

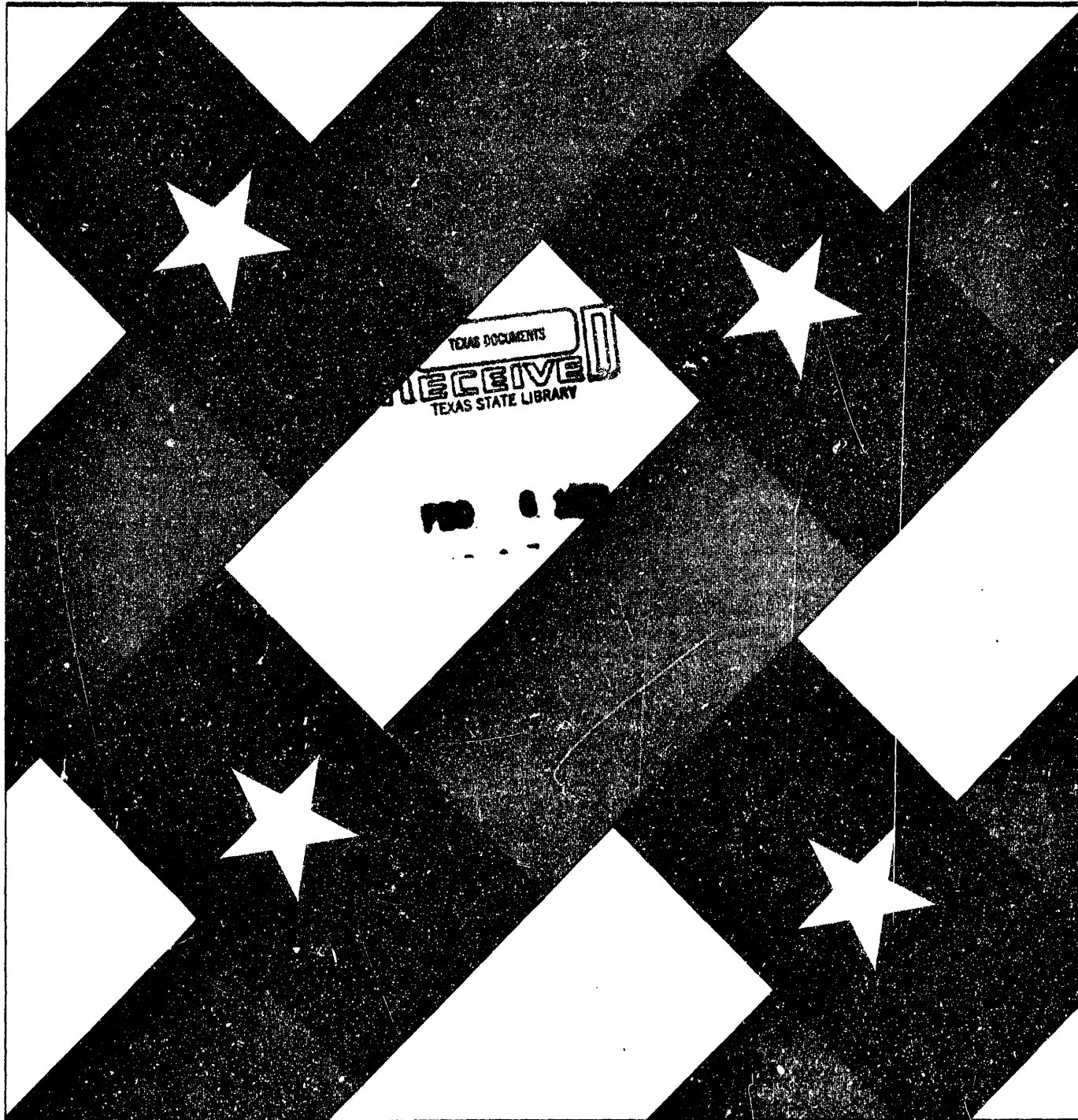
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Texas Register

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Volume 11, Number 9, January 31, 1986

Pages 570-627



Highlights

The **Board of Architectural Examliners** adopts an emergency new section concerning charges against architects. Effective date - January 22. **page 581**

The **Department of Agriculture** proposes

amendments concerning industrial county herbicide regulations. Earliest possible date of adoption - March 2. **page 584**

The **Railroad Commission** proposes an amendment concerning the transportation division and rail safety. Effective date - March 3. . **page 584**

**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 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

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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.

Appointment Made January 16

Literacy Task Force

For terms to continue at the pleasure of this governor:

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2211 East Missionary, E-235
El Paso, Texas 79903

Dr. Ana "Cha" Guzman
Director
Bilingual Programs
Goose Creek Consolidated Independent
School District
P.O. Box 30
Baytown, Texas 77520

Margarita Huantes
Executive Director
San Antonio Literacy Council
1101 West Woodlawn, Suite 207
San Antonio, Texas 78201

Barbara Kazdan
Literacy Chair
Women's American ORT (District IX)
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Houston, Texas 77027

Carolyn Kribs
Executive Director
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Dallas, Texas 75202

Jane Sara Lack
State Job Training Coordinating
Council
2107 East Commercial
Victoria, Texas 77901

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Director, Education and Training
Gary Job Corps Center
P.O. Box 967
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President
Reading, Education, and Development
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Deborah S. Stedman
Education Specialist I
Division of Adult and Continuing
Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Ted Talbot
Director
Human Resources for System
TSTI
Waco, Texas 76705

Alan Thompson
Vice-President
Reading, Education, and Development
Council
IBM Branch Manager
P.O. Box 1369
Houston, Texas 77251

Thomas Williamson
President
The Psychological Corporation
555 Academie Court
San Antonio, Texas 78204.

Issued in Austin, Texas, on January 16, 1986.

TRD-8600795 Mark White
Governor of Texas

★ ★ ★

Appointments Made January 17

For a term to expire October 31 1991:

Harold H. LeCrone, Jr., Ph.D.
3417 Stewart Circle
Waco, Texas 76708

Dr. LeCrone is replacing Robert P. Ander-
son of Lubbock, whose term expired.

Coordinating Board, Texas College and University System

For a term to expire August 31, 1991:

Lauro G. Guerra, M.D.
2200 South Fifth Street
McAllen, Texas 78503

Dr. Guerra is replacing Dr. Mario E.
Ramirez of Rio Grande City, whose term
expired.

Issued in Austin, Texas, on January 17, 1986.

TRD-8600795 Mark White
Governor of Texas

★ ★ ★

Appointment Made January 20

Trinity River Authority, Board of Directors

For terms to expire March 15, 1991:

Blake Gillen
2024 Glenwood Circle
Corsicana, Texas 75110

Mr. Gillen is being reappointed.

B. C. Lively
1400 West Church Street
Livingston, Texas 77351

Mr. Lively is being reappointed.

Melvin W. Jackson, Jr.
4205 Lorraine
Dallas, Texas 75205

Mr. Jackson is replacing Rufus Edmonds
Palm of Fort Worth, whose term expired.

James Charles Payton
212 East Huit Lane
Euless, Texas 76040

Mr. Payton is being reappointed.

Robert T. Mattox
1100 East Houston Avenue
Crockett, Texas 75835

Mr. Mattox is being reappointed.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600795

Mark White
Governor of Texas



Emergency

Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of 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 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter I. Charges Against Architects: Action

★22 TAC §1.165

The Texas Board of Architectural Examiners adopts on an emergency basis an amendment to §1.165, concerning informal disposition. The amendment conforms to the advice of the assistant attorney general regarding statutory requirements for disciplinary hearings scheduled in the immediate future.

An emergency exists due to the need to proceed with alleged violation hearings in accordance with the Texas Civil Statutes, Article 249a.

The amendment is adopted under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.165. Informal Disposition. Informal hearings of disciplinary actions may be conducted after the filing of a sworn complaint but before a formal board hearing is set. Informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default. Informal hearings may be chaired by one board member, or the designate or representative of the board. The agency (board) shall present its evidence substantiating the complaint, and the respondent may present his evidence by correspondence or appearance at the informal hearing. In an effort to bring about an adjustment and equitable solution to the matter without a formal hearing before the full board, all informal dispositions of matters shall not be final and effective until the full board, at a regularly called session, endorses and renders its acceptance of the proposed agreement of the parties. Such informal hearing shall be held without prejudice to the right of the board thereafter, if the controversy is not resolved, to institute a formal hearing governing the same matter, or the right of the registrant involved, if the controversy is not resolved, to request a formal hearing.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600781

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural
Examiners

Effective date: January 22, 1986

Expiration date: May 22, 1986

For further information, please call
(512) 458-1863.

★ ★ ★

Chapter 3. Landscape Architects

Subchapter H. Disciplinary Action against Registrants

★22 TAC §3.143

The Texas Board of Architectural Examiners adopts on an emergency basis an amendment to §3.143, conform with the advice of the assistant attorney general regarding statutory requirements for disciplinary hearings scheduled in the immediate future.

An emergency exists due to the need to proceed with alleged violation hearings in accordance with Texas Civil Statutes, Article 249c.

The emergency amendment has no fiscal implications for the state or for units of local governments.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 249c, which provide the board with the authority to promulgate rules.

§3.143. Informal Disposition. Informal hearings of disciplinary actions may be conducted after the filing of a sworn complaint but before a formal board hearing is set. Informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default. Informal hearings may be chaired by one board member, or the designate or representative of the board. The agency (board) shall present its evidence substantiating the complaint, and the respondent may present his evidence by correspondence or appearance at the informal hearing. In an effort to bring about an adjustment and equitable solution to the matter without a formal hearing before the full board, all

informal dispositions of matters shall not be final and effective until the full board, at a regularly called session, endorses and renders its acceptance of the proposed agreement of the parties. Such informal hearing shall be held without prejudice to the right of the board thereafter, if the controversy is not resolved, to institute a formal hearing governing the same matter, or the right of the registrant involved, if the controversy is not resolved, to request a formal hearing.

Issued in Austin, Texas, on January 23, 1986.

TRD-8600905

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural
Examiners

Effective date: January 24, 1986

Expiration date: May 24, 1986

For further information, please call
(512) 458-4126

★ ★ ★

Chapter 511. Certification as CPA

CPA Examination

★22 TAC §511.76

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.76, concerning refund policy.

The reason for emergency action is to provide for application of the changes to the May 1986 uniform certified public accounting examination which has an application deadline of February 28, 1986.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §61a and §12, which provide the Texas State Board of Public Accountancy with the authority to administer testing to applicants in order to certify them as a certified public accountant within the State of Texas, and to publish rules as may be required to accomplish such testing.

§511.76. Refund Policy.

(a) (b) (changed.)

(b) The board will grant a refund of all but \$10 per part of the examination fee to the total fee paid for the candidate if the candidate withdraws after the filing deadline.

because of extreme hardship. Extreme hardship for refund purposes shall be defined as a serious illness of the candidate or member of immediate family or death of immediate family member. Any of the extreme hardship fact situation will be determined on the case-by-case basis by the board. For refund purposes, accounting practice is considered as two parts.]:

(1) the applicant because of extreme hardship withdraws after the filing deadline; or

(2) the applicant submits an incomplete application for examination, does not remedy the deficiency, and as a result of the deficiency is not permitted to take the examination.

(c) All requests for refunds based on extreme hardship must be in writing and provide documentation of the extreme hardship. The requests for refunds for the May examination must be received by the board on or before the 15th of November following the examination. The request for refund for the November examination must be received by the board on or before May 15, following the examination. Extreme hardship for refund purposes shall be defined as a serious illness of the candidate or member of immediate family or death of immediate family member. Any other extreme hardship fact situation will be determined on a case-by-case basis by the board. For refund purposes, accounting practice is considered as two parts. [No examination fee will be transferred to a subsequent examination.]

(d) No examination fee will be transferred to a subsequent examination. [All requests for refunds based on extreme hardship must be in writing and provide documentation of the extreme hardship requiring withdrawal from the examination. The requests for refunds for the May examination must be received by the board on or before November 15, following the examination. The request for refund for the November examination must be received by the board on or before May 15, following the examination.]

Issued in Austin, Texas, on January 22, 1986.

TRD-8600806

Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 22, 1986
Expiration date: May 22, 1986
For further information, please call
(512) 451-0241.



TITLE 31. NATIONAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing

★31 TAC §65.6, §65.71

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of amended §65.6 and §65.71 for a 60-day period effective February 12, 1986. The text of the amended §65.6 and §65.71 was originally published in the October 22, 1985, issue of the *Texas Register* (10 TexReg 4112).

Issued in Austin, Texas, on January 22, 1986.

TRD-8600817

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: February 12, 1986
Expiration date: April 13, 1986
For further information, please call
(512) 479-4974.



★31 TAC §65.63

The Texas Parks and Wildlife Commission adopts on an emergency basis an amendment to §65.63, a part of the Statewide Hunting and Fishing Proclamation.

The emergency amendment restricts a portion of the Guadalupe River in Comal County to fly fishing only. The restriction is intended to prevent overharvest of Red-band trout, an introduced desert species.

The commission found in public hearing that imminent peril to the public's wildlife resources through depletion requires the emergency amendment.

The amendment is adopted under an emergency basis under the Texas Parks and Wildlife Code, Chapter 61, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, bag limits, means, methods, and places for taking wildlife resources.

§65.63. *Freshwater Fish: Means and Methods.*

(a) Only the following means and methods may be used to take or attempt to take fish:

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

(5) In the Guadalupe River in Comal County, only fly fishing is permitted between the first concrete dam (weir) below the eastern most Texas State Highway 306 Bridge and the Little Ponderosa Bridge.

(A) Fly fishing means the use of artificial wet or dry flies only as a lure.

(B) Live baits are prohibited.

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

Issued in Austin, Texas, on January 24, 1986.

TRD-8600957

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: January 25, 1986
Expiration date: May 25, 1986
For further information, please call
(512) 479-4805 or (800) 792-1112, ext. 4974.



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 4. AGRICULTURE Part I. Texas Department of Agriculture Chapter 11. Herbicide Regulations

★4 TAC §11.1, §11.2

The Texas Department of Agriculture proposes amendments to §11.1 and §11.2, concerning counties regulated and county special provisions.

The department proposed changes to the Texas herbicide regulations as a result of commissioners court orders promulgated effective January 1, 1986, from each affected county, and as a result of public hearings held in affected counties in accordance with the Texas Herbicide Law, the Texas Agriculture Code, Chapter 75, §75.018.

The amendment to §11.1 adds Briscoe and Swisher counties to those subject to all provisions of Chapter 75, the Texas Agriculture Code (1981), unless specifically exempted by §11.2.

The amendment to §11.2 changes the dates for beginning of the prohibition period for use of regulated herbicides from May 28 to May 26 of each year, and adds new special provisions for Austin, Dickens, Swisher, and Briscoe counties.

Alvin Ashorn, assistant director, Agricultural and Environmental Sciences, has determined that for the first five-year period the proposed amendments will be in effect there will be fiscal implications for state or local government or small businesses as a result of enforcing or administering the amendments. The anticipated effect on state government is an estimated increase in revenue of \$2,540 each year from 1986-1990. There will be no effect on local government for the first five-year period the amendments are in effect. The cost of compliance with the amendments for small businesses will be \$20 per equipment inspection, as requested. The cost of compliance will be the same for small and large businesses dependent upon the number of equipment inspections.

Mr. Ashorn also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the

amendments will be enhanced public health, safety, and welfare. The possible economic cost to individuals who are required to comply with the rule as proposed will be \$2,540 each year from 1986-1990 (127 equipment inspections at \$20 per inspection).

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Director of Hearings, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The amendments are proposed under the Texas Agriculture Code, §75.018 which provides the Texas Department of Agriculture with the authority to promulgate rules after notice and hearing for administration of the Texas Herbicide Law, and which provides the commissioners court of an affected county to act to change the exemption status of a county after notice and public hearing.

§11.1. Counties Regulated. The following counties shall be subject to all of the provisions of the Texas Agriculture Code, Chapter 75 (1981), unless specifically excepted by the provisions of §11.2 of this title (relating to County Special Provisions): Aransas, Austin, Bell, Bexar, Brazoria, Brazos, Briscoe, Burleson, Calhoun, Cochran, Collin, Collingsworth, Colorado, Cottle, Culberson, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, El Paso, Falls, Foard, Fort Bend, Frio, Gaines, Galveston, Hall, Hardin, Harris, Haskell, Hidalgo, Houston, Hudspeth, Jackson, Jefferson, Karnes, Kaufman, King, Knox, Lamar, Lamb, Liberty, Loving, McLennan, Martin, Matagorda, Midland, Milam, Newton, Orange, Parmer, Rains, Reeves, Refugio, Robertson, Rockwall, Runnels, San Patricio, Swisher, Travis, Tyler, Van Zandt, Waller, Ward, Washington, Wharton, Williamson, Wilson, and Wood.

§11.2. County Special Provisions.

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

(f) Dicken County.

(1) No permit is required during the period beginning October 1 and ending May 15 of each year.

(2) Permits are required for all phenoxy herbicides during the period beginning May 16 and ending June 10 of each year.

(3) The use of all phenoxy herbicides is prohibited during the period begin-

ning June 11 and ending September 30 of each year.

(4) Any research conducted by the Texas Agriculture Experiment Station under the auspices of brush control and research using phenoxy herbicides will be allowed. Aerial research must have a buffer zone of at least ¼ mile from any susceptible crops, and wind velocity must not exceed 10 mph during spraying period. Ground application must comply with the special provisions for ground application under the special provisions for dicamba. Research will be permitted during the period of May 15 through September 30 under these conditions, and will be exempt from all fees. Notification shall be made to Texas Department of Agriculture before beginning research projects. [No bond or permit will be required in the use of ground equipment in the application of hormone-type herbicides during the period of December 1 to the following April 15 of each calendar year.]

(g)-(q) (No change.)

(r) Runnels. That portion of Runnels County beginning on the west county line at the point of intersection with the Colorado River, east-southeasterly along the Colorado River to its intersection with U.S. Highway 83, thence north along U.S. Highway 83 to its intersection with the north county line, thence westerly along the north Runnels County line to the northwest corner of the county, thence southerly along the west county line to the Colorado River, the point of beginning, is regulated by the Texas Herbicide Law. In regulated areas, no permit is required from October 1 to May 28 of the year following. Use of regulated herbicides is prohibited between May 26 [28] and October 1 of each year. And further, amine and other nonvolatile formulation may be used in the regulated area between the dates of May 28 and October 1 each year, provided that the user obtain a permit as prescribed by the law prior to such use.

(s)-(w) (No change.)

(x) Austin. That portion of Austin County lying east and south of the line described in paragraph (1) of this subsection is regulated by the Texas Agriculture Code, Chapter 75.

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

(3) The aerial application of regulated herbicides in that portion of Austin County covered by the Texas Herbicide Law, the Texas Agriculture Code, Chapter 75, is

prohibited, unless prior to each use, on-site approval of the commissioner of agriculture or his representative is secured, but in no case shall hormone-type herbicides be applied by air to any area that is nearer than two miles to any susceptible crops.

(y)-(dd) (No change.)

(ee) Swisher.

(1) The use of 2,4-D ester is prohibited for the period beginning April 20 and ending September 20 of each year.

(2) The aerial application of all 2, 4-D is prohibited for the period beginning April 20 and ending September 20 of each year.

(3) The application of 2,4-D amine by ground rig is allowed at any time throughout the year.

(4) A permit for application of a herbicide will not be required.

(ff) Briscoe.

(1) The aerial application of any regulated herbicide is prohibited in Briscoe County from April 25 through October 1, except in Precinct 2, where aerial application of regulated herbicides is prohibited for the period beginning May 10 and ending October 15 of each year.

