effective date: November 25, 1988
Expiration date: March 25, 1988
For further information, please call
(512) 463-4606.

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Proposed

Rules

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

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

TITLE 1. ADMINISTRATION Part V. State Purchasing and General Services Commission Chapter 113. Central Purchasing Division Purchasing

★ 1 TAC §113.2, §113.9

The State Purchasing and General Services Commission proposes amendments to §113.2 and §113.9, concerning definitions and term contracts. The commission proposes to provide a definition for the term "manufacturer's price list," and to provide an alternate procedure to address those situations in which a bidder has failed to supply a requested manufacturer's price list. The amendments allow the commission to accept the lowest bid, even though the requested manufacturer's price list is not provided, which is expected to effect significant monetary savings for state agencies purchasing under a term contract.

John R. Neel, 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 is an estimated reduction in cost of \$100,000-200,000 each year in 1986-1990. There will be no effect on local government or small businesses as a result of enforcing or administering the sections.

Mr. Neel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is enhanced public clarity regarding the meaning of the term "manufacturer's price list" and monetary savings for state agencies making purchases under term contracts. 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 John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047.

The amendments are proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate regulations necessary to institute and maintain an effective and economical purchasing system for all affected state agencies.

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

Manufacturer's price list—A price list published in some form by the manufacturer and available to and recognized by the trade. It does not mean a price list especially prepared for a given bid.

§113.9. Term Contracts. Texas Civil Statutes, Article 601b, §3.10 and §3.11, authorize the commission to establish term contracts for the purchase and rental of items used in large quantities by several state agencies for delivery during a specified period of time for estimated quantities only.

(1) (No change.)

(2) Bidding instructions.

(A) (No change.)

(B) Discount-from-list type of bid provides for discounts from ~~or add-on~~ to a manufacturer's price list, which must accompany the bid [, or a percentage add-on to the vendor's cost list]. Price changes are acceptable under approved conditions. Requests for price increases must be documented with a new price list from the manufacturer, covering the items in question. The new net unit prices will be computed at the same percentage as reflected in the original bid and price list. Where discount-from-list bids are requested, firm price bids will not be accepted. **As an alternate, when bidding on a contract identified in the bid invitation as an automated contract, should a company fail to submit a manufacturer's price list or submits a price list that fails to meet other requirements of the bid invitation, the bid will be considered; however, if an award is made, the vendor will not be entitled to a price increase during the term of the contract. The state, however, shall be granted any decreases in price if there are price reductions to the trade.** Class 715 - publications and/or approval programs term contracts will be awarded on the basis of a quoted discount, and bidders will not be required to furnish a current price list with

their bids, nor will they be required to furnish a new price list in the event of price changes.

(C) (No change.)

(3)-(4) (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 22, 1985.

TRD-8510937

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

Earliest possible date of adoption:

December 30, 1985

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

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TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, and Liquidations

Organization Procedures

★ 7 TAC §91.211

The Credit Union Department proposes an amendment to §91.211, concerning security of members' shares and deposits through an insurance of guaranty fund. The amendment to subsection (c)(9) of this section deletes any reference to a specific fund, but retains the requirement that shares and deposits in members' accounts must be insured or guaranteed.

John R. Hale, 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. Hale also has determined that for each year of the first five years the section is in effect the public benefit anti-

icipated as a result of enforcing the section is continuation of the requirement that shares and deposits of Texas members being served by branch offices of out-of-state credit unions be insured in amounts comparable to amounts applicable to credit unions chartered pursuant to the Texas Credit Union Act. The anticipated economic cost to individuals who are required to comply with the proposed section will be minimal.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 2461, §11.07, which provide the Credit Union Commission with the authority to promulgate general rules and regulations pursuant to this Act, and from time to time, to amend the same.

§91.211. Foreign State Credit Union Branch Offices.

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

(c) In order to protect the interests of the citizens of the State of Texas, the commissioner shall approve the application if he finds that the applicant:

(1)-(8) (No change.)

(9) has proven that the shares and deposits of its members in the State of Texas are insured or guaranteed comparably [through the National Credit Union Share Insurance Fund or a compatible fund approved by the commission, and in amounts comparable] to [that of] credit unions chartered pursuant to the Act;

(10)-(11) (No change.)

(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.

Issued in Austin, Texas, on November 19, 1985

TRD-8510905

John R. Hale
Commissioner
Credit Union
Department

Earliest possible date of adoption:

December 30, 1985

For further information, please call
(512) 837-9236

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TITLE 19. EDUCATION
Part III. Teachers'
Professional Practices
Commission
Chapter 181. Procedure
Subchapter A. Complaints and
Hearings

The Teachers' Professional Practices Commission of Texas proposes amend-

ments to §§181.1-181.5, the repeal of §§181.6-181.14, and new §§181.6-181.18, concerning complaints and hearings. The proposed amendment to §181.1 adds the definitions of fact, hearing officer, issue, reprimand, and warning. The proposed amendment to §181.2 allows the commission to overrule the director's jurisdictional ruling by 10 members voting to hear a case. Section 181.5 requires that complaints be sent directly to the director rather than through the commissioner, outlines the procedure for response to be filed, and stipulates timelines.

The proposed new §181.6 outlines new procedures for determining jurisdiction upon a complaint. The proposed new §181.8 stipulates timelines for a response to a complaint. Section 181.9 is a proposed new section allowing for amendments to be filed. Section 181.11 is a proposed new section creating prehearing procedures which includes a provision for a prehearing conference that did not exist in the previous procedures. Section 181.17 pertains to the recommendations made by the commission to the commissioner and includes a provision for a reprimand to be made a part of the respondent's file kept by the Division of Teacher Certification and copied to the employing school district. Section 181.18 concerns the report of findings and recommendations, and allows for a minority decision to be submitted which has not been allowed in the past.

Lynn Moak, deputy commissioner for research and information, 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.

Dr. Beverly J. Bardsley, director for policy development, and Mr. Moak have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is clarification and efficiency of the commission's rules of procedure thereby increasing the effectiveness of the commission. 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 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 rules has been published in the *Texas Register*.

★ 19 TAC §§181.1-181.5

These amendments are proposed under

the Texas Education Code, §§13.101-13.218, which provides the Teachers' Professional Practices Commission of Texas with the authority to promote high standards of ethical conduct for the membership of the education profession by establishing a code of ethics, discipline members who violate the Code of Ethics, and serve as an advisory body to the commissioner and the State Board of Education on matters related to the code.

§181.1. Definition of Terms. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Active certified member of the teaching profession—Administrator, teacher or [and] special service person who holds [either] a valid [provisional or professional] Texas teacher's certificate or [an] emergency teaching permit and [who] holds a position or is actively seeking a position that requires certification [and who is currently on regular duty status].

Chairperson—Chairperson of the Teachers' Professional Practices Commission who is annually elected by the commission or the chairperson of the three-member panel appointed to conduct a hearing on behalf of the commission [committee].

Commission—Teachers' Professional Practices Commission which consists of 15 educators appointed by the governor in compliance with the Teachers' Professional Practices Act (The Texas Education Code, §§13.201-13.218).

Commissioner—Commissioner of education, State of Texas [Texas Education Agency].

Complainant—Active certified member of the teaching profession [Educator] who files [issues] and signs the written complaint that is received by the commission [commissioner].

Director—Central [Commission and] Education Agency staff member [representative] responsible to the commission for program administration.

Fact—Any relevant event, expression, activity, happening, or circumstance that bears upon showing a violation of any of the principles or standards contained in the code of ethics and standard practices adopted by the Teachers' Professional Practices Commission of Texas.

Hearing officer—The representative of the commissioner of education who acts as presiding officer at a Teachers' Professional Practices Commission hearing.

Issue—Whether or not conduct or activities of a member of the teaching profession are in violation on any of the principles or standards contained in the Code of Ethics and Standard Practices adopted by the Teachers' Professional Practices Commission of Texas.

Reprimand—A recommendation made to the commissioner of education that the violation found is of a serious nature

and the interest of the teaching profession can best be protected through issuance of an official reprimand. When issued by the commissioner, a copy of the reprimand shall be sent to the superintendent of the employing school district, or if the offender be the superintendent, to the president of the board of trustees. A copy shall also be sent to the director of the division of teacher certification and shall become a part of the respondents' official certification record.

Respondent—Active certified member of the teaching profession [Educator] against whom the complaint is duly filed for an alleged violation of the Code of Ethics and Standard Practices for Texas Educators.

Warning—A recommendation made to the commissioner of education that the violation found is of such nature that the interest of the profession will be adequately protected and served through issuance of a written warning to the respondent. A copy of this warning shall become a part of the individual's official certification records, and notice of the commissioner's decision shall be forwarded to the director of the division of teacher certification.

§181.2 Initiation of Complaint.

(a) A complaint may be initiated by an active certificated member of the teaching profession against any other active certificated member of the teaching profession for an alleged violation of a principle or standard contained within [point or points off] the Code of Ethics and Standard Practices for Texas Educators.

(b) The commission is authorized to receive written complaints from active certificated members of the profession of alleged violations by active certificated members of the profession.

(c) The commission by a vote of 10 or more members may proceed with action upon any complaint filed, notwithstanding any other provision of these sections.

§181.3. Format for Complaint.

(a) A complaint shall be filed before the commission by use of the format for complaint. The format for complaint may be obtained by request in writing to the Director, Teachers' Professional Practices Commission, 1701 North Congress Avenue, [201 East 11th Street], Austin, Texas 78701

(b) The format for complaint must be fully completed, submitted in writing, and addressed to the Director [Commissioner of Education], Teachers' Professional Practices Commission, 1701 North Congress Avenue [210 East 11th Street], Austin, Texas 78701.

(c) The format for complaint consists [must consist] of a notarized statement which includes the following:

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

(3) a clear and complete description of what was done by the respondent which the complainant believes was in violation of the code of ethics [statement of fact

resulting in the alleged violation]. The specific place, time, date, occurrences, and the specific principle(s) [principle] and/or standard(s) of the code that the incident violates must be cited.

(4) the statement: "I certify that this complaint was individually initiated by me and is not a result of coercion by any person or group [whose name is not signed to this complaint]."

(d) The complainant shall not be allowed to introduce evidence at the hearing on any issue which is not raised in the complaint.

§181.4. Filing of Complaint.

(a) The complaint should be filed as near the [immediate] date of the alleged violation [allegation] as possible, but not less than 90 days from the date of the alleged violation. [The formal complaint must not be filed to exceed 90 from the date of the alleged violation.] The date of postmark on the letter transmitting the complaint shall serve as the effective date of filing. These time provisions may be waived at the discretion of the commission [upon show of good cause by the complainant and majority vote of the commission].

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

§181.5. Action upon Complaint.

(a) The director [commissioner] will record the receipt of the complaint and will forward a copy [it] to the commission chairperson [director].

(b) (No change.)

(c) Upon acceptance of jurisdiction, the director will forward to [notify] the respondent by certified mail the following information and request that a written response be filed: [of the complaint and the pending hearing. The director will forward to the respondent by registered mail the following information.]

(1) [a] copy of the complaint;

(2) [a] notice that includes:

(A)-(B) (No change.)

(C) statement of the jurisdictional decision [matters]; and

(3) "Rules of Procedures for Hearing Complaints Before the Teachers' Professional Practices Commission of Texas."

(d) The director will forward a copy of the jurisdictional decision [complaint] to the commission chairperson and advise him or her of the necessary procedures to be followed.

(e) Upon receipt of the jurisdictional decision [complaint], the commission chairperson will make the following determinations.

(1) The commission will hear the complaint *en banc* or the commission chairperson will appoint a hearing panel [committee] of three members (and one alternate) of the commission to hear the complaint. If a hearing panel [committee of three] is appointed [and], the commission chairperson [is not to hear the complaint, he or she] will designate one member of the

panel [of the committee] to act as chairperson.

(2) The date, time, and place for the hearing will be set. The date for the hearing will not be less than 30 [15] days and will not, except in unusual circumstances, exceed 60 days following the receipt of the notice of the complaint by the respondent [from the commission].

(3) Hearings may be conducted at one of the regional service centers if warranted. The following [criteria] will be considered [used] in making this judgment:

(A) the number of witnesses for the complainant or respondent [person complained against];

(B) (No change.)

(C) the convenience of transportation for all parties to and from Austin [to the location of complaint incident];

(D)-(E) (No change.)

(F) convenience of transportation for all parties to the regional service center [from home to regional service center for commission members, lawyer's staff, and professional practices' staff].

(f) The director [chairperson, through the director,] will transmit to the respondent by certified [registered] mail at least 15 days prior to the date established for the hearing the following information:

(1) [a notice that includes:]

[(A)] date, time, place, and nature of the hearing;

[(B)] legal authority and jurisdiction for the hearing;

(2) (No change.)

(g) (No change.)

(h) Prior to the hearing, all communications between the parties affected and the commission will be through the director [and the] communications or documents are not to be directed or copied to individual commission members by the parties.

(i) (No change.)

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

Issued in Austin, Texas, on November 25, 1985

TRD-8511011 W N Kirby
Commissioner of
Education

Earliest possible date of adoption.

December 30, 1985

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

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★ 19 TAC §§181.6-181.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Teachers' Professional Practices Commission, 201 East 11th Street, Austin, or in the Texas Register office,

Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

These repeals are proposed under the Texas Education Code, §§13.101-13.218, which provides the Teachers' Professional Practices Commission of Texas with the authority to promote high standards of ethical conduct for the membership of the education profession by establishing a code of ethics, discipline members who violate the Code of Ethics, and serve as an advisory body to the commissioner and the State Board of Education on matters related to the code

§181.6. *Appeal of Jurisdictional Determination.*

§181.7. *Withdrawal of Complaint.*

§181.8. *Response to Complaint.*

§181.9. *Hearing: Rules and Responsibilities.*

§181.10. *Subpoenas and Depositions.*

§181.11. *Procedures for the Hearing.*

§181.12. *Postponement of Hearing.*

§181.13. *Findings of the Commission.*

§181.14. *Report of the Findings.*

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 25, 1985

TRD-8511010

W N Kirby
Commissioner of
Education

Earliest possible date of adoption
December 30, 1985

For further information, please call
(512) 463 9212

★ ★ ★

★ 19 TAC §§181.6-181.18

These new sections are proposed under the authority of the Texas Education Code, §§13.101-13.218, which provides the Teachers' Professional Practices Commission of Texas with the authority to promote high standards of ethical conduct for the membership of the education profession by establishing a code of ethics, discipline members who violate the Code of Ethics, and serve as an advisory body to the commissioner and the State Board of Education on matters related to the Code.

§181.6. *Determination of Jurisdiction.*

(a) For the purpose of determining the commission's jurisdiction, all facts alleged in the complaint shall be taken as true. If the facts alleged would, by themselves, support a finding that the respondent has violated one or more specific principles or standards of the Code of Ethics in a significant manner, then the commission has jurisdiction.

(b) If the director for the PPC concludes the commission has jurisdiction, then

the director shall request a response from the respondent and notify the commission chairperson that a hearing before the commission should be scheduled.

(c) If the director concludes that the commission does not have jurisdiction, the director shall advise the complainant and the commission chairperson that jurisdiction has been denied, state the basis for the decision, and inform the complainant of the right of appeal.

(d) The complainant may, within 30 days of receiving notice of denial of jurisdiction, request that the denial be reviewed by the commission's jurisdictional appeals committee in accordance with §181.7 of this title (relating to Appeal of Jurisdictional Decision).

(1) The commission's jurisdictional appeals committee may consult with the director for the commission or other Texas Education Agency personnel having expertise in such matters.

(2) If the commission's jurisdictional appeals committee concludes that the commission does not have jurisdiction, the denial shall be final.

(3) If the commission's jurisdictional appeals committee concludes that the commission does have jurisdiction, the chairperson for the commission shall instruct the director to accept jurisdiction and request a response from the respondent. The chairperson shall then proceed to set the matter for hearing as provided in §181.5 of this title (relating to Action upon Complaint).

§181.7. *Appeal of Jurisdictional Decision.*

(a) Rejection of jurisdiction by the director may be appealed to the commission by the complainant. Appeal of all jurisdictional matters shall be based upon the complete record of complaint available in the commission files.

(1) The appeal must be filed in writing with the director within 30 days of receipt of notification of denial of jurisdiction.

(2) The appeal must specifically request formal review of the jurisdictional determination by the commission. The appeal must also provide reasons for contesting jurisdictional ruling in the matter. The complainant may file a brief at the time the appeal is formally filed.

(b) The director shall forward the appeal to the commission chairperson, and the commission chairperson shall decide whether the commission will consider the appeal *en banc*, or by means of a jurisdictional appeals committee. In either case, the commission chairperson shall be a member of the jurisdictional appeals committee and shall preside at all meetings relating to appeals of jurisdiction. If an appeals committee is to be established, the commission chairperson shall appoint two other members of the commission to serve on the committee to consider appeals of jurisdiction.

(c) The commission chairperson shall establish a date, time, and site for commission consideration of appeal *en banc* or for a meeting of the jurisdictional appeals committee to consider the appeal.

(d) The commission chairperson, through the director, will notify the party appealing of the date of the meeting and that notification of disposition of the appeal will be forwarded upon review of the record and decision of the committee.

(e) The commission chairperson, through the director, will transmit to all members of the commission, or to the jurisdictional appeals committee, the following information:

(1) notification of date, time, and site of the appeal meeting; and

(2) a copy of the complaint.

(f) The commission *en banc* or the jurisdictional appeals committee, shall review the complaint and shall consider and decide upon the matter of jurisdiction by:

(1) applying and interpreting rules of the commission stipulated in §181.2 of this title (relating to Initiation of Complaint), §181.3 of this title (relating to Format for Complaint), and §181.4 of this title (relating to Filing of Complaint);

(2) interpreting allegations in the complaint as they relate to designated principles and standards of the Code of Ethics and Standard Practices for Texas Educators.

(g) Oral argument shall not be heard concerning jurisdiction.

(h) The commission *en banc*, or the appeals committee, shall determine acceptance or rejection of jurisdiction by majority vote. The director shall communicate the decision of the committee to the complainant.

(i) Acceptance of jurisdiction by the commission or by the jurisdictional appeals committee will initiate procedural continuation.

§181.8. *Response to Complaint.*

(a) The respondent shall be sent a copy of the complaint and requested to file a written response. Within 30 days after receiving such request, the respondent shall file a response which may generally address the allegations in the complaint or address one or more of the allegations specifically. Upon request to the director for the commission, the respondent shall be allowed an additional 30 days in which to file a response. If the respondent fails to file a response, the allegations in the complaint may be taken as true at the hearing and the commission may make whatever recommendations it deems appropriate based on those allegations. No recommendation on a complaint can be made by the commission without a hearing.

(b) The response must be in writing and must be received by the director. Teachers' Professional Practices Commission, 1701 North Congress Avenue, Austin, Texas 78701, within 30 days of receipt of the

notification of the complaint by the respondent.

(c) The format for the response should consist of the following.

(1) The heading: "Before the Teachers' Professional Practices Commission of Texas."

(2) Full name, address, and telephone number of the respondent.

(3) Answers to allegations in the complaint may be specific denials, explanations, or statements of mitigating circumstances.

(4) Should the respondent prefer to be heard by either the commission *en banc* or by a committee of three, the preference may be stated.

(5) Should the respondent desire an open public hearing, a statement requesting such a hearing may be included.

(d) The director for the commission will forward copies of the response to the complainant and the commission chairperson.

§181.9. Amendments. After the initial complaint and response are filed, amendments may be filed with the commission's consent. The amendment must be submitted in writing to the director and to the opposing party. With the consent of the hearing officer, an amendment may be read orally into the record and be included in the matters disposed of by the hearing panel. In the absence of extraordinary circumstances, no complaint or response may be amended within 14 days of the scheduled hearing or at the hearing. If such amendment is permitted, the opposing party, upon request, shall be granted a reasonable continuance.

§181.10. Withdrawal of Complaint. A complaint may be withdrawn at the discretion of the commission at any time prior to the hearing provided the complainant submits to the commission chairperson, through the director, a request in writing that the complaint be withdrawn without further action being taken by the commission; and the request is signed by the complainant. The commission chairperson will assure all withdrawal conditions have been met prior to a decision. The chairperson, through the director, will notify the commissioner and all affected parties of the decision.

§181.11. Prehearing Procedures.

(a) Upon the request of either the complainant or respondent, the director for the commission may enter whatever prehearing orders the director deems reasonable and necessary to allow both parties a fair opportunity to prepare for the hearing.

(b) The panel chairperson may schedule a prehearing conference with the parties for the purpose of determining if all or any part of the matters in issue may be resolved without the necessity of an evidentiary hearing. The prehearing conference may be attended by the hearing officer and

any representative of the commission appointed by the panel chairperson.

(c) If either party to the complaint objects to any member of the commission who is to hear the complaint, the party may, in writing, state the objection and the reasons for the objection and request that the member be disqualified from the hearing. The decision concerning whether the cause for the objection warrants disqualification of the commission member will be made by the chairperson. Should a member of a three-person committee be disqualified, the chairperson will appoint another commission member in his or her place.

§181.12. Hearing: Rules and Responsibilities.

(a) A commission member may be disqualified from hearing a complaint if he or she:

(1) is the complainant or respondent;

(2) is deemed by the chairperson to be unable to participate because of a relationship to the complaint;

(3) is disqualified by a majority vote of the commission or hearing panel;

(4) disqualifies himself or herself because of his or her relationship to complaint; or

(5) is disqualified as specified in §181.11 of this title (relating to Prehearing Procedures).

(b) Decisions relative to disqualification of any member for any purpose are the sole authority of the commission and/or its members. Argument or pleadings made subsequent to such decision by either complainant or respondent or their representatives shall not be received or considered.

(c) Members of the commission are privileged in their utterances.

(d) A majority of the commission when meeting *en banc* will constitute a quorum. If the complaint is to be heard by a committee of three commission members, all three members will constitute a quorum.

(e) A transcript of the hearing will be provided by a certified court reporter. It will accompany the report of the findings to the commissioner. This will be the responsibility of the director.

(f) The hearing will be private unless the respondent requests an open public hearing.

(g) The hearing will proceed if the respondent has not appeared within 60 minutes of the appointed time for the hearing to begin. If the complainant has not appeared within 60 minutes of the appointed time for the hearing to begin and is without good cause, the hearing will proceed and the panel may recommend dismissal of the complaint.

(h) If documentary evidence is to be admitted, copies must be provided to the opposing party and to all commission members hearing the complaint. If an exhibit is admitted, the record will reflect the contents of the exhibit.

(i) Briefs may be submitted by either party before or during the hearing. Copies must be provided by the party submitting the brief to the opposing party and to all commission members hearing the complaint.

§181.13. Subpoenas and Depositions.

(a) A request by either party to issue a subpoena to require the attendance of witnesses and/or the production of books, records, papers, or other items, must be submitted in writing to the director within a reasonable time prior to the hearing. The request must show good cause and must be accompanied by a cashier's check or money order in an amount for fees estimated to accrue. A copy of the standard rates may be obtained from the director upon request.

(1) A request for the issuance of a subpoena will be ruled upon by the director. The request must specify:

(A) the name, address, and telephone number of the person to be subpoenaed;

(B) the item to be subpoenaed by title, description, location, and the name, address, and telephone number of the person who has possession of the item; and

(C) the basis for the claim of good cause that identifies the relevance of the testimony of the person to be subpoenaed or the relevance of the item to be subpoenaed to the jurisdictional point or points of the complaint.

(2) If the request complies with all provisions, the subpoena will be issued to the requesting party, and it shall be his/her responsibility to cause the subpoena to be served by the appropriate sheriff or constable to require the attendance of witnesses or the production of items. If the request does not comply with all provisions or does not show good cause, the director will advise the party in writing that the request has been rejected and the reasons therefor.

(b) A request by either party to require the issuance of a subpoena for the purpose of the taking of a deposition from a witness must be submitted in writing to the director within a reasonable time prior to the hearing. The request must show good cause and must be accompanied by a cashier's check or a money order in an amount for fees estimated to accrue. A copy of the standard rates may be obtained from the director upon request.

(1) A request for a subpoena for the taking of a deposition will be ruled upon by the director. It must specify:

(A) the name, address, and telephone number of the individual from whom the deposition is to be taken; and, if books, records, papers, or other items are to be part of the deposition, identify the item to be subpoenaed by title and description; and

(B) the basis for the claim of good cause that identifies the relevance of testimony or the relevance of the requested subpoenaed item to the jurisdictional point or points of the complaint.

(2) If the request complies with all provisions, the subpoena will be issued to the requesting party and it shall be his/her responsibility to cause the subpoena to be served by the appropriate officer authorized by statute for deposition purposes. If the request does not comply with all provisions or does not show good cause, the director will advise the party in writing that the request has been rejected and the reasons therefor. All depositions will be filed with the director for inspection and use by either party in the hearing.

§181.14. Procedures for the Hearing.

(a) Immediately upon the commission's acceptance of jurisdiction of any complaint, the commissioner of education shall be notified and requested to appoint a hearing officer to preside at the hearing and an attorney to advise the commission during the hearing.

(b) The hearing shall be conducted in accordance with the rules of evidence. The rules of evidence shall be liberally construed, and all evidence shall be admitted unless it is irrelevant, immaterial, or unduly repetitious, its evidentiary value is outweighed by its tendency to prejudice the fact finder against a particular party or witness, or it is otherwise inadmissible for any purpose.

(c) The complainant shall be allowed to introduce evidence at the hearing relevant to any issue raised in the complaint.

(d) The hearing officer shall make all rulings concerning the admissibility of evidence.

(e) Parties who are not represented by an attorney may not be placed at a disadvantage by the fact that they are unfamiliar with courtroom procedure. If at any time such a party is prevented from presenting relevant evidence by objections unrelated to the admissibility of such evidence, the commission may interrupt the proceeding and may request its attorney to explain to that party the proper method of presenting such evidence.

(f) Both parties shall have the opportunity to make an opening and a closing statement. These statements may be reduced to writing and a copy provided to each member of the commission.

(g) The complainant will be heard first. The respondent will then be heard.

(h) Both parties may produce witnesses in their behalf and each party will be afforded the opportunity to cross-examine any witnesses. After the parties have concluded their examinations of any witness, the commission and the hearing officer may ask such questions as are necessary and proper to enable them to fully understand the witness' testimony.

(i) The counsel representing a party may advise his or her client of his or her rights, make motions regarding the nature and conduct of the questioning, and may cross-examine any witnesses.

§181.15. Postponement of Hearing.

(a) A request for postponement of the hearing must be submitted in writing and received by the director at least three days prior to the scheduled date of the hearing. The request may originate from either the complainant or the respondent and it must show good cause.

(b) The chairperson for the hearing will make the determination of whether the cause stated in the request justifies postponement. If the chairperson for the hearing allows the request, he or she will notify, through the director, all parties of the new time, date, and place for the hearing. The date for the new hearing will be as near the date set for the original hearing as deemed feasible by the chairperson for the hearing.

§181.16. Findings of the Commission.

(a) At the conclusion of the testimony, the chairperson for the hearing will announce that the commission will adjourn to meet in executive session, according to Texas Civil Statutes, Article 6252.17, §2(g), to determine its findings and recommendations. During its deliberations, the commission may consult freely with the hearing officer on any aspect of the case. The commission will reconvene in an open meeting for the purpose of declaring the findings of the commission and taking final action on the recommendation to the commissioner.

(b) The vote from the commission approving or disapproving the recommendation to the commissioner will be by a show of hands.

(c) If the proposed recommendation is not accepted by a majority vote of the commission, then the commission may adjourn to meet in executive session to arrive at another decision different from the one proposed and defeated.

(d) If the proposed recommendation is approved, it will become the decision of the commission and will so stand.

(e) The chairperson shall, following the decision, remind the parties that the commission is an advisory body and that its final responsibility in regard to the hearing is to make a recommendation to the commissioner of education.

§181.17. Recommendations to the Commissioner of Education.

(a) The commission may recommend to the commissioner of education that any of the following actions be taken in regard to the complaint in part or in its entirety:

(1) the complaint be dismissed;

(2) the respondent be issued a warning to be made a part of the respondent's file kept by the Division of Teacher Certification;

(3) the respondent be issued a reprimand to be made a part of the respondent's file kept by the Division of Teacher Certification and copied to the employing school district;

(4) the respondent's certificate be suspended for a period not to exceed one

year and so noted upon reissuance of the certificate; or

(5) the respondent's certificate be revoked.

(b) If the commissioner upholds the commission's recommendation of a suspension or revocation, the Central Education Agency shall provide notification of the suspension or revocation to all superintendents of all school districts in the State of Texas and to certification officers in each state or territory of the United States.

§181.18. Report of Findings and Recommendations.

(a) At the conclusion of the hearing, the chairperson for the hearing will appoint a member of the majority to the decision to draft a report for the commissioner. If the decision is not unanimous, a minority report may be issued as part of the report to the commissioner under subsection (g) of this section.

(b) The majority decision report will delineate the charges against the individual, the findings of fact, conclusion of law, and recommendation of the commission.

(c) A transcript of testimony and evidence will be forwarded by the director to the panel member appointed to draft the majority decision report within 10 days of director's receipt of the transcript from the court reporter.

(d) The panel member appointed to draft the majority decision report will complete and forward the draft to the director for the commission within 30 days after receiving the transcript from the director.

(e) The director for the commission within 10 days shall forward a copy of the draft report to each panel member for review and signature of approval. Each panel member should respond within five days.

(f) When all certifying signatures have been affixed to the final report(s), the director for the commission will within five days forward the report, transcript, and exhibits to the commissioner for consideration of the recommendation.

(g) A member or members of a hearing panel may submit a minority report to the director for the commission within five days of receipt of the majority findings and recommendations.

(h) A copy of the commission's report shall be sent to both parties to the hearing when it is sent to the commissioner.

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 25, 1985

TRD-8511009 W N Kirby
Commissioner of
Education

Earliest possible date of adoption:
December 30, 1985

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 139. Abortion Facilities

The Texas Department of Health proposes the repeal of §139.1 and new §§139.1-139.12, concerning abortion facilities. The new sections will cover the purpose; definitions; fees; standards for the operation of an abortion facility; unlicensed facility; exemptions; applications and issuance of license for initial applicants; inspections; renewal of annual license, annual reporting requirements, conditions of annual license; license denial, suspension, and revocation. Section 139.1 is being repealed and renumbered as §139.3 in this proposal with some minor changes from the existing text.

Stephen Seale, chief accountant III, has determined that for the first five-year period the repeal and new sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The anticipated effect on state government is an estimated additional cost of \$60,000 per year and an estimated increase in revenue of \$60,000 per year. There is no anticipated effect on local government and no adverse economic effect on small businesses.

Mr. Seale 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 standards and annual reporting requirements covering the licensure of abortion facilities in the State of Texas. There is no anticipated cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Director, Health Facility Licensure and Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512)458-7245. Comments will be received for 30 days from the date of publication of the proposed sections. In addition, a public hearing will be held at 10 a.m. on Wednesday, December 18, 1985, in the auditorium, Texas Department of Health, 1100 West 49th Street, Austin.

★ 25 TAC §139.1

(Editor's note: The Texas Department of Health proposes for permanent adoption the repeal it adopts on an emergency basis in this issue. The text of the section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provides the Texas Board of Health with the authority to adopt rules to implement the Texas Abortion Facility Reporting and Licensing Act.

§139.1. Fees.

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

Issued in Austin, Texas, on November 22, 1985.

TRD-8510931

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

Proposed date of adoption:

January 31, 1986

For further information please call
(512) 458 7245

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Abortion Facility Reporting and Licensing

★ 25 TAC §§139.1-139.12

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

The new sections are proposed under the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provide the Texas Board of Health with the authority to adopt rules to implement the Texas Abortion Facility Reporting and Licensing Act.

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 22, 1985.

TRD-8510932

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

Proposed date of adoption:

January 31, 1986

For further information, please call
(512) 458-7245.

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Chapter 289. Occupational Health and Radiation Control Control of Radiation

★ 25 TAC §289.1

The Texas Department of Health proposes an amendment to §289.1, concerning the control of radiation.

Subsection (a)(1), which adopts by reference Part 11, titled "General Provisions" will be amended by the revision of several sections in Part 11 Texas Civil Statutes, Article 4590f, as amended by House Bill 2091, 69th Legislature, 1985, mandated that the department develop rules which designate inspection frequencies for electronic products which can generate or emit fields of radiation during operation (e.g., x-ray and laser devices), and which specify an inspection interval of five years for those devices which present a minimal threat to human health and safety. These sections have been developed and are proposed in §11.5 and Appendices 11-C and 11-D of Part 11. The inspection intervals for registrant categories not defined as minimal threat were based on the average number of health-related violations per inspection by registrant category, as determined from compliance histories.

The compliance data will be reviewed at least every two years, and appropriate adjustments will be made to the inspection intervals. With the use of this method for determining inspection intervals, a category of registrant can, by influencing peers to improve compliance problems, effect a longer inspection interval, e.g., from three years to four years. This would also decrease the fees for that category, since under the proposed fee rules, the machine/service fees are divided by the inspection interval of the registrant category as listed in Appendix 11-C.

The following other sections in Part 11 will be affected. Section 11.2, definitions, will be amended and expanded to include words used throughout the rules that had not been used previously, including the definition of minimal threat, as used in the inspection frequency rules.

Section 11.7 will be amended to require that the action level on all leaking sealed radioactive sources be designated at 0.005 microcuries, instead of a higher action level for some sources. To clarify agency policy, a 30-day time limit for submission of a formal report on leaking sources has been added.

Other changes to update references to appropriate federal and state agencies were also made in Part 11.

A new §11.14 has been added to state provisions of the Texas Open Records Act as they apply to information filed with the department.

Subsection (a)(16), which adopts by reference Part 12, titled "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services," is proposed to be amended by changing the annual fee amounts, the method for calculation of annual fees for registrants, and other minor clarifications.

Part 12 prescribes the fees charged for licensing, registration, and other regulatory services rendered by the department and provides for their payment upon initial application or renewal, and annually, thereafter. Fees are charged also for emergency planning and implementation and environmental surveillance of nuclear reactors and fixed nuclear facilities.

The Appropriations Bill of the 69th Legislature requires that a greater portion of the department's budget be obtained from fees and a lesser percentage of the budget be obtained directly from the general revenue fund. Therefore, Part 12 is being amended to increase the fees charged for licensing, registration, and other regulatory services rendered by the department. The current fees recover approximately 44% of the cost to the department for rendering these services. Fees for emergency planning and implementation and environmental surveillance of nuclear reactors and fixed nuclear facilities are currently set at 100% cost-recovery and will remain at 100% of cost to the department.

A cost analysis was developed regarding the items designated in the Radiation Control Act as those expenses to the agency for which fees may be charged. Costs per license and certificate of registration were broken down by licensing and registration costs, inspection costs, environmental costs, if applicable, records maintenance and accounting costs, standards development costs, and incident and enforcement costs. From the cost analysis, a fee system was developed which would recover 83% of the costs incurred annually by those activities.

For registrants, a base fee applicable to all registration categories was developed from activities that are approximately the same in cost for all groups, such as records maintenance, registration (for most groups), incidents and enforcement activities (including service of orders, second and third notices of violation, and enforcement conferences and hearings).

To the base fee, an inspection fee per machine or service is added. This fee was based on the costs incurred in inspecting the machines, including salaries, rent, equipment, travel, and other operating expenses. These fees are additive for the number of machines possessed. This part of the fee is then divided by the inspection interval of the facility category, as established by rule in Part 11, to reflect annual costs.

For licenses, a similar cost analysis was performed to obtain a per license cost by category of license. This cost was then multiplied by the same percent recovery as registrants' fees to obtain the license fee for each license.

Subsection (a)(3), which adopts by reference Part 21, titled "Standards for Protection Against Radiation" is proposed to be amended by addition of new §21.108 to provide by rule soil and vegetation contamination limits; new §21.109 to provide by rule surface contamination limits for facilities and equipment, survey instrument calibration requirements to 21.201, requirements that personnel monitoring equipment be processed by a processor accredited by the National Voluntary Laboratory Accreditation Program for Personnel Dosimetry Processors of the National Bureau of Standards; an exemption from personnel monitoring of registrants in categories specified as minimal threat in Part 11; requirements for extremely high radiation areas; requirements for defacing radioactive material labels on empty containers; requirements for inventories of sources of radiation at a six-month interval; iodine-125 as an isotope in counting media or animal carcasses which may be disposed of without regard to its radioactivity when in concentrations of 0.05 microcuries per gram or less; other isotopes to Appendix 21-A, Concentrations in Air and Water Above Natural Background; and minor clarification changes in rules on disposal, waste manifests, and incident notifications.

Subsection (a)(4), which adopts by reference Part 22, "Notices, Instructions, and Reports to Workers; Inspections", will be amended by the revision of §22.16, requests by workers for inspections. Section 22.16 will be changed to allow, upon the request of a worker filing an inspection request, the deletion of the worker's name from any agency records released or made available by the agency, except for good cause shown. This change is to protect workers from being denied their right to work or their right to work under safe conditions.

Subsection (a)(11), which adopts by reference Part 41, titled "Licensing of Radioactive Material," will be amended to make Part 41 comparable to current U.S. Nuclear Regulatory Commission (NRC) rules, to put into rule current agency policies regarding release of patients containing radiopharmaceuticals, temporary implants, or permanent implants, and to put into rule current agency policies regarding expiration and termination of licenses.

Exemptions from Part 41 have been added for persons who receive, possess, use, or transfer thorium contained in personnel neutron dosimeters, providing that each dosimeter does not contain more than 50 milligrams of thorium, and thorium in glass enamel or glass enamel frit containing not more than 10% by weight

source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983, (e.g., cloisonne jewelry). Also, exemptions have been added for timepieces or hands or dials containing not more than one microcurie of radium-226 per timepiece acquired prior to January 1, 1986, for spark gap irradiators containing not more than one microcurie of cobalt-60 per spark gap irradiator for use in electrically-ignited fuel oil burners having a firing rate of at least three gallons per hour, and for articles containing less than 0.1 microcurie of radium-226 acquired prior to January 1, 1986.

In Section 41.21, General Licenses-Source Material, specific references to pharmacists and physicians have been deleted and the expression for persons in "commercial and industrial firms, research, educational, and medical institutions, and state and local government agencies" has been re-emphasized for compatibility with NRC regulation changes.

Section 41.22(i), General License for Use of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing, has been expanded to include veterinarians, in accordance with NRC rule changes Selenium-75 for in vitro use, mock iodine-125 calibration sources for in vitro use, and cobalt-57 for in vitro use have been added to this section. These radioisotopes are currently available to and being used by licensees, but are not addressed in the current rules.

Section 41.26(b), Specific Licenses for Certain Groups of Medical Uses of Radioactive Material, has been added for compatibility with NRC regulation changes.

Section 41.26(c), Release of Patients Containing Radiopharmaceuticals, Temporary Implants, or Permanent Implants, has been added to formalize into rule current agency policies. Patients containing more than 30 millicuries of a radiopharmaceutical may not be released from an inpatient facility.

Survey procedures for releasing patients who had temporary implants and release limits for patients containing permanent implants are also specified.

Section 41.28(g), Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use, has been added to provide consistency with amendments to NRC regulations. These changes have been made to provide regulatory language for licensing the manufacture and distribution of products that would be incorporated into Part 41 with the adoption of these changes to the rules.

Section 41.32, Expiration and Termination of Licenses, has been expanded to formalize into rule agency license expiration and termination policies and to increase the agency's ability to control the use of

licensed radioactive material. The amendments clarify a licensee's authority and responsibility for radioactive materials and allow for orderly termination of specific licenses. The sections specify that a license remains in effect, with respect to possession of residual radioactive materials present, until the agency notifies the licensee, in writing, that the license is terminated. The rules are necessary to establish clear procedures for the termination of licenses and to establish a more coherent regulatory framework.

In addition to specific amendments to the rules, the word "regulation" has been changed to "rule" throughout the text. For consistency, the words "of these rules" have been added throughout the text where references are made to entire parts of the *Texas Regulations for Control of Radiation* (TRCR). The words "section" and "of these rules" have been deleted when references are not to an entire part of the TRCR. Masculine references to a licensee/registrant (his, him) have been deleted throughout the text in an effort to make the TRCR nonsexist. References to the Federal Code of Regulations throughout the texts have been changed for grammatical correctness and consistency.

Stephen Seale, chief accountant III, has determined that for the first five-year period the section will be in effect there will be fiscal implications as a result of enforcing or administering the proposed section. The anticipated effect on state government will be an estimated increase in revenue of \$1,317,930 each year in 1986 and 1987 and \$1,432,480 each year in 1988-1990.

There will be no effect on local government.

The total cost of compliance with the section for small businesses will vary because the section covers many types of businesses, including medical, industrial, and academic, and because the fees vary widely (see fee schedule in Part 12).

The cost of compliance for one of the largest businesses regulated would be approximately 17 cents per employee per year. This example is a conventional uranium mine which has an annual fee of \$42,193 and is owned by a company which employs approximately 250,000 persons.

The cost of compliance for a small business would be, for example, \$908 per year per employee for a one-person wireline service, which is charged a fee of \$908 per year.

Edgar D. Bailey, director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section is that the rule

will make Texas rules for control of radiation more compatible with those of the Nuclear Regulatory Commission. Regulation of uses of radioactive material within and outside the State of Texas will be more consistent. The agency's ability to control the use of licensed material upon expiration or termination of a license will be strengthened. The accuracy of radiation dose measurements made by dosimetry processors can more readily be assured. Addition of the isotope iodine-125 to 21.307, the biomedical waste rule, will save research and medical institutions money spent in disposing of this very low-level radioactive waste at commercial radioactive waste disposal sites. Prevention of administration of therapeutic doses of radiopharmaceuticals on an outpatient basis will keep radiation doses to members of the general public lower. Agency policies will be more concrete in rule form. The amendments to Part 12 will allow the department to maintain an adequate radiation control program to protect the public health and safety and the environment.

The anticipated economic cost to individuals who are required to comply with the section as proposed will depend upon the category of registrant or licensee. Individual costs to comply with Part 12 are listed in the schedule of fees in 12.21 and 12.31 of the proposed rules. The cost for personnel monitoring processors to comply with 21.202(c) of the proposed rule will be approximately \$7,800 initially to prepare for the accreditation program. In some cases, the processors are already in compliance with this rule on a voluntary basis or in preparation for the similar proposed rule of the NRC. Most of the processors of personnel monitoring provide the service on an interstate basis; therefore, those would be subject to the NRC rule as well as the Texas rule, and the costs would not need to be repeated. Processors would incur biennial costs for accreditation which include NVLAP administrative fees and costs associated with proficiency testing of approximately \$14,000. There are currently 28 personnel monitoring processors registered with the agency. Several of these have met or are in the process of meeting voluntary accreditation requirements. Should the NRC adopt a similar rule, many of the others would be required to comply regardless of adoption of the rule in this state. None of the other rules should incur any significant cost to individuals required to comply with them.

Comments on the proposal may be submitted to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, there will be a public hearing on the rules on December 19, 1985, in the auditorium, Texas Department of Health, 1100 West 49th Street,

Austin. The rule changes in Parts 21, 22, and 41 will be considered at 10 a.m. The hearing on Parts 11 and 12 will begin at 1:30 p.m.

The amendment is proposed under Texas Civil Statutes, Article 4590(f), §§4(d)(3), 7(c), 17, and 18, which provide the Texas Department of Health with the authority to formulate, adopt, and promulgate rules which provide for licensing and registration relating to control, transport, and routing of radioactive material within the State of Texas, adopt rules regarding the frequency of inspection by the agency of devices that have electronic circuits that can generate or emit physical fields of radiation during operation, prescribe and collect a fee for each license and registration; and to prescribe and collect annual fees from each fixed nuclear facility that utilizes special nuclear material for emergency planning and implementation and environmental surveillance activities.

§289.1. Control of Radiation Generally

(a) The Texas Department of Health adopts by reference the rules contained in the department's document titled *Texas Regulations for Control of Radiation*, which consists of the following parts and the dates they have been amended:

(1) Part 11, "General Provisions," as amended in April 1986 [October 1983].

(2) (No change.)

(3) Part 21, "Standards for Protection Against Radiation," as amended in April 1986 [October 1983].

(4) Part 22, "Notices, Instructions, and Reports to Workers; Inspections," as amended in April 1986 [May 1977].

(5)-(10) (No change.)

(11) Part 41, "Licensing of Radioactive Material," as amended in April 1986 [April 1984].

(12)-(15) (No change.)

(16) Part 12, "Fees For Registration Certificates, (Certificates of Registration) Radioactive Material(s) Licenses, Emergency Planning and Implementation, And Other Regulatory Services," as amended in April 1986 [April 1984].

(b) (No change.)

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

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

TRD-8510881

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

Proposed date of adoption

January 31, 1986

For further information, please call
(512) 835-7000

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 287. Water Well Drillers

General Provisions

★ 31 TAC §287.1, §287.2

The Texas Water Commission proposes new §§287.1, 287.2, 287.31, 287.32, 287.41-287.50, 287.71-287.74, and 287.91-287.99, concerning general provisions; well logs and reporting undesirable water; well drilling, completion, capping, and plugging; miscellaneous provisions; and licensing procedures.

These sections replace and are in large part the same as those previously found in 31 TAC §§319.1-319.99, promulgated by the Texas Water Development Board for the former Texas Department of Water Resources. By virtue of Senate Bill 249, §10.002, 69th Legislature, 1985, the rules of the former Texas Department of Water Resources relating to Water Well Drillers Act related rules (31 TAC Chapter 319) will cease to be effective when these new sections are adopted by the Texas Water Commission. The commission proposes to adopt new sections to reflect the legislatively mandated shift of responsibilities from the Texas Water Development Board and Texas Department of Water Resources to the commission, pursuant to Senate Bill 249; to implement additional authority legislatively accorded the Texas Water Well Drillers Board; and to provide greater clarity.

New §287.2 adds definitions for more precise interpretation of the rules.

New §§287.31, 287.41, 287.43-287.45, 287.48, 287.49, 287.71-287.73, and 287.91-287.94 have been revised to make clear that they apply not only to water wells, but also to the types of injection wells over which the Water Well Drillers Board received jurisdiction during the 69th Legislature, 1985, pursuant to Senate Bill 1185

New §287.74 adds provision for the type of notice to be given when the executive director of the commission refers a complaint to the Water Well Drillers Board with the object of collecting a civil penalty; this section reflects the authority to impose penalties that the board received pursuant to Senate Bill 1185.

New §287.93 and §287.94 alter requirements that a person seeking a well driller's license must demonstrate that he or she has resided in Texas for at least 90 days prior to making application for license; the new sections provide that the applicant may seek and receive waiver of this requirement, in accordance with recent-

ly promulgated Water Well Drillers Board rules.

Mike Hodges, chief, Fiscal Services Section, 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. Hodges 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 a clearer and more accurate expression of the procedures and standards by which the commission and the Texas Water Well Drillers Board exercise their responsibilities relating to water well and injection well drilling. 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 Mike Rogan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711

The new sections are proposed under the Texas Water Code, §5.103, which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state.

§287.1. Purpose of Rules. These sections are adopted by the Texas Water Commission pursuant to Texas Civil Statutes, Article 7621e, titled the Water Well Drillers Act, and the Texas Water Code, §§26.003, 26.011, 26.128 and 28.011. The Water Well Drillers Act requires the executive director of the Texas Water Commission to furnish the Water Well Drillers Board with necessary clerical, legal, and investigative services and provides that the commission shall promulgate procedures and standards for plugging water wells. The sections of the Texas Water Code referenced in this section direct the commission to establish the level of quality to be maintained, and to control and protect the quality of the underground water in this state.

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

Abandonment—Intentional permanent discontinuation of use.

Board—The Texas Water Well Drillers Board.

Capping—Equipping a well with a suitable device that will prevent the entrance of surface pollutants into the well.

Casing—A tubular watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the ground waters to their zones of origin and prevent the entrance of surface pollutants.

Cement—A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives; the well driller will adhere to the manufacturer's recommended water content for the mix.

Commission—The Texas Water Commission.

Completion—Sealing off access of undesirable water to the well bore by proper casing and/or cementing procedures.

Examination fee—The nonrefundable fee required of each applicant each time that applicant takes the Water Well Drillers Board's examination.

Executive director—The executive director of the Texas Water Commission, or any authorized individual designated by the executive director to act in his place.

Freshwater—Water whose bacteriological, physical and chemical properties are such that it is suitable and feasible for beneficial use.

Injection well—Includes:

(A) an air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water previously used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish the water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a nonoil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

License fee—The fee to be paid by a successful applicant to become a licensed well driller.

Licensed well driller—Any person who holds a license issued by the State of Texas pursuant to this chapter, the Texas Water Well Drillers Act, and the substantive rules of the Water Well Drillers Board.

Mud—A relatively homogenous, relatively viscous fluid produced by the suspension of clay-size particles in water.

Plugging—An absolute sealing of the well bore.

Pollution—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water

harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Public water system—A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Department of Health.

Renewal fee—The annual fee paid by a previously registered well driller, which is \$100.

Undesirable water—Water that is injurious to vegetation, to land, or to fresh water, or water that can cause pollution.

Water or water in the state—Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Water well—Any artificial excavation constructed for the purpose of exploring for or producing ground water. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce ground water.

Water well driller—Any person (including owner, operator, and drilling supervisor) who engages for compensation in the drilling, boring, coring, or construction of any water well in this state. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operations.

Water well drillers board—An examining board consisting of nine members appointed by the governor with the advice and consent of the senate and designated according to Texas Civil Statutes, Article 7621e.

Well log—A log accurately kept, on forms prescribed by the board, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the board. Each copy of a well log, other than a commission copy shall include the name, mailing address, and telephone number of the board and the 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 22, 1985.
TRD-8511017 James K. Rourke, Jr.
General Counsel
Texas Water
Commission

Earliest possible date of adoption:
December 30, 1985
For further information, please call
(512) 463-8069.

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Well Logs and Reporting Undesirable Water

★ 31 TAC §§287.31, §287.32

These sections are proposed under the Texas Water Code, §5.103, which provides that the Texas Water Commission shall adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state.

§287.31. Reporting of Well Logs.

(a) Every licensed well driller who drills, deepens, or otherwise alters a water well of injection well within this state shall cause to be made and kept a legible and accurate well log on forms supplied by the executive director.

(b) Every licensed well driller shall deliver or transmit by certified mail a copy of the well log to the commission, and shall deliver or send by first-class mail a copy to the owner or person for whom the well was drilled, within 30 days from the completion or cessation of drilling, deepening, or otherwise altering a water well or injection well.

(c) Every licensed well driller shall inform the owner or person having the water well or injection well drilled, deepened, or otherwise altered that he or she may submit a written request by certified mail to the commission that the well log be kept confidential and exempt from disclosure as a public record.

§287.32. Reporting Undesirable Water.

(a) Each licensed well driller shall immediately inform the landowner or person having a well drilled, deepened, or otherwise altered when undesirable water has been encountered.

(b) The well driller shall submit to the executive director and to the landowner or person having the well drilled, deepened, or otherwise altered, on forms supplied by the executive director, a statement signed by the well driller indicating that the landowner or person having the well drilled, deepened or

otherwise altered, has been informed that undesirable water has been encountered.

(c) The statement indicated in subsection (b) of this section must be submitted within 30 days after encountering undesirable water.

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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(512) 475-8069.

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Well Drilling, Completion, Capping, and Plugging

★ 31 TAC §§287.41-287.50

These new sections are proposed under the Texas Water Code, §5.103, which provides that the Texas Water Commission shall adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state.

§287.41. Responsibility.

(a) All well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of this subchapter prescribing the location of wells and proper drilling, completion, capping, and plugging.

(b) Where a landowner, or person having the well drilled, deepened, or otherwise altered, denies a licensed well driller access to the well and thereby precludes the driller from performing his duties under the Water Well Drillers Act and this chapter, the well driller shall file a statement with the commission as prescribed in §§287.71-287.74 of this title (relating to Miscellaneous Provisions).

§287.42. Standards of Completion for Public Water System Wells. Wells supplying a public water system shall be completed according to presubmitted plans approved by the Texas Department of Health.

(1) The water well driller shall to the best of his ability ascertain whether a well which he is to drill, deepen, or otherwise alter is intended for use as part of a public water system.

(2) By way of his water well log, the water well driller shall inform the commission of the well's purported intended use.

(3) The person having the well drilled, deepened, or otherwise altered is responsible for ascertaining that a well intended for use as a part of a public water system meets the current rules and regulations of the Texas Department of Health.

§287.43. Location of Domestic, Industrial, Injection, and Irrigation Wells.

(a) Except as noted in §287.44(b) of this title (relating to Standards of Completion for Domestic, Industrial, Injection, and Irrigation Wells), a well shall be located a minimum horizontal distance of 50 feet from any water-tight sewage and liquid-waste collection facility.

(b) Except as noted in §287.44(b) of this title (relating to Standards of Completion for Domestic, Industrial, Injection, and Irrigation Wells), a well shall be located a minimum horizontal distance of 150 feet from any concentrated sources of contamination, such as existing or proposed livestock or poultry yards, privies, and septic system absorption fields.

(c) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal and steel casing extending a minimum of 24 inches above known flood level.

§287.44. Standards of Completion For Domestic, Industrial, Injection, and Irrigation Wells. Domestic, industrial, injection and irrigation wells shall be completed in accordance with the following specifications and in compliance with local county or incorporated city ordinances.

(1) The annular space between the borehole and the casing shall be filled from ground level to a depth of not less than 10 feet below the land surface or well head with cement slurry. The distances given in §287.43(a) and (b) of this title (relating to Location of Domestic, Industrial, Injection, and Irrigation Wells) may be decreased provided the total depth of cement slurry is increased by twice the horizontal reduction. In areas of shallow, unconfined, ground-water aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water-bearing strata.

(2) In all wells where plastic casing is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(A) The slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(B) The surface of the slab shall be sloped to drain away from the well.

(C) The top of the casing shall extend a minimum of one foot above the top of the slab.

(3) In wells where steel casing is used:

(A) the casing shall extend a minimum of one foot above the original ground surface; and

(B) A slab or block as described in paragraph (2)(A) is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:

(i) the adapter is welded to the casing or fitted with another suitably effective seal; and

(ii) the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(4) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(5) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

§287.45. Standards of Completion For Wells Encountering Undesirable Water.

(a) If a well encounters undesirable water and the well is not plugged, the licensed well driller shall see that the well drilled, deepened, or otherwise altered is forthwith completed in accordance with the following.

(1) When undesirable water is encountered in a well, the undesirable water shall be sealed off and confined to the zone(s) of origin.

(2) When undesirable water is encountered in a zone overlying fresh water, the well shall be cased from the top of the fresh water zone to the land surface.

(3) The annular space between the casing and the wall of the borehole shall be cemented to the land surface.

(4) When undesirable water is encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable-water zone shall be filled with cement to a height that will prevent the entrance of the undesirable water into the pumping well.

(b) The person who performs the well completion operation on a well shall, within 30 days after completing the well, submit a well completion report to the executive director, on forms supplied by the executive director.

§287.46. Standards For Wells Producing Undesirable Water.

(a) Wells completed to produce undesirable water shall be cased from the top of the undesirable water zone or 50 feet

below the lowermost fresh water zone to the land surface.

(b) The annular space between the casing and the wall of the borehole shall be cemented to the land surface, or as a minimum, to a height greater than the hydrostatic head of the undesirable-water aquifer plus the uppermost 10 feet of casing.

(c) If the undesirable water does not enter the cased part of the well, the lowermost and uppermost 10 feet (minimum) of the casing shall be cemented in order to seal off all other water-bearing or other permeable sections from the well.

§287.47. Recompletions.

(a) The landowner shall have the continuing responsibility of insuring that a well does not allow the commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.

(b) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well recompleted in accordance with the applicable rules, the casing in the well shall be perforated and squeeze cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

(c) The executive director may direct the landowner to take proper steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

§287.48. Well Plugging and Capping.

(a) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered, to cap or have capped, under standards set forth in §§287.41-287.50 of this title (relating to Well Drilling, Completion, Capping, and Plugging), any well which is open at the surface.

(b) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered to plug or have plugged a well which is abandoned.

(c) It shall be the responsibility of each licensed well driller to inform a landowner or person having a well drilled, deepened, or otherwise altered that the well must be plugged if it is abandoned.

(d) It is the responsibility of the licensed well driller to see that any well which encounters undesirable water is plugged under the standards set forth in §§287.41-287.50 of this title (relating to Well Drilling, Completion, Capping, and Plugging).

(e) The person that plugs such a well shall, within 30 days after completion or plugging is complete, submit a well completion and plugging report to the executive director, on forms supplied by the executive director.

§287.49. Standards for Plugging Wells.

(a) If the use of a well that does not contain any undesirable-water zones is permanently discontinued, all removable casing shall be removed from the well and the entire well filled with cement to the land surface.

(b) In lieu of the procedure in subsection (a) of this section, the well may be filled with heavy mud followed by a cement plug extending from land surface to a depth of not less than 10 feet.

§287.50. Standards For Plugging Wells That Penetrate Undesirable Water Zones.

(a) If the use of a well that penetrates undesirable water is to be permanently discontinued, all removable casing shall be removed from the well and the entire well filled with cement to the land surface.

(b) In lieu of the procedure in subsection (a) of this section, either the zone(s) contributing undesirable water, or the fresh water zone(s), shall be isolated with cement plugs and the remainder of the wellbore filled with heavy mud to form a base for a cement plug extending from land surface to a depth of not less than 10 feet.

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 22, 1985.

TRD-8511019 James K. Rourke, Jr.
General Counsel
Texas Water
Commission

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For further information, please call
(512) 463-8069.

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Miscellaneous Provisions

★ 31 TAC §§287.71-287.74

The new sections are proposed under the Texas Water Code, §5.103, which provides that the Texas Water Commission shall adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state.

§287.71. Minimum Standards.

(a) If the party having the well drilled, deepened, or otherwise altered, or the licensed well driller, or the party plugging the well, finds any of the procedures prescribed by §§287.41-287.50 of this title (relating to Well Drilling, Completion, Capping, and Plugging) inapplicable, unworkable, or inadequate, combinations of the prescribed procedures or alternative procedures may be employed, provided that the adopted alternative procedures will prevent injury and pollution.

(b) Proposals to use combinations of prescribed procedures or alternative procedures shall be submitted to the executive director for approval prior to their implementation.

§287.72. Field Inspection. The executive director may initiate field inspection and investigation of well drilling, capping, plugging or completion operations.

§287.73. Plugging Responsibility. A licensed well driller is responsible for assuring that a well which encounters undesirable water is plugged or completed forthwith pursuant to the following:

(1) Where a person having the well drilled, deepened, or otherwise altered denies a licensed driller access to a well which requires plugging or completion or otherwise precludes the driller from plugging or completing a well which has encountered undesirable water, the driller shall immediately file a signed statement with the executive director and provide a copy of the statement to the board.

(2) The statement shall indicate that.

(A) the driller, or person under his supervision, encountered injurious water while drilling the well;

(B) the driller has informed the person having the well drilled, deepened, or otherwise altered, that injurious water was encountered and that the well must be plugged or completed pursuant to this chapter;

(C) the person having the well drilled, deepened, or otherwise altered, has denied the driller access to the well;

(D) the reason, if known, for which access has been denied; and,

(E) if known, whether the person having the well drilled, deepened, or otherwise altered, intends to have the well plugged or completed.

(3) Upon receipt of the statement described in paragraph (2) of this section:

(A) the executive director shall determine whether injurious water has been encountered;

(B) if injurious water has been encountered, the executive director shall determine whether the person having the well drilled, deepened, or otherwise altered, intends to have the well plugged or completed within 30 days.

(C) Where a person having the well drilled, deepened, or otherwise altered does not intend to have the well plugged or completed as required by commission rules, or where he does not have the well plugged or completed within the prescribed time period, the executive director shall file a complaint before the commission or board requesting that the person having the well drilled, deepened or otherwise altered, appear before the commission or board and show cause why the well should not be plugged or completed pursuant to commission rules.

§287.74. Complaints.

(a) When a violation is alleged of the Texas Civil Statutes, Article 7621e; of the Texas Water Code, Chapter 26 or Chapter 28; or of regulations set forth in this chapter, the executive director may seek remedial action on his own initiative or a complainant may seek relief by filing a complaint setting forth the name and address of the alleged violator, as well as facts and circumstances concerning the particular problem.

(b) The executive director may file his complaint directly with the commission or the board; all others must file their sworn complaints with the executive director.

(c) If the executive director determines, upon investigation, that evidence exists of a violation of Texas Civil Statutes, Article 7621e, or of any provision of this chapter promulgated pursuant to Texas Civil Statutes, Article 7621e, the executive director may refer the complaint to the board, to the attorney general, or act in accordance with any provisions of Texas Civil Statutes, Article 7621e.

(1) Where the executive director refers a complaint to the board for suspension or revocation of the alleged violator's license or the collection of a civil penalty, the executive director shall serve notice on the alleged violator by personal service or by certified mail, return receipt requested, of the date, time, and place of the next board meeting at which the complaint will be reviewed.

(2) The notice shall be given at least 10 days prior to the date set for hearing and shall inform the alleged violator of the nature of the complaint, the complainant's name, and the nature of the hearing.

(d) If the executive director determines, upon investigation, that evidence exists of a violation of the Texas Water Code, Chapter 26 or Chapter 28, or of any provision of this chapter promulgated pursuant to the Texas Water Code, Chapter 26 or Chapter 28, the executive director may refer the complaint to the commission or the attorney general, or may act in accordance with any provisions of the Texas Water Code.

(e) Where the executive director refers a complaint to the commission:

(1) a hearing will be called and a show-cause order will be sent by certified mail to the alleged violator; and

(2) notice of the hearing will be sent by first class mail to all interested parties of record at least 10 days prior to the hearing date and shall indicate the nature of the violation, the date and place the commission shall consider the matter, and other information deemed appropriate.

(f) The commission shall keep an information file about each complaint filed with the commission relating to a licensee.

(g) If a written complaint is filed with the commission relating to a licensee, the commission at least as frequently as quar-

terly, shall notify the complainant of the status of the complaint until its final disposition unless the notification would jeopardize an undercover investigation.