(2) The aerial application for brush control may be permitted under the direct personal supervision of the Texas Department of Agriculture.

(3) The application of regulated herbicides by ground equipment is banned except for dicamba products. Permits must be obtained prior to the application of dicamba products by ground equipment.

(4) In Briscoe County, Precinct 2, the application of 2,4-DB will be permitted for ground application only.

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 January 23, 1986.

TRD-8600834

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest possible date of adoption:

March 2, 1986

For further information, please call
(512) 483-7583.

★ ★ ★



TITLE 16. ECONOMIC REGULATIONS

Part 1. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter AA. Rail Safety

★16 TAC §5.612

The Railroad Commission of Texas proposes an amendment to §5.612, to change the telephone number for railroad accident/incident reporting.

Mike Calhoun, rail safety and planning, assistant director, 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. Calhoun also has determined that for each year of the first five years the section as proposed is in effect there will be no public benefits anticipated or possible economic cost to individuals who are required to comply with the section.

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

The amendment is proposed under Senate Bill 444, 69th Legislature, 1985, which empowers the Railroad Commission of Texas to adopt regulations to ensure railroad safety.

§5.612. Report of Railroad Accident/Incidents.

(a) (No change.)

(b) A railroad must report immediately by telephone to the commission at (512) 463-6788 [475-6143], whenever it learns of the occurrence of any collision, derailment, fire, explosion, act of God, or other event occurring in the State of Texas and involving operation of railroad on-track equipment (standing or moving) which:

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

(c) (No change.)

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

Issued in Austin, Texas, on January 20, 1986.

TRD-8600874

Walter Earl Lille
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:

March 3, 1986

For further information, please call
(512) 483-7149.

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners Chapter 1. Architects Subchapter I. Charges Against Architects; Action

★22 TAC §1.165

(Editor's note: The Texas Board of Architectural Examiners proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is published in the *Emergency Rules* section of this issue.)

The Texas Board of Architectural Examiners proposes an amendment to §1.165, concerning the conduct of information hearings of violations of Texas Civil Statutes, Article 249a, by architects. This section is amended, as the agency would present evidence in support of a complaint, not the board.

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

Mr. Norris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be correction of language to assure clear understanding of the intent of 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1362.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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 January 22, 1986.

TRD-8600782

Robert H. Norris, AIA
Executive Director
Texas Board of
Architectural
Examiners

Earliest possible date of adoption:

March 3, 1986

For further information, please call
(512) 458-1363.

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**Chapter 3. Landscape
Architects**
**Subchapter H. Disciplinary
Action against Registrants**
★ 22 TAC §3.143

The Texas Board of Architectural Examiners proposes an amendment to §3.143, concerning the conduct of informal hearings of violations of Texas Civil Statutes, Article 249c, by landscape architects. This section is amended as the agency would present evidence in support of a complaint, not the board.

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

Mr. Norris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be correction of language to assure clear understanding of the intent of the rule. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758 (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249c which provides Texas Board of Architectural Examiners with the authority to promulgate rules.

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 January 23, 1986.

TRD-8600904

Robert H. Norris
Executive Director
Texas Board of
Architectural
Examiners

Earliest possible date of adoption:
March 3, 1986
For further information, please call
(512) 458-4126.



**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**
**Part III. Texas Air Control
Board**

Chapter 101. General Rules

★ 31 TAC §101.24

The Texas Air Control Board (TACB) proposed an amendment to §101.24, concerning inspection fees, to clarify applicability, to allow additional time for fee payment in certain cases, and to require the payment of a one-time supplemental inspection fee. The legislature specified in the appropriations act for the 1986-1987 biennium that a certain amount of the TACB budget funds would be collected by the agency in the form of fees. Amendments to the Texas Clean Air Act (TCAA) require the payment of inspection fees and became effective on September 1, 1985, and §101.24 was adopted by the board on September 20, 1985, with an effective date of October 21, 1985.

Inspection fees are due and payable for fiscal year 1986 during December, 1985, and January, 1986, with some late payments to arrive after January 31. The total revenue that will be collected through inspection fees for fiscal year 1986 is projected to be insufficient to maintain the TACB at its budgeted level. In order to correct this revenue shortfall, the TACB proposes to require and to collect a supplemental inspection fee for fiscal year 1986 based upon the fees currently required in §101.24. Based on current revenue projections the supplemental fee could represent as much as a 65% increase in the fiscal year 1986 inspection fee; however, the actual amount of any increase will be determined at the time the section is considered for adoption. Final consideration of the proposed section revisions will occur sometime after the current February 28, 1986, deadline for receipt of all inspection fees including late payments.

The proposed changes to §101.24(a) clarify the applicability of the section to all accounts, not just those which have been assigned TACB account numbers. The proposed changes to §101.24(b) clarify the intent of the subsection. A new paragraph added to §101.24(c) provides additional time for payment of fees by those accounts which recently have been assigned account numbers. A new paragraph added to §101.24(d) requires payment of a supplemental inspection fee by all accounts, including accounts which have yet to be assigned TACB account numbers.

Bernie Engelke, director of management and staff services, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local units of government. The fiscal implications for state

government as a result of implementation of §101.24 would be an estimated additional cost of \$50,000 for 1986, and none for 1987-1990; and an estimated increase in revenue of \$1.5 million for 1986, and none for 1987-1990.

The fiscal impact of §101.24 on any small business would be as much as a 65% increase in the fiscal year 1986 annual inspection fee, as stated in the fee table of §101.24, if the air contaminant emissions levels from the business equal or exceed 50 tons per year.

Steve Spaw, P.E., director of central regulatory operations program, has determined that the public benefit to be derived from a supplemental inspection fee would be the partial recovery of some of the agency costs for enforcement and a continuation of all agency functions by avoiding the reduction in TACB staff which would result if projected revenue goals are not attained. The anticipated economic cost to individuals who are required to comply with the proposed rule would be as much as 65% increase in the fiscal year 1986 inspection fee, as determined according to the fee table in §101.24.

A public hearing on this proposal is scheduled for 2 p.m. on February 18, 1986, in the auditorium of the Texas Air Control Board located at 6330 Highway 290 East, Austin.

Copies of the proposed section changes are available from Barry Irwin at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposal is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony prior to or at the hearing. Written testimony received by 4 p.m. on February 19, 1986, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

These amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09 (a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§101.24 Inspection Fees.

(a) Applicability. The owner or operator of each account, as defined in this subsection, for which actual emissions of total suspended particulates (TSP), nitrogen oxides, volatile organic compounds (VOC), or any other air contaminant equal or exceed 50 tons per year (tpy) and for which potential emissions of TSP, nitrogen oxides, VOC, or any other air contaminant equal or exceed 100 tpy shall remit to the Texas Air Control Board (TACB) an annual fee for inspections performed in enforcement of the

Texas Clean Air Act (TCAA) and the rules of the board. A separate fee is required for each account. The amount of the fee shall be determined by the highest aggregate emission rate of any air contaminant at an account applied to the following table. For purposes of this section, an account shall be defined as all of the facilities located at a property. Where contiguous properties or properties contiguous except for intervening roads, railroads, rights-of-way, canals, watercourses and the like are under common ownership but contain separate operations, or are managed independently, or are carried on the records of this agency under separate account numbers, a separate fee will be charged and collected for each account. Provisions of this section apply to all accounts, including accounts which have not been assigned specific TACB account numbers. The owner or operator of an account is responsible for contacting the TACB to obtain an account number. Provisions of this section shall not apply to those accounts which contain only nonregulated, nonpermitted facilities which have received no

TACB notices of violations (NOVs) within the most recent five-year period. In this context, nonregulated means that facilities are not subject to any of the requirements of Chapters 111-113 of this title (relating to Control of Air Pollution for Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, and Control of Air Pollution from Toxic Materials); Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds); Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds); and Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide). Nonpermitted means that facilities have not been issued a construction permit, special permit, special exemption, or operating permit pursuant to the requirements of Chapter 116 of this title (relating to Permits). By May 31, 1986, the executive director shall review the fees assessed and the costs recovered pursuant to this section and present to the Board a report of the results of such review which shall include recommended changes to the section as may be appropriate.

the tenth day of the month following the month due. The additional fee to be remitted shall be 10% of the unpaid fee for the first month, or part thereof, after the month the inspection fee is due. Thereafter, failure to have remitted the full inspection fee shall result in action under the TCAA, §4.041 or §4.02. Each day the fee remains unpaid shall be considered a separate violation.

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 January 22, 1986.

TRD-8600794 Bill Stewart
Executive Director
Texas Air Control Board

Earliest possible date of adoption:

March 14, 1986

For further information, please call
(512) 451-5711, ext. 300

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Emission Rate
(tpy rounded down
to the nearest ton)

Base Fee

Incremental Fee*

50-99	\$ 500	\$12.00/ton
100-249	1,100	9.00/ton
250-999	2,450	3.00/ton
1,000 up**	4,700	1.50/ton

*incremental fee to be applied to each ton in excess of the initial tonnage in that category

**maximum fee is \$10,000

(b) Payment. Fees shall be remitted in the form of a check or money order made payable to the Texas Air Control Board and delivered to the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. A completed inspection fee form shall accompany fees remitted. The inspection fee form shall include at least the company name, property address, TACB account number, and a statement of the aggregate emission rate for that single air contaminant which is emitted in the largest quantity at the account during the calendar year preceding the beginning of the December-January pay-

ment cycle. The maximum fee shall be required if no statement of the aggregate emission rate is included with the inspection fee form. All fees paid pursuant to subsection (a) of this section shall be remitted in accordance with the provisions of [schedule provided in] subsection (c) of this section.

(c) Schedule.

(1) Fees shall be due and payable according to the following schedule. The last numeric character of the TACB account number indicates the month in which payment is due.

Last numeric character
of account number

1, 2, 3, 4, or 5
6, 7, 8, 9, or 0

Month in which
fees are due

December
January

(2) Fees shall be due and payable during the month of April, 1986, from those accounts which were assigned TACB account numbers after October 21, 1985.

(d) Additional Fees.

(1) A supplemental inspection fee shall be paid by the owner or operator of every account to which subsection (a) of this

section applies and shall be the amount of 65% of the inspection fee due according to the provisions of subsection (a). This supplemental fee shall be due and payable during the month of April 1986.

(2) An additional fee shall be paid by the owner or operator of an account for each inspection fee payment not received by

Chapter 120. Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities

★31 TAC §§120.1, 120.3, 120.11, 120.13, 120.15, 120.21, 120.31

The Texas Air Control Board (TACB) proposes new §§120.1, §120.3, 120.11, 120.13, 120.15, 120.21, and 120.31, concerning control of air pollution from hazardous waste or solid waste management facilities. These new sections comprise a proposed new Chapter 120 to Title 31 of the Texas Administrative Code.

The new chapter is being proposed in response to amendments to the Solid Waste Disposal Act enacted by House Bill 2358, 69th Legislature, 1985. These amendments stipulate the responsibilities of the TACB in relation to permit applications to the Texas Water Commission (TWC) for hazardous waste or solid waste management facilities. The new chapter incorporates into TACB rules the procedures to be followed in reviewing such existing, new, and modified facilities. In accordance with House Bill 2358, the proposed new chapter is intended for joint rule making with the TWC. The TWC will be publishing identical rules separately.

The TACB views House Bill 2358 as making a permit issued by the TWC the sole state permit required for a hazardous or solid waste management facility engaged

in the storage, processing, treatment, disposal, or destruction of hazardous or solid waste. Under the amendments, the TACB is responsible for conducting air quality reviews of permit applications for such facilities and transmitting recommendations to the TWC for consideration. These sections are proposed accordingly, with no TACB permit required for hazardous or solid waste management facilities permitted by the TWC. However, these sections will not affect the agency's treatment of such facilities which are not permitted by the TWC. Comments are solicited concerning this issue and additional rulemaking will be considered in the future.

The new §120.1, concerning definitions, specifies that the meanings for terms used in the chapter are as given by the Solid Waste Disposal Act and regulations promulgated thereunder. The new §120.3, concerning applicability, describes the types of facilities affected by the chapter.

The new §120.11, concerning permit conditions, states that permits covered by this regulation may contain terms and conditions which must be complied with by the permit recipient. The new §120.13, concerning representations in application for permit, declares that all representations made in a TWC permit application become conditions upon which the permit is issued and cannot be changed without approval of the permitting agency. The new §120.15, concerning responsibility for review of air quality impacts from existing, new, and modified facilities, describes the responsibilities to be borne by the TACB on permit applications submitted to the TWC for waste management facilities.

The new §120.21, concerning general air emissions requirements for hazardous or solid waste management facilities, outlines the requirements to be met by all waste management facilities prior to and after commencing operations. The new §120.31, concerning specific air emissions requirements for new and existing hazardous or solid waste management facilities, describes requirement alternatives for new and existing facilities.

Particular note should be taken that for existing facilities under §120.31(b), concerning specific air emissions requirements for new and existing hazardous or solid waste management facilities, if the TACB determines that emissions from the facility for which a permit is sought have a significant potential to create a condition of air pollution, but monitoring of the emissions from the facility is not considered to be feasible by the applicant, the TACB will either conduct property line sampling at the site or require the owner or operator of the facility to conduct such sampling pursuant to §101.8 of this title in spite of the reservations expressed concerning its feasibility. In such cases, the owner or operator may alternatively submit a modeling demonstration that the fa-

cility will not cause a condition of air pollution as part of the permit application.

Steve Spaw, P.E., Central Regulatory Operations Program director, has determined that for the first two-year period the sections as proposed are in effect additional costs of \$150,000 per year will be incurred by the agency as a result of administering the sections. The basis for this determination consists of salaries, travel, and other expenses associated with the review of 100 permit applications from new and existing facilities, and response to eight joint hearings per year. For the next three-year period the sections as proposed are in effect, additional costs of \$125,000 per year will be incurred by the agency due to salaries, travel, and other expenses associated with the review of 25 permit applications from new facilities and response to five joint hearings per year. There will be no fiscal implications to local governments. Fiscal implications to small businesses are no greater than those which would be incurred by large businesses.

Mr. Spaw also has determined that the public will benefit from requirements which will result in safer disposal of hazardous and solid wastes in such management facilities. Regulated persons, including small businesses, will benefit from a simplified permitting process. The cost to regulated businesses will be \$500,000 per year for the first two-year period the sections as proposed are in effect and \$125,000 per year for the next three-year period.

A public hearing on this proposal is scheduled for 10 a.m. on February 18, 1986, in the auditorium, Texas Air Control Board, 6330 Highway 290 East, Austin. Copies of the proposed rule changes are available from Lane Hartsock at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by 4 p.m. on February 18, 1986, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

These new sections are proposed under Texas Civil Statutes, Article 4477-5, §3.09 (a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§120.1. Definitions. The words and terms used in this chapter have the meanings as given in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the regulations promulgated thereunder. Unless specifically defined in the Solid Waste

Disposal Act or the regulations promulgated thereunder, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. The term "facility" as used in this chapter refers to a hazardous or solid waste management facility as defined in the Solid Waste Disposal Act.

§120.3. Applicability.

(a) Except as provided in subsection (b) of this section, this chapter applies to all hazardous waste or solid waste management facilities which are required to obtain a permit by the Texas Water Commission (TWC) pursuant to the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e) (4)(A)(i).

(b) Any person who plans to construct or engage in the modification of a hazardous waste or solid waste management facility shall obtain authorization for such construction or modification under Chapter 116 of this title (relating to Permits) if the proposed construction or modification is subject to the new source review requirements of the Federal Clean Air Act, Title I, Part C or D, 42 United State Code 7401 *et seq.*

§120.11. Permit Conditions. Permits for facilities to which this chapter applies may contain terms and conditions relating to air quality. The holders of such permits shall comply with any and all such terms and conditions.

§120.13. Representations in Application for Permit. All representations in an application for a Texas Water Commission (TWC) permit or a modification to a TWC permit regarding construction plans and operation procedures that may affect emissions from a facility to which this chapter applies, become conditions upon which a subsequent permit is issued. It shall be unlawful for any person to vary from such representations if the change may alter the method of controlling the emissions, the character of the emissions, or may result in an increase in the emissions of any air contaminant, unless prior notification is made to the TWC and such change is approved by the permitting agency. Such person shall submit to the executive director of the TWC upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and whether such change may be approved. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

§120.15. Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities.

(a) Technical review. The Texas Air Control Board (TACB) shall be responsible for performing a technical review of the air quality aspects of any permit application submitted to the Texas Water Commission

(TWC) for a solid waste or hazardous waste management facility to which this chapter applies. The TACB shall complete such review and shall forward all recommendations or proposed permit provisions to the TWC within the time limits established under Chapter 281 of this title (relating to Applications Processing) for completion of technical review of the application. All recommendations developed by the TACB and forwarded to TWC shall be included in any permit issued unless the TWC determines that the recommendation or proposed revisions are less stringent than applicable federal requirements under the Federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 *et seq.*, as amended. If permit provisions proposed by the TACB conflict with provisions proposed by the TWC, the two agencies shall attempt to resolve such conflicts prior to completion of technical review of the application.

(b) Uncontested cases. If a contested case hearing is not held by the TWC, the proposed provisions submitted by the TACB shall be incorporated into any permit issued by the TWC.

(c) Hearings. If a contested case hearing is held by the TWC, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by the TACB. All parties, including the TWC, shall have the right to cross-examine any testifying witnesses of the TACB. At the conclusion of the presentation of testimony, the TWC shall afford the TACB at least 30 days in which to submit proposed findings of fact and conclusions of law, and, if applicable, proposed permit language, regarding the air quality aspects of the application. Such findings, conclusions, and permit language shall be accepted unless the TWC finds that the recommendations of the TACB are not supported by a preponderance of the evidence. The TACB may seek judicial review of the air quality aspects of any final decision of the TWC.

(d) Enforcement. Both the TACB and the TWC shall have authority to enforce the terms of any permit issued by the TWC which relate to air quality.

§120.21. General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities.

(a) In order for a Texas Water Commission (TWC) permit to be granted to a hazardous or solid waste management facility, the owner or operator of such facility shall submit information to the permitting agency which will demonstrate that all of the following are met.

(1) The facility will comply with all requirements of the Resource Conservation and Recovery Act and the rules promulgated thereunder insofar as these directly or indirectly limit air emissions.

(2) The emissions of air contaminants from the proposed facility will comply with all rules and regulations of the Texas

Air Control Board (TACB) (except Chapter 116 of this title (relating to Permits)) and with the intent of the Texas Clean Air Act.

(3) The facility will comply with all applicable requirements relating to air quality in Chapter 333, Subchapter F, of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), promulgated by the TWC pursuant to the Solid Waste Disposal Act.

(4) The emissions from the proposed facility will meet at least the requirements of any applicable new source performance standards promulgated by the Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) The emissions from the proposed facility will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) The facility will have appropriate provisions for measuring significant emissions of air contaminants.

(b) The owner or operator of the facility shall also comply with each of the following after operation has commenced.

(1) As soon as possible after a spill of hazardous or odorous waste, all standing liquids resulting from the spill shall be collected and contained such that emissions are minimized.

(2) Records shall be maintained on site indicating the date, quantity, type, and composition of solid waste generated or managed at the hazardous or solid waste management facility. At a minimum, the definition of waste composition shall include an analysis for those compounds present in concentrations greater than 1.0% by volume and shall include the concentration of the total organic carbon.

(3) All records required by the permit shall be maintained at the plant site and shall be made available to representatives of the TACB or TWC upon request. Such records shall be maintained on site for at least three years.

(4) All sampling, monitoring, testing, and calibration equipment and procedures related to air emissions shall be conducted in accordance with the quality assurance requirements of the TACB and shall have prior TACB approval.