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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James K. Rourke, Jr.
General Counsel
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Commission

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For further information, please call
(512) 463-8069

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Licensing Procedures

★ 31 TAC §§287.91-287.99

These new sections are proposed under the Texas Water Code, §5.103, which provides that the Texas Water Commission shall adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state.

§287.91. License Required. It shall be unlawful for any person to act as or to offer to perform services as a water well driller or as a driller of injection wells, as defined in this chapter, without first obtaining a license pursuant to the Water Well Drillers Act and the board's substantive rules, §§231.31-231.53 of this title (relating to Licensing Procedures).

§287.92. Exceptions. The following persons are exempt from the requirement of obtaining licenses from the board:

(1) any person who drills, bores, cores, or constructs a water well on his or her property for his or her own use; or

(2) a person who assists in the construction of a well under direct supervision of a licensed well driller and is not primarily responsible for the drilling operation.

§287.93. Requirements for Issuance of a License.

(a) Each person desiring to obtain a well drillers license must submit a completed application to the commission.

(b) Each applicant shall have been a resident of the state for not less than 90 consecutive days prior to making application for licensing as a well driller, unless the board waives this requirement in accordance with its rules.

(c) Each applicant must pay the required examination fee to the commission upon submission of his or her application.

(d) Each applicant's qualifications must be certified by the board before he or she may take the examination.

(e) Subsequent to certification and within 90 days thereof, each applicant must pass an examination prepared and administered by the board.

(f) Subsequent to passing the examination, an applicant must submit the required license fee to the commission.

§287.94. Applications.

(a) Applications shall be made on forms which may be obtained from the commission.

(b) Applications shall include:

(1) the applicant's name, business address, and permanent mailing address;

(2) a sworn and satisfactory letter of reference from a licensed well driller with at least two years' experience in water well drilling, or other references satisfactory to the board;

(3) satisfactory letters of reference from:

(A) the applicant's banker; and

(B) two satisfied well drilling customers who are not related within the second degree of consanguinity to the applicant;

(4) the applicant's sworn statement that he or she has been a resident of Texas for 90 consecutive days immediately prior to making his or her application, or a request for waiver of this requirement;

(5) the applicant's sworn statement that he has drilled wells under the supervision of a driller licensed under the Texas Water Well Drillers Act for two years or that he has other comparable well drilling experience; and

(6) the applicant's endorsement of the board's standard of conduct.

(c) The application must be received by the commission 14 working days prior to the board meeting at which it is considered.

(d) An application shall be null and void, and the examination fee shall be forfeited, if the applicant fails to take the examination within 90 days after the board certifies the application.

§287.95. Notification to Applicants.

(a) Upon receipt of a properly completed application, the examination fee required by the board, and the required letters of reference, the executive director shall inform the applicant of the date, time, and place of the board meeting at which his or her application will be evaluated for certification.

(b) The executive director shall notify each applicant as to the disposition of his or her application after the board's decision and shall advise the applicant of the dates, times, and places of the examinations for which he is eligible.

§287.96. Administration of Examination.

(a) The commission shall offer and proctor the examination once a month at a time and place designated by the executive director.

(1) The examination shall be offered more frequently if more than 10 persons petition the board in writing, or if the board should so provide.

(2) The board will notify the executive director of the applicants eligible to take the examination.

(3) No less than 30 days prior to a scheduled examination, an applicant may petition the board, in writing, to request that an oral examination be administered to him or her.

(b) The executive director shall notify any applicant who fails an examination within 30 days of the administration of the examination.

(c) An applicant may take the examination only twice within any 12-month period.

(d) At any time within six months of the date he or she is notified of the results of an examination, an applicant may inspect his or her examination paper in the commission's offices during normal business hours for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

(e) If requested in writing by a person who fails the examination, the commission shall furnish the person with an analysis of the person's performance.

§287.97. Licenses.

(a) After an applicant meets the requirements prescribed by the rules of the board, passes the required examination, and submits the license fee required by the board, the executive director shall issue a license to the applicant.

(b) The license shall not be transferable or assignable and will be issued one time only.

(c) The executive director shall also issue a small (billfold size) card indicating the expiration date of the license.

(d) A duplicate license to replace a lost or destroyed license shall be issued by the commission upon proper application and payment of the fee required by the board.

§287.98. Renewal of Licenses.

(a) All licenses will expire on August 31 of each year.

(b) The commission shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration and shall attempt to obtain from each licensee a signed statement confirming receipt of the notice.

(c) The executive director shall furnish application forms for renewal.

(d) A completed application for renewal shall be submitted to the executive director on or before August 31 of each year.

(1) The application must be accompanied by the renewal fee prescribed by the board.

(2) The renewal fee shall be payable to the commission.

(e) Upon receipt of a properly completed renewal form and the renewal fee, the executive director shall renew the license and issue a small (billfold size) card indicating the expiration date of the license.

§287.99. *Disposition of Revenues.*

(a) The state auditor shall audit the financial transactions of the board and commission in connection with the administration of this Act during each fiscal biennium.

(b) All money collected by the commission under the provisions of the Water Well Drillers Act shall be deposited in the state treasury to the credit of a special fund to be known as the water well drillers fund and may be used only to administer this Act.

(c) On or before January 1 of each year, the commission shall submit in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for funds received and disbursed under this Act by the commission and the board during the preceding year.

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

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Chapter 289. Weather Modification

The following proposals submitted by the Texas Water Commission will be serialized in the December 6, 1985, issue of the *Texas Register*. The proposed date of adoption for the documents is December 30, 1985.

Definitions
§289.1
(new)

Issuance of Licenses and Permits
§§289.11-289.22
(new)

Records and Reports
§289.31, §289.32
(new)

Amendment, Revocation, and Suspension of Licenses and Permits on Motion of Commission
§§289.41-289.44
(new)

Amendment of Permits Upon Application of Permittees
§§289.51-289.53
(new)

Hall Suppression Election Provisions
§289.61, §289.62
(new)

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

★ 34 TAC §3.545

The Comptroller of Public Accounts proposes an amendment to §3.545, concerning licenses, fees, and bonds for conduct of bingo and commercial lessor. The amendment deletes the detailed itemization of the fee schedule for licenses, since these provisions are repetitive of the Bingo Enabling Act, Texas Civil Statutes, Article 179d. The amendment also revises the standards for determining the amount of bond required. The comptroller has determined that bingo tax revenue will be adequately protected without requiring a bond of taxpayers with a liability of less than \$950 per reporting period, and the amendment establishes this standard. The amendment also provides exceptions to this standard based on the applicant's history of recordkeeping, reporting, and payment of tax.

Dale Craymer, director of revenue estimating for the comptroller, 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. Craymer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is a reduction in paperwork and from bond costs savings. 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 Ches Stubblefield, Manager, Miscellaneous Services, P.O. Box 13428, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179d, which provide

that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.545. Licenses, Fees, and Bonds for Conduct of Bingo and Commercial Lessor.

(a) Annual license to conduct bingo games.

(1) (No change.)

(2) Fee. An application for a license to conduct bingo must be accompanied by a license fee in accordance with the Bingo Enabling Act, Texas Civil Statutes, Article 179d, §13. [the following schedule:

[(A) Class A (annual gross receipts of \$25,000 or less)-\$100;

[(B) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000)-\$200;

[(C) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000)-\$300;

[(D) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000)-\$400;

[(E) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000)-\$600;

[(F) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000)-\$900;

[(G) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000)-\$1,200;

[(H) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000)-\$1,500;

[(I) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000)-\$2,000; and

[(J) Class J (annual gross receipts of more than \$400,000)-\$2,500].

(3) (No change.)

(4) Bond or other security. Each application for an annual license to conduct bingo must be accompanied by a bond or other security equal to the applicant's estimated quarterly tax liability. If the amount is estimated to be less than \$950, no bond or other security will be required, unless the comptroller determines a bond or other security is necessary based on the applicant's history of recordkeeping, reporting, and payment of tax. If a bond or the form of security is required, no license will be issued until such bond or other security has been posted. [Bond. Each application for an annual license to conduct bingo in a legalized area must be accompanied by a bond equal to the organization's anticipated average quarterly tax liability. If the amount is estimated to be less than \$100, no bond will be required. No annual license will be issued until a satisfactory bond has been posted.]

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

(b) Commercial license to lease bingo premises.

(1) (No change.)

(2) **Fee.** An application for a license to lease bingo premises must be accompanied by a license fee which is based upon the annual gross rentals from licensed organizations. For the purpose of this section, "gross rentals from licensed organizations" means the total receipts, regardless of how they are denominated, from the licensed organizations, including but not limited to building rental, payments of utilities, fixtures, security services, etc. The fee that must accompany the application must be made in accordance with the **Bingo Enabling Act, Texas Civil Statutes, Article 179d, §13.** [the following schedule:

[(A) Class A (annual gross rentals from licensed organizations of not more than \$12,000)-\$100;

[(B) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000)-\$200;

[(C) Class C (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000)-\$400;

[(D) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000)-\$400;

[(E) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000)-\$500;

[(F) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000)-\$600;

[(G) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000)-\$700;

[(H) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000)-\$800;

[(I) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000)-\$900; and

[(J) Class J (annual gross rentals from licensed organizations of more than \$90,000)-\$1,000.]

(3) (No change.)

(c)-(n) (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

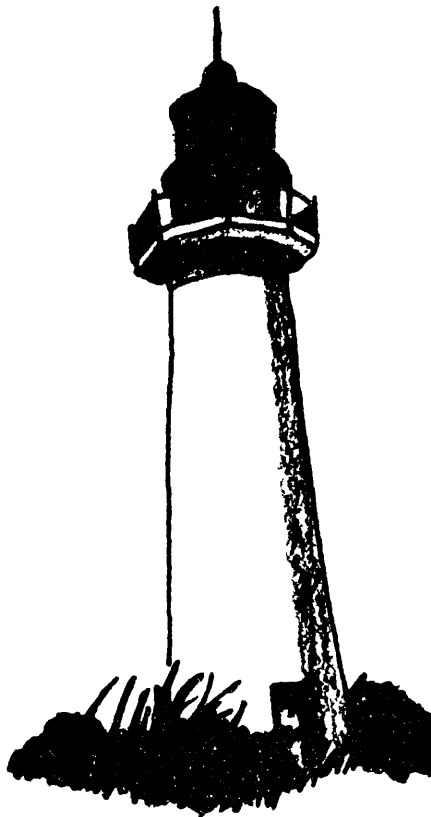
Issued in Austin, Texas, on November 25, 1985.

TRD-8510979

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
December 30, 1985

For further information, please call
(512) 483-6406.



Subchapter V. Bingo Regulations and Tax

★ 34 TAC §3.558

The Comptroller of Public Accounts proposes new §3 558, concerning seal required on disposable bingo cards. The section establishes a requirement that every disposable bingo card used in this state bear an impression of the seal of the State of Texas and provides a timetable for implementation of this requirement by the various parties affected. The section also notifies manufacturers of their responsibilities and provides information concerning the procedure to be used to obtain approval by the comptroller of the manufacturer's cards.

Dale Craymer, director of revenue estimating for the comptroller, 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. Small businesses involved in the manufacture of disposable bingo cards would experience negligible costs in the area of additional printing requirements.

Mr. Craymer also has determined that for each year of the first five years the section is in effect the public will benefit from more efficient enforcement of bingo regulations as a result of enforcing the

section. 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 Ches Stubblefield, Manager, Miscellaneous Services, PO Box 13528, Austin, Texas 78711.

This new section is proposed under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act

§3.558. Seal Required on Disposable Bingo Cards.

(a) For the purposes of this section, a disposable bingo card is a card made of paper or other suitable material which is designed or intended for use at a single bingo occasion.

(b) Subject to the implementation schedule set out in subsection (e) of this section, the face of every disposable bingo card used, sold, or otherwise furnished in this state shall bear an impression of the State of Texas and a star of five points encircled by olive and live oak branches and the words "Office of the Comptroller," in accordance with detailed specifications, available on request from the Miscellaneous Services Section, Tax Administration Division of the comptroller's office

(c) No disposable bingo card shall be sold or otherwise furnished to any person in this state without an example of such card having the prior written approval of the comptroller.

(d) Manufacturers shall submit an example of all disposable cards to the Miscellaneous Services Section, Tax Administration Division, of the comptroller's office for written approval. Approval extends only to cards manufactured to the same specifications as examples submitted. Any modification of approved disposable bingo cards other than color, series numbers, serial numbers, and/or card numbers shall require submission of an example to the Miscellaneous Services Section, Tax Administration Division of the comptroller's office for approval.

(e) The provisions of this section shall be implemented according to the following schedule.

(1) A manufacturer shall not sell or otherwise furnish unapproved disposable cards to distributors or licensed organizations for use in this state after March 31, 1986.

(2) A distributor shall not purchase unapproved disposable cards after March 31, 1986, for use in this state. A distributor may continue to sell unapproved cards to licensed organizations in this state until June 30, 1986.

(3) A licensed organization shall not purchase or otherwise obtain from a manufacturer unapproved disposable cards

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for use in this state after March 31, 1986. A licensed organization shall neither purchase nor use in this state unapproved disposable cards after June 30, 1986.

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-8510993 Bob Bullock
 Comptroller of Public
 Accounts

Earliest possible date of adoption
December 30, 1985

For further information, please call
(512) 463-4606

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 141. General Provisions

★ 40 TAC §141.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §141.1, concerning defined terms. The definitions as proposed for repeal define terms as stated in prior enabling legislation and as interpreted by the commission when used in rules. The definitions are proposed for repeal simultaneously with the proposal of new general rules, which contain definitions from current enabling legislation and current commission interpretation

Larry Goodman, fiscal and administrative services administrator, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal

Mr. Goodman also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is updating of rules to reflect current legisla-

tion requirements. There is no anticipated economic cost to individuals as a result of the the proposed repeal.

Comments on the proposal may be submitted to Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214

The repeal is proposed under Texas Civil Statutes, Article 5561c-2, Chapter 632, 69th Legislature, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt all necessary rules to effectuate the purposes of the Act

§141.1. *Defined Terms.*

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-8510793 Ross Newby
 Executive Director
 Texas Commission on
 Alcohol and Drug
 Abuse

Earliest possible date of adoption:
December 30, 1985

For further information, please call
(512) 475-2577

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

The Texas Commission on Alcohol and Drug Abuse proposes new §§141.1-141.6, 141.21-141.24, 141.31-141.34, 141.41, 141.51, 141.61, and 141.62, concerning the organization, structure, authority, rules, definitions, meetings, policies, records, conduct of the commission and the board, and donations to the commission.

Larry Goodman, fiscal and administrative services administrator, 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 Goodman 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 public access to information about the commission and its organizational characteristics, including meetings of the board and the securing of records of the commission. Potential donors will ascertain how the commission makes use of donated funds. 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 Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe Street, Austin, Texas 78701-1214.

The new sections are proposed under Texas Civil Statutes, Article 5561c-2, 69th Legislature, Chapter 362, §1.12, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures allowed by the commission in the administration of any commission programs.

§141.1. *Origin of the Commission.* The Texas Commission on Alcohol and Drug Abuse was created through the Texas Alcohol and Drug Services Act, Texas Civil Statutes, Article 5561c-2, 69th Legislature, Chapter 632, 1985, which continued, renamed, and expanded the duties of the former Texas Commission on Alcoholism, originally created in 1953. The commission exists in response to the need to provide services to prevent, intervene, treat, and rehabilitate substance abusers and to educate all citizens about the problems of alcohol and drug abuse.

§141.2. *Composition of Commission.* The governing board of the Texas Commission on Alcohol and Drug Abuse is composed of nine members appointed by the governor with the advice and consent of the senate. The commission employs an executive director who administers policy decisions of the commission.

§141.3. *Purpose.* The commission is the principal authority in the state on matters relating to the prevention, intervention, treatment, and rehabilitation of substance abusers. The commission is the designated agency to receive and administer federal block grant funds for alcohol and drug abuse services in Texas. The commission provides services through grants and contracts subject to the availability of state and federal funds. The commission licenses alcohol or combined alcohol and drug treatment facilities. The commission works cooperatively with interested and affected federal, state, and local agencies and organizations to plan, develop, coordinate, evaluate, and implement programs relating to substance abuse services in Texas.

§141.4. *Legal Basis.* The state constitutional authority for the acceptance by the commission of money from private or federal sources is the Texas Constitution, Article 16, §3. The state statutory authority for supervision of substance abuse programs by the commission is found in Texas Civil Statutes, Article 5561c-2, (1985) as amended from time to time. In accordance with Texas Civil Statutes, Article 5561c-2, §1.14, the commission cooperates with the federal government in carrying out its charge to provide for needs of substance

abusers through administration of federal block grant funds under state and federal law, adopting such methods of administration as are found by the federal government to be necessary and not contrary to existing state laws. The commission complies with such requirements as may be necessary to obtain federal funds in the maximum amount and most advantageous proportion authorized.

§141.5. Organization for Substance Abuse Services. Under operational policies established by the commission, the executive director is responsible for the administration, supervision, planning, and direction of funding, licensing, and all other activities of the commission. The commission maintains an organizational chart illustrating its functional organization. The state is divided into geographical districts and regions with a district director in charge of each district.

§141.6. Relation to Other Agencies. Many state and federal agencies provide services that benefit the commission and those persons receiving benefits or privileges from the commission or its funded programs. The commission works cooperatively with these agencies to plan, develop, coordinate, implement, and evaluate programs for the prevention, intervention, treatment, and rehabilitation of substance abuse and alcoholism and drug dependence. In addition, the commission works cooperatively with local governments, nonprofit and proprietary service providers, state planning regions, the criminal justice system, school districts, health organizations, and other groups and individuals. It provides technical assistance, funds, and consultation services for the development, enhancement, and coordination of community services.

§141.21. Commission Meetings. The board meets at least quarterly. Commission meetings may be held anywhere within the State of Texas. Prior to each meeting the chair, with the assistance of the executive director, prepares and submits to each member of the commission the agenda, listing items to be considered. Materials supplementing the agenda may be included. All meetings are held pursuant to public notice as required by law. The chair, or four or more members by written request, call special meetings on dates and at such places and times as are determined by the executive director and the chair.

§141.22. Public Comment and Requests. At its meetings, the board receives public comment from any person on any issue which is not otherwise provided for by rule or procedure. The board may limit public comment to five minutes per person, unless the individual previously submitted a written request to appear as an item on the commission's agenda, and such request was received prior to submitting the agenda to the *Texas Register* for publication. The com-

mission maintains a list of visitors attending meetings.

§141. Minutes and Recordings. At all open meetings the executive director, or his designee, take written minutes. In addition, all open meetings are electronically recorded unless technological problems preclude such recording. All electronic or written minutes are open records. The board approves the written minutes at its next meeting.

§141.24. Officers. The governor appoints the chair annually. The previous chair serves as active chair until such appointment is made, or may designate another member as acting chair. The officers of the commission are a chair, a vice-chair, and a secretary. The vice-chair and secretary are elected annually, and immediately assume the duties of their office as assigned by the chair. Officers are elected upon the vote of majority of a quorum present, and may be re-elected without limitation. Resignation, death, or incapacity of the vice-chair or secretary resulting in a vacancy in office are filled by election of a member to assume the duties at such time as the members shall designate. The vice-chair assumes the duties of the chair in the event of the resignation, death, or incapacity of the chair until such time as the governor appoints a new member as chair.

§141.31. Funding and Fees. The board approves legislative budget requests and grant funds as prepared by the executive director, and approves the agency budget of appropriated funds and funds from other sources. In addition, the board approves acceptance of donations, and sets fees for licensure programs, technical or administrative assistance, consultant services, or specialized services provided by the commission.

§141.32. Amendment of Rules. The board makes all rules appropriate to the accomplishment of its statutory duties and the allocation of its funds through the executive director as its certifying official. The commission may amend its rules at any time as deemed appropriate or necessary to promote the policies of the commission and statutory requirements.

§141.33. Policies of the Commission. Policies of the commission are those formal written policies approved by the board to carry out statutory mandates. The chair signs new or amended policies, which are effective on the date of adoption unless otherwise specified. Specific policies are adopted or amended only when their approval is an official agenda item. An individual commission member's opinion does not necessarily represent the opinion or policy of the commission.

§141.34. Commission Records. The executive director of the commission is the custodian of all public records of the commission. These records are available upon reasonable notice to any person who re-

quests, in writing, to examine or duplicate public records. The commission may charge a reasonable fee for staff time and costs of duplicating records.

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

Alcohol abuse—The excessive use of alcohol in a manner that interferes with one or more of the following to a less than chronic extent: physical or psychological functioning, social adaptation, educational performance, or occupational functioning.

Alcoholic—The individual suffering from alcoholism.

Alcoholism—The loss of self-control with respect to the use of alcohol, or the pathological use of alcohol that chronically impairs social or occupational functioning, or physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms.

Appellant—A person who has a statutory or commission policy right to appeal a decision of the commission and who requests such appeal to the commissioners following commission rules and procedures.

Approved treatment program—A substance abuse treatment facility approved by the commission to carry out specific statutory provisions.

Board—The members of the governing body of the commission.

Commission—The Texas Commission on Alcohol and Drug Abuse.

Drug abuse—Misuse or abuse of any controlled substance or other substance other than for appropriate and duly prescribed medicinal purposes.

Drug-dependent person—A person who is using a controlled substance and who is in a state of psychological or physical dependence, or both, arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.

Intervention—Constructive methods or programs designed to interrupt the onset or progression of substance abuse or dependence in the early stages.

Prevention—Constructive methods or programs designed to reduce an individual's risk of abusing or becoming addicted to alcohol or drugs.

Rehabilitation—A planned and organized program designed to reestablish the social and vocational life of a substance-free person.

Substance—Alcohol, a controlled substance, or other chemical substance which has the potential for addiction or harm from abuse or misuse.

Treatment—A planned and organized program designed to initiate and maintain a person's substance-free status.

§141.51. Nondiscrimination in Employment and Funding. The commission fully supports the goal of achieving equal employment opportunities for persons of every race, color, sex, religion, creed, age, national origin, political affiliation, and physical or mental impairment. The commission recruits, tests, hires, and promotes for all job classifications without regard to the designated classifications. Decisions on employment are based solely upon an individual's qualifications for the position being filled. The commission has a grievance procedure for employees and a complaint procedure for others in the event any person feels that he or she has been subject to discrimination. The commission conducts its programs and funding activities in such a manner as to ensure that no person will be excluded from participation in, or denied benefits of, any funding program or activity on the basis of these designated classifications without strong justification related to therapeutic goals

§141.61. General Authority to Accept Donations. The authority to accept donations for the commission is vested in its governing board. Employees of the commission may accept donations within the policies set by the board. The commission does not accept donations of real estate without the express permission and authorization of the legislature, but the commission solicits and accepts other donations from organizations and individuals in any amount and for specified or unspecified purposes. However, the commission avoids competing with organizations which depend upon private donations, and does not solicit donations for regular statutorily prescribed programs of the commission without prior approval of the executive director. All restrictive donations are utilized for purposes specified by the donor. The executive director expends unrestricted donations and any accrued interest under the guidance of the board. No donations are transferred to a foundation or nonprofit organization without written permission from and the written approval of the executive director

§141.62. Standards of Conduct between Employees and Officers and Private Donors Commission officers and employees shall not:

- (1) accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his or her official conduct;
- (2) accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce disclosures of confidential information acquired by reason of the official position;
- (3) accept other employment or compensation from a private donor which could reasonably be expected to impair the officer's or employee's independence of

judgment in the performance of the duties of the official position;

(4) make personal investments in association with a private donor which could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the interest of the commission;

(5) solicit, accept, or agree to accept any benefit for having exercised his/her official powers on behalf of a private donor or performed his/her official duties in favor of a private donor;

(6) vote on or otherwise participate in any measure, proposal, or decision pending before the private donor if he or she serves as an officer or director of the donor and the commission might reasonably be expected to have an interest in such measure, proposal, or decision; or

(7) authorize a private donor to use property of the commission unless the property is used in accordance with a contract between the commission and the private donor, or the commission is otherwise compensated for the use of the property.

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-8510798

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption:
December 30, 1985
For further information, please call
(512) 485-2577.

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★40 TAC §141.71

The Texas Commission on Alcohol and Drug Abuse proposes new §141.71, concerning resolution of complaints. This new section describes the function of the commission's board of inquiry and sets out the commission's requirements for review of client complaints by an entity licensed or funded by the commission, as a result of recommendations made by the Sunset Commission, and requirements of Texas Civil Statutes, Article 5561c-2, Senate Bill 601.

Larry Goodman, fiscal and administrative services administrator, 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. Goodman also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that alcohol and drug abuse clients or other persons will have notice of procedures for resolution of complaints over which the commission has legal authority. 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 Patricia Kubsch, Administrative Technician, 1705 Guadalupe Street, Austin, Texas 78701-1214, (512) 475-2577.

The new section is proposed under Texas Civil Statutes, Article 5561c-2, 69th Legislature, 1985, Chapter 632, §1.12, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in the administration of any commission programs.

§141.71. Resolution of Complaints. The board of inquiry of the commission receives and investigates written complaints over which the commission has jurisdiction. Any entity funded or licensed by the commission shall have written policies and procedures for investigating and remedying complaints by its clients, and shall prominently display a sign stating its policy and procedures on complaints. The sign shall also notify clients of the commission's board of inquiry and its mailing address. The governing authority of the entity or its designee shall document any complaints, the results of the investigation of each complaint, and subsequent actions taken to resolve the complaint. This documentation shall be maintained at the facility and shall be available for inspection by the commission. If the governing authority cannot resolve the complaint, it shall forward the complaint to the commission for resolution through the board of inquiry procedures. In all other cases, persons with a complaint shall write to the Board of Inquiry, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701, and request an investigation.

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-8510799

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption:
December 30, 1985
For further information, please call
(512) 475-2577

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Chapter 143. Introduction

★40 TAC §§143.1-143.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§143.1-143.4, concerning the origin, composition, purpose, and rules and regulations of the Texas Commission on Alcoholism. The repeals are made to update and reorganize the commission's general rules. New sections have been proposed simultaneously with the proposed repeals.

Larry Goodman, fiscal and administrative services administrator, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeals.

Mr. Goodman also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be the updating of rules to reflect current legislation requirements. There is no anticipated economic cost to individuals as a result of the proposed repeal.

Comments on the proposal may be submitted to Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214.

The repeal is proposed under Texas Civil Statutes, Article 5561c-2, 69th Legislature, 1985, Chapter 632, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt all necessary rules to effectuate the purposes of the Act.

§143.1. *Origin.*

§143.2. *Composition.*

§143.3. *Purpose.*

§143.4. *Rules and Regulations.*

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-8510794

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption

December 30, 1985

For further information, please call
(512) 475-2577

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Chapter 143. Appeals and Hearings

★40 TAC §§143.11-143.19, 143.13-143.35

The Texas Commission on Alcohol and Drug Abuse proposes new §§143.11-143.19 and 143.31-143.35, concerning appeals to the board of the commission, requirements for appeals, notice and location of hearings, conduct of hearings, use of hearing examiners, proof standard, evidence, board actions, *ex parte* communications, jurisdiction, and exhaustion of agency remedies.

Larry Goodman, fiscal and administrative services division administrator, 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 Goodman also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is that persons wishing to appeal commission decisions will have notice as to the commission's expectations and requirements for appeals and information about how such appeals will be determined by the board. The anticipated economic cost to individuals who are required to comply with the proposed sections will vary depending upon travel distance and whether the individual wishes to employ an agent.

Comments on the proposal may be submitted to Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214.

The new sections are proposed under Texas Civil Statutes, Article 5561c-2, 69th Legislature, 1985, Chapter 632, §112, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in the administration of any commission programs.

§143.11. *Appeals to the Board.* The governing board of the commission is the highest appeal body within the agency. Its decision is the final decision of the commission. The board hears only appeals which are clearly mandated by statute or by commission policy. The board establishes intermediate appeal tribunals by policy at its discretion.

§143.12. *Hearing Examiners.* The board may conduct its own hearing or it may appoint a qualified hearing examiner to hear final appeals to the board. The hearing examiner must:

(1) be a Texas-licensed attorney not employed by the commission;

(2) conduct the hearing outside the presence of any commissioner;

(3) make rulings on admissibility of evidence sought to be introduced by staff and by the appellant; and

(4) submit to the board a written proposal for decision, stating facts found at the hearing, points of law relied upon, and recommendation for a board decision.

§143.13. *Requirement for Appeal Request.* A person who has a statutory or commission policy right to appeal commission action or decision must have exhausted intermediate appeals and must request an appeal to the board by letter addressed to the Executive Director, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214. The appellant must state the factual basis for the appeal in the request and specifically state the grounds for the appeal. The request must be signed by an individual with legal authority to make the request. The appellant must request an appeal from an agency decision within 30 days of the mailing date of the decision unless other rules in this chapter apply to extend the time. The commission shall not grant a hearing to any person who did not request an appeal in writing and in a timely manner as provided in these rules. An appellant may waive a hearing in writing at the time the appeal is requested. If the hearing is waived, the commission will review the written request for appeal and the commission's documentary evidence and make its decision.

§143.14. *Notice of Hearing.* Unless the appellant waives the hearing in writing, the commission gives all parties at least 10 days actual notice of the date, time, place, and nature of the hearing unless otherwise required by rule of by statute. The commission may waive this notice upon agreement of all parties. Notice is deemed given to the appellant if the commission mailed the notice to the last known address on the commission's records.

§143.15. *Location of Hearing.* All hearings before the board will be held in Austin, unless the board waives this requirement for extreme hardship or for administrative convenience.

§143.16. *Nature of Hearings.* In appeals to the board, all persons have an opportunity for full, fair, and impartial hearing. The board conducts hearings informally and considers all relevant issues. The board considers any written agreements of the parties as to facts. Hearings before the board are conducted to ascertain all relevant facts and to determine the rights of all parties. All testimony taken is under oath and recorded, and is subject to the right of cross-examination.

§143.17. Restrictions on Communications During Appeals. A party to an appeal may not orally discuss the facts or merits of an appeal with any commissioner after a written request for appeal to the commission has been submitted, unless the commission gives the opposing party notice and an opportunity to participate in the discussion. Any party may communicate in writing with a commissioner, but must mail a copy to the executive director to be included in the appeal file records.

§143.18. Representation by Agent. Any appellant may be represented by another individual acting as an agent or attorney, but is not required to be represented. The commission may request written designation of an attorney or other agent for purposes of commission business or appeals. Unless the party gives the commission actual notice in writing that its relationship with the agent has been terminated, the commission may rely upon the designation of agent in giving all notices and communicating all decisions under these rules.

§143.19. Adjournment, Continuances, and Postponements of Hearings. The hearing examiner or board has discretion to grant any requests for continuances prior to or during a hearing for good cause shown. Good cause includes, but is not limited to, serious illness; accident; or unethical, abusive or offensive conduct of any party to the hearing. The board or the hearing examiner shall notify the parties to appear before it at a specified time and place for the purpose of hearing additional evidence and argument.

§143.31. Evidence. The board considers all relevant documentary evidence and commission records submitted by the parties. The appellant may inspect and copy all relevant open records of the commission. The board may require submission of written briefs, affidavits, or other written memoranda or records not prohibited by law and may take official notice of public facts. The board's decision is based upon a preponderance (greater weight) of the evidence and shall not consider subsequent evidence or argument. If there is a hearing, the board's decision also considers the evidence and testimony admitted at the hearing.