(5) The holder of a permit shall conduct sufficient stack sampling analyses, emissions monitoring, or other tests related to air emissions to prove satisfactory equipment performance upon request by the executive director of the TACB. All sampling and testing procedures shall have prior TACB approval.

(6) The facilities shall not be operated unless all associated air pollution abatement equipment is maintained in good working order and functioning properly during facility operations.

§120.31 Specific Air Emissions Requirements for New and Existing Hazardous or Solid Waste Management Facilities.

(a) Facilities which have not operated prior to September 1, 1985.

(1) The facility will utilize the best available control technology to control the emissions of air contaminants, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating these emissions from the facility.

(2) The owner or operator must demonstrate that the facility will not cause or contribute to a condition of air pollution as defined in the Texas Clean Air Act (TCAA). Such demonstration shall be based on waste characteristics, emissions estimates, and dispersion modeling and shall be submitted as part of the permit application.

(b) Facilities which have operated prior to September 1, 1985.

(1) The facility must comply with all rules and regulations of the Texas Air Control Board (TACB) (except Chapter 116 of this title (relating to Permits)).

(2) The owner or operator must submit a list of wastes stored, handled, processed, or disposed of at the facility including estimates of the quantity and character of such waste. The applicant shall certify that such information is true, correct, and complete to the best of his knowledge.

(3) If the TACB determines, based on a review of the information submitted pursuant to paragraph (2) of this subsection, that a significant potential for a condition of air pollution due to emissions from the facility exists and the monitoring of emissions from such facility is feasible:

(A) within 90 days from the date of issue of the Texas Water Commission (TWC) permit, the owner or operator of the facility must submit to the TACB a plan for monitoring emissions from the facility and must initiate monitoring within 90 days of TACB approval of such plan; or

(B) the owner or operator must submit dispersion modeling demonstrating that the facility will not cause a condition of air pollution.

(4) If one or more complaints relating to air pollution resulting from operation of the facility have been received and confirmed by the state or local air pollution control agency within the previous 12 months, the owner or operator of the facility must submit monitoring data or dispersion modeling demonstrating that the facility will not cause a condition of air pollution. Failure to submit such information may be grounds for permit denial.

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 January 23, 1986.

TRD-8600885

Bill Stewart
Executive Director
Texas Air Control Board

Proposed date of adoption:

March 21, 1986

For further information, please call
(512) 451-5711, ext. 354.

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**Part IX. Texas Water
Commission
Chapter 335. Industrial Solid
Waste and Municipal
Hazardous Waste
Subchapter L. Control of Air
Pollution from Hazardous
Waste or Solid Waste
Management Facilities**

★ 31 TAC §§335.361-335.367

The Texas Water Commission (commission) proposed new §§335.361-335.367, concerning control of air pollution from hazardous waste or solid waste management facilities.

The new sections are proposed in response to House Bill 2358, adopted by the 69th Legislature, 1985, which amended the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. These amendments stipulate the responsibilities of the Texas Air Control Board (board) in relation to permit applications to the commission for hazardous waste or solid waste management facilities. The new sections incorporate the procedures to be followed in reviewing applications relating to such existing, new, and modified facilities. In accordance with House Bill 2358, the proposed sections are intended for joint rulemaking with the board.

The commission views House Bill 2358 as making a permit issued by the commission the sole state permit required for a hazardous or solid waste management facility engaged in the storage, processing, treatment, disposal, or destruction of hazardous or solid waste. Under the amendment, the board is responsible for conducting air quality reviews of permit applications for such facilities and transmitting recommendations to the commission for consideration. These sections are proposed accordingly, with no board permit required for hazardous or solid waste management facilities permitted by the commission. However, such facilities which are not permitted by the commission will not be affected by these sections.

New §335.361 specifies that the meanings for terms used in the chapter are as given by the Solid Waste Disposal Act and regulations promulgated thereunder. New §335.362 describes the types of facilities affected by this chapter.

New §335.363 states that permits covered by this regulation may contain terms and conditions which must be complied with by the permit recipient. New §335.364 declares that all representations made in a commission permit application become conditions upon which the permit is issued and cannot be changed without approval of the permitting agency. New §335.365 describes the responsibilities to be borne by the board on permit applications submitted to the commission for waste management facilities.

New §335.366 outlines the requirements to be met by all waste management facilities prior to and after commencing operations. New §335.367 describes requirement alternatives for new and existing facilities.

Particular note should be taken that for existing facilities under §335.367(b), if the board determines that emissions from the facility for which a permit is sought have a significant potential to create a condition of air pollution, but monitoring of the emissions from the facility is not considered to be feasible by the applicant, the board will either conduct property line sampling at the site or require the owner or operator of the facility to conduct such sampling pursuant to 31 TAC §101.8, in spite of the reservations expressed concerning its feasibility. In such cases, the owner or operator may alternatively submit a modeling demonstration that the facility will not cause a condition of air pollution as part of the permit application.

Bobbie Barker, chief of fiscal services, has determined that there will be fiscal implications as a result of enforcing or administering these sections. The estimated additional cost to state government for the first five-year period that the sections will be in effect is \$10,000 each year in 1986 and 1987, and \$5,000 each year in 1988-1990. These costs represent costs associated with the coordination of permitting with the Texas Air Control Board, based on the number of applications to be processed during each of the five years. There will be no fiscal impact on local government or small businesses.

Ms. Barker also has determined for each year of the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcing these sections as proposed will be safer disposal of hazardous and solid waste in such management facilities. The cost to regulated businesses will be \$500,000 per year for the first two-year period these sections are in effect and \$25,000 per year for the next three-year period.

The public is encouraged to comment on these proposed sections. To facilitate public participation, a public hearing on this proposal is scheduled for 10 a.m. on February 18, 1986, in the auditorium, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas.

Public comment, both oral and written, on the proposed changes is invited at the hearing. Written testimony received by 4 p.m. on February 18, 1986, at the commission's central office will be included in the hearing record. Written comments should be sent to Mary Reagan, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-8087. Persons submitting written comments on the proposal shall provide copies of their comments to both agencies.

These new sections are proposed under Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i), which provide the commission and board with rulemaking authority relating to standards which will be applied in review of air quality issues in the permitting of hazardous and solid waste management facilities.

§335.361. Definitions. The words and terms used in this subchapter have the meanings as given in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the regulations promulgated thereunder. Unless specifically defined in the Solid Waste Disposal Act or the regulations promulgated thereunder, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. The term "facility" as used in this chapter refers to a hazardous or solid waste management facility as defined in the Solid Waste Disposal Act.

§335.362. Applicability.

(a) Except as provided in subsection (b) of this section, this subchapter applies to all hazardous waste or solid waste management facilities which are required to obtain a permit by the Texas Water Commission pursuant to the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i).

(b) Any person who plans to construct or engage in the modification of a hazardous waste or solid waste management facility shall obtain authorization for such construction or modification under Chapter 116 of this title (relating to Permits) if the proposed construction or modification is subject to the new source review requirements of the Federal Clean Air Act, Title I, Part C or D, 42 United States Code §7401 *et seq.*

§335.363. Permit Conditions. Permits for facilities to which this subchapter applies may contain terms and conditions relating to air quality. The holders of such permits shall comply with any and all such terms and conditions.

§335.364. Representations in Application for Permit. All representations in an application for a Texas Water Commission permit or a modification to a commission permit regarding construction plans and operation procedures that may affect emissions from a facility to which this subchapter applies, become conditions upon which a subsequent permit is issued. It shall be unlawful for any person to vary from such represen-

tations if the change may alter the method of controlling the emissions, the character of the emissions, or may result in an increase in the emissions of any air contaminant, unless prior notification is made to the commission and such change is approved by the permitting agency. Such person shall submit to the executive director of the commission upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter and whether such change may be approved. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

§335.365. Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities.

(a) Technical Review. The Texas Air Control Board shall be responsible for performing a technical review of the air quality aspects of any permit application submitted to the Texas Water Commission for a solid waste or hazardous waste management facility to which this chapter applies. The board shall complete such review and shall forward all recommendations or proposed permit provisions to the commission within the time limits established under Chapter 281 of this title (relating to Applications Processing) for completion of technical review of the application. All recommendations developed by the board and forwarded to the commission shall be included in any permit issued, unless the commission determines that the recommendation or proposed revisions are less stringent than applicable federal requirements under the Federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 *et seq.*, as amended. If proposed permit provisions by the board conflict with provisions by the commission, the two agencies shall attempt to resolve such conflicts prior to completing technical review of the application.

(b) Uncontested cases. If a contested case hearing is not held by the commission, the proposed provisions submitted by the board shall be incorporated into any permit issued by the commission.

(c) Hearings. If a contested case hearing is held by the commission, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by the board. All parties, including the commission, shall have the right to cross-examine any testifying witnesses of the board. At the conclusion of the presentation of testimony, the commission shall afford the board at least 30 days in which to submit proposed findings of fact and conclusions of law, and, if applicable, proposed permit language, regarding the air quality aspects of the application. Such findings, conclusions, and permit language shall be accepted unless the commission finds that the recommendations of the board are not supported by a preponderance of the evi-

dence. The board may seek judicial review of the air quality aspects of any final decision of the commission.

(d) Enforcement. Both the board and the commission shall have authority to enforce the terms of any permit issued by the commission which relate to air quality.

§335.366. General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities.

(a) In order for a Texas Water Commission permit to be granted to a hazardous or solid waste management facility, the owner or operator of such facility shall submit information to the permitting agency which will demonstrate that all of the following are met:

(1) The facility will comply with all requirements of the Resource Conservation and Recovery Act and the rules promulgated thereunder insofar as these directly or indirectly limit air emissions.

(2) The emissions of air contaminants from the proposed facility will comply with all sections of the Texas Air Control Board, except Chapter 116 of this title (relating to Permits), and with the intent of the Texas Clean Air Act.

(3) The facility will comply with all applicable requirements relating to air quality in §335.151-335.177 of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities), promulgated by the commission pursuant to the Solid Waste Disposal Act.

(4) The emissions from the proposed facility will meet at least the requirements of any applicable new source performance standards promulgated by the U.S. Environmental Protection Agency pursuant to authority granted under the Federal Clean Air Act, §111, as amended.

(5) The emissions from the proposed facility will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the U. S. Environmental Protection Agency pursuant to authority granted under the Federal Clean Air Act, §112, as amended.

(6) The facility will have appropriate provisions for measuring significant emissions of air contaminants.

(b) The owner or operator of the facility shall also comply with each of the following after operation has commenced.

(1) As soon as possible after a spill of hazardous or odorous waste, all standing liquids resulting from the spill shall be collected and contained such that emissions are minimized.

(2) Records shall be maintained on-site indicating the date, quantity, type, and composition of solid waste generated or managed at the hazardous or solid waste management facility. At a minimum, the definition of waste composition shall include an analysis for those compounds present in concentrations greater than 1.0% by volume

and shall include the concentration of the total organic carbon.

(3) All records required by the permit shall be maintained at the plant site and shall be made available to representatives of the board or commission upon request. Such records shall be maintained on-site for at least three years.

(4) All sampling, monitoring, testing, and calibration equipment and procedures related to air emissions shall be conducted in accordance with the quality assurance requirements of the board and shall have prior board approval.

(5) The holder of a permit shall conduct sufficient stack sampling analyses, emissions monitoring, or other tests related to air emissions, to prove satisfactory equipment performance upon request by the executive director of the board. All sampling and testing procedures shall have prior board approval.

(6) The facilities shall not be operated unless all associated air pollution abatement equipment is maintained in good working order and functioning properly during facility operations.

§335.367. Specific Air Emissions Requirements for New and Existing Hazardous or Solid Waste Management Facilities.

(a) The following applies to facilities which have not operated prior to September 1, 1985.

(1) The facility will utilize the best available control technology to control the emissions of air contaminants, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating these emissions from the facility.

(2) The owner or operator must demonstrate that the facility will not cause or contribute to a condition of air pollution as defined in the Texas Clean Air Act. Such demonstration shall be based on waste characteristics, emissions estimates, and dispersion modeling, and shall be submitted as part of the permit application.

(b) The following applies to facilities which have operated prior to September 1, 1985.

(1) The facility must comply with all sections of the Texas Air Control Board, except Chapter 116 of this title (relating to Permits).

(2) The owner or operator must submit a list of wastes stored, handled, processed, or disposed of at the facility, including estimates of the quantity and character of such waste. The applicant shall certify that such information is true, correct, and complete to the best of his/her knowledge.

(3) If the board determines, based on a review of the information submitted pursuant to paragraph (2) of this subsection, that a significant potential for a condition of air pollution due to emissions from the facility exists and the monitoring of emissions from such facility is feasible, the owner

or operation of the facility must do one of the following.

(A) Within 90 days from the date of issuance of the Texas Water Commission permit, the owner or operator of the facility must submit to the board a plan for monitoring emissions from the facility and must initiate monitoring within 90 days of board approval of such plan.

(B) The owner or operator must submit dispersion modeling demonstrating that the facility will not cause a condition of air pollution.

(4) If one or more complaints relating to air pollution resulting from operation of the facility have been received and confirmed by the state or a local air pollution control agency within the previous 12 months, the owner or operator of the facility must submit monitoring data or dispersion modeling demonstrating that the facility will not cause a condition of air pollution. Failure to submit such information may be grounds for permit denial.

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 January 27, 1986.

TRD-8600931 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
March 3, 1986
For further information, please call
(512) 463-8070.

★ ★ ★



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

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

★34 TAC §3.341

The Comptroller of Public Account proposes an amendment to §3.341, concerning sales of governmental publications, records, or documents. The amendment would exempt the additional copies from sales tax when the original document was exempt, and subject all magazine subscriptions to sales 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 as a result of enforcing or administering the section. This section is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be savings to the public by exempting the charges for additional copies of a public document from sales tax. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

The amendment is proposed under the Tax Code, §111.002, which provides that

the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

§3.341. Sales of Governmental Publications, Records, or Documents.

(a) (No change.)

(b) When a person requests more than one copy of a public document required to be furnished, sales tax is not due on the fee charged by the governmental body to furnish the additional copy or copies.

(c) (No change.)

(d) Unless such sales are otherwise exempt, sales tax is due on sales of regular publications, records, or general information by a governmental body, even though such publications, records, or information may be open or available to the public by statute. For example, textbooks sold by a state university are taxable. The Texas Tax Guide sold by the comptroller's office is taxable. [Yearly] Magazine subscriptions sold by a state agency are taxable [exempt]. See §3.299 of this title (relating to Newspapers, Magazines, Publishers, Sacred Writings, Broadcasters).

(e) Sales tax collected by state agencies is to be remitted in accordance with Funds [Management] Accounting Policy Statement 012 on Comptroller's form 73.113 [3A06-3.01].

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 January 27, 1986.

TRD-8600938 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
March 3, 1986
For further information, please call
(512) 463-4806.

★ ★ ★

Adopted

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

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

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter P. Commercial Zones

★ 16 TAC §5.294

The Railroad Commission of Texas adopts an amendment to §5.294, without changes to the proposed text published in the October 18, 1985, issue of the *Texas Register* (10 TexReg 4041).

The amendment is adopted because the City of Midlothian and a designated portion of the surrounding unincorporated area are adjacent to, and commercially a part of, the Cities of Dallas and Fort Worth.

The amendment as adopted adds to the Dallas and Fort Worth commercial zones both the City of Midlothian and a portion of the unincorporated area adjacent thereto and commercially a part thereof.

This amendment increases transportation availability in the City of Midlothian, which will benefit commercial establishments there which regularly ship to and from the Dallas/ Fort Worth metropolplex.

Many comments were received in favor of the amendment. A single comment opposing the amendment was also received. The supporting comments generally related to the interests of local industries; effects of commercial, residential and industrial development; the growth of the City of Midlothian; and the commercial interdependence of the City of Midlothian; and the commercial interdependence of the city and the existing commercial zones. The single comment opposing the amendment expressed reservations, not about the amendment per se, but about its future implications. Specifically, the opposing party fears that adoption of this amendment signals that the commission is adopting a broad interpretation of the commercial zone statute that will ultimately affect that party's business. The opposing party expects no direct adverse effects on his business as a result of adoption of the amendment.

In support of the amendment, commenters pointed out that the involved area is adjacent to Dallas, Texas. The City of Mid-

lothian is approximately 5.5 miles from the city limits of Dallas at its closest point. It is 9.5 miles from Dallas, measured along Highway 67. Midlothian's city limits touch the city limits of two incorporated municipalities, which are themselves in the existing Dallas commercial zone. Grand Prairie and Cedar Hill, by contrast, Galveston, which is in the Houston commercial zone, is 22 miles from the city limits of Houston.

Commenters in favor of the amendment further stated that the involved area is commercially a part of Dallas and Fort Worth. The population of the City of Midlothian is about 6,000, and the total area sought is only slightly greater than the size of the city. Petitioners have narrowly tailored their proposal to embrace only those areas that have been demonstrated to be commercially part of Dallas and Fort Worth. Midlothian lies at the intersection of two major highways leading from Dallas and Fort Worth, Highway 67 from Dallas, and Highway 287 from Fort Worth. The city also lies at the intersection of two railways, the Atchison, Topeka and Santa Fe, and the Southern Pacific.

Midlothian is the geographical location of large deposits of limestone, on which many of the city's industries are founded. These industries include cement companies such as Gifford-Hill, Box-Crow, and TXI. The largest market for the goods of these companies is Dallas/Fort Worth. Other industries in the city include Chaparral Steel and industries related to automobile manufacturing, both of which market a substantial number of their goods in Dallas and Fort Worth.

The City of Midlothian is one of a few federally designated foreign trade zones, or inland ports. Foreign trade zones allow manufactures to ship their goods to American shores, transport them to inland ports, such as Midlothian, and not pay duties on the goods until they are sent from the inland ports to distributors and merchants. In the case of Midlothian, foreign automobile manufacturers such as Mazda send their cars from the coasts by rail to Midlothian, where accessories and customized items are installed in the cars. No taxes are paid on the installed items if the items are made in the United States. Several Midlothian businesses provide parts and services which support these warehousing and installation activities. Many of the cars prepared in Midlothian are sent to retailers in Dallas and Fort Worth.

Sixty-70% of persons employed in the involved area live in Dallas/Fort Worth. These persons regularly shop, attend entertainment and cultural events, and go to school in the Dallas area. Red Bird Mall is 10 minutes away in Dallas. Midlothian has no independent radio or television stations. Many of the businesses and government offices in Midlothian have metro telephone lines into the Dallas/Fort Worth metropolplex.

The City of Midlothian has filed with the Public Utility Commission a petition for extended area service that would include its telephone exchange among the exchanges available in the Dallas/Fort Worth area. Government offices in Midlothian ship their paperwork to Dallas/Fort Worth accounting firms for processing.

Commenters stated that there is a need for including the involved area in the commercial zones of Dallas and Fort Worth. Carriers presently serving Midlothian businesses and industries run on regular schedules. When machinery used at these establishments are in need of repair parts, down-time charges are incurred until the parts can be brought in from Dallas and Fort Worth. Several of the larger industries and merchants maintain their own trucks and drivers solely for the purpose of providing hot-shot service to and from Dallas and Fort Worth. This is expensive.

Because Midlothian is commercially a part of Dallas, Midlothian businesses are in competition with businesses in the commercial zone area. Midlothian businesses suffer a competitive disadvantage because their shipping expenses are higher than those of businesses who ship within the commercial zone. This is because nonregulated carriers in the commercial zones of Dallas and Fort Worth charge lower rates. Moreover, Midlothian businesses, because they cannot offer instant delivery or same-day service, are at a competitive disadvantage.

Industries are seeking to locate in the Dallas/Fort Worth area. These industries consider as one of their criteria whether the proposed site is within the commercial zone. Presently, the population of Midlothian is over 5,000. Because of Midlothian's unique characteristics discussed previously, the city is experiencing rapid growth, which is expected to continue at an accelerated rate.