§143.32. Abstention from Voting. Any commissioner shall abstain from discussion or voting on an appeal where he or she has a conflict of interest as defined by state law or commission policy. A commissioner may abstain from discussion or voting in any other situation where he or she believes the appearance of conflict of interest may exist.

§143.33. Decision of the Board. The board may affirm reverse, or modify any proposal for decision of a hearing examiner. The board conducts all discussions and voting on any appeal, whether or not there was a hearing, as an item on the agenda in

an open meeting. If a decision of the board is not unanimous, the majority vote prevails. The chair signs the decision of the board. Any commissioner may submit a written dissent to be included in the board's decision. The commission gives all parties written notice of the final decision. The decision is effective on the date made unless otherwise specified in the decision or commission rules.

§143.34. Continuing Jurisdiction. The board retains jurisdiction over an appeal for 10 days following the date of a final decision, for the purpose of corrections to form or substance of its written decision.

§143.35. Exhaustion of Remedies. A person with a statutory or policy right of appeal to the board must exhaust all agency appeals before bringing action for judicial relief in the courts.

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-8510800 Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption
December 30, 1985
For further information, please call
(512) 475-2577.

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Chapter 145. Amendment and Records

★ 40 TAC §§145.1-145.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§145.1-145.5, concerning amendments, rules, availability of state plan, public records, records custodian, and open meetings. These sections are proposed for repeal simultaneously with the proposal of new general sections, to update and reorganize the commission's rules.

Larry Goodman, fiscal and administrative services administrator, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Goodman also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the updating of rules to reflect current legislation requirements. There is no anticipated economic cost to individuals as a result of the proposed repeal.

Comments on the proposal may be submitted to Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214

The repeal is proposed under Texas Civil Statutes, Article 5561c-2, 69th Legislature, Chapter 632, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt all necessary rules to effectuate the purposes of the Act.

- §145.1. Amendment and Rules.
- §145.2. Availability of the State Plan.
- §145.3. Public Records.
- §145.4. Records Custodian
- §145.5. Open Meetings and Record of Meetings.

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-8510795 Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption
December 30, 1985
For further information, please call
(512) 475-2577

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Chapter 147. State Planning

★ 40 TAC §147.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §147.1, concerning the state plan. The section being repealed is outdated and is no longer applicable. The repeal is proposed simultaneously with the proposal of new sections which will update and reorganize the commission's general rules.

Larry Goodman, fiscal and administrative services administrator, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Goodman also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be the updating of rules to reflect current legislation requirements. There is no anticipated economic cost to individuals as a result of the proposed repeal

Comments on the proposal may be submitted to Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214.

The repeal is proposed under Texas Civil Statutes, Article 5561c-2, 69th Legislature, Chapter 632, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt all necessary rules to effectuate the purposes of the Act.

§147.1. State Plan.

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-8510796

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption:
December 30, 1985
For further information, please call
(512) 475-2577.

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Chapter 149. Project Support Procedures

★ 40 TAC §§149.21-149.25, 149.31, 149.32, 149.41

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§149.21-149.25, 149.31, 149.32, 149.41, concerning project funding. The sections are proposed for repeal simultaneously with the proposal of new general sections for the commission. The sections proposed for repeal are outdated and do not reflect current commission practices or procedure as mandated by new legislation.

Larry Goodman, fiscal and administrative services administrator, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Goodman also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeal will be the updating of rules to reflect current legislation requirements. There is no anticipated economic cost to individuals as a result of the proposed repeals

Comments on the proposal may be submitted to Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214.

The repeals are proposed under Texas Civil Statutes, Article 5561c-2, Chapter 632, 69th Legislature, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt all necessary rules to effectuate the purposes of the Act.

- §149.21. Funding Authority.
- §149.22. Funding Methods.
- §149.23. Criteria for Funding.
- §149.24. Denial of Funds.
- §149.25. Funding Requirements.
- §149.31. Section 18 Funds.
- §149.32. Special Purpose Funds.
- §149.41. State Alcoholism Authority Designation.

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-8510797

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption:
December 30, 1985
For further information, please call
(512) 475-2577

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Withdrawn

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 91. Cancer Cancer Registry

★25 TAC §§91.1-91.5

The Texas Department of Health has withdrawn from consideration the emergency adoption of new §§91.1-91.5, concerning a cancer registry, effective December 13, 1985. The text of the emergency new sections appeared in the September 24, 1985, issue of the *Texas Register* (10 TexReg 3650) These sections are being replaced by new sections adopted on a permanent basis in this issue

Issued in Austin, Texas, on November 22, 1985

TRD-8510933 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed, November 22, 1985
For further information, please call
(512) 458-7236.

★ ★ ★

Chapter 145. Long-Term Care Subchapter B. Minimum Standards for Nursing Homes

★25 TAC §145.13

The Texas Department of Health has withdrawn the emergency amendment to §145.13, concerning minimum standards for nursing homes, effective December 16, 1985. The text of the emergency amendment appeared in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3346). These amendments are being replaced by amendments adopted on a permanent basis in this issue.

Issued in Austin, Texas, on November 25, 1985

TRD-8510982 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed November 25, 1985
For further information, please call
(512) 458-7706

★ ★ ★

Subchapter C. Minimum Standards for Custodial Care Homes

★25 TAC §145.33

The Texas Department of Health has withdrawn the emergency amendment to §145.33, concerning minimum standards for custodial care homes, effective December 16, 1985. The text of the amended section appeared in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3346). This amendment is replaced by an amendment adopted on a permanent basis in this issue.

Issued in Austin, Texas, on November 25, 1985

TRD-8510984 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed November 25, 1985
For further information, please call
(512) 458-7706

★ ★ ★

Subchapter L. Minimum Licensing Standards for Personal Care Homes

★25 TAC §145.181

The Texas Department of Health has withdrawn the emergency amendment to §145.181, concerning minimum licensing standards for personal care homes, effective December 16, 1986. The text of the amended sections appeared in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3347). This section is being replaced by amendments adopted on a permanent basis in this issue.

Issued in Austin, Texas, on November 25, 1985

TRD-8510986 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed: November 25, 1985
For further information, please call
(512) 458-7706

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Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas

★25 TAC §145.211

The Texas Department of Health has withdrawn the emergency amendment to §145.211, concerning minimum licensing standards for facilities serving the mentally retarded citizens of Texas, effective December 16, 1985. The text of the amended section appeared in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3348). These amendments are being replaced by amendments adopted on a permanent basis in this issue.

Issued in Austin, Texas, on November 25, 1985

TRD-8510988 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed: November 25, 1985
For further information, please call
(512) 458-7706

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter V. Bingo Regulations and Tax

★34 TAC §3.558

The Comptroller of Public Accounts has withdrawn from consideration for permanent adoption the proposed new §3.558, concerning tax administration. The text of the new section as proposed appeared in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4264).

Issued in Austin, Texas, on November 25, 1985

TRD-8510992 Bob Bullock
Comptroller of Public
Accounts

Filed, November 25, 1985
For further information, please call
(512) 463-4606.

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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 1.

ADMINISTRATION

Part III. Office of the

Attorney General

Chapter 57. Rental-Purchase Act Compliance

★ 1 TAC §57.1

The Office of the Attorney General adopts new §57.1, with changes to the text proposed to be adopted by reference, as published in the August 6, 1985 issue of the *Texas Register* (10 Tex Reg 2509).

The new section is required by Texas Business and Commerce Code, §35.72(b), which requires the attorney general to provide a form agreement that may be used to satisfy the requirements of an agreement under the Rental-Purchase Act, Texas Business and Commerce Code, §35.71 *et seq*. The section as adopted contains all disclosures required by the Rental-Purchase Act, and is written in plain English, as the Act also requires.

The section consists of a form agreement and instructions. Use of the form agreement is not required. Any rental-purchase company which elects to use the form will be able to raise conformity with the form agreement as a defense to any legal action based on alleged failure to comply with the disclosure requirements of the Rental-Purchase Act, Texas Business and Commerce Code, §35.71 *et seq*. This section adopts the Rental-Purchase Form Agreement by reference.

Use of the form agreement to establish conformity with the disclosure requirements of the Rental-Purchase Act must strictly follow the language, content, and format of the form agreement and the instructions. Because the form agreement must, by the requirements of Texas Business and Commerce Code, §35.72(a), be in plain English, neither the language, the content, nor the format may be altered in any way. The form agreement makes all required disclosures in an easy to understand manner. It is very possible that additional or different language would distract from the clarity and readability of the form agreement. Therefore, there is little provision in the instructions for modification of the form agreement, and, other than those modifications provided, no other changes may be made without losing the protection of Texas Business and Commerce Code, §35.72(b).

David Egan, General Counsel, Legal Department, Rent-A-Center of America, Inc., 9920 East Harry, Wichita, Kansas 67207, made the following comments. The disclosure that the company could not enter the renter's house without permission, while an accurate statement of the law in Texas, is not a disclosure required by the Rental-Purchase Act. The last sentence of paragraph 1 in the Right to Re-instate section is unclear and should be changed to read, in pertinent part, "if you do repossess and keep up your payments." The first sentence of the Repossession section should be changed to read, in pertinent part, "we have the right to come to your house to pick up the merchandise."

The agency disagrees with Mr. Egan's first comment regarding the language in the Repossession section. It is the agency's prior experience, supported by comments received during this rulemaking, that repossession is an area subject to abuse by an unscrupulous company, when a repossession agent for the company will make numerous misrepresentations to the renter, including but not limited to representing that the agent may enter the renter's house to pick up the merchandise. This is not the case under Texas law, and any provision in the agreement to the contrary would be unenforceable as opposed to public policy and also as an unconscionable provision. However, because of the fact that repossession agents will nevertheless make misrepresentations orally, it was deemed necessary to include in the form agreement the specific disclosure as it now is, in order to assure meaningful and knowing disclosure of the consumer's rights in the event of repossession, so that a consumer may make an informed decision in exercising his rights to reinstate the agreement.

The agency adopted Mr. Egan's second two comments.

Diana M. Joseph, Attorney at Law, Strasburger & Price, 1100 First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, made the following comments. (1) The form agreement should be modified to provide specifically for the timing of payments, by stating the day of the month and the date of the first payment. (2) The disclosures regarding "tax" should be changed to read "sales tax." (3) The Other Charges section should require itemization as to the amount, the purpose, and whether or not the charge is optional. (4) In the Your Liability for

The agency received a total of eight comments regarding the new section. Comments were received prior to the publication of the proposed section on August 6, 1985, based on a draft proposed section, and after publication. Where prepublication comments on the draft proposal relate to the proposed section as published, they are included in this summary of comments.

All commentators supported the adoption of a new section providing a form agreement and instructions on how to use the form agreement. The comments were limited to suggested modifications, additions, or deletions to the proposed rule and the instructions.

Randall Chapman, Executive Director, Texas Legal Services Center, 210 Barton Springs Road, Suite 300, Austin, Texas 78704, commented that the proposed form agreement appeared to meet the essential requirements of the law. Mr. Chapman's other comments include: time price differential should be included, when applicable, instructions should indicate that all blanks should be filled in as appropriate; the form agreement properly advises consumers of the right to refuse premises entry in the repossession of rental merchandise, and while use of the form agreement should not be mandatory, no merchant who wishes to rely upon it for legal protection should be allowed to pick and choose portions of the form and still be able to rely upon compliance with the form agreement.

All of Mr. Chapman's comments were either already a part of the new section or were adopted, except his suggestion that a time price differential be included, when applicable. This was not done because the Rental-Purchase Act does not provide for disclosure of a time price differential as a mandatory disclosure.

Steve Easely, ColorTyme, commented that the disclosure on the time to reinstate should distinguish between a right to reinstate and a grace period. Mr. Easely's suggestion was not adopted, because the Rental Purchase Act does not provide for such a mandatory disclosure and because inclusion of a provision to this effect within the right to reinstate disclosures would tend, in the agency's opinion, to confuse rather than to clarify the disclosure. Any company is still free to insert a provision to this effect in the section where additional terms may be inserted.

Loss or Damage section, language should be added to provide that the consumer will never owe more than the total remaining payments necessary to acquire ownership, because there are not otherwise any required remaining payments (5) In the Right to Reinstate section, a company should be advised of the exact number of days within which the consumer is entitled to reinstate (6) The Form Agreement should be clear that use of the form agreement will not satisfy the statutory provision with respect to form agreements unless the disclosures are made as required by this section. (7) The Purchase section should be modified to provide that the consumer will not own the merchandise unless the consumer pays the full amount necessary to acquire ownership, rather than to state that the consumer must pay the full amount due because the consumer can terminate the lease at any time and no repayments are in fact due

Ms Joseph made the following additional comments (8) The proposed form agreement indicates that a sales tax is collected with each periodic rental payment, but under amended §151.055(b) of the Tax Code, it appears that a rental purchase agreement may be a "financing lease," in which case sales tax would need to be collected at the start of the lease, although this issue is unresolved at the present time (9) The form agreement should indicate that the law requires that a late charge must be an amount equal to not more than the lesser of 0.5% of the delinquent payment or \$5.00, and not less than \$2.00, rather than just providing for a dollar figure, so that a consumer would be able to calculate whether or not a company was in violation of this provision (10) It should be made clear that the consumer has a right to reinstate after repossession only if repossession was not through judicial process (11) The form agreement should contain a specific provision that the consumer does not acquire ownership rights unless the consumer has complied with the ownership terms of the agreement (12) The instructions to the form agreement should not require that the entire form agreement be printed in 10-point bold type but rather only that the required disclosures be in 10-point bold type (13) Other contractual terms should not be required to be in 10-point bold type (14) The form agreement should be allowed to be printed on two sides of one page, because there are a number of additional terms that a company might want to use which could not be included on one side of one page. (15) The renter's signature should be required only below the required disclosures and not below any other contractual provisions, because this would not be possible when including other contractual provisions on the back of the page The agency adopted, with wording modifications, the first seven comments The remaining com-

ments were not adopted, for the following reasons. The question raised regarding sales tax was not addressed in the adopted new section because, as Ms Joseph points out, the issue is in her opinion unresolved The method of calculating late charges was not included in the form agreement because the agency believes that to do so would confuse the reader and make for a less meaningful disclosure It is the better decision to require the company to make this calculation. However, in order to make this calculation easier on the company, the instructions include, at paragraph 14, a simplified statement of how to calculate the late charge

The suggestion that the form agreement be revised to provide that the consumer has a right to reinstate after repossession only if repossession was not through judicial process was not adopted because repossession through judicial process is not in fact "repossession" under the Texas Business and Commerce Code. The suggestion regarding ownership rights was not adopted because the form agreement as proposed contained the disclosure

The comment regarding 10-point bold type was not adopted because the agency believes that every provision in the form agreement is either a required disclosure or so related to the required disclosure as to make it necessary to be in 10-point bold type There is no requirement that additional contractual terms be in 10-point bold type, unless they explain or relate to the required disclosures

The comment expressing a desire to print on the reverse of the page was not adopted because the agency believes that contractual terms on the reverse of a contract are rarely, if ever, read by consumers The instructions to the form agreement were changed to provide specifically that the contract may be printed on more than one page The comment concerning the renter's signature was not adopted because the agency believes that meaningful disclosure can only be achieved if the signature of the renter follows full disclosure of all terms, whether or not they are required by the Rental-Purchase Act

John A. Lusky, Attorney at Law, Miller-Wiener, Hager & Carlsen, 111 Southwest 5th Avenue, Portland, Oregon 97204, made the following comments (1) The Form Agreement should be in a general form, with model paragraphs rather than a specific agreement (2) The company should not have to disclose whether or not the merchandise is new or used, but rather should only have to disclose that the merchandise may be either new or used and that the consumer should presume that it is used (3) The language in the Your Liability for Loss or Damage section goes beyond the Act's requirements in stating substantive terms of a rental-

purchase transaction (4) In the Repossession section, provision should be made for repossession by court order in order to avoid a contention by the consumer that the company has waived this remedy (5) Also in the Repossession section, the last sentence may not be an accurate expression of Texas law (6) In the Return of Merchandise subsection under the Right to Reinstate section, the words "after we repossess" should be inserted in the second line after the word "agreement," because reinstatement may occur prior to repossession and the lessor has no obligation to give the consumer any additional merchandise if the lessor has not repossessed the merchandise. (7) Other disclosure terms should be permitted to be interspersed among the required disclosures (8) The bold face type requirement of the Act apparently applies only to the disclosures required by §35.72(g) and not the substantive requirements of §35.72(f). (9) The requirement of the instructions that additional language must be in 10-point bold type if it "explains or relates to" the required disclosures should be defined by example or otherwise (10) The requirement of the instructions that the form agreement must be written in the language in which the agreement was orally negotiated goes beyond the requirements of the Act (11) To the extent that the final form agreement imposes substantive requirements which do not appear in the Act, the explanatory material published with the form agreement should disclose this fact and state that the form agreement should not be construed as official interpretation that the Act requires all rental purchase agreements to include the additional substantive terms

Mr. Lusky made the following additional comments (12) The space for listing the rented merchandise is inadequate (13) Provision should be made for an agreement with an initial term of longer than one week or month (14) The Purchase section should be allowed to be modified to delete the early buyout language (15) The Other Charges section should provide specifically for optional charges (16) The Late Charges section should allow for a grace period longer than the 7-day period, which is the minimum under the Act (17) In the Your Liability for Loss or Damage section the words "to purchase the merchandise" should be added to the last sentence (18) In the Repossession section, the last sentence should not be underlined (19) In the After Repossession subsection of the Right to Reinstate section, the word "paying" should be inserted after the words "payments and" and the last phrase of that paragraph should be revised to read "days of the date you return or we repossess the merchandise" (20) In the Return of Merchandise subsection, the word "do" should be deleted. (21) The instructions should indicate which sections may be omitted if not applicable and what deviation from

the language as contained in the form agreement is a plain English version of the language contained in the statute, and is therefore easier for the renter to read and understand

The word "stolen" was added to the Liability section because the agency feels that a company would assert such a claim against a renter if the property were stolen. A company is free to delete this if such is not the case. The provision that the liability will never be more than the total remaining payments is not specifically provided by statute, but is a statement of the Texas law in the area and is accordingly an appropriate provision of a form agreement.

The Repossession section in the form agreement, as previously stated, is necessary in order to set forth for the renter what constitutes a breach of the peace. The language proposed for revision to the Right to Reinstate section did not improve readability and was therefore not adopted. The purchase clause was not adopted because it is not required by the Act as a part of a form agreement. A company is free to add this in the section for additional terms.

The form agreement must be kept an integral whole rather than allowing the company to intersperse other language, in order to insure that the required disclosures under the Act are made in a meaningful sequence and in a clear and conspicuous manner. Were a company to intersperse the required disclosures with additional language, there is a great possibility of confusion on the part of the renter.

The Agency disagrees with the comments that the provisions which the commenter deems to be optional are not required under the Act. The attorney general's authority under the Act is to promulgate a form agreement. In the agency's opinion, the final Form Agreement does no more than to carry out that authority. Any provisions which are not specifically mandated by the Act are, in the agency's opinion, necessary in order to provide a plain English form agreement, as the Act requires.

Edward L. Winn III, Executive Director and General Counsel, Association of Progressive Rental Organizations, 1866 Inter-First Tower, Austin, Texas 78701, made the following comments: (1) The Right to Reinstate section as proposed is unclear in the second sentence of the Before Repossession subsection, because it seems to suggest that some circumstances a company could not repossess when legally it could do so. (2) Because customers in a rental-purchase agreement will frequently switch back and forth between weekly payments and making monthly payments, and because rental dealers do not typically redraft rental agreements in this event, the form agreement should provide for disclosure

of both weekly and monthly rates where applicable. (3) There is no requirement for a disclosure regarding repossession, because the Act simply states that an agreement may not contain a provision authorizing a breach of the peace. (4) Although the commenter felt that the requirement that an agreement be in the language in which it is negotiated was taking liberties with the Act, the commenter stated that he had no real quarrel with what had been done. The Agency adopted the first comment, but declined to incorporate the remaining comments for the following reasons: Providing for both weekly and monthly disclosures in the same agreement would not make for meaningful disclosure, and would rather be confusing to the renter. In the agency's opinion, an agreed change of terms might in many instances require the execution of a new rental-purchase agreement. The agency stands by its decision to include a Repossession section, as detailed above. Similarly, the agency stands by its decision to require disclosures in the language in which the contract was negotiated.

The new section is adopted under the Texas Business and Commerce Code, §35 72(b), which provide the Office of the Attorney General with the authority to provide a form agreement that may be used to satisfy the requirements of agreement under the Business and Commerce Code, Chapter 35, Subchapter F

§571 *Rental-Purchase Form Agreement*. The office of the attorney general adopts by reference a Rental-Purchase Form Agreement which can be obtained from Stephen Gardner, 714 Jackson Street, Suite 700, Dallas, Texas 75202.

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-8510883

Lou McCreary
Assistant Attorney
Office of the Attorney
General

Effective date: December 11, 1985
Proposal publication date: August 6, 1985
For further information, please call
(512) 475-0672

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 91. Cancer Cancer Registry

★ 25 TAC §§91.1-91.5

The Texas Department of Health adopts new §91.3, with changes to the proposed text published in the September 24, 1985, issue of the *Texas Register* (10 TexReg 3676). New §§91.1, 91.2, 91.4, and 91.5 are adopted without changes and will not be republished.

The sections provide for the payment of fees to compensate hospitals, clinical laboratories, and cancer treatment centers to encourage better compliance in reporting cancer data which in turn will make possible epidemiological studies and improved cancer screening and detection programs.

These sections cover the reporting of cancer cases to the department to be included in a cancer registry and the establishment of a fee to compensate reporting facilities.

No comments were received regarding adoption of the new sections; however, the lead-in sentence to §91.3(b) was changed for clarification purposes.

The new sections are adopted under the Texas Cancer Control Act, Texas Civil Statutes, Article 4477-40, §5, which authorize the Texas Board of Health to adopt rules to implement the Act, and §7, which covers reporting and fee requirements.

§91.3. *List of Reportable Diseases.*

(a) Cases of cancer or those of precancerous or tumorous diseases to be reported to the division are as follows:

- (1) all neoplasms with a behavior code of two or three in the most current edition of the *International Classification of Diseases for Oncology (ICD-O)*;
- (2) all benign neoplasms of the brain and central nervous system;
- (3) myelofibrosis (ICD-O codes T169.____ and M99808);
- (4) polycythemia vera (ICD-O codes T169.____ and M99501);
- (5) any neoplasm specified malignant.

(b) Codes and taxa of the *International Classification of Diseases, Ninth Revision, Clinical Modification* which correspond to the Cancer Registry Division's reportable list are:

- (1) 140.0—208.9 malignant neoplasms;
- (2) 225.0—225.9 benign neoplasms of brain and nervous system;
- (3) 230.0—234.9 carcinoma in situ;
- (4) 236.1 hydatidiform mole, malignant;

the language as contained in the form agreement is a plain English version of the language contained in the statute, and is therefore easier for the renter to read and understand

The word "stolen" was added to the Liability section because the agency feels that a company would assert such a claim against a renter if the property were stolen. A company is free to delete this if such is not the case. The provision that the liability will never be more than the total remaining payments is not specifically provided by statute, but is a statement of the Texas law in the area and is accordingly an appropriate provision of a form agreement.

The Repossession section in the form agreement, as previously stated, is necessary in order to set forth for the renter what constitutes a breach of the peace. The language proposed for revision to the Right to Reinstate section did not improve readability and was therefore not adopted. The purchase clause was not adopted because it is not required by the Act as a part of a form agreement. A company is free to add this in the section for additional terms.

The form agreement must be kept an integral whole rather than allowing the company to intersperse other language, in order to insure that the required disclosures under the Act are made in a meaningful sequence and in a clear and conspicuous manner. Were a company to intersperse the required disclosures with additional language, there is a great possibility of confusion on the part of the renter.

The Agency disagrees with the comments that the provisions which the commenter deems to be optional are not required under the Act. The attorney general's authority under the Act is to promulgate a form agreement. In the agency's opinion, the final Form Agreement does no more than to carry out that authority. Any provisions which are not specifically mandated by the Act are, in the agency's opinion, necessary in order to provide a plain English form agreement, as the Act requires.

Edward L. Winn III, Executive Director and General Counsel, Association of Progressive Rental Organizations, 1866 Inter-First Tower, Austin, Texas 78701, made the following comments: (1) The Right to Reinstate section as proposed is unclear in the second sentence of the Before Repossession subsection, because it seems to suggest that some circumstances a company could not repossess when legally it could do so. (2) Because customers in a rental-purchase agreement will frequently switch back and forth between weekly payments and making monthly payments, and because rental dealers do not typically redraft rental agreements in this event, the form agreement should provide for disclosure

of both weekly and monthly rates where applicable. (3) There is no requirement for a disclosure regarding repossession, because the Act simply states that an agreement may not contain a provision authorizing a breach of the peace. (4) Although the commenter felt that the requirement that an agreement be in the language in which it is negotiated was taking liberties with the Act, the commenter stated that he had no real quarrel with what had been done. The Agency adopted the first comment, but declined to incorporate the remaining comments for the following reasons. Providing for both weekly and monthly disclosures in the same agreement would not make for meaningful disclosure, and would rather be confusing to the renter. In the agency's opinion, an agreed change of terms might in many instances require the execution of a new rental-purchase agreement. The agency stands by its decision to include a Repossession section, as detailed above. Similarly, the agency stands by its decision to require disclosures in the language in which the contract was negotiated.

The new section is adopted under the Texas Business and Commerce Code, §35 72(b), which provide the Office of the Attorney General with the authority to provide a form agreement that may be used to satisfy the requirements of agreement under the Business and Commerce Code, Chapter 35, Subchapter F.

§57.1. Rental-Purchase Form Agreement. The office of the attorney general adopts by reference a Rental-Purchase Form Agreement which can be obtained from Stephen Gardner, 714 Jackson Street, Suite 700, Dallas, Texas 75202.

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.

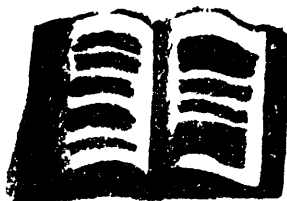
Issued in Austin, Texas, on November 19, 1985.

TRD-8510883

Lou McCreary
Assistant Attorney
Office of the Attorney
General

Effective date December 11, 1985
Proposal publication date August 8, 1985
For further information, please call
(512) 475-0672

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 91. Cancer Cancer Registry

★ 25 TAC §§91.1-91.5

The Texas Department of Health adopts new §91.3, with changes to the proposed text published in the September 24, 1985, issue of the *Texas Register* (10 TexReg 3676). New §§91.1, 91.2, 91.4, and 91.5 are adopted without changes and will not be republished.

The sections provide for the payment of fees to compensate hospitals, clinical laboratories, and cancer treatment centers to encourage better compliance in reporting cancer data which in turn will make possible epidemiological studies and improved cancer screening and detection programs.

These sections cover the reporting of cancer cases to the department to be included in a cancer registry and the establishment of a fee to compensate reporting facilities.

No comments were received regarding adoption of the new sections, however, the lead-in sentence to §91.3(b) was changed for clarification purposes.

The new sections are adopted under the Texas Cancer Control Act, Texas Civil Statutes, Article 4477-40, §5, which authorize the Texas Board of Health to adopt rules to implement the Act, and §7, which covers reporting and fee requirements.

§91.3. List of Reportable Diseases.

(a) Cases of cancer or those of precancerous or tumorous diseases to be reported to the division are as follows:

- (1) all neoplasms with a behavior code of two or three in the most current edition of the *International Classification of Diseases for Oncology* (ICD-O);
- (2) all benign neoplasms of the brain and central nervous system;
- (3) myelofibrosis (ICD-O codes T169 __ and M99808);
- (4) polycythemia vera (ICD-O codes T169 __ and M99501);
- (5) any neoplasm specified malignant.

(b) Codes and taxa of the *International Classification of Diseases, Ninth Revision, Clinical Modification* which correspond to the Cancer Registry Division's reportable list are:

- (1) 140.0—208.9 malignant neoplasms;
- (2) 225.0—225.9 benign neoplasms of brain and nervous system;
- (3) 230.0—234.9 carcinoma in situ;
- (4) 236.1 hydatidiform mole, malignant;

- (5) 238.4 polycythemia vera;
- (6) 289.8 myelofibrosis.

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 22, 1985

TRD-8510934

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

Effective date December 13, 1985
Proposal publication date September 24, 1985
For further information, please call
(512) 458-7265

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Chapter 145. Long Term Care Subchapter B. Minimum Standards for Nursing Homes

★25 TAC §145.13

The Texas Department of Health adopts an amendment to §145.13, with changes to the proposed text published in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3351)

The amendment implements certain requirements enacted by the 69th Legislature affecting the regulation by the Texas Department of Health of nursing homes licensed under Texas Civil Statutes, Article 4442c

The amendment specifies that nursing homes shall make available to the Texas Department of Health, as licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The amendments specify procedures a nursing home must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendments define in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection

Concerning §145 13(g), copying of documents requested by the Texas Department of Health, several comments were received

One commenter stated that the department should be more specific as to what documents are to be made available, including only medical and health care documents as implied in the statute. The department has essentially accepted this comment as being in alignment with the statute and has made wording accordingly

The commenter stated that the administrator or designee should be in control of the records being copied. This has always been the position of the department, and wording to that effect has been provided.

The commenter stated that facilities should charge the department for the copies, using the same rate as the state charges for copies of its records.

The department has accepted this comment and has provided wording accordingly

The commenter stated that the department must maintain confidentiality of the facility records copied and that they are never to be subject to the Open Records Act. The department has determined that some wording is advisable which expresses the need for confidentiality and conformance to applicable law and has provided such wording

The commenter stated that in the rules there should be a statement from the statute on the nonliability of a facility and its officers and employees for surrendering records. The department has accepted this comment and has provided wording accordingly.

Concerning §145.13(h), facility notification of persons when closing, one comment was received. The commenter indicated that under involuntary closure, the Texas Department of Health should make the verbal notification to patients, relatives, or responsible parties. The department believes that the notification must remain the responsibility of the facility and the law so indicates. Historically, when the department orders emergency closure of the facility, the department staff stand ready to make or assist in making the notifications and have had to do so in some instances. The department, therefore, has made no word changes

Concerning §145 13(i)-(l), facility posting of information, many comments were received

One commenter stated that the facility rather than the department should summarize the inspection, survey, and other visits made by department staff. The department does not agree with this comment, believing that the intent of the law is that department personnel prepare the summaries; therefore, no word changes have been made in this regard.

Two commenters stated that when a complaint is unsubstantiated, there is now no report going to the facility, and that the facility should have something to show that the complaint is unsubstantiated. The department intends to have a summary for investigations showing unsubstantiated complaints; however wording in these rules to that effect is not needed

The aforementioned two commenters stated that there should be an informal hearing provided for the facility when the

facility does not agree with a summary. The department advises that summaries do not stand alone but summarize a more detailed regular or other report, which if not subject to hearing, then the summary is not subject to hearing. The department, therefore, has not provided any wording regarding this comment.