The sole opposing commenter stated his concern that the Dallas commercial zone

would ultimately grow so large as to directly threaten its business. Specifically, the opponent is concerned that a grant of the instant proposal means that other cities, such as Waxahachie, Ennis, and Denton, will also be included in the Dallas/Fort Worth commercial zones at a future date.

Those making comments in favor of the amendment included: Joe Barton, U.S. House of Representatives; George Kent, mayor of Midlothian; Howard F. Brown, city manager; Maurice Osborn, city councilman; Robert Leu, Chaparral Steel; James Tompkins, Gifford-Hill Cement; Erdle Webb, Webb Hardware; Gene Rodgers, First National Bank; Albert Moore, Midlothian Home Supplies; Linda McAda; Budy Reasoner, Mazda Motors; V.H. Easterwood, P.E.T. Construction; Eugene McAda; Billy Porter, Accessory Installation; Richard Proffitt, Proffitt Welding; John Evans, Elixir Industries; Randy Denton; Eugene Page, Midlothian National Bank; Pat Roling, Midlothian Trade Zone Corp.; David Davenport, Lawson Brothers; Nick Turner, White Home & Auto; and Hugh Inman, Elixir Industries.

John P. Westcott, Burriss Mayflower, made the single comment opposing the amendment.

The Railroad Commission of Texas neither agrees nor disagrees with the opponent's comments. The commission would simply point out that approval of the present application is not an indication of how the commission will rule should the other cities mentioned in the opponent's response apply for inclusion in the Dallas of Fort Worth commercial zones.

Finally, while the opponent mentioned in his comments the harm of including Woodlands in the Houston commercial zone, the opponent failed to comment on the effect a grant of the present application would have.

The amendment is adopted under Texas Civil Statutes, Article 91b, §1g, which provide the Railroad Commission of Texas with the authority to prescribe commercial zones adjacent to and commercially a part of any specified incorporated municipality.

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 January 20, 1986.

TRD-8600875

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

Effective date: February 21, 1986
Proposal publication date: November 18, 1985
For further information, please call
(512) 463-7149.

Chapter 75. Air Conditioning Contractor License Law

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

The Texas Department of Labor and Standards adopts amendments to §§75.4, 75.5, 75.8 and 75.9 with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2387). Amendments to §75.1 and §75.3 are adopted without changes, and will not be republished.

The exemption changes were mandated by Texas Civil Statutes, Article 8861, enacted by the 69th Legislature, 1985, in House Bill 1957. The changes in definitions and license renewal were necessary for clarification.

The sections allow for exemption from licensing certain persons doing maintenance work, and provide for other miscellaneous and minor changes for clarifying Chapter 75.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 8861, which provide the Texas Department of Labor and Standards with the authority to promulgate rules and regulations necessary to effectuate the purpose of the Act.

§75.4. Exams.

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

(c) All exams shall be given "open book," and applicants are encouraged to bring reference material only. The exam is generally based on common industry practices and the latest edition of the Uniform Mechanical Code, published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, and herein adopted by reference. Copies may be obtained from the International Conference of Building Officials, 603 West 13th Street, Suite 2-F, Austin, Texas 78701, (512) 479-8278. An applicant will also need to know the Texas Boiler Law and Chapter 65 of this title (relating to Boiler Division) as they apply to air conditioning contracting. The exam is also compatible with the latest edition of the Standard Mechanical Code, published by the Southern Building Code Congress International, Inc., and herein adopted by reference. Copies may be obtained from the Southern Building Code Congress International, Southwest Regional Office, 3355 Bee Cave Road, Suite 404, Austin, Texas 78746, (512) 327-8278.

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

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

the scheduled exam must pay the re-examination fee prior to being rescheduled.

§75.5. Licenses and Renewals.

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

(h) A license holder is required to notify the commissioner in writing within 30 days of any change in mailing address, change of location, business affiliation, or business telephone number. The mailing address on file with the commissioner shall be considered the license holder's primary place of business, and all correspondence, including license expiration notice from the department, will be mailed to such address of record. A license holder wishing a duplicate license or to replace a lost license or to revise a license shall request in writing the revision or replacement and pay the appropriate fee required in §75.3. of this title (relating to Fees) and return the original license. Additionally, a revised insurance certificate must be provided to the department correctly reflecting the requested revisions. A license holder wishing to revise or replace the identification card shall request in writing the revision or replacement and pay the appropriate fee required in §75.3 of this title (relating to Fees) and submit an identification photograph, 1½ by 2 inches in size.

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

§75.8. Exemptions.

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

(1) (No change.)

(2) performs air conditioning maintenance work if:

(A) the person is regularly employed as a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the air conditioning maintenance work is being performed;

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

(C) the person and the person's employer referred to in subparagraph (A) of this paragraph do not engage in the occupation of air conditioning contracting for the general public;

(3) (No change.)

(4) performs plumbing work and is licensed under the Plumbing License Law, Texas Civil Statutes, Article 6243-101. A person licensed under Texas Civil Statutes, Article 8861, may not perform or offer or attempt to perform any act, service, or function that is defined as plumbing work under the Plumbing License Law, unless licensed under that law. A person who is licensed in this state as a plumber, and is engaged in business as a plumber, may not perform or offer or attempt to perform air conditioning contracting, unless licensed under this Act;

(5) (No change.)

(6) is regulated under the Natural Resources Code, Chapter 113. A person li-

censed under this Act may not perform or offer or attempt to perform any act, service, or function regulated under the Natural Resources Code, Chapter 113, unless licensed under that law. A person regulated under the Natural Resources Code, Chapter 113, may not perform or offer or attempt to perform air conditioning contracting, unless licensed under this Act;

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

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

§75.9. Municipal Regulation and Reporting Requirement.

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

(b)-(c) (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 January 23, 1986.

TRD-8600835 Allen Parker, Sr.
Commissioner
Texas Department of
Labor and Standards

Effective date: February 21, 1986
Proposal publication date: July 26, 1985
For further information, please call
(512) 463-3127.

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TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners Chapter 1. Architects Subchapter B. Registration and Definitions

★22 TAC §1.23, §1.25

The Texas Board of Architectural Examiners adopts amendments to §1.23 and §1.25, without changes to the proposed text published in the December 10, 1985,

Issue of the *Texas Register* (10 TexReg 4724).

A statement establishing the procedure for determining the deadline date for filing an application for examination to be administered in any year, when added to the rules and regulations of the board, serves as public notice of the deadline to all applicants.

The board will accept from any person a completed application for an examination to be administered in a given year, only if that application has been received by the board on or before the deadline date in the year in which the examination is to be administered; otherwise, the application will be accepted for the examination to be administered the following year.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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 January 21, 1986.

TRD-8600780 Robert H. Norris
Executive Director
Texas Board of
Architectural Examiners

Effective date: February 21, 1986
Proposal publication date: December 10, 1985
For further information, please call
(512) 458-1363.

★ ★ ★

Part IV. Texas Cosmetology Commission Chapter 89. General Provisions

★22 TAC §89.30

The Texas Cosmetology Commission adopts an amendment to §89.30, without changes to the proposed text published in the November 8, 1985, issue of the *Texas Register* (10 TexReg 4321).

This section covers the procedures for submitting examination applications. It has been determined that the amendment to this section will aid in clarification of the statutes.

No comments were received regarding the adoption of this amendment.

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 January 20, 1986.

TRD-8600830

Jo Ann Reeves
Executive Director
Texas Cosmetology
Commission

Effective date: February 21, 1986
Proposal publication date: November 8, 1985
For further information, please call
(512) 475-1400.

★ ★ ★

TITLE 25. HEALTH SERVICES Part I. Texas Department of Health Chapter 37. Maternal and Child Health Services Maternal and Infant Health Improvement Program

★25 TAC §§37.231-37.243

The Texas Department of Health adopts new §§37.231-37.243 with changes and §§37.261-37.270 without changes to the proposed text published in the October 25, 1985, issue of the *Texas Register* (10 TexReg 4165 and 4171).

House Bill 1023, 69th Legislature, 1985, requires the department to adopt these sections for the purpose of limiting the occurrence of maternal, fetal, and infant deaths, and low birth weight infants due to inadequate health care; and the department having available for advice and assistance an advisory committee on maternal and infant health care.

Sections 37.231-37.243 cover the criteria and procedures by which the department will deliver comprehensive maternity and infant health services and ancillary services to eligible women and infants. Sections 37.261-37.270 cover the membership and procedure requirements of the advisory committee.

A number of comments were received by the department on §§37.231-37.243. In responding to these comments, the department has made a number of format and editorial changes and has rearranged various provisions throughout the sections; however, the section numbers remain as proposed and none of the content changes are of a substantive nature.

A commentator suggested that §37.231 would be clearer if the department redesignated the title as "Purpose and Scope" and rearranged the subsections in accordance with the redesignated title. This change is primarily a format one and would not involve a change in the substantive content of the section. The department agrees and has changed the section accordingly.

Concerning §37.231, a commentator recommended that the department emphasize only the priority areas in comprehensive services and not simply reiterate the comprehensive services as listed in the statute. The department agrees and has made the appropriate changes. A commentator suggested including social work under the scope of services to be provided. The department feels this section is specifically tracking

the language of the House Bill 1023, which precludes any additions.

Concerning §37.232, a commentator suggested that the general public should be aware that Texas Civil Statutes, Article 4447y, is the same law as House Bill 1023, 69th Legislature, 1985. The department agrees and has clarified Article 4447y to show that it is the same law as House Bill 1023.

Several comments were made regarding the eligibility date in emergency situations. The department has clarified the definition of eligibility date in §37.232 to allow for payment of services in emergency situations, when an application may have been received after the services were provided.

A commentator suggested that the department cite the statutory authority for a council of government in §37.232. The department agrees and has added the statutory authority. A commentator suggested that the definition of "other benefits" should include the entire definition in the Act in order for the term to be clear to the general public. The department agrees and has clarified the definition accordingly.

A commentator suggested that the word "services" be redesignated as "maternal and infant health improvement services," because the latter term is used throughout the rules. In addition, the commentator suggested that the term should include the entire definition in House Bill 1023 in order for the term to be clear to the general public. The department agrees with these two related suggestions and has made appropriate changes in the definition.

A commentator questioned whether §37.233 (d) precluded the involvement of hospital districts. The department agreed to a change that clearly reflects the intent of House Bill 1023 in not excluding the hospital districts from program involvement.

A commentator suggested that the rules should emphasize the requirement in House Bill 1023 concerning no funding for abortion services, so that the general public will be aware of this requirement. The department agrees and has added a new subsection (e) to §37.233. The remaining subsections have been renumbered accordingly. A commentator recommended that the list of services to be provided should be rearranged for clarification. The department agrees and made the appropriate changes.

A commentator noted that selecting traditional providers of charity care discriminates against facilities that operate for profit and conflicts with §13(b) of House Bill 1023. The department agrees and has deleted this paragraph in §37.234.

Several commentators suggested that there should be a wider distribution of the request for proposal packets. The department agrees and has included language to this effect.

Several commentators objected to the requirement in §37.234 that applicants must assure the provision of prenatal care according to the department's guidelines for Maternity, Child Health, and Family Planning. The commentators said that the applicants should assure the provision of such prenatal care according to the

guidelines. The agency agrees and has replaced the word "must" with the word "should".

Two commentators suggested including dietitians in the list of "other participating providers" in §37.235. The department feels the list of other participating providers is not exhaustive, but lists only those currently eligible to receive reimbursement for providing a direct service; therefore, nutritionists were not included in the list.

One commentator felt that the American Academy of Pediatrics standards for Level III intensive care nurseries was too restrictive for Texas and suggested that the department work with professionals to revise the department guidelines issued in 1979. The department agrees and has lessened the Level III restrictions so that neonates may receive care at an institution with services appropriate to meet their needs.

A commentator felt that prenatal care services and high-risk patient services needed further clarification. In addition, the content of prenatal care services is described by reference in §37.238 and in the request for proposals packet adopted by reference in §37.243.

One commentator felt not just board-certified physicians but all physicians should be allowed to participate in the program. The advisory committee to the program recommended that the department keep the requirements as they are now listed, since high-risk patients are involved, which would require a higher level of training and expertise.

Several commentators requested clarification of the exceptional situations where exceptions would be made to approve physicians for program participation. The department agrees and has specified geographic need and out-of-state physicians for program participation. The department agrees and has specified geographic need and out-of-state physicians and facilities as exceptions.

Some commentators asked for clarification of 50% of a physician's time. The department has clarified this to mean greater than 20 hours per week.

One commentator felt the term "nonapproved provider" carried a negative connotation. The department agrees and has changed the terminology to "other participating provider."

A commentator suggested that the residency section be reworded for clarification purposes. The agency agrees and has done so.

A commentator said that the word "routine" is unnecessary in the title of §37.236. The agency agrees and has deleted the word.

A commentator suggested that the income guidelines should be adopted by reference. The agency agrees and has adopted the guidelines by reference in §37.243.

A commentator suggested that since fees for high-risk services are only for those at or below 100% of poverty, it is necessary to have this provision in the rules. The agency agrees and has added this provision.

A commentator suggested that domiciliary care should be reimbursed at direct cost rates to

hospitals. The advisory committee to the program responded that the intention of the inclusion of domiciliary care was to provide for non-hospital (home) care. This is so indicated in the rules.

A commentator suggested that transportation of newborns should not be limited to 48 hours. The department agrees and has deleted the requirement.

A commentator suggested that the number of days and maximum cost limits for payment should be addressed. The department agrees and has included a guaranteed maximum fee schedule and a description of reimbursable services which are adopted by reference in §37.243.

A commentator suggested that providers "should" be required to follow the department guidelines for maternity, child health, and family planning. Compliance should not be mandatory. The agency agrees and has changed "shall" to "should".

A commentator recommended close coordination of this program with the federal Medicaid Program (Title XIX of the U.S. Social Security Act) as follows. Medicaid should reimburse the program for services provided to eligible Medicaid recipients; the Maternal and Infant Health Improvement Act (MIHIA) Program for services should be provided to eligible Medicaid recipients; and dual MIHIA/Medicaid application procedures should be set at MIHIA sites. The department agrees with these concepts and joint efforts are being made to develop common application and eligibility forms. As a beginning process, the rules will indicate a need for all potentially eligible patients to be screened for Medicaid eligibility. Payment provisions will require policy and/or procedure changes by the Texas Department of Human Services.

A commentator suggested that the wording of this section needed to be revised to prevent conflicts with eligibility for the medically needy under the Medicaid Program. The department agreed and inserted a revised statement.

A commentator said that since the advisory committee to the program has been appointed, §37.241 should reflect this. The agency agrees and has changed the section accordingly.

A commentator recommended that §37.242 should distinguish the hearing officer from the final decision maker. The department agrees with the recommendation and has made the appropriate change.

Since several items of information or requirements prepared by the department are mentioned in the rules, it was recommended that these items should be added to the list of items adopted by reference in §37.243. The department agrees and has added the items which are adopted by reference in the section.

A number of other miscellaneous and editorial changes has been made to each section. These changes include the addition of clarifying language and the deletion of unnecessary language. No public comments were received concerning §§37.261-37.270; therefore, no changes have been made to the text as proposed.

The following groups and association commented on the proposed §§37.231-37.243: Children's Defense Fund; Texas Hospital Association; AMI; local and regional health departments; Dallas Dietetic Association; Good Shepherd Medical Center; Harlingen Pediatrics Association; Northwest Texas Hospital; and Texas Medical Association. None of the commentators were against the sections in their entirety; however, questions were asked, concerns expressed, and recommendations made regarding specific parts of the proposed sections. The new sections are adopted under Texas Civil Statutes, Article 4447y, §4 and §5, which provide the Texas Board of Health with the authority to establish and administer a maternal and infant health improvement program; and §14, which provide the infant health care program advisory committee and with the authority to adopt rules covering the committee's operations.

§37.231. Purpose and Scope.

(a) Purpose.

(1) The Maternal and Infant Health Improvement Act, Texas Civil Statutes, Article 4447y, is intended to provide certain medical, educational, and associated services to eligible low-income women and infants necessary to avert or limit the occurrence of maternal, fetal, and infant deaths, low birth weight infants, handicapping conditions, unplanned adolescent pregnancies, and births without appropriate intrapartum care.

(2) The sections are designed to encourage the development of innovative prenatal care programs where services do not exist or where care is insufficient, and to facilitate consultation and other services for high-risk women and infants. Such programs will be expected to coordinate proposed new services under this program with existing local and regional resources and to provide adequate evaluation data measurements of the program.

(b) Scope. The Department will emphasize comprehensive services to individuals, such as providing:

(1) prenatal care in counties where such a service is not currently available;

(2) services for high-risk maternity patients and their infants; and

(3) special program including health education and health promotion services, and pregnancy prevention service, emphasizing those for adolescents and concentrating on adolescent pregnancy and pregnancy prevention.

(c) Types of providers. The program is intended to fund a variety of providers, including, but not limited to, private physicians, hospitals, community health clinics, local health departments, or any other qualified providers of such services. Program contractors may offer services either directly or by special arrangement with other providers.

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

Act—The Maternal and Infant Health Improvement Act (MIHIA), Texas Civil Statutes, Article 4447y (House Bill 1023, 69th Legislative, 1985).

Adolescent—A person under 18 years of age.

Ancillary services—Includes prescription drugs, medical social services, transportation, health promotion services, laboratory services, and other services necessary to obtain appropriate maternal and infant health improvement services in a timely and effective manner.

Applicant—An agency applying for a grant or contract with the department to provide maternal and infant health improvement services. In certain instances, an applicant may be an individual.

Board—Texas Board of Health.

Commissioner—The commissioner of health.

Council of government—A regional council of local governments formed to deal with problem and planning needs that cross the boundaries of individual local governments or require regional attention, as authorized by Texas Civil Statutes, Article 1011m.

Date of service—The actual date the service was initiated or provided.

Department—Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Eligible patient—An individual who meets all program requirements for eligibility.

Eligibility date—The date the patient is eligible to receive program benefits, which is the date the complete application was received by the program, except in emergency situations.

Emergency—The sudden onset of a life threatening situation in which a severe debilitating condition or death would result if immediate medical care were not provided.

Infant—An individual 12 months of age or younger.

Intrapartum care—Maternal and infant health improvement services and ancillary services appropriate for a woman and fetus or infant during childbirth.

Maternal and Infant Health Improvement Services—Include preventive health, medical, assessment, nursing, and facility care services, and other services necessary to avert or limit the occurrence of maternal, fetal, and infant deaths, low birth-weight infants, handicapping conditions, unplanned adolescent pregnancies, and births without appropriate intrapartum care.

Other benefit—A benefit, other than a benefit provided under this Act, to which an individual is entitled for payment of the costs of maternal and infant health improvement services, ancillary services, educational, or transportation services including:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII or Title XIX of the U.S. Social Security Act;

(C) the Veteran's Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services; and

(E) workers' compensation or any other compulsory employers' insurance program;

Perinatal care—Maternal and infant health improvement services and ancillary services that are appropriate for a pregnant woman and the fetus during the period beginning on the 20th complete week of gestation and ending on the infant's 28th completed day of life.

Person—An individual, corporation, government, or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Prenatal care—Maternal and infant health improvement services and ancillary services that are appropriate for a pregnant woman and the fetus during the period beginning on the date of conception and ending at the commencement of labor.

Program—The Maternal and Infant Health Improvement Services Program created by the Act and provided through program contractors or the department, or both.

Program contractor—An agency that, through a contract with the department, delivers maternal and infant health improvement services and ancillary services that are purchased by the department for the purposes of this Act. In some instances, a contractor could be an individual.

Provider—Generally includes, but is not limited to, private physicians, registered nurses, hospitals, community health centers, local health departments.

Region—A public health region of the Texas Department of Health.

Request for proposal—An application and instructions issued by the department to potential applicants for a proposal and budget to deliver comprehensive maternal and infant health improvement services.

State—The State of Texas.

Statewide Advisory Committee—Those persons appointed by the board to serve in an advisory capacity to the department.

Support—The contribution of money or services necessary for a person's maintenance; this includes food, clothing, shelter, transportation, and health care.

§37.233. Program.

(a) As authorized by the Act, the board has established a maternal and infant health improvement program in the department to deliver comprehensive maternity and infant health services and ancillary services to eligible women and infants.

(b) A needs determination shall be performed by the department with weightings based upon consideration of the number of the following:

- (1) live births;
- (2) nonmetropolitan births;
- (3) poverty level;
- (4) per capita income;
- (5) infant mortality rate; and
- (6) low birth weight rate.

(c) As a result of a statewide determination of need and in accordance with budget limitations, the department may provide (directly or through program contractors) all or any combination of the following services, to eligible patients;

(1) new or additional prenatal care in counties designated in need of these services;

(2) services for high-risk maternity patients and their infants including:

(A) outpatient consultation services for high-risk maternity patients;

(B) outpatient specialized diagnostic services for the high-risk maternity patient;

(C) stabilization of the high-risk maternity patient;

(D) hospitalization for delivery of the high-risk maternity patient and newborn care;

(E) inpatient hospitalization for newborns of high-risk maternity patients;

(F) inpatient high-risk infant follow-up consultation;

(G) emergency medical transportation necessary to secure appropriate perinatal care; and

(H) ancillary services, including laboratory tests medications, and nonemergency transportation;

(3) special program including:

(A) health education and health promotion services, including:

(i) organized continuing education for health care workers emphasizing perinatal education;

(ii) public health education to provide information relating to the importance of perinatal care and the availability of resources for care; and

(iii) nutrition education;

(B) a special program of pregnancy prevention services for women receiving benefits for two or more pregnancies, including the availability of family planning services as provided in the medical assistance program administered by the Texas Department of Human Services; and

(C) a special program of preventive, health, medical, and facility care and health education services for adolescents concentrating on adolescent pregnancy and pregnancy prevention.

(d) Funds authorized under the Act and these sections shall not be used to replace existing programs, services, or benefits currently funded or reimbursed through other resources, or which are legally required. These funds are meant to provide an additional scope of services. The applicant shall ensure that, as a condition of the funds being awarded in the contract, the level of funds which were available to the

applicant for maternal and infant health improvement services on January 1, 1986, or upon receipt of the applicant's first contract for such services, will not be diverted for the purpose of providing services other than for maternal and infant health improvement. This provision does not preclude the replacement of lost federal monies or state grant monies directed to maternal and infant health improvement services by Maternal and Infant Health Improvement Act dollars. In addition, this provision does not preclude the enhancement of benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or by the facilities of a publicly supported medical school. Exceptions will be considered upon written request and written response by the department based on the individual merits of the proposal.

(e) Notwithstanding any other revision of the Act or these sections, no funds administered under the Act shall be used to provide abortion services unless the mother's life is in danger.

(f) Throughout the duration of this program, the department may deliver maternal and infant health improvement services directly to eligible patients to the extent that the department determines that the existing private or public providers or other resources in the service area or contiguous service area are unavailable or unable to provide those services. In making a determination that providers or resources are unavailable or unable to provide services, the department shall:

(1) initially determine the proposed need for services in the service area;

(2) notify existing private and public providers and other resources in the service area or contiguous service area of the department's initial determination of the need for the services and the services the department proposes to deliver directly to eligible individuals;

(3) provide the existing private and public providers and other resources in the service area or contiguous service area 30 days notice to comment in writing on the Department's initial determination of the need for the proposed services and determine the availability and ability of existing private or public providers or other resources in the service area to satisfy the need for the services;

(4) provide the existing private and public providers and other resources in the service area 30 days after written notice to apply and 60 days after written notice to secure approval as providers under the program; and

(5) eliminate, reduce, or otherwise modify the proposed scope or type of services the Department proposes to deliver directly, to the extent that those services may be delivered by existing private or public providers or other resources in the service area that meet the Board's criteria

for approval as providers as described in §37.235 of this title (relating to Selection of Providers).

§32.234. Contract and Written Agreements.

(a) In order to conserve funds and effectively administer the program, the department may contract on a request for proposal (RFP) basis for maternal and infant health improvement services and ancillary services. The RFP is prepared by the Department and is adopted by reference in §37.243 of this title (relating to Items Adopted by Reference) and include all of the items adopted by reference in §37.243 of this title (relating to Items Adopted by Reference), except the guidelines for maternity, child health, and family planning.

(b) The department shall publish public notice of the request for proposals in the Texas Register, secretary of state's office, at least 30 days prior to the due date. Local published notices or direct contact by the Department with potential contractors will also be utilized. Notification may also be made to certain professional groups such as the Texas Medical Association, Texas Hospital Association and the Texas Nurses Association.

(c) Potential applicants may be existing private or public resources that meet the criteria in these sections to provide the needed services.

(d) Applicants may obtain a request for proposal and a copy of the sections from the regional offices of the Texas Department of Health or from the area councils of government.

(e) All potential applicants shall coordinate their plans to submit a proposal to the department with the appropriate regional director of public health and the Health Advisory Committee of the councils of government.

(f) Each proposal received from an applicant shall be reviewed according to the criteria in subsection (h) of this section at the appropriate regional department level and at the council of government. This review must be completed within 60 days. Concurrent review will be done at the state level by the department.

(g) Based on review criteria in §37.235 of this title (relating to Selection of Providers) and recommendations by both the regional director of public health and the council of government, applicants submitting proposals will be selected and approved by the department at the state level to enter into a contract with the Department.

(h) Criteria for the selection of applicants will be based on the following.

(1) The applicant must provide or assure the provision of prenatal care to indigent low-risk maternity patients and preventive child health services to indigent children, including immunizations. These services should be provided according to the Guidelines for Maternity, Child Health, and

Family Planning as developed by the department and adopted by reference in §37.243 of this title (relating to Items Adopted by Reference).

(2) The applicant must assure the availability of medical consultation for high-risk maternity patients and high-risk infants in accordance with the established maximum fee schedule adopted by reference in §37.243 of this title (relating to Items Adopted by Reference). Reimbursable fee rates shall be contained in the request for proposal packet.

(3) The applicant must assure the availability of appropriate hospital facilities for eligible patients at the established fees.

(4) The applicant must assure the availability of emergency transportation for eligible high-risk maternity patients and high-risk infants.

(5) The applicant must assure the availability of follow-up services for eligible high-risk infants.

(6) The applicant must designate a medical director who is a physician licensed to practice medicine in Texas and who shall be responsible for the medical aspects of the provider's program.

(7) In addition, the applicant must secure the consultative services of a board-certified obstetrician and a sub-board-certified neonatologist for each county where services are proposed. These specialists need not be located in each county, but shall be available to accept referrals from other physicians providing services for eligible patients.

(A) The obstetric consultant must be certified by the American Board of Obstetrics and Gynecology;

(B) The neonatology consultant must be certified by the American Board of Pediatrics with a sub-board certification in neonatology.

(C) Exceptions to the criteria in this paragraph will be made by the department in cases of geographic factors and unavailability of professionals.

(i) In areas where contractors are not available or not willing to provide program services, the department may provide program services directly and/or through approved physicians and hospitals.

(j) The department will continue to provide prenatal care, child health care, and family planning services in existing public health clinics according to the Guidelines for Maternity, Child Health, and Family Planning adopted by reference in §37.243 of this title (relating to Items Adopted by Reference).

(k) An applicant will not be denied approval as a contractor on the basis that the applicant operates for profit or receives federal funds, if those funds are inadequate to meet the needs of all eligible patients seeking services.

(l) The department may waive the preceding requirements in order to expedite selection of contractors so that maternal

and infant health services may be provided to individuals in need. This may be done on the advice of the Statewide Advisory Committee and shall have the approval of the board or commissioner.

§37.235. Selection of Providers.

(a) Authorization. Generally, the Act authorizes the department to select providers to participate in the program according to criteria in these sections.

(b) Provider acceptance of sections. All physicians, hospitals, and other providers must agree to abide by these sections and to accept program fees as payment in full for Maternal and Infant Health Improvement Act (MIHIA) services delivered to eligible individuals whose annual gross family income is 100% of the federal poverty income guidelines or below.

(c) Prenatal care services. Services by providers such as physicians, registered nurses, and certified nurse midwives may be funded for prenatal care services in the counties designated to be in need by the department.

(d) High-risk patient services. The following groups of providers must be processed through an application process to determine their desire to provide high-risk patient services and to determine their qualifications in relation to the criteria in these sections for participation:

(1) Physicians. To be approved for program participation, a physician must submit a completed application form which may be obtained from a contractor or the department and attach the documents as requested on the form.

(A) Criteria for approval and stipulations include:

(i) a license to practice medicine in Texas;

(ii) board certification in one of the following specialties of The American Board of Medical Specialties: Obstetrics and Gynecology, Pediatrics or Family Practice, or be a member of the American Academy of Family Practice; board-eligible physicians may be approved for a one-year period pending board certification; and

(iii) an established practice located within Texas.

(B) In exceptional situations of geographic need or unavailability of other providers, the requirements of subparagraph (A)(ii) and (iii) of this paragraph may be waived by the Department.

(C) Physicians who contract with a program contractor for greater than 20 hours per week or who are on salary with a program contractor may not be reimbursed by MIHIA funds.

(2) Hospitals. To be approved for program participation, a hospital must submit a completed application form and attach the documents as requested on the form.

(A) Criteria for hospital approval include the following:

(i) current approval by the Joint Commission on Accreditation of Hospitals and/or licensure by the Texas Department of Health;

(ii) location within Texas;

(iii) sufficient program-approved physicians to meet anticipated program caseload;

(iv) definable obstetrical and newborn units, equipment, and qualified staff necessary to meet the special needs of program-eligible patients, as determined by the department;

(v) a nursery meeting Texas Department of Health guidelines for hospitals providing intermediate and/or intensive care services; and

(vi) an agreement to allow the department to conduct or arrange for on-site visits and both medical and fiscal audits.

(B) To facilitate the availability of maternal and infant health improvement services in all areas of the state, while retaining the assurance of quality care, approval of some hospitals may be on a temporary basis, with restrictions limiting the hospital to treatment of certain specific conditions. Application materials should be updated at least every two years for hospitals with temporary approval.

(3) Out-of-State physicians and hospitals. All physicians and hospitals utilized by the program shall be located in Texas, except in those situations where it is a hardship or a great risk for patients to be transported to a medical facility in Texas, when an out-of-state facility within 50 miles of the Texas border is closer to the patient's home. Under these circumstances, all other program policies and procedures will apply.

(4) Physician and hospital application for program participation.

(A) Applications may be obtained from the Department or program contractor on request. A copy of these sections shall be attached to the application. The completed application will be reviewed by the department for correctness and to verify that all criteria have been met, including required documentation. The department shall notify the physician or hospital of the approval or denial of the application.

(B) Any physician or hospital may withdraw from program participation by notifying the department in writing 30 days in advance of the withdrawal.

(5) Denial/modification/suspension/termination of provider approval.

(A) The department may deny, modify, suspend, or terminate the approval of providers for failure to comply with these sections. Any provider submitting false or fraudulent claims or failing to provide and maintain quality services or medically acceptable guidelines is subject to the administrative sanctions of this subparagraph.

(B) A due process hearing is available to any provider for the resolution of conflict between the program and the provider, as set out in §37.242 of this title

(relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(e) Other participating providers. The department and program contractors may use other types of providers that are not required to apply for approval, and may use other providers for emergency care, or in areas of the state where there are not approved providers available. Similar to approved providers, other participating providers must adhere to these sections and the specified payment procedures to be assured of program payment. Examples of other participating providers are:

- (1) physicians who provide emergency care;
- (2) pharmacists;
- (3) transportation companies or providers;
- (4) ambulance services; and
- (5) physician consultants to approved physicians.

§37.236. Eligibility for Prenatal Care Services. In general, the following eligibility criteria and co-payment requirements are consistent with current guidelines utilized by programming funded under the federal grant for maternal and child health services.

(1) **Criteria.** A patient shall be eligible for prenatal care under this Act if she is pregnant, is a Texas resident as defined in these sections, has an annual gross family income at or below 200% of federal poverty income guidelines, and no other public resources are available.

(2) **Co-payment.** Patients may be charged a co-payment on a sliding-fee basis, in accordance with the fee schedule of the contracting agency, not to exceed the actual cost of service.

§32.237. Eligibility for High-Risk Patient Services.

(a) **Criteria.** In order for a patient to be eligible for high-risk maternal and infant health improvement services, the patient's gross annual family income must be at or below 100% of the federal poverty income guidelines and the patient has to meet the medical and other related criteria in this section.

(b) **Applications.** Applications are available to anyone seeking assistance from the program. Application forms may be obtained from most local or regional health departments or program contractors. The completed application form is reviewed by the program contractors or the regional health departments when acting as a program contractor. The program contractor will be responsible for making an eligibility determination. The application is in two parts: one part provides eligibility information regarding the family's financial circumstances and patient residency; the other part provides medical eligibility information. The application must be on department forms to be considered by the program.

(c) **Eligibility.** To be eligible for the program, the patient must meet all the following criteria:

(1) the patient must be pregnant or be the infant offspring of an eligible patient;

(2) the patient must have a high-risk medical condition as described in the high-risk prenatal classification form that is adopted by reference in §37.243 of this title (relating to Items Adopted by Reference) or be 16 years of age or under or 40 years of age or older at the time of pregnancy diagnosis;

(3) the patient must be in financial need as described in subsection (e)(2) of this section; and

(4) the patient must be a resident of Texas as described in subsection (e)(3) of this section.

(d) **Filing of application form.** The patient is considered to have filed an application from the time the program contractor or the regional office, when acting as a program contractor, has received a completed application. All applications must be kept by the department or program contractor for a period of three years. Applications will be classified as:

(1) denied, if eligibility requirements are not met;

(2) incomplete, if sufficient information is not provided;

(3) pending, if medical information is not yet available; or

(4) approved, if all criteria are met.

(e) **Eligibility requirements.**

(1) **Medical eligibility.**

(A) Any pregnant woman who is 16 years of age or younger or 40 years of age or older at the time of pregnancy diagnosis or any pregnant woman who is suspected of having a high-risk condition covered by the program and whose financial and residency eligibility have been established is eligible for outpatient consultation services and outpatient specialized diagnostic services by an approved physician.

(B) To be medically eligible for continuing services, other than those described in subparagraph (A) of this paragraph, the patient must have a condition covered by the program and have at least one licensed physician certify that the individual meets the health or medical criteria established by these sections; and the certifying physician shall have reason to expect that the services delivered by the program will prevent or reduce the probability of maternal, fetal, or infant death, and complications of pregnancy, including handicapping conditions found in infants that are associated with complications of pregnancy, or adolescent pregnancy.

(C) A list of high-risk medical conditions is described in the high-risk prenatal classification form that has been adopted by reference in §37.243 of this title (relating to Items Adopted by Reference). Special consideration has been given to pregnant women and infants with high-risk

medical conditions which, when treated, would result in reduced deaths and handicapping conditions.

(D) In order to determine medical eligibility, a physician must provide the contractor with at least the following:

(i) applicant's name and date of birth;

(ii) diagnosis by International Classification of Diseases, 9th Edition, Clinical Modification, (ICD-9 Codes) and name(s);

(iii) services performed;

(iv) plan of treatment/follow-up care.

(E) Written notification of emergency situations must be received within five working days of delivery of emergency care. The program will require the following specific information: the nature of the emergency; diagnosis; services performed; name and address of facility where services were delivered; name and address of physician who delivered the services; name, current address, and date-of-birth of patient/individual; and name, address, and telephone number of parents, if patient/individual is under 18 years of age. Eligibility must be established before any payment for services can be made. The program must receive a completed application no later than 30 days after the date of service was initiated. Failure to comply with this 30-day deadline will forfeit the provider's right to any claim for payment.

(2) **Financial eligibility.**

(A) Financial need is established on the basis of family income as established in the income guidelines that are adopted by reference in §37.243 of this title (relating to Items Adopted by Reference).

(B) The family income used to determine eligibility is the gross annual income of those persons who have a legal obligation to provide for the eligible patient. Gross annual income includes earned wages, pensions or allotments, child support payments, alimony, or any monies received on a regular basis for family support purposes. Verification of income will be required as set out in subparagraph (C) of this paragraph. If the individual is at least 18 years of age and is determined to be in school, the individual is considered to be the legal responsibility of the parent, guardian, or conservator; if an individual is at least 18 years of age, is not in school, and/or has been employed or is living independently, eligibility will be determined by the individual's situation.

(C) All income of the patient or legally responsible person(s) must be verified by presenting to the contractor at least one of the following:

(i) a copy of the most recent paycheck;

(ii) a copy of the most recent paycheck stub/monthly employee earnings statement;

(iii) employer's written verification of gross monthly income;

(iv) pension/allotment award letters;

(v) Internal Revenue Service Form 1040 and supporting schedules for the most recent year, if the items in clauses (i)-(iv) of this subparagraph are not available to verify income; or

(vi) other documents or proof of income determined to be valid by the department.

(D) Any other resource available to the eligible patient, or the parent/guardian/conservator if the patient is a minor, or the legally responsible person(s), must be utilized prior to the use of program funds. This includes benefits from a legal cause of action, settlement, or judgment on behalf of the patient, as well as personal financial resources and third-party insurance. (This should not be interpreted as a deterrent to appropriate care of minors.)

(E) To be eligible for services under this Act, the patient must not be receiving maternal and infant health benefits reimbursable through health insurance, including Medicaid.

(F) All potentially eligible patients must be screened for possible Medicaid eligibility.

(3) Residency eligibility.

(A) The person must be a bona fide resident of Texas. A bona fide resident means a person who is physically present within the geographic boundaries of the state and does not claim residency in any other state or country and who:

(i) has an intent to remain within the state;

(ii) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(iii) is under 19 years of age and resides in Texas and his/her parent(s) or managing conservator or the guardian of the child is a bona fide resident;

(iv) is a person residing in Texas and his/her legal dependent spouse is a bona fide resident; or

(v) is an adult residing in Texas and his/her legal guardian is a bona fide resident.

(B) Verification of Texas residency must be attached to the application and must be in the form of a copy of one of the following: a valid driver's license, voter registration, motor vehicle registration, rent or utility receipts, school records, or other proof of residency as determined valid by the department.

(f) Determination of eligibility.

(1) Final determination of eligibility. The final determination of eligibility is made by the program contractor, or the regional office when acting as a program contractor, using the information provided in both parts of the application (medical and financial).

(2) Approval. The patient's case is considered to be eligible for services when all aspects of eligibility have been met.

Eligibility continues for the perinatal period, and for eligible high-risk infants who are 12 months of age or younger, provided that eligibility criteria are maintained. The appropriate regional office or program contractor will notify the patient in writing of the status of their application within 20 working days after the application and the medical eligibility forms have been received. Any questions regarding coverage may be addressed to the department.

(3) Eligibility date. At the time eligibility is established, an eligibility date will be determined and recorded. The eligibility date assigned will be the date the properly completed application form, with financial residency and medical requirements met, was received by the appropriate regional office or program contractor, with the exception of emergency situations, as outlined in §37.236 of this title (relating to Eligibility for Prenatal Care Services).