One commenter indicated that summaries should include certain functional areas and the required corrective action, also that a response be entered under each categorical or functional item, even if the item is not part of the inspection. The department is studying various methods of preparing summaries, and the final method will be handled through procedures rather than through these rules.

One commenter requested that there be one poster or notice that gives the department toll-free incoming telephone line number, the telephone number of the Texas Board of Licensure for Nursing Home Administrators, and the telephone number of the local ombudsman, rather than have three separate notices. This would be a procedure that the department can consider and would not be a part of these sections

One commenter stated that good facilities should not be penalized by losing rapport with residents and families because of Gestapo-type notices that confront the public. The department is following the intent of the law in preparing sections and has no authority to distinguish between good facilities and other facilities

The aforementioned commenter stated not to post anything on abuse and neglect because it tells the public that abuse or neglect may occur in the facility. The department views abuse or neglect of a resident to be a serious violation and believes an appropriate way for employees and the public to know the new statutory provision protecting a person from retaliation who reports abuse or neglect is to note publicly that there is a provision. Conversely, the department receives complaints and information on threats made against a facility and its staff by disgruntled or terminated employees, often without foundation, and that part of the statute on abuse and neglect which speaks to maliciously or recklessly reporting needs also to be emphasized. The department, therefore, has not deleted these requirements for posting.

One commenter stated that the statement of deficiencies and plan of correction (Form HCFA 2567), which is the form for reporting deficiencies and plans of correction for Medicare and Medicaid participating facilities, should be posted and not just post a summary. The commenter stated that a summary intends to deceive the public and makes more work on the department. The department believes that posting the entire full list of

deficiencies and plans of correction goes beyond the intent of the law, since the law indicates a concise summary. The department believes that with public notice stating the survey report is available at the facility office, any person who wishes more information than that provided by the summary will make time to read the report in the office. The department realizes some extra time on department staff is required in preparing summaries but believes the intent of the law is that the department do so. The department, therefore, has made no word changes in this regard.

The aforementioned commenter said that when a new inspection report is posted, the previous report should not be removed. Whether the posting would be a full report (not really intended to be posted) or a summary, the statute calls for posting the most recent summary. Other summaries, those for the last 12 months, are to be available in the facility office for public review. The department, therefore, has made no word changes in this regard.

Some comments were received on the subject of posting of information relative to facilities serving the mentally retarded. Comments on proposed amendments to standards for that category of facilities are being considered simultaneously with comments pertaining to amendments to nursing home standards. The comments follow:

Three commenters relative to facilities serving the mentally retarded stated that in small facilities the use of posting location requirements as specified would present serious difficulties. The department has agreed with these comments relating to the amendments to standards for the care of mentally retarded persons and has determined that such comments would also be appropriate for small nursing homes; therefore word changes have been made to remove these difficulties.

Regarding facilities for the mentally retarded two comments stated that providers, consumers, advocates, etc., should have input on the forms or methods used for summaries. As far as this section is concerned, any wording on this comment would not be appropriate, since this is an internal procedure.

The following commenters did not definitely state being for or against the amendment in entirety but rather expressed concerns and made statements which have been interpreted that they are against parts of the amendments: Texans for Improvement of Nursing Homes, Inc., City of Houston, Office on Aging-Department of Health and Human Services; Texas Independent Nursing Home Association; Texas Health Care Association, and Bob Cash; and with reference to commenters on amendments to facilities for the mentally retarded, Bitter Creek Farm; Texas Association of Private ICF-

MR Providers; and Association for Retarded Persons, Texas.

Ann Ponder of The Clairmont (long term care facility) expressed being definitely against this amendment and the law on which the amendment is made.

The reasons why the agency disagrees with certain comments are stated along with the summary of comments.

The amendment is adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Board of Health with the authority to adopt minimum licensing standards for nursing homes.

§145.13. *General Requirements.*

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

(g) Upon request the facility management shall make available to the licensing agency representatives copies of relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. Documents or records which may be copied and made available are residents' medical records including nursing notes, pharmacy records, medication records, and physicians' orders. The facility may charge the licensing agency at the rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency. The procedure of copying will be the responsibility of the administrator or designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation. It will be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for their use. The licensing agency will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and licensing agency policy. In accordance with Texas Civil Statutes, Article 4442c, the facilities and their officers and employees and the patients' attending physicians, shall not be held liable civilly for surrendering physicians' orders, pharmacy records, state-office notes and memorandums, patient files and other confidential or private material under this provision.

(h) In the event any facility licensed under Article 4442c ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relatives or responsible parties of closure. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal

notice immediately to patients, relatives, or responsible parties.

(i) Each licensed facility shall conspicuously and prominently post certain information in one area of the facility that is readily and customarily available to the public. The posting shall be in a manner that each item of information is directly visible at a single time. The location of posting shall be in the main lobby or living room or main corridor leading from the main lobby or living room, or for a facility of less than 30 beds the posting may be in the area where public notices are usually posted as long as that location otherwise qualifies. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed section or public way leading thereto. Any exceptions shall be as approved by the licensing agency. The following items shall be posted:

(1) the facility license;

(2) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(3) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(4) a concise summary in nontechnical language prepared by the licensing agency of the most recent inspection report;

(5) a notice in a form prescribed by the licensing agency stating that:

(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility-patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c, §16.

(B) a person making a bad faith, malicious or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c, §16.

(C) the facility has available for public inspection pursuant to Article 4442c, §16, pertaining to abuse and neglect.

(j) The inspection reports and related reports that are available at the facility for public inspection, as noted in subsection (i) of this section, shall include licensing inspection reports, deficiency sheets and plan of correction (HCF A Form 2567) of Medicare and Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The

material available for public inspection shall be available at the on-premises business office or administrator's office during normal facility office hours

(k) Texas Civil Statutes, Article 4442c, §16, referred to in subsection (i) of this section shall be available for public reference at the on-premises business office or administrator's office during normal facility office hours

(l) Summaries, inspection reports, and related reports prepared by the licensing agency are available to the public through the established licensing agency's public disclosure procedures

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 25 1985

TRD-8510983

Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date December 16, 1985
Proposal publication date September 6, 1985
For further information, please call
(512) 458-7706

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Subchapter C. Minimum Standards for Custodial Care Homes

★ 25 TAC §145.33

The Texas Department of Health adopts an amendment to §145.33, with changes to the proposed text published in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3352).

The amendment implements certain requirements enacted by the 69th Legislature, 1985, affecting the regulation by the Texas Department of Health of custodial care homes licensed under Texas Civil Statutes, Article 4442c.

The amendment specifies that custodial care homes shall make available to the Texas Department of Health, as a licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The amendment specifies procedures a custodial care home must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendments define in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection.

No comments were received regarding adoption of the proposed amendments to

the standards for custodial care homes; however, comments were received in reference to the proposed amendment to standards for nursing homes and the proposed amendment to standards for facilities serving mentally retarded persons, the proposed amendment covering the same subjects as the proposed amendment to standards for custodial care homes.

The department has determined that nearly all of the comments received applicable to those other categories of facilities and decisions the department has made with respect to those comments are most appropriate to be generally applicable to custodial care homes, and that determination has been reflected in wording changes of these amendments. More specifically, the applicable comments follow.

Concerning §145.33(i), copying of documents requested by the Texas Department of Health, applicable comments are as follows. One commenter stated that the department should be more specific as to what documents are to be made available, including only medical and health care documents as implied in the statute. The department has essentially accepted this comment as being in alignment with the statute and has changed wording accordingly

The commenter stated that the administrator or designee should be in control of the records being copied. This has always been the position of the department, and wording to that effect has been provided.

The commenter stated that facilities should charge the department for the copies, using the same rate as the state charges for copies of its records.

The department has accepted this comment and has provided changes accordingly.

The commenter stated that the department must maintain confidentiality of the facility records copied and that they are never to be subject to the Open Records Act. The department has determined that some wording is advisable which expresses the need for confidentiality and conformance to applicable law and has provided such wording

The commenter stated that in the sections, there should be a statement from the statute on the nonliability of a facility and its officers and employees for surrendering records. The department has accepted this comment and has provided wording accordingly.

Concerning §145.33(j), facility notification of persons when closing, there is one applicable comment. The commenter indicated that under involuntary closure, the Texas Department of Health should make the verbal notification to patients, relatives, or responsible parties. The department believes that the notification must remain the responsibility of the facility

and the law so indicates. Historically, when the department orders emergency closure of the facility, the department staff stand ready to make or assist in making the notifications and have had to do so in some instances. The department, therefore, has made no word changes.

Concerning §145.33(k)-(n), facility posting of information, applicable comments follow.

One commenter stated that the facility rather than the department should summarize the inspection, survey, and other visits made by department staff. The department does not agree with this comment, believing that the intent of the law is that department personnel prepare the summaries; therefore, no word changes have been made in this regard.

Two commenters stated that when a complaint is unsubstantiated, there is now no report going to the facility, and that the facility should have something to show that the complaint is unsubstantiated. The department intends to have a summary for investigations showing unsubstantiated complaints; however, wording in these sections to that effect is not needed.

The immediately preceding two commenters stated that there should be an informal hearing provided for the facility, when the facility does not agree with a summary. The department advises that summaries do not stand alone but summarize a more detailed regular (or other) report; which, if it is not subject to hearing, then the summary is not subject to hearing. The department, therefore, has not provided any wording regarding this comment.

One commenter indicated that summaries should include certain functional areas and the required corrective action, also that a response be entered under each categorical or functional item, even if the item is not part of the inspection. The department is studying various methods of preparing summaries, and the final method will be handled through procedures rather than through these sections.

One commenter requested that there be one poster or notice that gives the department toll-free incoming telephone line number, the telephone number of the Texas Board of Licensure for Nursing Home Administrators, and the telephone number of the local ombudsman, rather than have three separate notices. This would be procedure that the department can consider and would not be a part of these sections.

One commenter stated that good facilities should not be penalized by losing rapport with residents and families because of Gestapo-type notices that confront the public. The department is following the intent of the law in preparing rules and has no authority to dis-

linguish between good facilities and other facilities.

The immediately preceding commenter suggested not posting anything on abuse and neglect, because it tells the public that abuse or neglect may occur in the facility. The department views abuse or neglect of a resident to be a serious violation and believes an appropriate way for employees and the public to know the new statutory provision protecting a person (from retaliation) who reports abuse or neglect is to note publicly that there is a provision. Conversely, the department receives complaints and information on threats made against a facility and its staff by disgruntled or terminated employees, often without foundation, and that part of the statute on abuse and neglect which speaks to maliciously or recklessly reporting needs also to be emphasized. The department, therefore, has not deleted these requirements for posting.

One commenter stated that the statement of deficiencies and plan of correction (Form HCFA 2567), which is the form for reporting deficiencies and plans of correction for Medicare and Medicaid participating facilities, should be posted rather than posting a summary. The commenter stated that a summary intends to deceive the public and makes more work for the department. The department believes that posting the entire full list of deficiencies and plans of correction goes beyond the intent of the law, since the law indicates a concise summary. The department believes that with public notice stating the survey report is available at the facility office, any person who wishes more information than that provided by the summary will take time to read the report in the office. The department realizes some extra time from department staff is required in preparing summaries but believes the intent of the law is that the department do so. The department, therefore, has made no word changes regarding this suggestion.

The immediately preceding commentor said that when a new inspection report is posted, the previous report should not be removed. Whether the posting would be a full report (not really intended to be posted) or a summary, the statute calls for posting the most recent summary. Other summaries, (those for the last 12 months) are to be available in the facility office for public review. The department, therefore, has made no word changes in this regard.

Three commenters stated that in small facilities, the use of posting location requirements as specified would present serious difficulties. The department has agreed with these comments and has made appropriate word changes.

Two commenters stated that providers, consumers, advocates, etc., should have input on the forms or methods used for

summaries. As far as these sections are concerned, any wording in the sections on this comment would not be appropriate, since this is an internal procedure.

The following persons commented about the amendment to nursing home standards or the amendment to standards for facilities for the mentally retarded. They did not definitely state whether they were for or against the amendment in entirety but rather expressed concerns and made statements which have been interpreted as being against parts of the amendment: Texans for Improvement of Nursing Homes, Inc.; City of Houston, Office of Aging-Department of Health and Human Services; Texas Independent Nursing Home Association; Texas Health Care Association; Bob Cash, Bitter Creek Farm; Texas Association of Private ICF-MR Providers, and Association for Retarded Persons, Texas.

With reference to nursing homes, Ann Ponder of The Clairmont (long term care facility) expressed being definitely against the amendment and the law on which the amendment is made.

The amendment is adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Board of Health with the authority to adopt minimum licensing standards for custodial care homes.

§145.33 General Requirements

(a)-(h) (No change.)

(i) Upon request the facility management shall make available to the licensing agency representatives copies of relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. Documents or records which may be copied and made available are residents' medical records, including nursing notes, pharmacy records, medication records, and physicians' orders. The facility may charge the licensing agency at the rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency. The procedure of copying will be the responsibility of the administrator or designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation. It will be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for their use. The licensing agency will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and licensing agency policy. In accordance with Texas Civil Statutes, Article 4442c, the facilities and their officers and employees and the patients' (residents') attending physicians, shall not be held liable civilly for surrendering physicians' orders, pharmacy records, state-office notes and memorandums, pa-

tient (resident) files, and other confidential or private material under this provision.

(j) In the event any facility licensed under Texas Civil Statutes, Article 4442c, ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relatives or responsible parties of closure. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of owner's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives, or responsible parties.

(k) Each licensed facility shall conspicuously and prominently post certain information in one area of the facility that is readily and customarily available to the public. The posting shall be in a manner that each item of information is directly visible at a single time. The location of posting shall be in the main lobby or living room or main corridor leading from the main lobby or living room, or for a facility of less than 30 beds the posting may be in the area where public notices are usually posted as long as that location otherwise qualifies. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed section or public way leading thereto. Any exceptions shall be as approved by the licensing agency. The following items shall be posted:

(1) the facility license;

(2) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(3) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(4) a concise summary in nontechnical language prepared by the licensing agency of the most recent inspection report;

(5) a notice in a form prescribed by the licensing agency stating that:

(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c, §16;

(B) a person making a bad faith, malicious, or reckless report of abuse or neglect, is subject to a criminal penalty, in

accordance with Texas Civil Statutes, Article 4442c, §16;

(C) the facility has available for public inspection of Article 4442c, §16, pertaining to abuse and neglect.

(l) The inspection reports and related reports that are available at the facility for public inspection, as noted in subsection (k) of this section, shall include licensing inspection reports, deficiency sheets and plan of correction (HCFA Form 2567) of Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or administrator's office during normal facility office hours.

(m) Texas Civil Statutes, Article 4442c, §16, referred to in subsection (k) of this section, shall be available for public reference at the on-premises business office or administrator's office during normal facility office hours.

(n) Summaries, inspection reports, and related reports prepared by the licensing agency are available to the public through the established licensing agency's public disclosure procedures.

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 25, 1985

TRD-8510985

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

Effective date: December 16, 1985

Proposal publication date: September 6, 1985

For further information, please call
(512) 458-7706.

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Subchapter L. Minimum Licensing Standards for Personal Care Homes

★ 25 TAC §145.181

The Texas Department of Health adopts an amendment to §145.181, with changes to the proposed text published in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3352)

The amendment implements certain requirements enacted by the 69th Texas Legislature, 1985, affecting the regulation by the Texas Department of Health of personal care homes licensed under Texas Civil Statutes, Article 4442c

The amendment specifies that personal care homes shall make available to the Texas Department of Health, as a licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The amendments specify procedures a personal care home must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendments define in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection

No comments were received specifically on the proposed amendment to the standards for personal care homes, however comments were received in reference to the proposed amendment to standards for nursing homes and the proposed amendment to standard for facilities serving mentally retarded persons. The proposed amendment covering the same subjects as the proposed amendment to standards for personal care homes. The department has determined that nearly all of the comments received applicable to those other categories of facilities and decisions the department has made with respect to those comments are most appropriate to be generally applicable to personal care homes, and that determination has been reflected in wording changes of this amendment. More specifically the applicable comments follow

Concerning §145.181(f)(13), copying of documents requested by the Texas Department of Health, applicable comments follow

One commenter stated that the department should be more specific as to what documents are to be made available, including only medical and health care documents as implied in the statute. The department has essentially accepted this comment as being in alignment with the statute and has changed wording accordingly.

The commenter stated that the manager or designee should be in control of the records being copied. This has always been the position of the department and wording to that effect has been provided

The commenter stated that facilities should charge the department for the copies, using the same rate as the state charges for copies of its records. The department has accepted this comment and has provided wording accordingly

The commenter stated that the department must maintain confidentiality of the facility records copied and that they are never to be subject to the Open Records Act. The department has determined that some wording is advisable which expresses the need for confidentiality and

conformance to applicable law and has provided such wording

The commenter stated that, in the rules there should be a statement from the statute on the nonliability of a facility and its officers and employees for surrendering records. The department has accepted this comment and has provided wording accordingly

Concerning §145.181(f)(14), facility notification of persons when closing, there is one applicable comment. The commenter indicated that under involuntary closure, the Texas Department of Health should make the verbal notification to patients, relatives, or responsible parties. The department believes that the notification must remain the responsibility of the facility and the law so indicates. Historically, when the department orders emergency closure of the facility, the department staff stand ready to make or assist in making the notifications and have had to do so in some instances. The department, therefore, has made no word changes

Concerning §145.181(f)(15),(16),(17), and (18) facility posting of information, applicable comments follow

One commenter stated that the facility rather than the department should summarize the inspection, survey, and other visits made by department staff. The department does not agree with this comment, believing that the intent of the law is that department personnel prepare the summaries, therefore, no word changes have been made in this regard

Two commentors stated that when a complaint is unsubstantiated, there is now no report going to the facility, and that the facility should have something to show that the complaint is unsubstantiated. The department intends to have a summary for investigations showing unsubstantiated complaints, however, wording in these sections to that effect is not needed

The previous two commentors stated that there should be an informal hearing provided for the facility, when the facility does not agree with a summary. The department advises that summaries do not stand alone but summarize a more detailed regular or other report, which if not subject to hearing then the summary is not subject to hearing. The department, therefore, has not provided any wording regarding this comment

One commenter indicated that summaries should include certain functional areas and the required corrective action, also that a response be entered under each categorical or functional item, even if the item is not part of the inspection. The department is studying various methods of preparing summaries, and the final method will be handled through procedures rather than through these sections

One commentor requested that there be one poster or notice that gives the department toll-free incoming telephone line number, the telephone number of the Texas Board of Licensure for Nursing Home Administrators, and the telephone number of the local ombudsman, rather than have three separate notices. This would be a procedure that the department can consider and will not be a part of these sections.

One commentor stated that good facilities should not be penalized by losing rapport with residents and families because of Gestapo-type notices that confront the public. The department is following the intent of the law in preparing rules and has no authority to distinguish between good facilities and other facilities.

The immediately preceding commentor suggested not posting anything on abuse and neglect, because it tells the public that abuse or neglect may occur in the facility. The department views abuse or neglect of a resident to be a serious violation and believes an appropriate way for employees and the public to know the new statutory provision protecting a person (from retaliation) who reports abuse or neglect is to note publicly that there is a provision. Conversely the department receives complaints and information on threats made against a facility and its staff by disgruntled or terminated employees, often without foundation, and that part of the statute on abuse and neglect which speaks to maliciously or recklessly reporting needs also to be emphasized. The department, therefore, has not deleted these requirements for posting.

One commentor stated that the statement of deficiencies and plan of correction (Form HCFA 2567), which is the form for reporting deficiencies and plans of correction for Medicare and Medicaid participating facilities, should be posted rather than posting a summary. The commentor stated that a summary intends to deceive the public and makes more work for the department. The department believes that posting the entire full list of deficiencies and plans of correction goes beyond the intent of the law, since the law indicates a concise summary. The department believes that with public notice stating the survey report is available at the facility office, any person who wishes more information than that provided by the summary will take time to read the report in the office. The department realizes some extra time from department staff is required in preparing summaries but believes the intent of the law is that the department do so. The department, therefore, has made no word changes regarding this suggestion.

The immediately preceding commentor said that when a new inspection report is posted, the previous report should not be removed. Whether the posting would

be a full report (not really intended to be posted) or a summary, the statute calls for posting the most recent summary. Other summaries (those for the last 12 months) are to be available in the facility office for public review. The department, therefore, has made no word changes in this regard.

Three commenters stated that in small facilities, the use of posting location requirements as specified would present serious difficulties. The department has agreed with these comments and has made appropriate word changes.

Two commenters stated that providers, consumers, advocates, etc., should have input on the forms or methods used for summaries. As far as these sections are concerned, any wording in the sections on this comment would not be appropriate, since this is an internal procedure.

The following persons commented about the amendment to nursing home standards or the amendment to standards for facilities for the mentally retarded. They did not definitely state whether they were for or against the amendment in entirety but rather expressed concerns and made statements which have been interpreted as being against parts of the amendment: Texans for Improvement of Nursing Homes, Inc., City of Houston, Office of Aging-Department of Health and Human Services, Texas Independent Nursing Home Association, Texas Health Care Association, Bob Cash, Bitter Creek Farm, Texas Association of Private ICF-MR Providers, and Association for Retarded Persons, Texas.

With reference to nursing homes, Ann Ponder of The Clairmont (long term care facility) expressed being definitely against the amendment and the law on which the amendment is made.

The amendment is adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Board of Health with the authority to adopt minimum licensing standards for personal care homes.

§145 181 General

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

(f) General requirements.

(1)-(12) (No change.)

(13) Upon request the facility management shall make available to the licensing agency representatives copies of relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. Documents or records which may be copied and made available are residents' medical records, including health care notes, pharmacy records, medication records, and physicians' orders. The facility may charge the licensing agency at the rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency. The procedure of copying will be the responsibility of the man-

ager or designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation. It will be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for their use. The licensing agency will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and licensing agency policy. In accordance with Texas Civil Statutes, Article 4442c, the facilities and their officers and employees and the patients' (residents') attending physicians, shall not be held liable civilly for surrendering physicians' orders, pharmacy records, state-office notes and memorandums, patient (resident) files, and other confidential or private material under this provision.

(14) In the event any facility licensed under Texas Civil Statutes, Article 4442c, ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relatives or responsible parties of closure. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of owner's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives, or responsible parties.

(15) Each licensed facility shall conspicuously and prominently post certain information in one area of the facility that is readily and customarily available to the public. The posting shall be in a manner that each item of information is directly visible at a single time. The location of posting shall be in the main lobby or living room or main corridor leading from the main lobby or living room, or for a facility of less than 30 beds, the posting may be in the area where public notices are usually posted as long as that location otherwise qualifies. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed section or public way leading thereto. Any exceptions shall be as approved by the licensing agency. The following items shall be posted:

(A) the facility license;

(B) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(C) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(D) a concise summary in nontechnical language prepared by the

licensing agency of the most recent inspection report;

(E) a notice in a form prescribed by the licensing agency stating that:

(i) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c, §16,

(ii) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c, §16;

(iii) the facility has available for public inspection Article 4442c, §16, pertaining to abuse and neglect

(16) The inspection reports and related reports that are available at the facility for public inspection, as noted in paragraph (15) of this subsection, shall include licensing inspection reports and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or manager's office during normal facility office hours.

(17) Texas Civil Statutes, Article 4442c, §16, referred to in paragraph (15) of this subsection, shall be available for public reference at the on-premises business office or manager's office during normal facility office hours.

(18) Summaries, inspection reports, and related reports prepared by the licensing agency are available to the public through the established licensing agency's public disclosure procedures.

(g) (No change)

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

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

TRD 8510987

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

Effective date December 16, 1985

Proposal publication date September 5, 1985

For further information, please call

(512) 458 7708

Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas

★25 TAC §145.211

The Texas Department of Health adopts an amendment to §145.211, with changes to the proposed text published in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3353).

The amendment implements certain requirements enacted by the 69th Legislature, 1985, affecting the regulation by the Texas Department of Health of facilities serving mentally retarded persons and which are licensed under Texas Civil Statutes, Article 4442c.

The amendment specifies that facilities serving mentally retarded persons shall make available to the Texas Department of Health, as licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The amendment specifies procedures a facility serving mentally retarded persons must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendment defines in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection.

Concerning §145.211(e)(4), copying of documents requested by the Texas Department of Health, no comments were received. However, the department has determined that comments received on this subject as applicable to nursing homes, comments being received simultaneously on amendments to nursing home standards and on amendments to standards for facilities serving mentally retarded persons, and decisions of the department with respect to those comments are most appropriate to be generally applicable to facilities serving the mentally retarded, and that determination has been reflected in wording changes of these amendments.

More specifically, these comments are as follows. One commentator stated that the department should be more specific as to what documents are to be made available, including only medical and health care documents as implied in the statute. The department has essentially accepted this comment as being in alignment with the statute and has made wording accordingly.

The commentator stated that the administrator or designee should be in control of the records being copied. This has always been the position of the department and wording to that effect has been provided.

The commentator stated that facilities should charge the department for the copies, using the same rate as the state charges for copies of its records. The department has accepted this comment and has provided wording accordingly.

The commentator stated that the department must maintain confidentiality of the facility records copied and that they are never to be subject to the Open Records Act. The department has determined that some wording is advisable which expresses the need for confidentiality and conformance to applicable law and has provided such wording.

The commentator stated that in the sections there should be a statement from the statute on the nonliability of a facility and its officers and employees for surrendering records. The department has accepted this comment and has provided wording accordingly.

Concerning §145.211(e)(5), facility notification of persons when closing, one commentator said there should be inter-agency coordination on sections on the closing of a facility, more time should be provided to design appropriate sections, even for involuntary closure there should be written notice given to the residents, and for voluntary closure the seven-day notice following decision to close should be followed with not less than 60 days notice for resident relocation. Under certain conditions the department has the authority to close a licensed facility immediately and notification to be always in writing is not possible. Regarding voluntary closure, the department has no authority to require a facility to remain open for such an amount of time as 60 days, although the department agrees that such an amount of time may be desirable in some cases. The department has determined that sections must be developed to implement this subject and believes the intent of the legislature is that implementation not be delayed. Therefore, the department has made no word changes on this subject.

Concerning §145.211(e)(6)-(9), facility posting of information, a few comments were received.

Two commentators said that providers, consumers, advocates, etc., should have input on the forms or methods used for summaries. As far as these sections are concerned, any wording in the sections on this comment would not be appropriate, since this is an internal procedure.

Three comments were received indicating that the posting of information requirements as to the location of posting would create serious difficulties for small facilities. The department agrees with these comments and has made changes to eliminate these difficulties.

Several comments pertaining to nursing homes were received on the subject of

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posting of information. The department has determined that those comments are most appropriate to be generally applicable to facilities serving mentally retarded persons, and that determination has been reflected in wording changes of these amendments. More specifically, these comments are as follows.

One commenter stated that the facility rather than the department should summarize the inspection, survey, and other visits made by department staff. The department does not agree with this comment, believing that the intent of the law is that department personnel prepare the summaries; therefore, no word changes have been made in this regard.

Two commenters stated that when a complaint is unsubstantiated, there is now no report going to the facility, and that the facility should have something to show that the complaint is unsubstantiated. The department intends to have a summary for investigations showing unsubstantiated complaints; however wording in these sections to that effect is not needed.

The same two commenters stated that there should be an informal hearing provided for the facility when the facility does not agree with a summary. The department advises that summaries do not stand alone but summarize a more detailed regular or other report, which if not subject to hearing, then the summary is not subject to hearing. The department, therefore, has not provided any wording regarding this comment.

One commenter indicated that summaries should include certain functional areas and the required corrective action, also that a response be entered under each categorical or functional item, even if the item is not part of the inspection. The department is studying various methods of preparing summaries, and the final method will be handled through procedures rather than through these sections.

One commenter requested that there be one poster or notice that gives the department toll-free incoming telephone line number, the telephone number of the Texas Board of Licensure for Nursing Home Administrators, and the telephone number of the local ombudsman, rather than have three separate notices. This would be a procedure that the department can consider and would not be a part of these sections.

One commenter stated that good facilities should not be penalized by losing rapport with residents and families because of Gestapo-type notices that confront the public. The department is following the intent of the law in preparing sections and has no authority to distinguish between good facilities and other facilities. The same commenter stated not to post anything on abuse and neglect, because it tells the public that abuse or neglect may occur in the facili-

ty. The department views abuse or neglect of a resident to be a serious violation and believes an appropriate way for employees and the public to know the new statutory provision protecting a person from retaliation who reports abuse or neglect is to note publicly that there is a provision. Conversely, the department receives complaints and information on threats made against a facility and its staff by disgruntled or terminated employees, often without foundation, and that part of the statute on abuse and neglect which speaks to maliciously or recklessly reporting needs also to be emphasized. The department, therefore, has not deleted these requirements for posting.

One commenter stated that the Statement of Deficiencies and Plan of Correction (Form HCFA 2567), which is the form for reporting deficiencies and plans of correction for Medicare and Medicaid participating facilities, should be posted and not just post a summary. The commenter stated that a summary intends to deceive the public and makes more work on the department. The department believes that posting the entire full list of deficiencies and plans of correction goes beyond the intent of the law, since the law indicates a concise summary. The department believes that with public notice stating the survey report is available at the facility office, any person who wishes more information than that provided by the summary will make time to read the report in the office. The department realizes some extra time on department staff is required in preparing summaries but believes the intent of the law is that the department do so. The department, therefore, has made no word changes in this regard. The same commenter said that when a new inspection report is posted, the previous report should not be removed. Whether the posting would be a full report (not really intended to be posted) or a summary, the statute calls for posting the most recent summary. Other summaries, those for the last 12 months, are to be available in the facility office for public review. The department, therefore, has made no word changes in this regard.

The following commenters did not definitely state being for or against the amendments in entirety but rather expressed concerns and made statements to show that they are against parts of the amendments: Bitter Creek Farm, Texas Association of Private ICF-MR Providers; and Association for Retarded Persons, Texas, and with reference to commenters on amendments to nursing home standards, Texans for Improvement of Nursing Homes, Inc., City of Houston, Office on Aging-Department of Health and Human Services; Texas Independent Nursing Home Association, Texas Health Care Association, and Bob Cash.

With reference to comments on amendments to nursing home standards, Ann Ponder of The Clairmont (long term care facility) expressed being definitely against these amendments and the law on which the amendments are made.

The reasons why the agency disagrees with certain comments are stated along with the summary of comments.

The amendments are adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Board of Health with the authority to adopt minimum licensing standards for facilities serving mentally retarded persons.

§145.211. Introduction.

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

(e) General requirements.

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

(4) Upon request the facility management shall make available to the licensing agency representatives copies of relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. Documents or records which may be copied and made available are residents' medical records including nursing notes, pharmacy records, medication records, and physicians' orders. The facility may charge the licensing agency at the rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency. The procedure of copying will be the responsibility of the chief executive officer or designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation. It will be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for their use. The licensing agency will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and licensing agency policy. In accordance with Texas Civil Statutes, Article 4442c, the facilities and their officers and employees and the patients' (residents') attending physicians, shall not be held liable civilly for surrendering physicians' orders, pharmacy records, state-office notes and memorandums, patient (resident) files and other confidential or private material under this provision.