(4) Denial. The denial of any patient application will include the reason(s) for such denial. The patient applying for services has the right prior to the denial becoming final, to request administrative review and a due process hearing as set out in §37.242(a) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(g) Maintaining eligibility. Only the initial application needs to be filed to determine ongoing eligibility of a patient and her infant offspring. To maintain eligibility for high-risk patient services, the individual must:

(1) continue to reside in the state as described in these sections;

(2) be in financial need as described by these sections;

(3) continue to have a high-risk medical condition covered by these sections;

(4) appraise the appropriate regional health department or contractor within 30 days of changes in permanent home address, insurance coverage, employment, or income.

(h) Reapplication. Any patient has the right to reapply for program coverage at any time or when there is change of situation or condition.

§37.238. Services Provided to Patients.

(a) Generally, the department may provide direct program services or may utilize qualified existing private or public providers. The patient should receive services as close to the home community as possible except in those situations where program contracts or policies require treatment at specific facilities.

(b) Paragraphs (1)-(9) of this subsection provide a brief description of the medically indicated services the program shall provide. A more detailed description of these reimbursable services, along with the maximum fee schedule adopted by reference in §37.243 of this title (relating to Items Adopted by Reference), is available from the Bureau of Maternal and Child Health, Texas Department of Health. Services may be lim-

ited as to frequency, duration, and cost for budgetary reasons.

(1) New or additional prenatal care in counties designated in need of these services. The content of prenatal care services are contained in department guidelines for maternity, child health, and family planning, which are adopted by reference in §37.243 of this title (relating to Items Adopted by Reference). These guidelines should be followed. The department has conducted a statewide determination of need and certain counties shall be designated as priorities for new or expanded prenatal care services.

(2) Outpatient consultation services for high-risk maternity patients. These services include prenatal and postpartum visits for specified high-risk medical conditions.

(3) Outpatient specialized diagnostic services for high-risk maternity patients. These services include up to two sonograms per pregnancy, indicated amniocentesis, colposcopy for Class III or greater Pap smears, up to two nonstress tests per pregnancy and circlage for incompetent cervix.

(4) Stabilization of the high-risk maternity patient. These services include attending physician and hospital care for up to a total of seven days per pregnancy and a limited duration of nonhospital domiciliary care when deemed necessary for medical reasons.

(5) Hospitalization for delivery (intrapartum care) of the high-risk pregnant women and normal newborn care. Eligible pregnant women who have a high-risk medical condition, or who are 16 years of age or younger or 40 years of age or older, will receive intrapartum (delivery) care in an approved hospital.

(6) Inpatient hospitalization for newborns of high-risk maternity patients. Newborns eligible for inpatient services include only those whose mothers received intrapartum care under the program, including the following.

(A) Routine newborn services. Routine newborn services include physician and hospital care for two days (vaginal delivery) or five days (Cesarean delivery).

(B) Inpatient hospitalization for newborn conditions not requiring intensive care. This service includes inpatient hospitalization for newborns requiring medical care relating to immediate postpartum complications.

(C) Inpatient hospitalization for newborn conditions requiring intensive care. This service includes inpatient hospitalization for newborns requiring intensive neonatal care for immediate postpartum complications at an approved hospital which meets the guidelines of the Texas Department of Health.

(7) Outpatient high-risk infant follow-up consultation visits. Infants whose mothers received intrapartum care and who meet high-risk medical criteria are eligible for specialized high-risk infant follow-up ser-

VICES. These services include outpatient visits to a board-certified specialist.

(8) Emergency transportation. This service includes the emergency transportation of high-risk maternity patients eligible for program services and/or newborns eligible for neonatal intensive care services. Services include emergency transportation by a qualified provider.

(9) Ancillary services. These services include outpatient specialized laboratory tests, medications, and nonemergency transportation, as funds are available. Medications must be prescribed by an approved physician for treatment of a condition covered by the program. Payment is made only after delivery of the medications. The pharmacist must submit proof of receipt by the patient and a copy of the physician's prescription with the voucher. Nonemergency transportation to the nearest medically-appropriate facility may be provided for the patient (and responsible adults, if needed) and for services and appointments reimbursed by the program.

§37.239. Coordination of Benefits and Recovery of Costs.

(a) An individual is not eligible to receive services delivered under the Act to the extent that the individual or person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services, unless those services were denied.

(b) At the time of application or while an individual is receiving services, if the department determines that the individual (or any person who has a legal obligation to support the individual) is financially able to pay for all or part of the services provided under this Act, the department shall require the individual (or the person who has a legal obligation to support the individual, and who is financially able to bear a portion of the expense) to pay for or reimburse the department for that portion of the cost of the services that the individual (or person) is able to pay.

(c) An individual who applies for or receives services delivered under this Act shall inform the department, at the time of application or at the time the individual receives services, of any other benefit to which the individual or a person who has a legal obligation to support the individual may be entitled.

(d) An individual or a person who has a legal obligation to support an individual who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The commissioner may waive enforcement as prescribed in these sections in certain individually considered cases in which enforcement of this section will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or regulations.

(f) As authorized by the Act, §II, the department may recover the cost of services delivered under this Act from an individual or person who does not reimburse the department as required by subsections (b) and (d) of this section or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

§37.240. Denial/Modification/Suspension/Termination of Services.

(a) Generally. The department may deny, modify, or terminate services to an individual, for just cause, after written notice and an opportunity for a due process hearing has been given under §37.242 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(b) Basis for action. An individual requesting or receiving benefits from the program may be notified in writing that such benefits may be denied, modified, suspended, or terminated if:

(1) the information in the patient application is erroneous or has been falsified;

(2) the individual is no longer a resident of Texas defined by these sections;

(3) the required information is not provided when requested;

(4) obligated reimbursement to the department is not provided. Any individual or person who has a legal obligation to support the patient, and who has received third-party or liability payments for program services received, must reimburse the department by lump sum payment or, at the department's discretion, in monthly installments; or

(5) program funds are reduced or curtailed.

(c) Inapplicability of the Administrative Procedure and Texas Register Act. The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §§12-20, do not apply to the granting, denial, modification, suspension, or termination of services delivered under this Act. The department shall conduct due process hearings in accordance with §37.242 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(d) Exemption. The notice and hearing procedures do not apply if the department restricts program services to conform to budgetary limitations that require the board to establish service priorities relating to the types of services provided, geographical areas covered, or classes of individuals eligible.

(e) Payment of services. Payment for any service authorized by the program contractor or regional office may be made only after the delivery of service. The patient or his/her family must not be required to make a preadmission or pretreatment payment or deposit. Providers must agree to accept established fees for Maternal and Infant Health Improvement Act (MIHIA) services, and the patient or his/her family will not be required to pay the difference between the

usual and customary charge and the MIHIA program fee for MIHIA services if the annual gross family income is 100% of the federal poverty income guideline or below.

(1) Maximum provider fee schedules. The department adopts by reference a maximum fee schedule in §37.243 of this title (relating to Items Adopted by Reference) which applies to program services. The department may adopt other fee schedules through contract or written agreement for budgetary or administrative reasons.

(2) Required documentation. The department requires documentation of the delivery of goods and services from the provider. Notification will be given regarding billing for services.

(3) Claims submission deadline. Providers must submit their claims within 90 days of the date of the delivery of goods and/or services. Submission of claims after that date may be deemed cause for denial of payment. Opportunity will be provided for the correction of claims made in error.

(4) Overpayments. Overpayments made on behalf of patients to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, out of the current claims due to be paid to the provider on behalf of patients.

(5) Payment denial, modification, or suspension of payment and termination of contract. The department may deny, modify, or suspend payment for services or terminate a contract if false or fraudulent claims are submitted by a provider or supplier. Any provider failing to provide and maintain quality services or medically acceptable guidelines is subject to review, fraud referral, and/or administrative sanctions. Providers may request a due process hearing from the department in accordance with paragraph (6) of this subsection.

(6) Inapplicability of the Administrative Procedure and Texas Register Act. The Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), §§12-20, do not apply to the resolution of conflicts between the department and providers. The department shall conduct due process hearings in accordance with §37.242 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(7) Budgetary limitations. The notice and hearing procedures do not apply if the department cancels a grant or contract to conform to budgetary limitations that require the board to establish service priorities relating to the types of services provided, geographical areas covered, or classes of individuals eligible or if the grant or contract expires according to its terms.

§37.241. Development and Improvement of Guidelines and Services.

(a) Advisory committees.

(1) The board has appointed a nine-member statewide advisory committee to the program. The committee shall advise the department and make recommendations

with respect to the policies of the program, as follows.

(A) It may suggest alternatives to the ongoing program and its method of administration, including monitoring and evaluation.

(B) It may review and advise upon the method and requirements for obtaining contractor providers, i.e., the request for proposals.

(C) It may appoint sub-committees to review the department's criteria for selection of providers, including consultants, facilities, and emergency transportation systems.

(2) The board may also appoint any necessary areawide advisory committee to advise the department with respect to the local or areawide impact of the policies of the program.

(b) Monitoring and evaluation of program.

(1) Generally, monitoring and evaluation of the program will be done on a regular basis by department staff, and the Statewide Advisory Committee and the Health Advisory Committees of the Councils of Government. This will be done through on-site program audits and evaluations of providers and through fiscal and programmatic reports to determine compliance with the Act and these sections.

(2) The department shall conduct an analysis of outcome indicators such as the entrance month into prenatal care, number of prenatal visits, birth weight, as well as neonatal and infant mortality rates in order to determine the progress made towards achieving the goals and objectives of the long and short-range plans as specified in the Act.

(c) Reports. The Act requires additional financial information beyond that required in 1 TAC §§5.141-5.167 (relating to the Uniform Grant and Contract Management Standards) adopted by the governor's office. The department will require annual reports from program contractors and regional offices that must include:

(1) the unduplicated number of patients receiving care under the Act;

(2) the total cost of the program, including a delineation of the total administrative costs of the program and the total cost for each service authorized under the Act;

(3) the average cost of services per recipient;

(4) the number of recipients who received services in each public health region;

(5) high-risk maternity and high-risk infant follow-up reporting forms; and

(6) any other information that may be required by the board.

(d) Cooperation with other agencies. The department will cooperate with public agencies (federal, state, and local) and with private agencies and individuals interested in the welfare of mothers and infants. The department will make every effort to establish cooperative agreements with other state

agencies to define the responsibilities of each agency in relation to specific programs to avoid duplication of services.

(e) Data. The data included in the reports indicated in subsection (c) of this section and the updated needs assessment data will serve as the basis for the continuing review of the services the department provides directly to the eligible women and infants participating in this program.

§37.242. Appeals, Confidentiality, Gifts and Nondiscrimination.

(a) Right of appeal. Any individual aggrieved by a program decision to deny, modify, suspend, or terminate benefits or participation rights may appeal the decision before it becomes final in the following manner.

(1) Administrative review.

(A) Within 10 working days after receiving notice of the proposed denial, modification, suspension, or termination of benefits, or participation right, an individual aggrieved shall respond to the decision and notify the department by certified mail of his/her request for an administrative review of the program's decision. Additional information bearing on the decision may be submitted at this time. Failure to request an administrative review within the 10-day period is deemed to be a waiver of the administrative review.

(B) Upon receipt of this response, a department administrative review team will affirm or reverse the proposed action, and respond in writing to the individual, giving the reason(s) for the decision.

(C) Within 10 days after receiving written notice of the decision of the administrative review team, an individual aggrieved by the department's decision may request a due process hearing from the department in accordance with the provisions of paragraph (2) of this subsection. A request for a hearing shall be sent to the department by certified mail. Failure to request the hearing within the 10-day period is deemed to be a waiver of the due process hearing.

(2) Due process hearing.

(A) The department will set a date, time, and location for the hearing.

(B) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act. Texas Civil Statutes, Article 6252-13a, but will include the following:

(i) written notice to the individual aggrieved stating the basis for the decision and disclosure of the evidence on which the decision is based;

(ii) an opportunity for the individual aggrieved to appear before an impartial hearing officer to refute the basis for the decision;

(iii) an opportunity for the individual aggrieved to be represented by counsel or another representative;

(iv) an opportunity for the individual aggrieved or his/her representatives

to be heard in person, to call witnesses, and to present documentary evidence;

(v) an opportunity for the individual aggrieved or his/her representatives to cross-examine witnesses;

(vi) a proposal for decision by the hearing officer which will be submitted to the final decision maker (the commissioner of health); and

(vii) a written decision by the commissioner of health setting forth the reasons for the decision.

(b) Confidentiality of information. All medical records and other information maintained by the department, which are confidential by law, shall not be disclosed to the public.

(c) Gifts and donations. The department may receive gifts and donations on behalf of the program, which are deposited in the state treasury and reappropriated to the program.

(d) Nondiscrimination statement. The Texas Department of Health operates in compliance with the Civil Rights Act, 1964, Public Law 88-352, Title VI, and Title 45, Code of Federal Regulations, Part 80, so that no individual will be excluded from participation in, or otherwise subjected to discrimination on the grounds of race, color, national origin, or handicapping conditions.

§37.243. Items Adopted by Reference. The department adopts by reference the following items prepared by the department. Copies may be obtained from the Bureau of Maternal and Child Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours:

- (1) high-risk prenatal classification form;
- (2) income guidelines;
- (3) request for proposals;
- (4) description of reimbursible services;
- (5) maximum fee schedule;
- (6) guidelines for maternity, child health, and family planning;
- (7) medical eligibility criteria.

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 January 24, 1986.

TRD-8800926

Robert A. MacLean
Deputy Commissioner
Texas Department of
Health

Effective date: February 14, 1986

Proposal publication date: October 25, 1985

For further information, please call

(512) 458-7700.

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**State Maternal and Infant Health
Care Program Advisory
Committee**

★25 TAC §§37.261-37.271

The new sections are adopted under Texas Civil Statutes, Article 4447y, §4 and §5, which provide the Texas Board of Health with the authority to establish and administer a maternal and infant health improvement program; and §14 which provide the infant health care program advisory committee and to adopt rules covering the committee's operations.

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 January 24, 1986.

TRD-8600925 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: February 21, 1986
Proposal publication date: October 25, 1985
For further information, please call
(512) 458-7236.

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**Chapter 133. Hospital
Licensing
Standards**

★25 TAC §133.21

The Texas Department of Health adopts an amendment to §133.21, with changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4283).

Section 133.21 adopts by reference Chapter 11 of the hospital licensing standards. The new Chapter 11 is published in its entirety in the In Addition section of this issue of the *Texas Register*.

The amendment updates the existing standards by incorporating requirements governing the transfer of patients between hospitals and requiring that such transfers be accomplished in a medically appropriate manner from physician to physician as well as from hospital to hospital.

The amendment requires each hospital licensed by the Texas Department of Health to submit a transfer policy for review and acceptance by the department on or before April 1, 1986. Renewal of the hospital's license will depend upon compliance with the amendment.

The only comment on §133.21 itself was that the effective date be changed to April 1, 1986, instead of March 1986. The department agrees and has made the change. The remainder of the comments relate to Chapter 11 of the hospital licensing standards.

The department received numerous comments concerning the proposed new Chapter 11 to the hospital licensing standards. In response to the comments, the department has made a number of changes to the proposed rule; however, the changes do not represent a substantial change to the content or the requirements of the proposed Chapter 11. The changes include rearrangement of sections and content, the addition and deletion of requirements, rewording, and miscellaneous editorial changes.

All of the references to section numbers in this summary of comments are to section numbers in the proposed Chapter 11 of the hospital licensing standards. The comments with which the agency agrees and has made appropriate changes in the standards are as follows.

Regarding §11-1.1, several commenters requested that "emergency services" be defined. One commenter suggested that the definition of "emergency services," as used in Texas Civil Statutes, Article 4436a, be incorporated or used in this section. A commenter recommended that a definition of the term "stabilize" be added to the proposed rules. Several commenters suggested that the definition of "patient" clearly establish the point at which the transferring hospital has accepted initial responsibility for a person as a "patient." One commenter suggested that the definition of "patient" may need rewording to indicate a person with an impending need for hospitalization and medical care.

As regards the definition of "hospital administration," several commenters remarked that hospital personnel at both the transferring and receiving hospitals are involved with patient transfers; however, unless licensed to practice medicine, these individuals would not appear to be authorized to be the final authority in a transfer situation. As regards the definition of "hospital administration," one commenter suggested the word "approve" be substituted for the word "authorize," and that the words "been granted" be inserted between "person who has" and "the authority to."

Regarding §11-1.2.2, one commenter suggested rewording the introductory phrase to read, "the hospital's policy shall require through a defined peer review process that..." Several commenters recommended that the section include provisions for reporting of violations to the Texas Department of Health. Two commenters recommended that the word "assure" in the section be changed to "provide." Several commenters suggested amending the section to read "the hospital's transfer policy."

Regarding §11-1.2.2.1 and §11-1.2.2.2. Several commenters remarked that it is inappropriate to require a hospital to adopt a transfer policy which assures that a staff physician will employ medically appropriate life support measures to

stabilize the patient prior to transfer and to sustain him or her thereafter, and to require such physician to employ medically appropriate provision of personnel and equipment for transfer. Such a requirement will mandate that a hospital second-guess its staff members, thereby making the hospital legally accountable for medical judgments. Several commenters stated that holding the hospital legally accountable for medical judgments of physicians goes beyond the legislative authority, and may also be in conflict with the Texas Medical Practice Act, Texas Civil Statutes, Article 4495b. One commenter recommended that a group of physicians, either a medical staff or a local medical society, be responsible for determining medical judgement.

Several commenters remarked that the requirement for assurance of appropriate medical care by the transferring hospital and physician would seem to require that the physician physically attend the patient during transfer. This requirement could possibly increase the cost of medical treatment and deplete the emergency staffing of many hospitals, thereby jeopardizing incoming emergency patients.

Two commenters recommended that the responsibility for safe vehicle transfer be placed on the physicians and operators rather than on the hospital that has no control over their activities. Two commenters recommended that the medical decision-making process be placed with the physician.

One commenter suggested the section would be improved by changing the singular physician reference to plural physicians.

One commenter recommended that §11-1.2.2.1. and §11-1.2.2.2. be deleted in their entirety and incorporated into a new §11-1.2.2.3., to read: "The medical staff reviews appropriate patient records to confirm that patients are adequately treated and stabilized prior to transfer. The review must consider if medically appropriate life support measures and medically appropriate provision of personnel and equipment, which a reasonable and prudent physician exercising ordinary care in the same or similar locality would employ, were employed."

Regarding §11-1.2.2.3. several commenters remarked that this section suggests that patients may be somehow abused when transfer decisions are made. The commenters suggested that the section be revised to promote quality assurance activities rather than discourage something that has been loosely defined as patient abuse. Several commenters suggested that terminology other than "patient abuse" be used. One commenter suggested that the language be changed to read, "the medical staff reviews appropriate patient records in order to determine that the appropriate standard of care has in fact been met; and..." Several

commenters requested clarification of the term "patient abuse" and the method by which physician review of medical records will prevent such abuse.

Regarding §11-1.2.2.4., two commenters remarked that restricting transfers for "medical reasons" does not allow for patient preference, thereby placing legal consequences upon a hospital should a patient transport himself or herself for nonmedical reasons. Several commenters requested clarification of this section to guide hospitals when transfers may be made for other than medical reasons. If the intent of this section is to make certain that patients are stabilized prior to their transfer to a public hospital responsible for their care, then the rule should say so.

The commenters further stated that the department should realize that the indigent health care legislation, Senate Bill 1, 69th Legislature, 1985, may require a hospital to transfer a patient eligible for assistance from either the county or a public hospital to a mandated provider hospital, if one has been so designated.

Several commenters remarked that the service personnel and financial resources of the hospital should be taken into account in any transfer decision.