(5) In the event any facility licensed under Article 4442c ceases operation, temporarily or permanently, voluntarily, or involuntarily, notice shall be provided the residents and residents' relatives or responsible parties of closure. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is

waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives, or responsible parties.

(6) Each licensed facility shall conspicuously and prominently post certain information in one area of the facility that is readily and customarily available to the public. The posting shall be in a manner that each item of information is directly visible at a single time. The location of posting shall be in the main lobby or living room or main corridor leading from the main lobby or living room, or for a facility of less than 30 beds the posting may be in the area where public notices are usually posted as long as that location otherwise qualifies. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed section or public way leading thereto. Any exceptions shall be as approved by the licensing agency. The following items shall be posted:

(A) the facility license;

(B) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(C) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(D) a concise summary in non-technical language prepared by the licensing agency of the most recent inspection report;

(E) a notice in a form prescribed by the licensing agency stating that:

(i) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c, §16;

(ii) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c, §16;

(iii) the facility has available for public inspection of Article 4442c, §16, pertaining to abuse and neglect.

(7) The inspection reports and related reports that are available at the facility for public inspection, as noted in paragraph (6) of this subsection, shall include licensing inspection reports, deficiency sheets and plan of correction (HCFA Form 2567) of Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Deter-

minations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or chief executive's office during normal facility office hours.

(8) Texas Civil Statutes, Article 4442c, §16, referred to in paragraph (6) of this subsection, shall be available for public reference at the on-premises business office or chief executive's office during normal facility office hours.

(9) Summaries, inspection reports, and related reports prepared by the licensing agency are available to the public through the established licensing agency's public disclosure procedures.

(f) (No change.)

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

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

TRD-8510989

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

Effective date: December 16, 1985
Proposal publication date: September 8, 1985
For further information, please call
(512) 458-7706.

TITLE 31. NATURAL RESOURCES AND CONSERVATION Part I. General Land Office Chapter 1. Executive Administration

★31 TAC §1.91

The General Land Office adopts the repeal of existing §1.91, and new §1.91, with changes to the proposed text published in the August 13, 1985, issue of the *Texas Register* (10 Tex Reg. 3053).

The new §1.91 changes the format of the fee schedule to make its contents both clearer and easier to amend. The new section also revises existing fees and sets new fees. Changes have been made to the proposed new section, in part to reflect certain comments received, and in part to satisfy new agency needs. In the adopted section, changes occur in paragraphs (8), (11), and (12). Paragraphs (9) and (10) are new.

The existing section is repealed to allow for the adoption of the new section.

The new section differs from the repealed section by revising geophysical, vacancy, and appraisal fees, setting fees for surface damages, and increasing the fees for surface leases and for recording patents and deeds of acquittance.

The following comments were received in several letters and were specifically expressed in a meeting between representatives of the General Land Office (GLO) and the International Association of Geophysical Contractors (IAGC).

Commenters object to imposing an increase in fees at a time when the industry is in a slump and exploration budgets are minimal. They believe we should encourage exploration, not discourage it by assessing additional fees.

They assert that the fees should reflect costs in administering geophysical permits, and not be used to produce income. They questioned our authority to impose fees to raise revenue, contending that it was not the legislature's intent to do so.

They object to the charging of one set fee for surface damages, particularly in situations where no damage occurs at all, and urge the GLO to impose only fees for actual damages when they occur. They question the authority of the General Land Office to impose a set fee for surface damages.

They do not consider public school lands to be in the same category as University of Texas (UT) lands or private lands. It appears they believe they are at a disadvantage because state lands are not in large blocks as are those owned by UT or some private individuals. Apparently they feel they will be subject to hijacking by surrounding landowners, because their seismic surveys inevitably cover more acreage than just the state land. In addition, they assert that the reason private landowners charge higher fees and label them surface damages is to avoid paying income taxes on such amounts. They suggest that since the state does not pay taxes, it should not look to private landowners for comparisons.

When confronted with the fact that the fees imposed by the GLO are identical to UT's fees, the IAGC responded by saying they don't agree with UT's fees either, but they failed to object when UT's fees were adopted.

They also feel that the proposal will harm the small operators much more than the larger companies. The small operator is allegedly making only a small margin of profit on speculative work, and it is contended these fees will make such work completely unprofitable.

The IAGC objected to the nonrefundable 10-day minimum permit. They urge that we have no minimum, or that we refund fees for unused days. They also objected to the 30-day maximum permit, and suggested that 60 days would be more appropriate. (Changes have been made in response to this last comment.)

Other comments received included the following objections.

Speculative surveys have been used to make data available to oil companies at

a reduced rate and have contributed to the success of the state's leasing program. These fees jeopardize future lease sales.

Offshore work in federal waters sometimes requires that the work cross-over into state waters. While such work might involve only several hours, the company would need a 10 day permit at a cost of \$3,100.

The total fees required by the GLO are generally greater than assessed by other private and public landholders.

The proposed rules will not raise the additional revenue anticipated because of decreased exploration activity, and a resulting decrease in development over production. Overall the economic effect will be to lower state revenues.

Those making comments against the section included the International Association of Geophysical Contractors; Teledyne Exploration; Exploration Data Consultants, Inc.; Monsanto Oil Company; Oil Data, Inc.; Tidelands Geophysical Co., Inc.; Cities Services Oil and Gas Corporation; Seisdata Services Inc.; Professional Geophysics, Inc.; Conoco Inc.; GECO Geophysical Company, Inc.; Mitchell Energy Corporation; Fairfield Industries; Mr. Bill Paus; and Western Geophysical.

Certainly the oil industry is currently depressed. And as a surface and mineral owner, the state too feels the effects of that depression. Hence, this new section is neither intended to exacerbate the depression nor to discourage geophysical exploration. Instead, this new section intends to make the state's fees consistent with those charged by the private sector as well as by the University of Texas.

Some changes, however, have been made in response to the objections raised. The geophysical fees have been changed to reflect a 5-day minimum permit term instead of a 10-day minimum. In addition, it allows for the 30-day permit to be extended for an additional 30 days by merely submitting the \$100 filing fee. Thereafter during the extension, inspection fees and geophysical fees will only be charged for days worked. These changes should help mitigate the negative impact anticipated by the industry.

As mentioned, several of the comments received questioned the authority of the Land Office to impose these fees. The 69th legislature, through Senate Bill 493, has required the commissioner to set and to collect fees for damages done to the surface of public school land. It has also authorized the commissioner to collect reasonable fees as a condition of issuing a permit.

By clearly authorizing the commissioner to set the amount for surface damages, the legislature intended to give the commissioner the ability to establish such amounts as liquidated damages. Since

the legislation states that money collected from damages is to fund grants for improvements to permanent school fund lands, the legislature apparently contemplated that the damage fees would in part be a revenue raising measure.

The amounts to be charged are no greater than those previously charged by private landowners or by the University of Texas. Since the fees charged by these entities have not significantly decreased exploration or speculative surveys on their lands, we are skeptical that decreased exploration will occur on our lands. Moreover, we have not found in the past that the industry has chosen to explore on state lands instead of other lands just because of lower exploration costs. Additionally, our upland fees are still lower than those fees charged by UT.

The state public school lands are dedicated to support education. The General Land Office is responsible for those lands and for assuring that the lands are productive and that they generate an equitable amount of revenue for the permanent school fund. The state, until now, has charged very little for geophysical fees and has not charged at all for surface damages. The permanent school fund should not be disadvantaged just because the state does not pay taxes, because its lands are not in blocks, or because the industry failed to react to the fees charged by the University of Texas.

The repeal is adopted under the Natural Resources Code, §31.064, which provide the commissioner of the General Land Office with the authority to set and collect fees for various services performed by the General Land Office.

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 25, 1985.

TRD-8511004 Garry Mauro
Commissioner
General Land Office

Effective date: December 16, 1985
Proposal publication date: August 13, 1985
For further information, please call
(512) 475-8740.



Fee Schedule

★31 TAC §1.91

The new section is adopted under 1985 Texas General Laws, Chapter 624, page 4727, *et seq*, which authorizes the commissioner to establish fees and collect money for damages to the surface of land dedicated to the permanent school fund and to set and collect fees as a condition of issuing geophysical permits, and under the Natural Resources Code, §31.064, which provides the commissioner of the General Land Office with the authority to set and collect fees for various services performed by the General Land Office.

§1.91. Fees. The Commissioner is authorized and required to collect the following fees where applicable:

- (1) Patents and Deeds of Acquittance.
 - (A) Patent \$50;
 - (B) Deed of Acquittance . \$50;
 - (C) Mineral patent . . . \$50;
 - (D) Registered mail . . . \$5.00;
 - (E) Recording \$5.00.
- (2) Certificates of Facts.
 - (A) One File \$50;
 - (B) Each additional file . \$10;
 - (C) Spanish document . . \$50.
- (3) Certificates of Classification.
 - (A) One file \$15;
 - (B) Each additional file. \$5.00.
- (4) Maps and Plats.
 - (A) Official map
 - (i) Cloth print \$22;
 - (ii) Paper print \$12.
 - (B) Other sketches and plats, white prints, per linear foot \$2.00;
 - (C) Preparation of working sketches,
 - (i) Per hour \$10;
 - (ii) Minimum fee \$40;
 - (D) Mailing tube \$1.00.
- (5) Photostatic copies of documents.
 - (A) Pages larger than 8½ by 14 inches, per page \$5.00;
 - (B) Patent \$5.00;
 - (C) Deed of Acquittance. \$5.00;
 - (D) Maps, Plats, and working sketches
 - (i) 12 by 10 inches . \$3.00;
 - (ii) 12 by 15 inches . \$4.00;
 - (iii) 12 by 20 inches . \$5.00;
 - (E) Other pages, documents, or records, per page \$2.50.
- (6) Spanish translations.
 - (A) Per word \$.15;
 - (B) Minimum fee \$10.
- (7) Records research.
 - (A) Geneological search, per name \$2.00;
 - (B) Other records research
 - (i) Per hour \$15;
 - (ii) Minimum fee \$7.50.

- (8) Publications.
 - (A) Vacancy listing\$40;
 - (B) Abstract volume (on microfiche)\$12.50;
 - (C) Abstract volume supplement\$10.
 - (D) Submerged lease data
 - (i) Annual subscription rate\$300;
 - (ii) Monthly rate \$25;
 - (iii) Single copy, subscriber\$37.50;
 - (iv) Single copy, non-subscriber\$75;
 - (E) Energy information service, per year\$180.

- (9) Vacancy fees.
 - (A) Fees for good faith claimants
 - (i) Application filing fee.\$25;
 - (ii) Affidavit filing fee .25\$;
 - (iii) Field notes filing fee.\$25;
 - (iv) Filing fee for each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of claimant's good faith status\$25;
 - (v) Appraisal fee - listed in paragraph (10) of this section;
 - (B) Fees for applicants
 - (i) Application filing fee\$100;
 - (ii) Field notes filing fee \$25;
 - (iii) Appraisal fee, if needed - listed in paragraph (10) of this section.

(10) Appraisal fees. The following appraisal fees are charged for vacancies, excess acreage, and any other appraisal conducted by the General Land Office. When 10 or more tracts are being appraised, the fees are subject to negotiation.

- (A) First tract. \$300;
- (B) Each additional tract by the same applicant or owner and in the same general vicinity \$50.

- (11) Geophysical fees.
 - (A) Bays and other tideland areas and the Gulf of Mexico. Permits are granted for a minimum of five days and a maximum of 30 days. Each application must be accompanied by the filing fee listed in paragraph (12) of this section. A permit may be extended once for an additional 30 days by submitting an additional filing fee. Certain damage fees will also be charged as determined in paragraph (11) of this section.
 - (i) Unleased tracts (or a combination of leased and unleased tracts). The exploration inspection fee and the geophysical fee for the full permit term are due at the time each application is filed. Fees paid for the first five days of the permit are non-refundable. Beyond the required five-day minimum, fees for any unused days and the geophysical fee for those days that only leased tracts are worked will be refunded. During a permit extension, fees will be charged only for days worked.
 - (I) Exploration inspection fee, per day\$100;

- (II) Geophysical fee, per day\$200.
 - (ii) Leased tracts. The exploration inspection fee for the full permit term is due at the time each application is filed. Beyond the required five-day minimum, fees for any unused days will be refunded. If any unleased tract is covered during the permit term the geophysical fee for unleased tracts, listed in clause (i) (II) of this subparagraph, will be charged for the entire five-day minimum in addition to any days after the 5-day days that unleased tracts are covered. During a permit extension, fees will be charged only for days worked. Exploration inspection fee for leased tracts, per day.....\$100.
 - (B) Uplands (State Fee and Relinquishment Act tracts and any other permanent school fund lands). There is no geophysical or inspection fee for upland tracts. An exploration permit for a maximum of 30 days must be obtained, however, and the filing fee, listed in paragraph (12) of this section, must be submitted with the application. Surface damage fees will also be charged for operations on state fees tracts; amounts are listed in paragraph (11) of this section.
 - (12) Surface and bottom damage fees. Surface and bottom damage fees for the full permit term are due at the time the application is filed. Fees for any unused days will be refunded.
 - (A) Bays and other tideland areas.
 - (i) Unleased tracts, per day\$100;
 - (ii) Leased tracts, per day\$100.
 - (B) Uplands, unleased and leased state fee tracts.
 - (i) Dipsos, vibrations and weight drop, per line mile \$850; Plus, if explosives are used in conjunction with or to supplement these energy sources, per shot hole.....\$150;
 - (ii) Each shooting crew, regardless of number of shot holes, per line mile.\$900;
 - (iii) Gravity meter, geochemical, magnetometer, per crew per day.\$200;
 - (iv) Velocity survey or experimental worknegotiable
 - (13) Other filing fees.
 - (A) Mineral leases, assignments, and releases\$25;
 - (B) Surface leases, assignments, and releases\$50; (Surface lease fees for certain specific facilities are listed in §13.18 of this title (relating to Fees for Surface Leases for Certain Facilities));
 - (C) Prospect permits\$10;
 - (D) Geophysical exploration permit\$100;
 - (E) Original field notes ..\$25;
 - (F) Affidavit\$25;
 - (G) Any other instrument required by law to be filed in the General

Land Office, where no filing fee is otherwise specified\$25.

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 25, 1985.
 TRD-8511003 Garry Mauro
 Commissioner
 General Land Office

Effective date: December 16, 1985
 Proposal publication date: August 13, 1985
 For further information, please call
 (512) 475-8740.



Part II. Texas Parks and Wildlife Department

Chapter 53. Finance

Selling Price of Departmental Printed Material

★31 TAC §§53.2, 53.4, 53.6, 53.8

The Texas Parks and Wildlife Commission adopts amendments to §53.2 and §53.4 with changes to the proposed text published in the May 24, 1985, issue of the *Texas Register* (10 TexReg 1660). An amendment to §53.6 and new §53.8 are adopted without changes, and will not be republished.

These changes will inform the public about the availability of obsolete stamps and decals. Parks and Wildlife Statutes provide the Parks and Wildlife Commission with the authority and responsibility to set license fees. The fee increases are necessary to cover the cost of current Parks and Wildlife programs. Changes to the proposed text were clarification of the period of time that obsolete stamps and decals are on sale, and an increase of the Lake Texoma Fishing License fee which was necessary to match Oklahoma's fee increase.

An individual who wishes to purchase an obsolete stamp or decal will do so within the time period specified in these sections. Fees will be charged as set by these sections.

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

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

§53.6. Obsolete Stamps and Decals.

(a) The price of obsolete stamps and decals shall be face value, plus a processing charge per shipment, postage, and sales tax as determined by the executive director.

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

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

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

§53.8. License Fees Set by Commission.

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

(b) Due to the increasing costs involved in administering the programs of the Parks and Wildlife Department, the commission sets the following license fee amounts effective December 30, 1985:

- (1) resident combination hunting and fishing-\$15;
- (2) resident hunting-\$10;
- (3) resident-exempt hunting-\$6;
- (4) duplicate hunting-\$6;
- (5) temporary nonresident fishing-\$8;
- (6) nonresident small game hunting-\$75;
- (7) general nonresident hunting-\$200; and
- (8) Lake Texoma fishing -\$7.50.

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 7, 1985

TRD-8510914 Boyd Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: December 30, 1985
Proposal publication date: May 24, 1985
For further information, please call
(512) 479-4805.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part I. Texas Department of Human Services
Chapter 50. Day Activity and Health Services
Eligibility Requirements**

The Texas Department of Human Services adopts the repeal of §§50.1901-50.1904,

without changes to the proposed text published in the May 24, 1985, issue of the *Texas Register* (10 TexReg 1667).

To replace the repealed sections, the department also adopts new §§50.1901-1903, with changes to the proposed text. The new sections clarify day activity and health services (DAHS) medical and service criteria and simplify intake procedures. Adoption is justified because the new sections should improve provider understanding of program standards and intake procedures.

The new sections will function as standards of operation for DAHS facilities. These sections eliminate internal department operating procedures because they do not require that the client needs assessment questionnaire be completed.

One written comment against §50.1903, eliminating behavioral supervision/management, was received from a representative of Advocacy, Inc.

The commenter stated that the elimination of the behavior supervision/management criterion would impose severe hardships on people who are attempting to live in the community but are in need of some supervision and assistance when left alone.

The department disagrees with this comment because the presence of behavioral problems which can be managed by using common sense, respect, and guidance would not constitute medical necessity for DAHS. The department is rewording §50.1903, however, to clarify that people with behavioral problems (that can be managed by the DAHS facility) who meet the criteria stated in the section may still be eligible for DAHS.

Although the department did not receive public comments on §50.1901 and §50.1902, these sections were changed to further clarify program standards and requirements.

★ 40 TAC §§50.1901-50.1904

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

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

Issued in Austin, Texas, on November 21, 1985.

TRD-8510894 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 1, 1986
Proposal publication date: May 24, 1985
For further information, please call
(512) 450-3766.

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★ 40 TAC §§50.1901-50.1903

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

§50.1901. Service Criteria.

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

- (1) is Medicaid eligible outside an institution (Title XIX DAHS) or meets social services block grant income eligibility guidelines and resource limits;
- (2) meets or exceeds the medical criteria established for DAHS;
- (3) has physician's orders for DAHS.

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

(c) An adult protective services (APS) recipient with time-limited eligibility for up to 60 days does not have to meet the financial or medical/functional criteria for DAHS. The APS recipient does not need a physician's order for DAHS.

§50.1902. Enrollment.

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

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

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

(d) Intake initiated by the facility.

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

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

need criteria, the facility nurse contacts the applicant's physician to obtain verbal orders for the service.

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

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

(A) be Medicaid eligible or meets block grant financial eligibility criteria, and

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

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

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

(g) Reassessment. The facility staff must submit documentation of medical eligibility on the physician's orders and level-of-care assessment forms in time to allow the department to reassess medical need and the appropriateness of the service plan before the end of the prior approval period. A delay may result in a gap in coverage.

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

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

(2) a related functional disability;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) Behavioral problems. The applicant/recipient may have behavioral problems which can be managed by DAHS facility staff.

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 21, 1985

TRD-8510893

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date. January 1, 1986
Proposal publication date. May 24, 1985
For further information, please call
(512) 450-3766.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department of Agriculture

Wednesday, December 4, 1985, 10 a.m. The Texas Department of Agriculture will meet in the district office, 2935 Westhollow Drive, Houston. According to the agenda, the department will conduct an administrative hearing to review alleged violation of the Texas Agriculture Code, §76.116(a)(1), by Jim Gardner, doing business as Gardner Flying Service.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 21, 1985, 1:02 p.m.
TRD-8510904

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Texas Commission on Alcohol and Drug Abuse

Thursday, December 5, 1985, 1:30 p.m. The Texas Commission on Alcohol and Drug Abuse will meet in the conference room, 1705 Guadalupe, Austin. Items on the agenda include approval of minutes; advisory council appointments; Senate Bill 601 Task Force nominations; approval of licensure standards for final adoption; proposed revision to Audit Review Board Policy; discussion of addiction services in the criminal justice system; approval of adoption of House Bill 900 rule-Peer Assistance Program; executive director's report, and chairman's report. The commission also will meet in executive session.

Contact: Becky Davis, 1705 Guadalupe, Austin, Texas 78701, (512) 475-2577.

Filed: November 25, 1985, 11:51 a.m.
TRD-8511029

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Texas Commission on the Arts

Tuesday, December 3, 1985. Committees of the Texas Commission on the Arts will meet in the San Jacinto Room, Sheraton

Amarillo Hotel, 3100 IH 40 West at Georgia, Amarillo. Times committees and agendas follow.

1:30 p.m. The Education Committee will conduct a public hearing to discuss the arts in education goals.

Contact: A. Patrice Walker, Box 13406, Austin, Texas 78711, (512) 475-6593.

Filed: November 22, 1985, 4:15 p.m.
TRD-8510972

2:30 p.m. The Minority Involvement Committee will conduct a public hearing to consider the Texas Commission on the Arts activity update.

Contact: A. Patrice Walker, Box 13406, Austin, Texas 78711, (512) 475-6593.

Filed: November 22, 1985, 4:15 p.m.
TRD-8510973

3:30 p.m. The Assistance Review Committee will conduct a public hearing to consider minutes from the Assistance Review Committee meeting November 12, 1985, informational items, and action items.

Contact: A. Patrice Walker, Box 13406, Austin, Texas 78711, (512) 475-6593.

Filed: November 22, 1985, 4:15 p.m.
TRD-8510974

Wednesday, December 4, 1985, 9 a.m. The Full Commission of the Texas Commission on the Arts made an emergency revision to the agenda for a meeting to be held in the San Jacinto Room, Sheraton Amarillo Hotel, 3100 IH 40 West at Georgia, Amarillo. According to the agenda summary, the commission will consider items for individual consideration. The Public Relations Committee will not be meeting.

Contact: A. Patrice Walker, Box 13406, Austin, Texas 78711, (512) 475-6593.

Filed: November 22, 1985, 4:15 p.m.
TRD-8510971

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Board of Canvassers

Monday, December 2, 1985, 3 p.m. The State Board of Canvassers of the Secretary of State will meet in the Conference Room, Department of Human Services, 612 East Second Street, Irving. According to the agenda, the purpose of the meeting is to canvass the November 5, 1985 Constitutional Amendment Election held in 254 counties in the State of Texas.

Contact: Elections Division, Room 915, Sam Houston Building, Austin, Texas 78711, (512) 463-5650.

Filed: November 22, 1985, 4:37 p.m.
TRD-8510976

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Comptroller of Public Accounts

Thursday, December 5, 1985, 9 a.m. The Tax Administrative Division of the Comptroller of Public Accounts will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the division will conduct a public hearing on 34 TAC § 3 59, concerning receipts/exceptions, telephone companies (gross receipts tax).

Contact: Martin Cherry, 111 West Sixth, Room 101, Austin, Texas 78701, (512) 463-4606.

Filed: November 25, 1985, 9 a.m.
TRD-8510996

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Texas Corn Producers Board

Wednesday, December 4, 1985, 9 a.m. The Texas Department of Agriculture of the Texas Corn Producers Board will meet in the Corn Board Office, 218 East Bedford, Dimmitt. According to the agenda, the board will consider minutes of the previous meeting; the financial statement; discuss up-

coming and unemployment meeting; Kellogs visit to Dimmitt; and discuss insurance and correspondence.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: November 25, 1985, 11:36 a.m.
TRD-8511028

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Texas Commission for the Deaf

Friday-Saturday, December 13-14, 1985, 7 p.m. and 9 a.m., respectively. The Board for Evaluation of Interpreters for the Texas Commission for the Blind will meet in Room 300, 510 South Congress, Austin. According to the agenda summary, the board will consider action on previous minutes; meet in executive session to review certification applications and evaluation, discuss oral evaluation and certification at Level I, and discuss grievances; discuss the need for more evaluators; consider a report from the committee for development of recertification procedures; a report from the committee for development of grievance procedures; a report from the committee for development of revised evaluation forms; and the chairperson report.

Contact: Larry D. Evans, 510 South Congress Avenue, Room 300, Austin, Texas 78704, (512) 475-2492.

Filed: November 25, 1985, 1:31 p.m.
TRD-8511034

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Texas Economic Development Commission

Monday, November 25, 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. Agendas follow.

The corporation considered the proposed issuance of its revenue bond (the bond) in an amount not to exceed \$650,000 to finance the cost of the acquisition of approximately four acres of land and the acquisition and rehabilitation of three existing buildings to be used as a warehouse and welding area for imported brass products and the fabrication of component parts of aluminum lamp poles, together with certain equipment and various other items which are functionally related and subordinate to the foregoing (the project), to be owned by Robert F. Herndon and leased to and operated by Robert F. Herndon Corporation.

The project will be located at 7360 Stiles Road, El Paso, Texas 79915. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered 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 2.2775 acres of land and the construction of a building consisting of approximately 29,300 square feet to be used as a facility for the design, manufacture, and assembly of automotive electronic products, 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 Autotronic Controls, Corporation. The project will be located on the north side of Henry Brennan Drive with its southwest corner being 225 feet from the intersection of Henry Brennan Drive and Zaragosa Road, El Paso. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered the proposed issuance of its revenue bond (the bond) in an amount not to exceed \$700,000 to finance the cost of the acquisition of approximately 1.7 acres of land and the construction thereon of a building consisting of approximately 34,450 square feet with 318 units to be used as commercial self-storage facility, 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 Bassett Storage Park, Limited. The project will be located at 6565 Edgemere Boulevard, El Paso. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered 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 29,631 square feet of land and an existing three-story building located thereof consisting of approximately 60,000 square feet to be rehabilitated for use as a warehouse and remanufacturing facility, together with certain equipment and various other items which are functionally related and subordinate to the foregoing (the project) to be owned by Lambert J. and Jeanette Bodeewes and operated by Business Products and Services, Inc. The project will be located at 1601 Magoffin, El Paso. All interested persons are invited to attend and express any

comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

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

Filed: November 22, 1985, 2:30 p.m.
TRD-8510950, 8510949, 8510963,
8510962

Wednesday, November 27, 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. Agendas follow.

The corporation considered the proposed issuance of its revenue bond (the bond) in an amount not to exceed \$477,000 to finance the cost of construction of an office/warehouse building containing approximately 15,918 square feet together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned by R&M Sanden Joint Venture and leased to M. D. McDonald Company, Inc., and Richard Seltzer, doing business as Custom Wall Systems/Richard A. Seltzer Designs. The project will be located at 10840 Sanden Drive, Dallas, Texas 75238. All interests persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered the proposed issuance of its revenue bond (the bond) in an amount not to exceed \$275,000 to finance the cost of the acquisition of approximately 30,606 square feet of land and the acquisition, rehabilitation, and expansion of a metal building located thereon to be used as a distribution/warehouse, facility containing of approximately 12,400 square feet, together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned and operated by Data Distribution Service, Inc. The project will be located at 3208 Pinewood Street in Arlington, Texas 76010. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered proposed issuance of its revenue bond (the bond) in an amount not to exceed \$735,000 to finance the cost of the construction of a manufacturing facility containing approximately 27,000 square feet and the acquisition of an automatic laminating machine, together with equipment and other facilities which

are functionally related and subordinate to the foregoing (the project), to be owned by Lewisville Realty Joint Venture and leased to Metl-Span Corporation. The project will be located at 1497 North Kealy in Lewisville, Texas 75067. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered proposed issuance of its revenue bond (the bond) in an amount not to exceed \$750,000 to finance the cost of the construction of a manufacturing facility containing approximately 64,600 square feet together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned by Martin Real Estate Joint Venture and leased to Tube Forming, Inc., and to Frigi-Cool, Inc. The project will be located on the 1500 block of Crescent Street in the Capital Industrial Park of IH 35, between Belt Line and Sandy Lake Road in Carrollton, Texas 75006. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

The corporation considered proposed issuance of its revenue bond (the bond) in an amount not to exceed \$440,000 to finance the cost of construction of an office/warehouse/manufacturing facility containing approximately 21,600 square feet, together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned by B.B.J. Venture No 1 and leased to approximately nine tenants. The project will be located on an approximately 1.28 acre site located at the southwest corner of Jealousy Way and Hall Street in Cedar Hill, Texas 75104. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby. The emergency status was necessary to insure compliance with federal tax laws.

Contact: John H. Kirkley, 410 East Fifth Street, Austin, Texas 78701, (512) 472-5054.

Filed: November 22, 1985, 2:30 p.m.
TRD-8510954, 8510953, 8510961, 8510961, 8510959

The Texas Small Business Industrial Development Corporation of the Texas Economic Development Commission will meet in Room 318, Anson Jones Building, 410 East Fifth Street, Austin. Dates, times, and agendas follow.

Monday, December 2, 1985, 10 a.m. The corporation will consider proposed issuance

of its revenue bond (the bond) in an amount not to exceed \$300,000 to finance the cost of the construction of an office/manufacturing facility containing approximately 24,000 square feet, together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned by Cecil L. Armstrong and Dorothy L. Armstrong and leased to Abox Paperboard Company. The project will be located at 706 Rand Road in Kaufman, Texas. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby.

Addition to the previous agenda:
The corporation will consider proposed issuance of its revenue bond (the bond) in an amount not to exceed 385,000 to finance the cost of the acquisition of a printing press, together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned and operated by Abox Paperboard Company. The project will be located at 706 Rand Road, Kaufman. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby.

Friday, December 6, 1985, 10 a.m. The corporation will consider proposed issuance of its revenue bond (the bond) in an amount not to exceed \$750,000 to finance the cost of rehabilitating a building consisting of approximately 42,000 square feet to be used as a manufacturing and distribution facility and the construction of a building consisting of approximately 38,000 square feet to be used as a warehouse facility, together with equipment and other facilities which are functionally related and subordinate to the foregoing (the project), to be owned by S&R Joint Venture and leased to Sugerose, Inc. and its subsidiaries. The project will be located at 3419 East Commerce Street, San Antonio, Texas 78220. All interested persons are invited to attend and express any comments they have regarding the proposed issuance of the bond and the project to be financed thereby.

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

Filed: November 22, 1985, 2:31 p.m.
TRD-8510952, 8510951, 8510948

Texas Commission on Economy and Efficiency in State Government

Wednesday, December 4, 1985, 1:30 p.m. The Texas Commission on Economy and Efficiency in State Government will meet in Room 220, the Lieutenant Governor's Committee Room, State Capitol, Austin. Items on the agenda summary include invited appearances by, and exchange of ideas

with, chief executives from eight state agencies; discussion and approval of October 3, 1985, minutes; discussion and approval of commission policies manual; and report from the executive director and discussion.

Contact: Jess M. Irwin, Jr., P.O. Box 12128, Austin, Texas 78711, (512) 463-1159.

Filed: November 25, 1985, 2:21 p.m.
TRD-8511039

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Advisory Commission on State Emergency Communications

Friday, December 6, 1985, 9 a.m. The Advisory Commission on State Emergency Communications will meet in the Lieutenant Governor's Committee Room, State Capitol, Austin. According to the agenda summary, the commission will hear comments by Vaughn Aldredge, Texas Telephone Association, and possibly representatives of other interested organizations concern a proposed statewide 9-1-1 emergency telephone service; review subcommittee reports concerning technical issues and legislative issues and discuss possible alternatives; consider schedules for future meetings; discuss public information activities; and consider methods of receiving further input from interested organizations regarding statewide 9-1-1.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78705, (512) 463-1812.

Filed: November 25, 1985, 4:46 p.m.
TRD-8511066

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Texas Employment Commission

Wednesday, December 4, 1985, 8:30 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will consider prior meeting notes; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 49; and set a date for the next meeting.

Contact: Courtenzy Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: November 25, 1985, 1:22 p.m.
TRD-8511032

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Texas Department of Health

Sunday, November 24, 1985, 2:30 p.m. The Nursing Home Committee of the Texas Board of Health of the Texas Department of Health met in emergency session in Room 3E, Admiral Club, Dallas-Fort Worth International Airport Terminal, Dallas. According to the agenda, the committee discussed administrative penalties for nursing homes in Texas. The emergency status was necessary to meet statutory deadline required by House Bill 2091, 69th Legislature, 1985, of having rules in effect concerning administrative penalties in nursing homes.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 22, 1985, 3:45 p.m.
TRD-8510964

Sunday, December 8, 1985, 9:30 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet in the conference room, Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Items on the agenda summary include summary include the approval of minutes; the chairman's report; an update on Texas Low-Level Radioactive Disposal Authority activities; committee and task team reports; rules and regulatory guide update; program activities; and determine next meeting date and location. The board also will meet in executive session.

Contact: David M. Cochran, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7541.

Filed: November 22, 1985, 3:46 p.m.
TRD-8510965

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Texas Department of Human Services

Tuesday and Wednesday, December 3 and 4, 1985, 9 a.m. daily. The State Advisory Committee on Child Care Facilities of the Texas Department of Human Services will meet in Room 5-W, fifth floor, west tower, 701 West 51st Street, Austin. According to the agenda summary, the committee will consider approval of minutes of October 1-2, 1985, meeting; sharing session, assistant commissioner's report; recommendations or consolidated standards for residential child care facilities; and advisory committee objectives.

Contact: Doug Sanders, P.O. Box 2960, Austin, Texas 78769, (512) 450-3260.

Filed: November 25, 1985, 3:16 p.m.
TRD-8511051

Wednesday, December 4, 1985, 9 a.m. The Advisory Committee on Dispensing Fee Methodology of the Texas Department of Human Services will meet in Room 5-W, fifth floor, west tower, 701 West 51st Street, Austin. According to the agenda summary, the committee will review the modified cost report; and consider the study of interim fee adjustment.

Contact: Blount Barner, P.O. Box 2960, Austin, Texas 78769, (512) 450-3198.

Filed: November 25, 1985, 3:16 p.m.
TRD-8511052

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State Board of Insurance

Tuesday, November 26, 1985, 10 a.m. The State Board of Insurance made an emergency revision to the agenda for a meeting held in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the revision concerned a discussion of open records policy. Board action was needed on policy question affecting content of annual report required by statute; a discussion of State Purchasing and General Services Commission proposed rules 111.8, 111.9, and 115.3; the National Association of Insurance Commissioners December meeting assignments. The emergency status was necessary to meet publication deadline, to make a timely response, and to make travel arrangements.

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

Filed: November 22, 1985, 9:48 a.m.
TRD-8510939

Tuesday, November 26, 1985, 10 a.m. The State Board of Insurance made an emergency revision to the agenda for a meeting held in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. The revision concerns a discussion of State Purchasing and General Service Commission proposed rules 111.18, 111.19, and 111.53. The emergency status was necessary to allow the board to make a timely response.

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

Filed: November 25, 1985, 3:38 p.m.
TRD-8511063

Tuesday, December 3, 1985, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will motion for rehearing in the appeal of Larry Saye from action of the Texas Catastrophe Property Insurance Association; consider decisions on petitions by Texas Medical Liability Insurance Underwriting Association which

were considered at a hearing on September 5, 1985; fire marshal's report concerning personnel matters; commissioner's report concerning personnel matters; pending and contemplated litigation; agency training facilities; annual report to the governor; consideration of withdrawal and republication of proposed §25.509 published in (10 TexReg 3601); annual determination of reference interest rate under the Insurance Code, Article 3.28, 5(e). Final action on amendment to §5.5002 published in (10 TexReg 3945); and discussion of Administrative Code and agency liaison to Texas Register.

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

Filed: November 25, 1985, 3:39 p.m.
TRD-8511064

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings at 1100 San Jacinto Street, Austin. Days, times, and agendas follow.

Tuesday, December 3, 1985, 9 a.m. In Room 342 a public hearing to consider whether disciplinary action should be taken against Houssef A. Hedary doing business as Hedary Insurance Agency, Fort Worth, who holds a Fire and Casualty Local Recording Multiple Line Agent's license, Group II, health and accident insurance agent's license, and Group I, legal reserve life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: November 25, 1985, 9:29 a.m.
TRD-8510998

Tuesday, December 3, 1985, 1:30 p.m. In Room 342 a public hearing to consider the application of Rickey Lynn Tipton, Fort Worth, for a Group II, life, health, and accident insurance agent's license.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: November 25, 1985, 9:29 a.m.
TRD-8510997

Wednesday, December 4, 1985, 9 a.m. In Room 342, a public hearing to consider the application for amendment to the articles of incorporation of American Federation Life Insurance Company, Houston.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: November 25, 1985, 9:29 a.m.
TRD-8511006

Wednesday, December 4, 1985, 10:30 a.m. In Room 342 a public hearing to consider whether disciplinary action should be taken against Panola County Abstract and Title Company, Inc., Carthage, which holds a ti-

the insurance agent's license issued by the State Board of Insurance.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: November 25, 1985, 9:29 a.m.
TRD-8511005

Wednesday, December 4, 1985, 1:30 p.m.
In Room 342 a public hearing to consider the application of SCH Entercorp, Inc., Houston, to acquire control of Empire Life and Hospital Insurance Company, McAllen.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524

Filed: November 25, 1985, 9:29 a.m.
TRD-8511002

Wednesday, December 4, 1985, 1:30 p.m.
In Room 353, a public hearing to consider whether disciplinary action should be taken against Texas General Title, Inc., Plano, which holds a title insurance agent's license issued by the State Board of Insurance.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 787801-1998, (512) 463-6498.

Filed: November 25, 1985, 9:29 a.m.
TRD-8510999

Monday, December 9, 1985, 1:30 p.m.
In Room 353, a public hearing to consider the application of James Thomas Anglin, Arlington, for a legal reserve life insurance agent's license.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: November 25, 1985, 9:29 a.m.
TRD-8511001

Thursday, December 5, 1985, 9 a.m.
In Room 342, a public hearing to consider whether disciplinary action should be taken against Illinois Premium Finance Company, Lincolnwood, Illinois, which holds a Premium Finance Company license issued by the State Board of Insurance.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524

Filed: November 25, 1985, 9:29 a.m.
TRD-8511000

Wednesday, December 18, 1985, 9 a.m.
The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider the Provident Indemnity Life Insurance Company's application for review of the action of the commissioner of insurance denying Provident's application for admission to do the business of insurance in the State of Texas. Commissioner's Order 85-2271, dated October 25, 1985.

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

Filed: November 22, 1985, 3:45 p.m.
TRD-8510966

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Texas Commission on Law Enforcement Officer Standards and Education

Wednesday, December 11, 1985, 10 a.m.
The Commission for Law Enforcement Officer Standards and Education will meet at 1606 Headway Circle, Austin. According to the agenda, the commission will introduce appointees to the commission; recognize visitors; consider a request of Tarrant County Sheriff's Department for reactivation of academy certification; consider entry of final order in contested cases Dockets 458-82-2633LR, 456-74-6357LR, 465-70-2164LR, 552-50-8531LS, 458-29-6167LS, 450-08-8524LR, 456-96-5026LR, 456-13-8455LS, 450-54-5207LR, 451-92-4535LR, 464-04-5537LR, and 452-50-5832ICR; consider proposed regulation relating to license reactivation requirements; consider proposed regulation relating to minimum age requirements for licensing; consider proposed regulation relating to psychological examinations; consider proposed regulation relating to provisional licenses; staff activity reports; and the election of officers.

Contact: Alfredo Villarreal, 1606 Headway Circle, Austin, Texas 78754 (512) 834-9222

Filed: November 21, 1985, 2:21 p.m.
TRD-8510915

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Texas State Board of Medical Examiners

Monday-Thursday, December 2-5, 1985, 8 a.m., daily. The Texas State Board of Medical Examiners will meet in emergency session to revise the agenda, at 1101 Camino LaCosta, Austin. According to the agenda, the board will discuss the corporate practice of medicine. The emergency status was necessary because information recently became available which merits attention. Matters will be discussed at committee and board levels.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: November 25, 1985, 4:17 p.m.
TRD-8511065

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Texas Mohair Producers Board

Wednesday, December 4, 1985, 10 a.m.
The Department of Agriculture of the Texas Mohair Producers Board will meet at First National Bank, 200 South Bell, Hamilton. According to the agenda, the board will discuss minutes of the last meeting; financial reports; grower programs; discuss the Mohair Market Preparation Seminar; discuss Hamanaka Mohair Trophy Competition; the Wool Act Update; and a resolution honoring Dr. O. D. Butler, of Texas A&M University

Contact: Robert M. Paschal, P.O. Box 5337, San Angelo, Texas 76902, (915) 655-3161.

Filed: November 25, 1985, 9:33 a.m.
TRD-8511026

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Texas Motor Vehicle Commission

Tuesday, December 10, 1985, 9 a.m.
The Texas Motor Vehicle Commission will meet in Suite 302 815 Brazos, Austin. According to the agenda summary, the commission will consider the adoption of minutes of the commission meeting of September 12, 1985; hear reports and final orders in various consumer complaint cases; discuss proposals for decision and final orders in Docket 334-Duncan Buick Company vs General Motors Corporation, and Docket 416-license application of Krauskopf Brothers, Inc.; discuss the approval of agreed orders in various proceedings involving advertising violations and the unauthorized sale of vehicles; and review the agency financial reports

Contact: Russell Harding, 815 Brazos, Suite 301, Austin, Texas 78701, (512) 476-3587.

Filed: November 26, 1985, 8:51 a.m.
TRD-8511072

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Texas Optometry Board

Wednesday-Thursday, December 4-5, 1985, 8 p.m. daily. The Texas Optometry Board will meet at the Wyndham Hotel, IH 35 South and Ben White Boulevard, Austin. According to the agenda summary, the board will consider reports of the Secretary-Treasurer, legal counsel, executive director, and committee chairman; discuss old business to cover national board exams and advertising, with rules being proposed for adoption in regard thereto; and new business to consider correspondence from licensees, duplicate license requests, and general office matters. The board will meet in executive session in compliance with §2(e), Article 6252-17, Open Meetings Act. The Investigation-Enforcement Committee of the

Texas Optometry Board will hold informal conferences with licensees of the board, at the same location, on the same date, at 1 p.m. The Rules Committee will meet at the same location, December 4, 1985, 8 p.m.

Contact: Lois Ewald, 1300 East Anderson Lane, Suite C-240, Austin, Texas 78752, (512) 835-1938

Filed: November 26, 1985, 8:12 a.m.
TRD-8511067

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Board of Pardons and Paroles

Monday-Friday, December 2-6, 1985, 1:30 p.m. daily, and 11 a.m. on Friday. The Board Panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction, and initiate and carry through with appropriate action

Contact: Mike Roach, 8610 Shoal Creek, Austin, Texas 78758, (512) 459-2713.

Filed: November 22, 1985, 10:49 a.m.
TRD-8510940

Tuesday, December 3, 1985, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will consider and act on the minutes of the November 4, 1985 meeting; travel; the report on disruptive groups; the parole evaluation and diversion program; review of deferred parole and mandatory supervision policy; pre-parole transfer; the Wayback HH contract; Open, Inc. program; issuance and withdrawal of warrants; 1986 parole and administrative panels; summons; notices to trail officials; contract/Main-Hurdman; "Burn Out" workshop contract; the state employees training act, executive director report; and personnel matters.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: November 25, 1985, 10:20 a.m.
TRD-8511025

Tuesday, December 3, 1985, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek, Austin. According to the agenda, the board will meet to consider executive clemency recommendations and related actions (other than out of country conditional pardons), including full pardons/restoration of civil rights of citizenship;

emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: November 22, 1985, 10:49 a.m.
TRD-8510941

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Texas Parks and Wildlife Department

Tuesday, December 3, 1985, 4 p.m. The Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda, the commission will consider the park development bond program and waterfowl artwork.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: November 25, 1985, 4:27 p.m.
TRD-8511037

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Public Utility Commission of Texas

Wednesday, November 27, 1985, 9 a.m. The Hearings Division of the Public Utility Commission of Texas made an emergency addition to the agenda for a meeting held in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The addition concerned Docket 6200—petition of Southwestern Bell Telephone Company for authority to change rates, and an appeal of interim Order 84 was scheduled. The emergency status was necessary because the appeals related to a rate case with statutory deadlines.

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

Filed: November 21, 1985, 1:50 p.m.
TRD-8510910

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.

Monday, December 2, 1985, 10 a.m. The division will set interest rates on customer deposits as required by Texas Civil Statutes, Article 1440a.

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

Filed: November 21, 1985, 1:50 p.m.
TRD-8510911

Wednesday, December 4, 1985, 9 a.m. A prehearing conference in Docket 6605—application of Resort Water Services, Inc., for authority to change rates for water and sewer service within Smith, Henderson, Hood, and Marion Counties.

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

Filed: November 25, 1985, 2:48 p.m.
TRD-8511056

Thursday, December 5, 1985, 1:30 p.m. A prehearing conference in Docket 5438—petition of Hudson Water Supply Corporation for authority to serve R. C. Trimble.

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

Filed: November 21, 1985, 1:49 p.m.
TRD-8510908

Friday, December 6, 1985, 10 a.m. A prehearing conference in Docket 5124—application of Military Highway Water Supply Corporation to amend a certificate of convenience and necessity within Cameron County

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

Filed: November 22, 1985, 3 p.m.
TRD-8510957

Friday, December 6, 1985, noon. A prehearing conference in Docket 6259—Request of Community Water and Sewer Corporation to terminate service to Green Valley addition in Johnson County.

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

Filed: November 25, 1985, 2:48 p.m.
TRD-8511058

Monday, December 9, 1985, 9 a.m. A prehearing conference in Docket 6532—application of Dog Ridge Water Supply Corporation to amend a certificate of convenience and necessity within Bell County.

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

Filed: November 22, 1985, 3 p.m.
TRD-8510958

Tuesday, December 10, 1985, 10 a.m. A prehearing conference in Docket 6018—application of North County Water Corporation to sell to Hunt Water Corporation in McLennan County.

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

Filed: November 21, 1985, 1:49 p.m.
TRD-8510909

Monday, January 6, 1986, 1:30 p.m. A rescheduled hearing on the merits in Docket 6540—application of Concho Valley Electric Cooperative, Inc., for a rate increase.

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

Filed: November 25, 1985, 2:49 p.m.
TRD-8511055

Tuesday, January 21, 1986, 10 a.m. A hearing on the merits in Docket 6382—application of Tri-County Utilities for a rate increase

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

Filed: November 25, 1985, 2:48 p.m.
TRD-8511057

Wednesday, February 5, 1986, 10 a.m. A hearing on the merits in Docket 6546—application of Water Services, Inc., and Water Services Two, Inc., for a rate/tariff change.

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

Filed: November 25, 1985, 2:49 p.m.
TRD-8511054

Monday, February 10, 1986, 10 a.m. A hearing on the merits in Dockets 6314, 6492, and 6511—application of City of La Grange to amend water and sewer certificates in Fayette and Henderson Counties; and application of Fayette Water Supply Corporation to amend water certificate in Fayette County.

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

Filed: November 22, 1985, 3:01 p.m.
TRD-8510855

Tuesday, February 25, 1986, 10 a.m. A hearing on the merits in Dockets 6160, 6536, and 6537—application of Windermere Utility Company to amend its certificate of convenience and necessity to provide water utility service within Travis County

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

Filed: November 22, 1985, 3 p.m.
TRD-8510956

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Railroad Commission of Texas

Monday, November 25, 1985, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held on the 12th floor, 1701 North Congress, Austin. According to the agenda summary, the revision

concerned a discussion of the Voluntary Allocation Committee for natural gas supplies in Texas, and the appointment by the commission of members to that committee. The emergency status was necessary to effectuate the prompt formation of the gas supply Voluntary Allocation Committee which will benefit the public welfare.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: November 22, 1985, 8:59 a.m.
TRD-8510926

Monday, November 25, 1985, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made emergency additions to the agenda of a meeting held in the first floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. Additions follow.

Consideration of Docket 5-85,062—application of Ricks Exploration Company to determine proper field designation for its Three J Ranch lease, Well 272A, (proposed) Ginger S.W. (Smackover) Field, Kains County. The emergency status was necessary because this item was properly noticed for the meeting of November 18, 1985, and was passed.

Contact: Greg Waner, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6925

Filed: November 25, 1985, 9 a.m.
TRD-8510928

Consideration of a motion for rehearing in Docket 5-81,445—application of Prairie Producing Company for temporary field rules, Ginger, S.E. (Smackover) field, Raines County. The emergency status was necessary because this item was properly noticed for the meeting of November 18, 1985, and was passed.

Contact: Greg Waner, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6925.

Filed: November 22, 1985, 8:59 a.m.
TRD-8510927

Monday, December 16, 1985, 1:30 p.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the 12th floor conference room, William B. Travis Building, 1701 North Congress, Austin. According to the agenda summary, the division will conduct a statewide oil and gas hearing.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: November 22, 1985, 8:59 a.m.
TRD-8510925

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Texas County and District Retirement System

Friday, December 6, 1985, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet in the

Stephen F. Austin Hotel, 701 Congress, Austin. According to the agenda summary, the board will consider the minutes of the September 20, 1985 regular board meeting; pass on applications for service retirement benefits and disability retirement benefits; review and act on reports from actuary, legal counsel, investment counsel and director; consider proposed budget for the year 1986; conduct the election of officers for the year 1986; and set date of the March board meeting.

Contact: J. Robert Brown, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: November 22, 1985, 8:43 a.m.
TRD-8510924

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Texas Savings and Loan Department

Tuesday, December 3, 1985, 2 p.m. The Savings and Loan Section of the Texas Savings and Loan Department will meet in the Regency Ballroom, Hyatt Regency Hotel, 123 Losoya, San Antonio. According to the agenda summary, the department will consider final adoption of the proposed repeal of Chapter 65 of regulations in regard to loans and investments, and consider final adoption of proposed new Chapter 65 of regulations in regard to loans and investments. The section also will meet in executive session in regard to personnel and supervisory matters.

Contact: Russell R. Oliver, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Filed: November 22, 1985, 1:34 p.m.
TRD-8510943

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School Land Board

Monday, December 2, 1985, 10 a.m. The School Land Board will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider approval of the minutes of the previous board meeting; pooling applications; pooling agreement amendments; the acquisition of acreage for highway right-of-way by the State Department of Highways and Public Transportation; good faith claimant application; applications to lease highway lands for oil and gas; reconsideration of highway leasing rules; the discussion of OCS revenue; the consideration of proposed settlement, Jackson Seafood vs. Aransas County Navigation District; the final approval of land trade; consideration of the proposed sale and trade rules; coastal public lands commercial lease applications. The board also

will meet in executive session for preliminary approval of land trade acquisition.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 837, Austin, Texas 78701, (512) 475-0219.

Filed: November 22, 1985, 4:30 p.m.
TRD-8510975

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Board of Tax Professional Examiners

Tuesday, December 10, 1985, 1:30 p.m. The Board of Tax Professional Examiners will meet in the conference room, 9501 IH 35 North, Austin. Items on the agenda summary include swearing-in of a new member, Michael C. Frazier, Sr.; approval of the minutes of the August 28, 1985, meeting; action items including certification and recertification of registrants; consideration of Texas School Assessors Association course for elective credit, request for opinion on professional ethics and a policy memorandum on registrant disabilities; discussion items including subjects reported by the Requirements Committee regarding requiring law course and income demo appraisal; early administration of level IV exams; developing work-related elective and continuing education courses and requiring 45 continuing education units and one examined course for recertification; accepting preregistration courses as electives and registering persons who are not required to register; and information items including SPTB course exams program, exam survey, travel costs, renewals, registrant status, exam program, enforcement, cancellation and projected activities. The board also will meet in executive session to review four new exams.

Contact: Sam H. Smith, P. O. Box 15920, Austin, Texas 78761-5920, (512) 834-4982.

Filed: November 25, 1985, 1:32 p.m.
TRD 8511033

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Teacher Retirement System of Texas

Friday, December 6, 1985, 9 a.m. The Investment Advisory Committee of the Teacher Retirement System of Texas will meet at the Sheraton Dallas Hotel, 400 North Olive Street, Dallas. According to the agenda, the committee will consider approval of the minutes; update of investments for the preceding quarter and a report on forward commitments; changes to approved common stock list; the letter of understanding for real estate advisors; changes to investment policy; the economic outlook and

market conditions; and the allocation of cash flow for current quarter.

Contact: Clark Manning, 1001 Trinity, Austin, Texas 75201, (512) 397-6400.

Filed: November 26, 1985, 9:49 a.m.
TRD-8511074

Friday, December 6, 1985, 1 p.m. The Board of Trustees of the Teacher Retirement System of Texas will meet at the Sheraton Dallas Hotel, 400 North Olive Street, Dallas. According to the agenda, the board will discuss benefit design issues for retiree health insurance and consider the proposed new actuarial valuation method.

Contact: Mary Godzik, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: November 26, 1985, 9:49 a.m.
TRD-8511073

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Board of Veterinary Medical Examiners

Sunday-Wednesday, November 8-11, 1985, 1:30 p.m. daily. The Board of Veterinary Medical Examiners will meet at the Worthington Hotel, 200 Main Street, Fort Worth. According to the agenda, the board will discuss practice complaints, and conduct general board business and formal licensure hearings. The board also will meet in executive session to discuss personnel.

Contact: Roger D. Shipman, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

Filed: November 25, 1985, 9:34 a.m.
TRD-8511077

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Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Days, times, and agendas follow.

Tuesday, December 3, 1985, 10 a.m. The commission will consider water district bond issues, release from escrow, use of surplus funds, change in plans, proposed water quality permits, amendments and renewals, water use applications and amendments, certificate of adjudication matters, request for extension of time applications, and the filing and setting of hearing dates.

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

Filed: November 22, 1985, 3:42 p.m.
TRD-8510970

Wednesday, December 11, 1985, 2 p.m. According to the agenda, the commission will consider application of Robery Kay for pro-

posed water quality Permit 13151-01 to discharge treated domestic wastewater at a volume not to exceed a 30 day average flow of 21,000 gallons per day from the proposed Kickapoo Landing Wastewater Treatment Plant, Polk County, Trinity River Basin.

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

Filed: November 22, 1985, 3:44 p.m.
TRD 8510968

Tuesday, January 7, 1986, 10 a.m. According to the agenda, the commission will consider an application by Fort Bend County Levee Improvement District 12 for approval of preliminary plans for construction of a levee or other improvement, Fort Bend County, Buffalo Bayou.

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

Filed: November 22, 1985, 3:44 p.m.
TRD-8510969

Wednesday, January 8, 1986, 10 a.m. According to the agenda, the commission will consider a petition for creation of Fort Bend County Municipal Utility District 94, containing 284,782 acres of land.

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

Filed: November 21, 1985, 2:01 p.m.
TRD-8510912

Wednesday, January 8, 1986, 10 a.m. According to the agenda, the commission will consider a petition for creation of Harris County Municipal Utility District 285, containing 367,295 acres of land.

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

Filed: November 22, 1985, 1:55 p.m.
TRD-8510947

Wednesday, January 8, 1986, 2 p.m. According to the agenda, the commission will consider a petition for creation of South Mission Glen Utility District, containing 198,924 acres of land.

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

Filed: November 21, 1985, 2:02 p.m.
TRD 8510913

Thursday, January 9, 1986, 9 a.m. The Texas Water Commission will meet in Room 1156, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider application by Glen C. Anderson, 1004 Mopac Circle, Suite 100, Austin, Texas 78746, to the Texas Water Commission for Permit 13188-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 90,000 gallons per day from the proposed Rodriguez Road Wastewater Treatment Plant which is to serve a proposed housing development. The proposed draft

permit has been prepared with parameters recommended by the Governor's Task Force on the Colorado River.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 22, 1985, 1:56 p.m.
TRD-8510946

Thursday, January 9, 1986, 9:30 a.m. The Texas Water Commission will meet in the Houston-Galveston Area Council board room, Keplinger Building, 3555 Timmons, Suite 500, Houston. According to the agenda summary, the commission will consider Houshang Solhjou doing business as Melrose Mobile Home Park, The Solhjou Company, 911 Doral, Houston, Texas 77073 to the Texas Water Commission for an amendment to Permit 12261-01 to authorize an increase in the discharge of treated domestic wastewater effluent from a volume not to exceed an average flow of 20,000 gallons per day to 60,000 gallons per day at the Melrose Mobile Home Park Wastewater Treatment Plant. The applicant proposes to expand existing treatment facilities in two phases in order to handle the increased flow. The proposed amendment would also add requirements for monitoring nitrogen levels.

Contact: Steven Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875

Filed: November 25, 1985, 2:47 p.m.
TRD-8511059

Thursday, January 9, 1986, 9:30 a.m. The Texas Water Commission will meet in the Houston-Galveston Area Council board room, Keplinger Building, 3555 Timmons, Houston. According to the agenda summary, the commission will consider an application by the Southern Sanitary Corporation, 5710 Airline Drive, Houston, Texas 77067, to the Texas Water Commission for an amendment to Permit 10610-01 to authorize expansion of existing facilities from a capacity of not to exceed an average flow of 350,000 gallons per day to 475,000 gallons per day. The applicant proposes to construct a new facility to meet effluent standards. The proposed amendment also adds provisions for monitoring nitrogen levels upon completion of expansion and provisions for design of these facilities to meet requirements of future studies of the Houston Ship Channel.

Contact: Steven Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875

Filed: November 25, 1985, 2:47 p.m.
TRD-8511060

Thursday, January 9, 1986, 10:00 a.m. The Texas Water Commission will meet in Room 203, Orange County Commissioner's Courthouse, 801 Division, Orange. According to the agenda summary, the commission will consider application of Donald A. Page, 765 Lian Street, Vidor, Texas 77662 to the Texas Water Commission for renewal of Permit 10924-01 which authorizes a dis-

charge of treated domestic wastewater effluent at a volume not to exceed an average flow of 32,000 gallons per day from the Wexford Park Addition Wastewater Treatment Plant which is located east of Tiger Creek approximately 4,500 feet east and 7,200 feet north of the intersection FM Road 105 and IH 10 in Orange County. The effluent is discharged into Tiger Creek; thence to the Neches River in Segment 0601 of the Neches River Basin.

Contact: Kevin McCalla, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 25, 1985, 2:46 p.m.
TRD-8511061

Monday, January 13, 1986, 9 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application by Texas Commercial Investments, Inc., P.O. Box 1389, Austin, Texas 78767 to the Texas Water Commission for a Permit 13130-01 to authorize the disposal of treated domestic sewage by irrigation at a volume not to exceed an average flow of 220,000 gallons per day from a residential development. The wastewater treatment and disposal facilities are to consist of an activated sludge-extended aeration treatment plant, a 52.5 acre-foot holding pond, and 100 acres of land available for irrigation. No discharge of pollutants into the waters of the state is authorized by this permit.

Contact: Martin Wilson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 22, 1985, 1:58 p.m.
TRD-8510944

Wednesday, January 15, 1986, 9 a.m. The Texas Water Commission will meet in Room 215, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application by Ray Moore, 2407 South Highway 183, Leander, Texas 78641 to the Texas Water Commission for a Permit 13197-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 9,000 gallons per day from the proposed South San Gabriel Ranches Wastewater Treatment Plant which is to serve a proposed mobile home park.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875

Filed: November 22, 1985, 1:57 p.m.
TRD-8510945

Tuesday, January 21, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Agendas follow.

According to the agenda summary, the commission will consider Application 5012

of Joe D. Hawes for a \$11,121 permit to divert and use 140 acre-feet of water directly from Elm Bayou, San Antonio River Basin to the Guadalupe River Basin, Victoria County, for irrigation purposes.

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

Filed: November 25, 1985, 2:50 p.m.
TRD-8511053

According to the agenda, the commission will consider a Certificate of Adjudication 12-2213A of Wilburn I. Gaines and Murl Dean Gaines for an amendment to Certificate of Adjudication 12 2213 to delete the expiration date of December 31, 1985.

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

Filed: November 25, 1985, 2:50 p.m.
TRD-8511050

According to the agenda, the commission will consider an Application 5010 of K. Stan Wetsel for a permit to divert 70 acre-feet of water per annum from White Rock Creek, tributary of the Trinity River, Trinity River Basin into a 3.2 acre-foot off-channel reservoir on the applicant's property for irrigation purposes in Dallas County.

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

Filed: November 25, 1985, 2:51 p.m.
TRD-8511049

According to the agenda, the commission will consider application 5013 of Miller-Cohlma Trustees for a permit to construct a dam and reservoir on an unnamed tributary of La Nana Bayou, tributary of La Nana Bayou, tributary of Angelina River, tributary of Neches River, Neches River Basin and impound water not to exceed 79.2 acre-feet of water for recreational purposes in Nacogdoches County.

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

Filed: November 25, 1985, 2:51 p.m.
TRD-8511048

According to the agenda, the commission will consider Application 3334A of City of Teague for a permit to amend Permit 3235 to authorize the diversion of an additional 300 acre-feet of water per annum viz. from 5 to 305 acre-feet from Lower Club Lake and to transfer the water right to themselves from the permittee (Teague Hunting and Fishing Club), Brazos River Basin, Freestone County.

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

Filed: November 25, 1985, 2:52 p.m.
TRD-8511047

According to the agenda, the commission will consider Application 4080A of Beno Corporation for an amendment to Permit 3787 to increase the authorized 70 acres to

be irrigated per year to 175 acres and to increase the authorized 125 acre-feet to 425 acre-feet of water per annum to be diverted from the San Marcos River, Caldwell County.

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

Filed: November 25, 1985, 2:52 p.m.
TRD-8511046

According to the agenda, the commission will consider the Certificate of Adjudication 12-2218A of Samuel M. Frazier, Madeline Frazier, and S Mike Frazier seeking to amend Certificate of Adjudication 12-2218 to delete the expiration date of December 31, 1985.

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

Filed: November 25, 1985, 2:53 p.m.
TRD-8511045

According to the agenda, the commission will consider the Certificate of Adjudication 12-2217A of Oscar H. Frazier, Jr. and Marilyn Braun Casev for an amendment to Certificate of Adjudication 12-2217 to delete the expiration date of December 31, 1985.