Regarding §11-1.2.4., several commenters remarked that requiring the attending physician to personally examine and evaluate the patient prior to transfer would be nearly impossible to implement in rural areas and may be detrimental to the patient in some cases. More flexibility of the rule is encouraged and allowances for immediate transfer should be considered. Two commenters stated that the rule is particularly difficult for freestanding psychiatric hospitals that do not routinely have physicians in-house for the physical assessment. This would necessitate calling in a physician, which may delay prompt transfer of the patient in need of medical attention.

One commenter suggested that clarification of the section is necessary to deal with the situation when no physician is available and to have guidelines to insure a medically appropriate transfer.

One commenter recommended that the word "assure" be replaced with the word "require."

Regarding §11-1.2.5., several commenters remarked that the standards, because they are tied to hospital licensure, may not authorize the department to impose sanctions on physicians who might authorize an inappropriate patient transfer. This section attempts to monitor and enforce physician practices through the hospital's policy.

The commenters further recommended that sanctions be left to the discretion of the governing bodies of the respective hospitals and their management. One commenter observed that the section

may be interpreted so as not to permit a physician or hospital employee to have a fair opportunity to present his or her side when sanctions are contemplated by the governing body for alleged transfer policy violations. A provision which allows hospital governing body sanctions based on fair proceedings is in order. Several commenters remarked that sanctions against medical staff members and hospital employees are a matter of hospital internal quality assurance review. The proposed rules are contrary to corrective action and fair hearing plans, as well as potentially violative of fair employment laws. The imposition of a second set of sanction rules related to transfer patients will serve only to create confusion and redundancy in the self-regulating processes.

Two commenters observed that the rule appears to be a stringent and positive approach to seeking compliance, versus the hospital developing its own mechanism for assuring/monitoring compliance. One commenter stated that the rule has a great potential to bring about the closing of small town hospitals which have a limited staff. The commenter recommended that the terminology "up to and including termination," as is used for physicians, should also be used for hospital employees instead of "termination of employment for hospital employees."

Regarding §11-1.2.6., several commenters suggested that April 1, 1986, would be a more realistic and fair implementation date. One commenter proposed that the department require each hospital to submit a copy of their policies to the department no later than March 1, 1986, and not wait for license renewal, as provided for in §11-3.1. Several commenters recommended that adoption of the transfer policy be not later than 120 days from the date these rules become effective.

Regarding §11-2.1., one commenter suggested that the word "assure" be changed to "require."

Regarding §11-2.1.2.2., one commenter remarked that the requirement for direct voice communication in transit may discourage physicians from accepting emergency room duty and is not necessary for medical coverage of hospital emergency rooms. Several commenters stated that the rule should allow the physician to issue orders to be handled during the interim between his/her notification and his or her arrival at the hospital.

One commenter stated that medical staff standing orders have been developed for such instances and have proven to be effective and adequate in the past. If direct voice communication while in transit is to be required, funds should be made available through state coffers to purchase such equipment for each hospital.

Regarding §11-2.2., several commenters remarked that this requirement makes the

transferring hospital and physician legally accountable for transfer, even if a third party is handling the actual transfer. Clarification of the physician's and hospital's responsibility until the patient is accepted at the receiving hospital is encouraged.

One commenter requested clarification of when the patient is accepted for treatment by a receiving hospital. Another commenter asked if the receiving hospital has the right to delay acceptance while the patient is in a less than acceptable environment. Another commenter questioned the responsibility in the case of a voluntary ambulance that must stop at some other hospital enroute because of a stabilized patient's deterioration.

Two commenters stated that the rule extends the liability beyond contracted ambulance services. The rule would necessitate letters of agreement, and various ambulance services, and restriction of use of only contracted ambulance services. Several commenters questioned how a hospital can assure that hospital care is given in transit. One commenter suggested that the section be changed to read, "a hospital or physician initiating transfer shall seek transportation for transfers which provides medically appropriate life support capability which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to sustain the patient during the transfer."

One commenter stated that placing the responsibility for the patient's care during transfer on the referring physician places the concept of implied responsibility into a category of defined liability.

Regarding §11-2.3.1.2., one commenter recommended that the section be amended to include the same language concerning locality standards as found in §11-1.2.2.1.

Regarding §11-2.4., two commenters remarked that medical record and memorandum of transfer documentation requirements appear excessive, especially as applied to rural hospitals. Quality patient care should come first in trauma situations.

Two commenters suggested that the rule should specify that only that portion of the patient's clinical record pertaining to the spell of illness for which he or she is being transferred be forwarded to the receiving hospital. Several commenters suggested the Texas Department of Health promulgate a uniform form for use by hospitals.

Regarding §11-2.4.1., one commenter recommended that only records necessary for the continuing care of the patient be transferred to the receiving hospital and physician. One commenter remarked that the section should indicate that a copy of the medical record be transmitted with the patient; the original should remain with the sending hospital.

Regarding §11-2.4.1.5., one commenter remarked that most small hospitals do not have a full-time radiologist, and recommended that the section be reworded to read "x-ray films, if taken; and."

Regarding §11-2.4.2.1., one commenter suggested the phrase, "if known," be added to the section to allow for the occasional unconscious patient with no identification.

Regarding §11-2.4.2.10., several commenters stated that the transfer rule should concentrate on proper patient care and safe transfers, and not serve as an enforcement tool for making certain that a hospital is meeting its federal (Hill-Burton) obligation. One commenter added that an employee may be apt to sign such a certification in ignorance and urgency and be subject to termination of employment.

One commenter suggested that the report of uncompensated care volume should be handled in a more appropriate reporting manner.

One commenter said that the rule fails to identify the disposition of the memorandum of transfer.

Regarding §11-2.4.3., two commenters commented that the hospital administration should not be required to certify patient transfers.

The comments with which the agency disagrees and the reasons for disagreement are as follows.

Several commenters recommended that a definition of the word "transfer" be added to the §11-1.1. One commenter added that without the definition, it is unclear if the rules seek to govern the movement of inpatients from one facility to another, or if the rules are intended to include the nonemergency patient who chooses to drive himself or herself from one facility to another because of unavailable services at the facility of first choice. The agency disagrees that a specific definition of "transfer" is needed, because the word is used throughout Chapter 11, and explained in each situation in which it is used.

Several commenters requested that the definition of physician in §11-1.1.9 be broadened to include, in addition to medical doctors and doctors of osteopathy, those designated by the Joint Commission on Accreditation of Hospitals. The agency disagrees because only licensed physicians should be involved in medical transfers.

One commenter suggested that §11-1.2.1. require that a hospital's policy equal or exceed the standards found in the rules. The agency disagrees because this requirement would exceed statutory authority.

One commenter recommended that the implementation date in §11.1.2.6. be delayed until July 1, 1986. The agency

disagrees, because there is no need to wait until then to implement the rule. The effective date will be April 1, 1986.

One commenter stated that, as he interprets §11-2.1.1., almost every hospital in Texas will be out of compliance with this rule. The agency disagrees and believes that the commenter has misinterpreted the rule. Several commenters suggested that the word, "available" be substituted for the word, "present," to allow for the event when a physician is present in the facility but is occupied with more pressing matters. The agency disagrees, because the agency believes that the section covers patient care appropriately.

Several commenters suggested that §11-2.1.2. stipulate a fixed time standard of "within 20 minutes." The agency disagrees that there should be a fixed time standard; the wording was written to conform to Joint Commission on Accreditation of Hospitals standards and Medicare standards.

Regarding §1-2.3.1.1, several commenters remarked that Joint Commission on Accreditation of Hospitals standards provide that unless extenuating circumstances are documented in the patient's record, no patient shall be arbitrarily transferred to another hospital if the hospital where he/she is initially seen has the means for providing adequate care; however, transfers may be required for financial or contractual reasons. It was recommended that the phrase in §§11-2.3.1.1. concerning the economic status of the patient be deleted. One commenter observed that under the provisions of Senate Bill 1, 69th Legislature, 1985, there will automatically be some transfers which are required for financial or contractual reasons.

Several commenters stated that the transfer authority under Senate Bill 1 does not require that determinations be made as to the arbitrary, capricious, or unreasonable nature of the decision. Moreover, no distinction was made concerning the economic status of the patient. One commenter observed that the section is redundant, that a properly clarified §11-1.2.2.4 would suffice. The agency disagrees, since state and federal law prohibits discrimination on decisions made in an arbitrary, capricious, or unreasonable nature.

One commenter observed that §11-2.3.1.3. seems to dictate that every hospital would have to designate its physicians as its representatives. The commenter feels that the designation should be left up to the hospital. Several commenters recommended that the reference to "hospital" in this section be deleted. The agency disagrees, because the physician has the responsibility to make sure the patient is appropriately transferred; however, the reference to "hospital" is appropriate because the hospital's responsibility needs to be stated.

One commenter recommended that the word "available" be added to the beginning of the paragraph in §11-2.4.1.4.; the commenter thinks it would be unwise to risk a delay in an emergency to wait for the results of every test. The agency disagrees, because if appropriate tests are done, the results should be forwarded to the receiving physician.

Several commenters recommended that requirements in §11-2.4.2. be minimized to ensure that the receiving physician and hospital have adequate medical information to treat the patient. The remaining necessary records should be forwarded as soon as possible to prevent unnecessary delay in the transfer. The agency disagrees in that all results of tests completed should be forwarded to the receiving facility to prevent duplication and delay of patient care. Two commenters remarked that the creation of a memorandum of transfer and all the required documentation could be simplified by the acceptance of the emergency room record from most hospitals. One commenter added that additional documentation could be incorporated into the emergency room record, but the documentation should not be so burdensome that patients would suffer by not having the benefit of an early transfer. The agency disagrees because a separate form shall be completed and separately filed for inspection.

One commenter said the word "first" in §11.2.4.2.5. is misleading, because one might conclude that it means the first time ever the patient was presented at the hospital. The agency disagrees, since the section refers to the illness that has necessitated the transfer.

Two commenters suggested that §11-2.4.2.7. needs clarification as to what time the transfer begins. The agency disagrees, because the other provisions in Chapter 11 make it clear that the time of transfer is the time the patient leaves the transferring physician and hospital.

One commenter said that the sending physician cannot meet the requirement in §11-2.4.2.8., since the responsibility does not shift until the patient and the memorandum of transfer are actually received by the receiving physician. The agency disagrees because the receiving physician and not the sending physician will complete this information.

One commenter remarked that not all patients are admitted to a receiving hospital and the requirement in §11.2.4.2.9. should reflect this variance. The agency disagrees, since the object of this requirement is to ensure that the receiving physician and hospital will accept the patient.

One commenter stated that the criteria in §11.3.2. for the method of implementation are too vague and require clarification. The agency disagrees that the criteria are too vague; however, some language change has been made in the final rule. In addi-

tion, if a policy has not been implemented, the policy is not in effect.

One commenter remarked that the criteria in §11-4.1.3. regarding the enforcement of the transfer policy and the use of the memorandum of transfer by the governing body are too vague. Further clarification is required as to what will constitute a violation, and criteria need to be developed for various types and degrees of violations. The agency disagrees, because the language of this section, when read in conjunction with the other language of Chapter 11, is clear. In addition, the policy must be enforced, and there is a ample opportunity to correct a violation or deficiency.

The following groups or associations and hospitals commented on the rules: Texas Hospital Association; Central Plains Regional Hospital, Plainview; Twin Oaks Medical Center, Fort Worth; Doctors Hospital, Dallas; Dallas Fort Worth Hospital Council, Irving; Texas Association of Community Health Centers, Austin; Robert H. Dedman Memorial Medical Center, Dallas; Texas Medical Association; West Oaks, Houston; Highland Hospital, Lubbock; Physicians and Surgeons General Hospital, Corpus Christi; Grant-Bule Hospital, Hillsboro; Texas Association of Public and Nonprofit Hospitals; Parker County Hospital District, Weatherford; Trinity Medical Center, Carrollton; Edinburg General Hospital, Edinburg; Moore County Hospital District, Dumas; Southwest Osteopathic Hospital, Amarillo; Burnet County Hospital Authority (Shepperd Memorial Hospital), Burnet; Katy Community Hospital, Katy; Yoakum County Hospital, Denver City; Memorial Hospital, Marshall; Memorial Hospital, Gonzales; Sabine County Hospital, Hemphill; Ennis Community Hospital, Ennis; Bohne Memorial Hospital, Brenham; E. L. Graham Memorial Hospital, Cisco; Medical Arts Hospital, Dallas; National Medical Enterprises, Inc., Los Angeles, California; Golden Plains Community Hospital, Borger; Hall County Hospital, Memphis; West Texas Hospital, Lubbock; South Randall County Hospital District, Canyon; Westgate Medical Center, Denton; Angelo Community Hospital, San Angelo; Nacogdoches Medical Center Hospital, Nacogdoches; Johns Community Hospital, Taylor; Heights Hospital, Houston; Bexar County Hospital District, San Antonio; Shiner Hospital Foundation, Shiner; Sun Towers Hospital, El Paso; Methodist Hospitals of Dallas, Dallas; Hendrick Medical Center, Abilene; Shannon West Texas Memorial Hospital, San Angelo; Children's Defense Fund; Valley Baptist Medical Center, Harlingen; Children's Health Services of Texas, Dallas; Medical Plaza Hospital, Inc., Sherman; Danforth Hospital, Texas City; Parkland Memorial Hospital, Dallas; Memorial Hospital, Cleburne; Coastal Bend Hospital, Aransas Pass; Twelve Oaks Hospital, Houston; Incarnate Word

Health Services, San Antonio; St. Mary of the Plains Hospital, Lubbock; The Panhandle Division of the Texas Hospital Association; Plains Memorial Hospital, Dimmitt; Parmer County Community Hospital, Friona; Swisher Memorial Hospital District, Tulia; Palo Duro Hospital, Canyon; Coon Memorial Hospital, Dalhart; Hemphill County Hospital, Canadian; Southwest Osteopathic Hospital, Amarillo; High Plains Baptist Hospital, Amarillo; and Northwest Texas Hospitals, Amarillo.

In addition, Senator Chet Brooks, Representative Jesse Oliver, and a number of other individuals commented on the rules

None of the commentators opposed the adoption of the rules in their entirety, but, several commentators had questions, concerns, and recommendations regarding specific provisions in the rules.

The amendment is adopted under the Texas Hospital Licensing Law, Texas Civil Statutes, Article 4437f, §5, which provide the Texas Board of Health with the authority to adopt minimum standards governing the transfer of patients.

§133.21. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the department publication entitled, "Hospital Licensing Standards," as amended April 1, 1985.

(b) (No change.)

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

Issued in Austin, Texas, on January 23, 1986.

TRD-8600845

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

Effective date: February 13, 1986

Proposal publication date: November 5, 1985

For further information, please call
(512) 458-7538.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part I. Texas Department of Human Services
Chapter 15. Medicaid Eligibility**

Subchapter FF. SSI Basic Program Requirements

★40 TAC §15.3112

The Texas Department of Human Services adopts amendments to §§15.3112; 15.3303, 15.5104, and 15.5105, without changes to

the proposed text published in the December 13, 1985, issue of the *Texas Register* (10 TexReg 4786).

The Health Care Financing Administration (HCFA) has cited the department for noncompliance with federal policy in determining eligibility for three months prior coverage and deeming income from an ineligible spouse. The amendments to the department's sections are justified to comply with HCFA's directive. The amendment to §15.3112 will function by specifying that the caseworker must compute eligibility on a monthly basis rather than average income for the three-month prior period. The amendment to §15.3303 will function by specifying that in deeming the caseworker deducts from the ineligible spouse's income an amount equal to the difference between the supplemental security income (SSI) standard payment amount for an individual and for a couple as a living allowance for each ineligible child.

The amendments to §15.5104 and §15.5105 will function by making these sections consistent with the amendment to §15.3112.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 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 January 24, 1986.

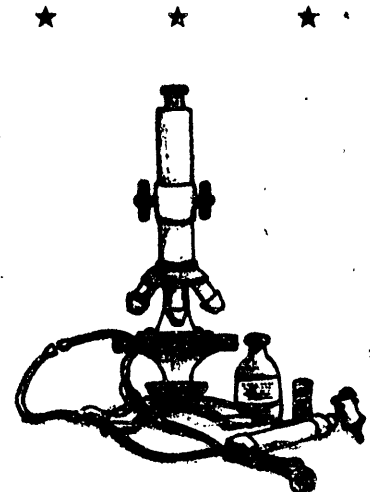
TRD-8600861

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 14, 1986

Proposal publication date: December 13, 1985

For further information, please call
(512) 450-3786.



**Subchapter HH. Income for
Individuals Related to the SSI
Program**

★40 TAC §15.3303

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 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 January 24, 1986.

TRD-8600862

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 14, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 450-3766.

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**Subchapter ZZ. Applications for
Medicaid**

★40 TAC §15.5104, §15.5105

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 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 January 24, 1986.

TRD-8600863

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 14, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 450-3766.

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**Chapter 48. CCAD
Support Documents**

★40 TAC §48.9801

The Texas Department of Human Services adopts new §48.9801, without changes to the proposed text published in the November 26, 1985, issue of the *Texas Register* (10 TexReg 4572).

The new section specifies requirements for completing and submitting cost reports and the provisions for performing desk audits and on-site audits. The section outlines the requirements for determining a reimbursement rate ceiling and

defines allowable and unallowable costs for cost analysis.

The provisions of §48.9801 affect all contracts being negotiated on or after April 1, 1986.

No comments were received regarding adoption of the new section.

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

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

Issued in Austin, Texas, on January 27, 1986.

TRD-8600933

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: April 1, 1986
Proposal publication date: November 26, 1985
For further information, please call
(512) 450-3766.

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**Chapter 85. General Licensing
Procedures**

**Subchapter S. Administrative
Procedures**

★40 TAC §85.1801

The Texas Department of Human Services adopts new §85.1801, with changes to the proposed text published in the October 8, 1985, issue of the *Texas Register* (10 TexReg 3886).

In subsection (a)(3), the department limited the volunteers for whom identifying information is needed to those regularly at the facility. This change was made as the result of public comments. The justification for adopting the new section is to implement legislation passed by the 69th Legislature, 1985. Senate Bill 48 allows the department to obtain criminal history information records maintained by the Department of Public Safety, the Federal Bureau of Investigation, and other law enforcement agencies when child care facility owners, employees, regular volunteers, or applicants wish to be licensed, registered, certified, or employed. The section will function to increase assurance that persons convicted of certain crimes will be prevented from being at child care facilities unless proof of their rehabilitation has been established.

The department received 16 comments regarding the adoption of the new section. Most of the comments neither favored nor opposed the section, but expressed concern about certain aspects of the new section. Representatives for Hope Center for Youth, the Settlement Home, Juliette Fowler Homes, Youth Services of Brazoria

County, Mission Developmental Center, and the Texas Association of Licensed Children's Services' submitted written comments. Representatives for the Texas Day Care Parents' Association, Austin State School, Kindercare, Austin State Hospital, the Texas Department of Mental Health and Mental Retardation, Child Care Protective Action Committee, Texas Baptist Day Care Center, and St. Paul's Lutheran Day Care commented at the public hearing held on October 16, 1985.

A number of persons were concerned about the impact of the criminal history check on volunteers, particularly volunteering parents. Several urged that limitations be placed on checking volunteers, current employees, and people employed under TEA-approved training. The department therefore limited the volunteers to be checked to those regularly at the facility.

Some commenters had questions about the procedures involved in the criminal history check. The department does not include procedures in its section; procedures are outlined in detail in the *General Licensing Handbook*.

The department was asked to define the word "continuously" as it is used in subsection (d). The department interprets "lived in Texas continuously" as actual (not claimed) continuous residence in Texas. Another person commented that the three-year Texas residency rule for exemption from the FBI fingerprint requirement is an inconvenience and hardship due to the frequent turnover of child care personnel. The residency requirement also results in recruitment difficulties and morale problems. In addition, it is an invasion of privacy.