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

Filed: November 25, 1985, 2:53 p.m.
TRD-8511044

According to the agenda, the commission will consider Application 5009 of Carson Gilmer, individually and as independent administrator of the estate of C. H. Gilmer, deceased, *et al* for a permit to divert and use not to exceed 60 acre-feet of water per annum from the West Frio River tributary of the Frio River, tributary of Nueces River, Nueces River Basin for irrigation purposes in Real County

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

Filed: November 25, 1985, 2:53 p.m.
TRD-8511043

According to the agenda, the commission will consider Application 5011 of Milton E. Wentz, Jr., individually and as trustee for James Michael Kincannon, *et al* for a permit to maintain two existing hydraulically-connected reservoirs on Resaca Del Rancho Viejo, tributary of San Martin Lake, tributary of Brownsville Ship Channel, tributary of Laguna Madre, Nueces-Rio Grande Costal Basin and to divert and use 1100 acre-feet of water per annum from the reservoir and/or directly from Resaca Del Rancho Viejo for irrigation purposes in Cameron County

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

Filed: November 25, 1985, 2:54 p.m.
TRD-8511042

According to the agenda, the commission will consider the Certificate of Adjudication 12-3662A of Walter J. Gore and Jimmy E. Gore for an amendment to Certificate of Adjudication 12-3662 to delete the expiration date

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

Filed: November 25, 1985, 2:55 p.m.
TRD-8511040

According to the agenda, the commission will consider the Certificate of Adjudication 12-2224A of Valerie Jane Hickie for an amendment to Certificate of Adjudication 12-2224 to delete the expiration date.

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

Filed: November 25, 1985, 2:54 p.m.
TRD-8511041

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Texas Water Development Board

Thursday, November 21, 1985, 3 p.m. The

Texas Water Development Board met in emergency session in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider a resolution supporting the nomination of Herbert Grubb, director of Water Data Collection, and Planning Division, for the 1986 National Public Service Award. The emergency status was necessary to allow timely submission of nomination.

Contact: Charles E. Nemir, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 21, 1985, 10:20 a.m.
TRD-8510902

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Regional Agencies

Meetings Filed November 21

The Bexar Appraisal District, Appraisal Review Board, met at 535 South Main, San Antonio, on November 22, 1985, at 9 a.m. The board also will meet at the same location on December 2-5, 9-13, and 16-19, 1985, at 8:30 a.m. daily. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511

The Central Texas Council of Governments, Transportation Planning Committee, will meet at 302 East Central, Belton, on December 2, 1985, at 10 a.m. Information may be obtained from Gerald B. Bunker, P.O. Box 729, Belton, Texas, (817) 939-1801.

The Lee County Appraisal District, Board of Directors, met at 218 East Richmond Street, Giddings, on November 27, 1985, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Leon County Central Appraisal District, Board of Directors, met at the appraisal district office, Centerville, on November 25, 1985, at 7:30 p.m. Information may be obtained from Tom G. Holmes, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The Texas Municipal Power Agency, Board of Directors, met at the DFW Airport Hilton, 1800 Highway 26E, Grapevine, on November 26, 1985, at 10 a.m. Information may be obtained from Jim Bailey, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.
TRD-8510903

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Meetings Filed November 22

The Brown County Appraisal District, Board of Directors, will meet at 403 Fisk Avenue, Brownwood, on December 2, 1985, at 7 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Central Texas Council of Governments, Private Industry Council, will meet at 302 East Central, Belton, on December 5, 1985, at 10 a.m. Information may be obtained from Walton B Reedy, 302 East Central, Belton, Texas 76513, (817) 939-3771.

The Dallas Area Rapid Transit, Mobility Impaired Task Force, met at 601 Pacific Avenue, Dallas, on November 26, 1985, at 4:30 p.m. The Board of Directors will meet at the same location, on the same date, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas Texas 75202.

The Dawson Central Appraisal District, Board of Directors, will meet at 611 North Dallas Avenue, Lamesa, on December 4, 1985, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Golden Crescent Regional Planning Commission, Board of Directors, will meet at Farmer's State Bank, 307 North Esplanade, Cuero, on December 4, 1985, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77002, (512) 578-1587.

The South Plains Health Provider, Board of Directors, met at the Plainview Clinic Facility, 2801 West Eighth, Plainview, on December 25, 1985, at 8 p.m. Information may be obtained from Diana Hinojosa-Garcia, 2801 West Eighth, Plainview, Texas 79072.

The Tyler County Tax Appraisal District, Board of Directors, will meet at 103 Pecan, Woodville, on December 3, 1985, at 4 p.m. The Board of Review will meet at the same location, on the same date, at 3 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-2726.

TRD-8510942

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Meetings Filed November 25

The Bexar-Medina-Atascosa Counties Water Control and Improvement District 1, Board of Directors, will meet at the District Office, Highway 81, Natalia, on December 2, 1985, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132

The Bosque County Appraisal District, Board of Directors, met in emergency session at the Courthouse, Meridian, on November 26, 1985, at 7 p.m. Information may be obtained from David G. Cooper, P.O. Box 393, Meridian, Texas 76665, (817) 435-2492

The Cass County Appraisal District, Appraisal Review Board, will meet at 208 West Houston Street, Linden, on December 3, 1985, at 9 a.m. Information may be obtained from Janelle Clements, P.O. Box 167, Linden, Texas 75563, (214) 756-7545.

The Education Service Center, Region XIII, Board of Directors, will meet in Room 200, 7703 North Lamar, Austin, on December 2, 1985, at 12:30 p.m. Information may be obtained from Joe Parks, 7703 North Lamar, Austin, Texas 78752, (512) 458-9131.

The Gulf Bend Mental Health and Mental Retardation Center, Board of Trustees, met in emergency session at 1404 Village Drive, Victoria, on November 27, 1985, at noon. Information may be obtained from T. G. Kelliher, 1404 Village Drive, Victoria, Texas 77901.

The Houston-Galveston Area Council, Home Rule Cities Caucus, met in emergency session at the Hyatt Regency Hotel, 1200 Louisiana, Houston, on November 26, 1985, at 6:30 p.m. Information may be obtained from Jack Steele.

The Nueces River Authority, Board of Directors, will meet at the Four Seasons Hotel, 555 South Alamo, San Antonio, on December 5, 1985, at 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78801, (512) 278-6810.

The Palo Pinto Appraisal District, Board of Directors, will meet at the Courthouse, Palo Pinto, on December 4, 1985, at 3 p.m. The Appraisal Review Board will meet at the same location, on December 5, 1985, at 1:30 p.m. Information may be obtained from Edna Beaty, Courthouse, Palo Pinto, Texas, (817) 659-3651, ext. 208.

TRD-8511012

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Meetings Filed November 26

The Bell County Appraisal District, will meet in the Commissioners' Courtroom, second floor, Courthouse, Belton, on December 18, 1985, at 7 p.m. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 410.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on December 3, 1985, at 10 a.m. Information may be obtained from James Bachus, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Hamilton County Appraisal District, will meet at the Appraisal Office, on December 5, 1985, at 7 p.m. Information may be obtained from Doyle Roberts, P.O. Box 446, Hamilton, Texas 76531, (817) 386-8945.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on December 2, 1985, at 7 p.m. Information may be obtained from B. H. Penny, 318 Phelps Avenue, Littlefield, Texas 79339, (806) 385-6474.

The Regional Planning Commission's Employee Benefit Plan Agency, Board of Trustees, will meet in the Big Thicket Room, Hyatt Regency Hotel, Austin, on December 5, 1985, at 8 a.m. Information may be obtained from Pam K. Weatherby, (915) 563-1061.

TRD-8511071

In Addition

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

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

Texas Adult Probation Commission Consultant Proposal Request

In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Adult Probation Commission is requesting proposals for services of consultants.

Proposal Specification. Persons with experience in development of alcohol-related curriculum materials, training delivery, and evaluation are sought to write and test the content of an advanced training program for DWI offenders in the state of Texas. Program activities include: research of published materials, writing the curriculum of a training course outline and support materials, submission of materials to an advisory committee and Texas Adult Probation Commission (TAPC) staff for review, determination of skills necessary for instructors to administer the advanced DWI curriculum, development of a plan to establish a cadre of instructor-trainers for the curriculum, implementation of a pilot study at two training sessions involving at least 30 repeat DWI offenders, and the ability to work effectively with an advisory committee. The position requires producing work products on schedule, travel to TAPC offices for consultation with staff of TAPC, and travel to training locations.

Contact. Resumes addressing the experience required and providing information demonstrating ability to perform project activities are to be submitted to Mr. Ed Peterson, Director of Fiscal Services, TAPC, 8100 Cameron Road, Building B, Suite 600, Austin, Texas 78753.

Deadline for Resumes. Resumes must be received at the specified address no later than 5 p.m. on December 6, 1985.

Evaluation Criteria. Resumes will be judged on the basis of the information contained therein which demonstrate experience in the development of alcohol-related training materials, strong written and demonstrated training skills, ability to work independently, willingness to travel to consult with TAPC project coordinator, willingness to travel to training sites, and ability to manage. Finalists will be contacted by telephone if additional information is needed to make the final evaluation and to schedule interviews if necessary.

Contract Award. Three consultant positions are available for the project—two consultant trainer/curriculum developer positions not to exceed \$9,025 each, and one curriculum developer position not to exceed \$2,940. The contracts will be awarded to the individuals who best meet the qualifications. Time frames for accomplishing the objects of the project will be negotiated; the contract period ends September 30, 1986. Travel and per diem expenses are included in the consultant award.

Notice of Contract Award. The notice of contract award will be sent to the consultant selected and will be

by letter, which will be issued no later than December 17, 1985.

Issued in Austin, Texas, on November 21, 1985.

TRD 8510917 Virginia Grote
Administrative Secretary
Texas Adult Probation Commission

Filed: November 21, 1985

For further information, please call (512) 834-8188.

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Ark-Tex Council of Governments Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Ark-Tex Council of Governments (ATCOG) is in the process of selecting a certified public accountant firm to perform fiscal year audits of federal, state, and local grants and contracts administered by the ATCOG for the period of October 1, 1983 - September 30, 1984, and October 1, 1984 - September 30, 1985.

The certified public accountant firm selected will be expected to meet the requirements set forth in Office of Management and Budget (OMB), Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, Attachment P, audit requirements as published in the October 22, 1979, issue of the *Federal Register*, Volume 44, #205.

Those firms interested in receiving a request for proposal package should contact Margaret Haak-Muse, Director of Finance and Administration, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636. The deadline for requesting the package is December 20, 1985.

The contract will be awarded on the applicant's abilities, experience, and qualifications. Selection will be made by the ATCOG executive committee.

Issued in Wake Village, Texas, on November 6, 1985.

TRD-8510892 James D. Goerke
Executive Director
Ark-Tex Council of Governments

Filed November 21, 1985

For further information, please call (214) 832-8636, ext. 220.

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Texas Department of Community Affairs

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Community Affairs (TDCA) is soliciting proposals for Job Training Partnership Act (JTPA) Title II funds to conduct research for the Texas School Dropout Survey. The primary goal of the Texas School Dropout Survey is to establish a comprehensive information base for analyzing the school dropout problem in Texas and the relationship of JTPA services to the dropout population.

Bidders may elect to propose funding to research any or all of the research tasks in the design of this project. The research tasks, outlined with suggested approaches in the proposal package, include the following:

- (1) to measure the extent of school dropouts in Texas;
- (2) to document the principal causes for school dropout; to specify predictive factors for identifying potential dropouts in Texas;
- (3) to gather information and analyze the impact dropouts have on the criminal justice and human services systems in Texas; and
- (4) to identify and evaluate in-school and alternative training programs for dropouts in Texas.

Bidders must be one of the following: unity or consortium of state county, or local government, including regional councils of governments, other public or private non-profit entities; or private-for-profit entities.

Proposals will be reviewed and evaluated on criteria such as the following:

- (1) appropriateness of proposed methodology(ies);
- (2) cost effectiveness; and
- (3) bidder qualifications.

The primary focus of this project is to conduct research according to goals and objectives established by the TDCA administrative work group for the Texas School Dropout Survey. The results of the research will be presented during a public hearing/dropout conference scheduled for the fall of 1986.

The period of performance for the Texas School Dropout Survey is approximately 12 months, beginning on or about January 31, 1986. Reports on research findings will be due approximately six months into the project. Final presentation of reports will be made at the fall conference.

To be considered for funding through this consultant proposal request, all proposals must be complete and received by January 15, 1986, at 4 p.m. Any modifications to the original proposal must be received prior to the closing date. Proposals and modifications will not be accepted after the 4 p.m. deadline.

A bidders conference will be held at Austin, on December 13, 1985, at 2 p.m. at 8317 Cross Park Drive, Room 2-04. Interested bidders are urged to attend.

The TDCA retains the right to accept or reject any or all proposals. The TDCA is under no legal requirement to execute a resulting contract, on the basis of its making this consultant proposal request and intends the material provided herein only as a means of identifying and considering various contractor alternatives and the general cost of services desired.

This consultant proposal request does not commit TDCA to pay for any cost incurred prior to execution of a con-

tract or prior to fund availability from the U.S. Department of Labor for this procurement. The TDCA specifically reserves the right to vary the provisions set forth herein at any time prior to execution of a contract where TDCA deems such variance to be in the best interest of the State of Texas, and to act otherwise as it deems in its sole discretion.

Interested bidders may obtain a proposal package from the Texas Department of Community Affairs, Training and Employment Development Division, at the following address: 8317 Cross Park Drive, P.O. Box 13166, Austin, Texas 78711, (Enrique Barrera, Room 2-22).

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

TRD-8511007 Douglas C. Brown
General Counsel
Texas Department of Community Affairs

Filed November 25, 1985.

For further information, please call (512) 843-8060.



Comptroller of Public Accounts Gasoline and Alcohol Mixture Determination of Credits

Pursuant to the Tax Code, §153.123, the Comptroller of Public Accounts is required to publish the credit against the gasoline tax allowable for the first sale or use of gasoline and alcohol mixture blended from products produced in a state allowing a reciprocal credit for Texas-produced products.

The Comptroller of Public Accounts has determined that \$.05 per gallon credit for the first sale or use of gasoline and alcohol mixture blended with alcohol produced in Texas or from Texas products will be available for the months of January-March 1986.

The maximum credit allowed to be claimed for the first sale or use in January-March 1986, of a gasoline and alcohol mixture blended from alcohol produced outside Texas and not from Texas-produced products will be \$.015 per gallon if from one of the following states: Alaska, North Dakota, Kansas, Nebraska, North Carolina, Illinois, Florida, South Dakota, Alabama, Iowa, and Washington.

Based upon the credit allowed by the following states, the maximum allowed by Texas will be: Nevada-.01 per gallon.

No credit will be allowed for mixtures containing alcohol produced outside the United States, or those states which do not allow credit or exemptions for Texas-produced alcohol.

Inquiries should be directed to the Tax Administration Division, Tax Policy Section, Comptroller of Public Accounts, Austin, Texas 78774, or (512) 463-4600, or toll free anywhere in Texas at 1-800-252-5555.

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

TRD-8510976 Bob Bullock
Comptroller of Public Accounts

Filed November 25, 1985.

For further information, please call (512) 463-4606.



**Office of Consumer Credit
Commissioner
Rate Ceilings**

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 12/02/85-12/08/85	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 12/01/85-12/31/85	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 01/01/86-03/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 01/01/86-03/31/86	14.58%	N/A
Standard Annual Rate— Article 1.04(a)(2) ⁽²⁾ 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 01/01/86-03/31/86	18.00%	N/A
Annual Rate Applica- ble to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/86-03/31/86	18.00%	N/A
Judgment Rate— Article 1.05, §2 12/01/85-12/31/85	10.00%	10.00%

- (1) For variable rate commercial transactions only
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose

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

TRD-8511008 Sam Kelley
Consumer Credit
Commissioner

Filed: November 25, 1985
For further information, please call (512) 479-1299.

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**Texas Economic Development
Commission
Private Activity Bond Allocation
Report**

Private activity bonds (PABs) which were induced on or after June 19, 1984, are subject to a cap, as stipulated in the Federal Deficit Reduction Act of 1984. This cap is equal to \$150 per capita or approximately \$2.3 billion for the State of Texas for calendar year 1985.

House Bill 690 states that the procedure for allocating this cap will be on a first-come, first-served basis, with the Texas Economic Development Commission (TEDC) being the tracking agency for the program. The information that follows is a summary report of the allocation activity for the week of November 11-15, 1985.

Total unallocated principal amount of private activity bonds authorized to be allocated as per the Federal Deficit Reduction Act of 1984 through August 23, 1985:

\$1,353,939,132.12

Comprehensive listing of bond issues which have received a reservation date as per House Bill 690 during the week of November 11-15, 1985:

Issuer	User	Amount
Bexar County Health Facilities Development Corporation	East San Antonio Medical Center, Inc.	\$1 450 million
Nacogdoches Industrial Development Authority, Inc	Jones Square Project	\$370,000
Nacogdoches Industrial Development Authority, Inc	Boyett's Inc.	\$125,000
Nacogdoches Industrial Development Authority, Inc	Colony Mall, Limited	\$100,000
Nacogdoches Industrial Development Authority, Inc	John S Wyatt, Inc	\$100,000
Nacogdoches Industrial Development Authority, Inc	ARC Investments, Inc	\$250,000
Trinity River Industrial Development Authority	General Motors Corporation	\$9.2 million
Port Arthur Health Facilities Development Corporation	Port Arthur Day Surgery Center, Ltd.	\$1 2 million
City of Desoto Industrial Development Authority	National Service Properties	\$7.15 million
Waco Health Facilities Development Corporation	GHG Leasing	\$850,000
Waco Health Facilities Development Corporation	Webster S. Lowder, MD	\$400,000
Trinity River Authority of Texas	Texas Industries, Inc.	\$7.455 million
Waco Health Facilities Development Corporation	L. Marc Barret, and Mark W. Story	\$470,000

City of Dallas Industrial Development Corporation	Cintas Corporation No. 81	\$2.535 million
Cochran County Industrial Development Corporation	Amoco Production Co.	\$1.585 million
Hockley County Industrial Development Corporation	Amoco Production Co.	\$56.8 million
Yoakum County Industrial Development Corporation	Amoco Production Co.	\$5.645 million
Trinity River Industrial Development Corporation	Flowers Baking Co.	\$8.4 million
Trinity River Industrial Development Corporation	General Motors Corporation	\$9.2 million
Port Arthur Health Facilities Developments	Port Arthur Day Surgery Center, Ltd.	\$1.2 million

Issued in Austin, Texas, on November 22, 1985.

TRD-8510923 David V. Brandon
Executive Director
Texas Economic Development Commission

Filed: November 22, 1985
For further information, please call (512) 472-5059.

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Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the following table. The sub-heading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Carrollton	North American Phillips Lighting Corporation	05-3823	Carrollton	0	10/25/85
Throughout Texas	Railroad Builders, Inc.	05-3845	Pilot Point	0	11/14/85

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	Humana Hospital-Abilene	04-2434	Abilene	16	11/08/85
Aransas Pass	Coastal Bend Hospital Foundation	08-3446	Aransas Pass	1	11/08/85
Arlington	Arlington Community Hospital	05-2228	Arlington	13	11/08/85
Baytown	Exxon Chemical Company	11-3335	Baytown	5	11/18/85
Beaumont	Saint Elizabeth Hospital	10-269	Beaumont	33	11/14/85
Beaumont	Saint Elizabeth Hospital	10-1580	Beaumont	9	11/14/85
Clifton	Goodall-Witcher Hospital	06-3427	Clifton	1	11/12/85

Corpus Christi	Corpus Christi Osteopathic Hospital	08-1979	Corpus Christi	9	11/08/85
Dallas	Dallas Memorial Hospital	05-2408	Dallas	8	11/05/85
Dallas	Ctek	05-2190	Dallas	3	11/12/85
Dallas	The University of Texas Health Science Center at Dallas	05-384	Dallas	42	11/12/85
Dallas	The University of Texas Health Science Center at Dallas	05-384	Dallas	41	10/01/85
Dallas	North Dallas Diagnostic Center	05-3125	Dallas	14	11/08/85
Dallas	Alpha Nuclear Laboratories, Inc.	05 2814	Dallas	3	11/18/85
El Paso	Nuclear Pharmacy, Inc.	03-1999	El Paso	53	11/08/85
El Paso	Hotel Dieu Hospital & Medical Center	03-2185	El Paso	18	11/12/85
Fort Worth	City of Fort Worth Texas Christian University	05-1928	Fort Worth	7	11/06/85
Fort Worth	University	05 1096	Fort Worth	14	11/12/85
Fort Worth	Huguley Memorial Medical Center	05 2920	Fort Worth	4	11/12/85
George West	United States Steel Corporation	08-2449	George West	16	11/01/85
Grand Prairie	Siemens Medical Systems, Inc.	05-2601	Grand Prairie	5	11/12/85
Houston	Rosewood General Hospital	11-1239	Houston	28	10/28/85
Houston	Texas Tower Partnership	11-3747	Houston	3	11/05/85
Houston	Lone Star Industries, Inc.	11-414	Houston	11	11/12/85
Houston	City of Houston Health Department	11-149	Houston	28	10/25/85
Houston	General Welding Works, Inc.	11-2895	Houston	12	11/06/85
Houston	The Methodist Hospital	11-457	Houston	47	11/08/85
Houston	Spring Branch Memorial Hospital	11-2473	Houston	19	11/07/85
Houston	Hermann Hospital	11-650	Houston	27	11/08/85
Houston	SDS Biotech Corporation	11-3521	Houston	3	11/14/85
Houston	Commercial Metals Company	11-3101	Houston	3	11/14/85
Houston	Tennessee Gas Pipeline Company	11-180	Houston	13	11/14/85
Lubbock	Glen H. Stanbough, Jr., M.D.	02-3748	Lubbock	2	11/05/85
Lubbock	Methodist Hospital	02-483	Lubbock	50	11/15/85
Odessa	Medical Center Hospital	12-1223	Odessa	32	11/08/85
Odessa	Shell Oil Company	12-1882	Odessa	4	11/14/85
Port Arthur	Park Place Hospital	10-1707	Port Arthur	13	11/08/85
San Antonio	Southwest Immunodiagnosics, Inc.	09-3796	San Antonio	2	11/08/85
San Patricio Co.	Reynolds Metals Company	08-200	Corpus Christi	28	11/06/85
Sugar Land	Nalco Chemical Company	11-1023	Sugar Land	9	11/14/85
Throughout Texas	NL/MWD	11-2603	Houston	14	11/12/85
Throughout Texas	BJ Titan Services Company	11-2684	Houston	11	11/12/85
Throughout Texas	Exxon Chemicals Americas	11-1135	Baytown	38	11/06/85
Throughout Texas	O'Malley and Clay, Inc.	06-2310	Brenham	3	11/06/85
Throughout Texas	Davis Great Guns Logging, Inc.	12-2708	Midland	6	11/06/85
Throughout Texas	Baytown Industrial X-Ray, Inc.	11-2143	Baytown	19	11/06/85
Throughout Texas	OMSCO Industries, Inc.	11-2726	Houston	5	10/24/85
Throughout Texas	Metils, Inc.	11-928	Houston	82	11/12/85
Throughout Texas	Pengo Wireline	05-3079	Fort Worth	24	11/14/85
Throughout Texas	Texas Department of Health	06-1155	Austin	25	11/14/85
Throughout Texas	Princeton Gamma Tech, Inc.	09-3444	San Antonio	1	11/14/85

Throughout Texas	HVJ Associates	11-3813	Houston	1	11/14/85
Throughout Texas	Amarillo Testing and Engineering, Inc.	01-2658	Amarillo	6	11/14/85
Throughout Texas	Welex	11-387	Houston	61	11/14/85
Throughout Texas	Longview Inspection, Inc.	07-3720	Longview	2	11/14/85
Webster	Humana Hospital Clear Lake	11-1680	Webster	19	11/06/85

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Denison	Texoma Medical Center	05-1624	Denison	20	11/06/85
Galveston	Todd Shipyards Corporation	01-871	Galveston	37	11/01/85
San Antonio	St. Mary's University	09-421	San Antonio	12	11/13/85

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Floydada	Caprock Hospital District	01-3255	Floydada	5	11/15/85
Ingleside	Copano Refining Company	08-2833	Ingleside	2	11/05/85
Kirbyville	Max Mixson Memorial Clinic Hospital	10-3511	Kirbyville	1	11/08/85
Lubbock	Evans Tank Company	02-683	Lubbock	20	11/12/85
Throughout Texas	Permian Industrial X-Ray	12-2835	Odessa	15	11/14/85

LICENSES REVOKED:

Location	Name	License #	City	Amendment #	Date of Action
	Dentalloy, Inc.	99-09879	Stanton, CA	0	11/14/85
	UCA Engineering Corporation	11-2947	Houston	0	11/18/85

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by

agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday through Friday (except holidays).

Issued in Austin, Texas, on November 25, 1985

TRD-8510990 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: November 25, 1985

For further information, please call (512) 835-7000.



Opportunity for Public Hearing

Starr County has filed Application 1762 with the Texas Department of Health to operate a proposed Type I municipal solid waste disposal facility to be located 4.3 miles north of the intersection of U.S. Highway 83 and State Highway 755 in Rio Grande City and 1,400 feet west of an unnamed county road, in Starr County.

The site consists of approximately 36.4284 acres of land, and is to receive daily approximately 20 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health.

The application is being processed, and the final decision will be made by the department pursuant to the provisions of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the Texas Department of Health municipal solid waste management regulations, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

No public hearing will be held on this application, unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, notice of such hearing will be provided to the requester and will also be published in a newspaper of general circulation in the area where the site is located at least 30 days prior to the date of such hearing. If no request for a hearing is received within 30 days of the date of publication of the said notice in a newspaper of general circulation, the department will make a decision. If a hearing is requested, it will be conducted, and the final decision will be rendered, in accordance with the applicable rules contained in the department's municipal solid waste management regulations, including all changes in effect as of August 20, 1985.

Requests for a public hearing and/or requests for a copy of the technical summary of the application prepared by the Bureau of Solid Waste Management shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete ap-

plication may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 8 headquarters located at 1401 South Rangerville Road, Harlingen, Texas 78550; (512) 423-0130.

Issued in Austin, Texas, on November 25, 1985

TRD-8510991 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: November 25, 1985

For further information, please call (512) 458-7271.



Texas Advisory Board of Occupational Therapy Examination Notice

Pursuant to 22 TAC §373.1(c) of the rules of the Texas Advisory Board of Occupational Therapy, public notice is given of the next scheduled examination of occupational therapy assistant to be administered by the American Occupational Therapy Association on January 25, 1986. The scores are scaled ranging from 300-600 with 450 being the passing score

The examination standards of performance are those used by the American Occupational Therapy Association

The examination will be held in various locations across the state. Any eligible person interested in taking the examination should contact the American Occupational Therapy Association, 1383 Piccard Drive, Suite 300, Rockville, Maryland 20850, (301) 948-9626

Issued in Austin, Texas, on November 19, 1985

TRD-8510891 Vernon H Newman
Legal Counsel
Texas Rehabilitation Commission

Filed: November 21, 1985

For further information, please call (512) 445-8368.



Public Utility Commission of Texas Technical Assistance Grant Program Announcement

The Public Utility Commission of Texas (PUC) is accepting applications from units of local government in Texas for technical assistance (TA) grants which will be awarded through the PUC's federally funded Institutional Conservation Program. Approximately \$300,000 in matching funds is available statewide to local governments to complete TA studies of their facilities. Grant funding will be provided on a 50% federal/50% applicant match basis; however, in some cases, a portion of the applicant's cash match obligation may be satisfied through in-kind services.

The TA reports are energy-related engineering studies of institutional buildings. These studies review low cost, no cost maintenance and operations procedures but concentrate on analyzing capital retrofit projects which will provide significant energy savings for building owners. Studies must be prepared by professional engineering or

architect-engineering firms approved by the PUC, using a prescribed format. Grant payment will be subject to final approval of the TA report by the PUC.

Applications for TA grants must be received by the PUC office no later than January 31, 1986. Grant awards will be made on or before February 21, 1986. Requests for application forms should be directed to Douglas Key, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, (512) 458-0307. Further information concerning this grant program may be obtained by contacting Douglas Key at the previous address.

Issued in Austin, Texas, on November 22, 1985

TRD-8511027 Rhonda Coolbert Ryan
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 25, 1985

For further information, please call (512) 458-0100.



Railroad Commission of Texas LP-Gas Advisory Committee Meeting

The LP-Gas Division of the Railroad Commission of Texas announces a meeting of the LP-Gas Advisory Committee to be held on Tuesday, December 3, 1985, at 8:30 a.m. in Room 7-143 at 1701 North Congress, seventh floor, William E. Travis Building, Austin, Texas.

Issued in Austin, Texas, on November 22, 1985

TRD-8510935 Walter Earl Lille
Special Counsel
Railroad Commission of Texas

Filed: November 22, 1985

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



Public Hearing and Extension of Comment Period

Notice is given to all interested persons that the Railroad Commission of Texas will hold a public hearing to receive comments concerning the proposed amendments to 16 TAC §§3.5, 3.11, 3.13-3.15, 3.26, 3.27, 3.45, 3.55, and 3.76 (relating to fees to be filed with the commission with certain applications), published in the October 22, 1985, issue of the *Texas Register* (10 TexReg 4113).

The hearing will be held at 1:30 p.m. on Monday, December 16, 1985, in the William B. Travis Building, 1701 North Congress, Austin.

At the hearing, comments should be presented in narrative and exhibit form. Witnesses may present testimony orally or in writing. There will be no cross-examination of witnesses other than by the examiners for purposes of ensuring a complete record. The commissioner's rules regarding contested cases will not be applicable.

The comment period for the proposed amendments to 16 TAC §§3.5, 3.11, 3.13-3.15, 3.26, 3.27, 3.45, 3.55, and 3.76 has been extended through December 17, 1985.

Questions regarding the proposed amendments to statewide Rules 5, 11, 13-15, 26, 27, 45, 55, and 78 should

be addressed to Kimberly L. Kiplin, Legal Section, Oil and Gas Division, Railroad Commission of Texas, (512) 463-6921.

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

TRD-8510980 Walt Earl Lillie
Special Counsel
Office of Special Counsel

Filed: November 25, 1985
For further information, please call (512) 463-7149.

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Texas Water Commission Application for Provisionally- Issued Temporary Permits

Notice is given by the Texas Water Commission of provisionally issued temporary permits issued during the period of November 18-22, 1985.

These permits were issued without notice and hearing pursuant to the Texas Water Code, §11.138, and commission rules 31 TAC §303.91-303.93.

The executive director has reviewed each application and found that sufficient water was available at the proposed point of diversion to satisfy the requirements of the applications as well as all existing water rights. It is further noted that these diversions are for not more than 10 acre-feet of water and for a period of not more than one year. If a complaint is received before or after diversions are

commenced, a preliminary investigation shall be made by the executive director to determine whether there is a reasonable basis for such complaint. Should the investigation indicate that there is a probability that diversions could result in injury to the complainant, the permit will be canceled, and the application will revert to the status of a pending application and no further diversions may be made until a public hearing is held. Notice of the hearing shall then be sent to the complaining person.

Information concerning any aspect of these permits may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8218.

Listed is the name of the permittees, diversion point, watercourse, amount of water authorized, period of time of the permit, permit number, and the date issued/administratively-complete.

Amoco Production Company, from the stream crossing near U.S. 281, approximately 19 miles southeast of Edinburg, Hidalgo County, Rio Grande; four acre-feet, three-month period; TP-5339; November 14, 1985

Issued in Austin, Texas, on November 22, 1985.

TRD-8510987 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: November 22, 1985
For further information, please call (512) 463-7898.

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