The department agrees that the residency rule will cause inconvenience; however, the department believes that the benefits will certainly outweigh the inconvenience to some facilities. One person asked if the department would issue a cautionary statement if an applicant had several indictments, but no convictions, under the relevant code titles. Licensing representatives will initiate follow-up investigations when indictments or arrests are matched.

Another question raised was whether in agencies with more than one facility the appropriate licensed administrator would be notified in the case of a match. The department's response is affirmative.

A person asked if contract consultants or other employer's personnel were to be included in the facility's criminal history check. The department requires that only those people specified in subsection (a)(1)-(4) be included in the check.

Several comments concerned the meaning of "appropriate action" that the facility must take if a match is found. Procedures in the *General Licensing Handbook* identify three options for a facility that re-

ceives a relevant report. In addition, licensing staff will provide technical assistance on how the facility should followup.

Questions were also raised about sharing the criminal history check with another facility requesting a reference, another person or agency out of the direct child care field, and in court proceedings if the facility is a party. The law states that the record may not be released to any person or agency except on court order or with the consent of the person being investigated.

One person asked if relevant criminal history records would be available on a juvenile. They will not.

Another comment suggested that the section be revised to enumerate the categories of criminal activity that are reported to the facility. The department has enumerated criminal offenses relevant to the child care licensing criminal history checks in the appendices of every set of minimum standards. Thus, all facilities have immediate access to a list of these criminal offenses.

Several persons wanted to know how mental health and mental retardation (MHMR) programs would be affected by the new section. Because MHMR programs are not licensed or regulated by the department, the new section will not affect MHMR programs.

One person wanted more specific information about who is qualified to take fingerprints. Local law enforcement agencies, private investigation agencies, and the Department of Public Safety are qualified to take fingerprints.

Another person wanted timeframes for the criminal history check clarified. The time frame for the criminal history check is immediate. Another asked to have the costs of the check clarified. A \$5.00 charge may be levied by local law enforcement agencies for the service of taking fingerprints for the FBI check. No other costs are required.

One person opposed the section, stating that research has revealed that the incidence of serious offenses to children was minimal, that the section was punitive to the facilities, rather than the individuals with criminal backgrounds, and that its very existence would be detrimental to the public image of caregivers. The section was necessary to carry out the legislation passed by the 69th Legislature, 1985.

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

§85.180i. Criminal History Check.

(a) Regulated facilities, applicants, and persons requesting registration must send the department-required identifying information about:

- (1) employees or applicants for employment;
- (2) adults who live at the facility but who are not employees or clients;
- (3) regular volunteers who are counted in the staff-child ratio; and
- (4) applicants for a license, registration, or certificate.

(b) Identifying information about board members of corporations or associations is not required, unless they are also staff or regular volunteers.

(c) The required information includes:

- (1) name (last, first, middle), including any maiden or married name or alias;
- (2) birthdate;
- (3) sex; and
- (4) race.

(d) Persons who have not lived in Texas continuously for at least three years immediately before the date the form is sent to the department must be checked by the Federal Bureau of Investigation (FBI). The FBI requires a qualified person to fingerprint the person being checked on a card provided by the department.

(e) The identifying information must be sent to the licensing representative on a department form:

- (1) when an unregulated facility sends an application or request to register;
- (2) when a regulated facility sends its next renewal application or request for re-registration after January 1, 1986;
- (3) no later than two weeks after a new person(s) is at the facility if criminal history check information is required but has not been sent.

(f) If the department obtains information from any law enforcement agency indicating that a person at a facility has a relevant criminal history, licensing staff will inform the governing body or administrator. The facility must take appropriate action as a result of this information.

(g) Information about criminal history records the department receives are privileged information for exclusive use by the department and people authorized to receive the records. Licensing staff must share the criminal history record with the facility within 10 work days after receiving the record. Except on court order or with the consent of the person being investigated, the records may not be released to any other person or agency.

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 January 23, 1986.

TRD-8600831

Marlin W. Johnson
Commissioner
Texas Department of
Human Services

Effective date: February 13, 1986
Proposal publication date: October 8, 1985
For further information, please call
(512) 450-3766

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State Board of Insurance Exempt Filings

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

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

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

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

The State Board of Insurance has adopted an optional pollution exclusion endorsement, form TxCMP-215, for use in conjunction with a Texas commercial multi-peril policy, without rate considerations. The adoption of this endorsement will provide a more stable market for those risks eligible for a Texas commer-

cial multi-peril policy that may have substantial pollution liability exposures. The absence of such an exclusion endorsement could cause a restriction in the writing of Texas commercial multi-peril policies for otherwise acceptable risks.

These changes are to be effective February 15, 1986.

This notification is filed pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on January 27, 1986.

TRD-8600920

Nicholas Murphy
Chief Clerk
State Board of
Insurance

Effective date: February 15, 1986
For further information, please call
(512) 463-6327.

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(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final ac-

tions printed in this section have not been previously published as proposals.

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

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

The State Board of Insurance has approved a self service storage floater policy to be written as inland marine insurance in accordance with the Texas definition of inland marine insurance. The new policy form provides coverage on property of a tenant located in a mini storage warehouse and while in transit to or from the storage facility. The rates to be charged must be in excess of manu-

al fire and extended coverage rates as promulgated by this board.

These changes are to be effective 15 days after publication in the *Texas Register*.

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

Issued in Austin, Texas, on January 27, 1986.

TRD-8600921

Nicholas Murphy
Chief Clerk
State Board of
Insurance

Effective date: February 15, 1986
For further information, please call
(512) 463-6327.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Commission on the Arts

Wednesday, February 12, 1986, 9 a.m. The full commission of the Texas Commission on the Arts will meet in the Marshall Civic Center Auditorium, 2501 East End Boulevard South, Marshall. Items on the agenda summary include introduction of guests, the consent agenda, items for individual consideration, and informational items. The commission will also meet in executive session pursuant to Texas Civil Statutes, Article 6252m, s(g), to consider the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, if necessary.

Contact: A. Patrice Walker, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: January 27, 1986, 4:07 p.m.
TRD-8600960

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Texas Cancer Council

Tuesday, February 4, 1986, 9:30 a.m. The Texas Cancer Council will meet in House Appropriations Room 309, State Capitol, 1200 Congress Avenue, Austin. According to the agenda summary, the council will review the minutes; consider the employment of the executive director and staff; the budget report; the school health issues; the outstanding requests for proposal; activities of the legislative task force; the cancer registry implementation; the diagnostic reimbursement program; cancer control activities; National Cancer Institute programs in cancer control; the University of Texas Medical Branch Cancer Atlas in Texas; the University of Texas System Cancer Center-study on mass media gatekeepers; the Texas Education Agency-school health proposal; the University of Texas Health Science Center of Houston-study of cancer in minorities; the family practice program proposal; and the next meeting date of May 22, 1986.

Contact: Owen McCrory, Texas Cancer

Council, M.D. Anderson Hospital, Houston, Texas (713) 792-2203.

Filed: January 24, 1986, 4:17 p.m.
TRD-8600917

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East Texas State University

Committees of the East Texas State University (ETSU) Board of Regents will meet in the McDowell Administration Building boardroom, ETSU, Commerce. Days, times, and agendas follow.

Thursday, February 6, 1986, 2:30 p.m. The Academic Affairs Committee will consider the revision of the general education curriculum; the faculty salary budget for summer 1986 for ETSU-Commerce; and the faculty salary budget for summer, 1986, for ETSU-Texarkana.

Contact: Dayton T. Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: January 24, 1986, 11 a.m.
TRD-8600896

Thursday, February 6, 1986, 3 p.m. The Campus Planning and Finance Committee will consider adjustments in the ETSU-Commerce fiscal year 1986 operating budget; the tuition and fee rates for ETSU-Commerce; room and board rates for ETSU-Commerce; the adjustments in the ETSU-Texarkana fiscal year 1986 operating budget; and tuition and fee rates for ETSU-Texarkana.

Contact: Dayton T. Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: January 24, 1986, 11:02 a.m.
TRD-8600899

Thursday, February 6, 1986, 3:30 p.m. The Executive Committee will consider the appointment of the president for fiscal year 1987; the administration organization report; the speaker policy; the policy on naming of buildings and other facilities; and the naming of photography gallery.

Contact: Dayton T. Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: January 24, 1986, 11:01 a.m.
TRD-8600898

Friday, February 7, 1986, 9 a.m. The Board of Regents will consider approval of the agenda; approval of the minutes of November 1, 1985, meeting; the report by the president; the revision of the general education curriculum; the faculty salary budget for the summer, 1986, for ETSU-Commerce; the faculty salary budget for summer, 1986 for ETSU-Texarkana; the adjustments in the ETSU-Commerce fiscal year 1986 operating budget; the tuition and fee rates for ETSU-Commerce; the room and board rates for ETSU-Commerce; the adjustments in the ETSU-Texarkana fiscal year 1986 operating budget; the tuition and fee rates for ETSU-Texarkana; appointment of the president for fiscal year 1987; the administrative organization report; the speaker policy; the policy on naming of buildings and other facilities; and the naming of photography gallery. The board also will meet in executive session.

Contact: Dayton T. Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: January 24, 1986, 11 a.m.
TRD-8600897

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Texas Education Agency

Friday and Saturday, January 31 and February 1, 1986, 11 a.m. and 8:30 a.m., respectively. The Governor's Chapter Two Advisory Committee of the Texas Education Agency will meet in the Brazos Room, Executel Motor Inn, 925 East Anderson Lane, Austin. According to the agenda, the committee will advise the state education agency on the allocation among authorized functions of funds for state programs assisted under this chapter; and provide for an annual evaluation of the effectiveness of programs assisted under this chapter.

Contact: Dick Jarrell, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269.

Filed: January 23, 1986, 4:13 p.m.
TRD-8600837

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Texas Employment Commission

Tuesday, February 4, 1986, 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 the prior meeting notes; the internal procedures of commission appeals; consider and act on higher level appeals in unemployment compensation cases on commission Docket 5; and set the date of the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: January 27, 1986, 1:29 p.m.
TRD-8600952

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Texas Grain Sorghum Producers Board

Tuesday, February 18, 1986, 3 p.m. The Texas Grain Sorghum Producers Board of the Texas Department of Agriculture will meet in the Lincoln Hotel, 5410 LBJ Freeway, Dallas. According to the agenda, the board will consider the minutes; the financial report; review the market development activities; the Texas Grain Sorghum Producers Board's possible involvement in Grain Sorghum Producers Association promotion federation; and other business.

Contact: Elbert Harp, P.O. Box 530, Abernathy, Texas 79311-0530, (806) 298-2543.

Filed: January 28, 1986, 8:54 a.m.
TRD-8600965

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Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Thursday, February 13, 1986, 8 p.m. The Organization Committee of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet in the Austin South Plaza Hotel, IH 35 South at Woodward, Austin. According to the agenda, the Organization Committee will conduct a review of rules and regulations pertaining to Texas Civil Statutes, Article 4566.

Contact: Wanda F. Stewart, Suite 104, 510 South Congress, Austin, Texas 78704, (512) 474-8998.

Filed: January 28, 1986, 8:49 a.m.
TRD-8600967

Friday and Saturday, February 14 and 15, 1986, 8 a.m. and 9 a.m., respectively. The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Austin South Plaza-Hotel, IH 35 at Woodward, Austin. According to the agenda summary, the board will consider approval of minutes of October 26, 1985, meeting, prayer, board action of examination, final adoption of proposed rules changes, committee reports, executive director's report, president's report, and report on future meeting dates.

Contact: Wanda F. Stewart, 510 South Congress Avenue, Suite 104, Austin, Texas 78704, (512) 474-8998.

Filed: January 28, 1986, 8:50 a.m.
TRD-8600966

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Texas Department of Health

Committees of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Austin. Days, times, committees, rooms, and agendas follow.

Friday, January 31, 1986, 11:45 a.m. In Room G-107, the Environmental Health Committee of the Texas Board of Health will consider the emergency and proposed rules concerning the production and sale of Grade A retail raw milk; petitions for the revision of the rule concerning the sale of unpasteurized milk; final adoption of amendments to the Texas Regulations for Control of Radiation, Parts 11, 21, 22, and 41, and rules concerning the Texas Hazard Communications Act; the proposed rules for registered solid waste transporter fees, and amendment to the existing rule concerning licensing fees to be paid by food, drug, device, and cosmetic salvage establishments and brokers.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:15 p.m.
TRD-8600841

Friday, January 31, 1986, 11:45 a.m. In Room T-604, the Alternate Care Committee of the Texas Board of Health will discuss salvaging of drugs from nursing homes for export to foreign countries.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:15 p.m.
TRD-8600842

Friday, January 31, 1986, 12:30 p.m. In the Law Library, Room G-108, the Crippled Children's Services Committee of the Texas Board of Health will consider proposed amendments to the Crippled Children's Services Program rules; the final adoption of

rules concerning criteria and procedures for approval of physicians and dentists to participate in the Crippled Children's Services Programs.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:16 p.m.
TRD-8600840

Friday, January 31, 1986, 1:30 p.m. In Room T-610, the Texas Board of Health will approve minutes of last meeting; consider the commissioner's report; the proposed rule concerning Acquired Immune Deficiency Syndrome as a quarantinable disease; the status report on the Texas response citizens for Mexican relief; the quarterly report of the Primary Health Care and Maternal and Infant Health Improvement Act Advisory Committees; the adoption of final, emergency, and proposed rules covering department programs; petitions for the revision of the rule concerning the sale of unpasteurized milk; announcements and comments (no Board of Health action required); and setting of the next meeting date.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:16 p.m.
TRD-8600839

Friday, January 31, 1986, 5 p.m. In Room G-107, the Hospital Committee of the Texas Board of Health will consider proposed rules concerning amendments to the Hospital Licensing Standards; the selection and approval of consulting firm to prepare a six-year plan for the State Chest Hospitals; the Southwest Methodist Hospital request for reconsideration to participate as a Crippled Children's Program Cardiac Center Provider.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:17 p.m.
TRD-8600838

Saturday, February 1, 1986, 8:30 a.m. In Room T-604, the Personnel Committee of the Texas Board of Health will consider appointments to Crippled Children's General Advisory Committee, the TB Advisory Committee, the Hospital Data Advisory Committee, and the Advisory Committee on Nursing Home Affairs.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:18 p.m.
TRD-8600850

Saturday, February 1, 1986, 8:30 a.m. In Room G-107, the Legislative Committee of the Texas Board of Health will discuss proposed legislation.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:17 p.m.
TRD-8600849

Saturday, February 1, 1986, 9:30 a.m. In Room T-610, the Texas Board of Health will consider the Gramm-Rudman Legislation; the proposed amendments to formal hearing procedures; the Hospitals Committee Report; the Alternate Care Committee Report; the Legislative Committee Report; the Personnel Committee Report; the appointments to the Board of Health committees; announcements and comments (no Board of Health action required); and setting of next meeting date. The board also will meet in executive session.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 23, 1986, 4:18 p.m.
TRD-8600848

Saturday, February 1, 1986, 9:30 a.m. In Room T-610, the Texas Board of Health made a revision to the agenda. The revision concerned the Gramm-Rudman legislation; the proposed amendments to formal hearing procedures; the Hospitals Committee Report; the Alternate Care Committee Report; the Legislative Committee Report; the Personnel Committee Report; the Budget Committee Report; appointments to the Board of Health committees; announcements and comments (no Board of Health Action required); and setting of the next meeting date. The board also will meet in executive session.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 24, 1986, 4:14 p.m.
TRD-8600911

Friday, February 7, 1986, 10 a.m. In Room G-107, the Birthing Center Ad-Hoc Committee will conduct a work session to draft regulations for the Texas Birthing Center Licensing Act.

Contact: Dr. Juanita Carrell, 1100 West 49th Street, Austin, Texas 78756, (512) 468-7245.

Filed: January 24, 1986, 4:15 p.m.
TRD-8600913

Monday, February 10, 1986, 9 a.m. In Room G-107, the Ambulatory Surgical Center Ad-Hoc Committee will conduct a work session to draft regulations for the Texas Ambulatory Surgical Center Licensing Act.

Contact: Dr. Juanita Carrell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: January 24, 1986, 4:16 p.m.
TRD-8600914

Sunday, February 16, 1986, 9:30 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet in the Gunter Hotel, San Antonio. According to the agenda summary, the board will approve the minutes; elect the new officers; consider the chairman's report; the update on the Texas Low-Level Radioactive Waste Disposal Authority Activities; the committee and task team reports; the rules and regulatory guide update; the 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: January 24, 1986, 4:17 p.m.
TRD-8600916

Wednesday, February 19, 1986, 1 p.m. The Abortion Facility Ad-Hoc Committee of the Texas Department of Health will meet in Room T-507, 1100 West 49th Street, Austin. According to the agenda, the committee will conduct a work session to draft final regulations for the Texas Abortion Facility Reporting and Licensing Act.

Contact: Dr. Juanita Carrell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: January 24, 1986, 4:16 p.m.
TRD-8600915

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State Department of Highways and Public Transportation

Thursday and Friday, January 30 and 31, 1986, 9 a.m. daily. The Commission of the State Department of Highways and Public Transportation made an emergency revision to the agenda for a meeting held in Room 101-A, Dewitt C. Greer Building, 11th and Brazos Streets, Austin. The revision concerned items 14(g)—Adopt-A-Highway Program, and 14(h)—Use of Convict Labor. The emergency status was necessary because commission action is necessary this month.

Contact: Lois Jean Turner, Room 203, Dewitt C. Greer Building, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: January 27, 1986, 11:13 a.m.
TRD-8600945

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State Board of insurance

The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Days, times, rooms, and agendas follow.

Thursday, February 6, 1986, 9 a.m. In Room 342, the section will reopen a public hearing to consider Docket 7691—determine whether Great Southwest Life Insurance Company, Houston, has complied with Commissioner's Order 84-1915, dated June 18, 1984.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: January 27, 1986, 11:32 a.m.
TRD-8600947

Thursday, February 6, 1986, 9 a.m. In Room 353, the section will consider Docket

9169—whether disciplinary action should be taken against Samuel J. Blunson, Houston, who holds a Group I, legal reserve life insurance agent's license, Group II, insurance agent's license and local recording agent's license issued by the State Board of Insurance.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524

TRD-8600949

Thursday, February 6, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9168—whether disciplinary action should be taken against Judy Carol Shadowens, Houston, who holds a Group I, legal reserve life insurance agent's license and Group II, insurance agent's license issued by the State Board of Insurance.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: January 27, 1986, 11:33 a.m.
TRD-8600948

Monday, February 10, 1986, 10:30 a.m. In Room 342, the section will consider Docket 9175—whether disciplinary action should be taken against Danny J. Burns, Garland, who holds a Group II insurance agent's license issued by the State Board of Insurance.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: January 27, 1986, 11:34 a.m.
TRD-8600950

Monday, February 10, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9170—whether the application of Porter Luker Eilledge, Mbank, for a Group I, legal reserve life 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: January 27, 1986, 11:31 a.m.
TRD-8600946

Tuesday, February 11, 1986, 10 a.m. The Title Insurance Division of the State Board of Insurance will meet in the Lt. Governor's Committee Room 200, State Capitol, Austin. According to the agenda, the division will discuss the preliminary recommendation on rate-making process by the advisory committee on title insurance rates.

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

Filed: January 24, 1986, 8:59 a.m.
TRD-8600865

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Texas Department of Labor and Standards

Friday, February 7, 1986, 4:30 p.m. The Auctioneer Division, Auctioneer Advisory Board of the Texas Department of Labor and Standards will meet in the La Fitte Room, St. Anthony Inter-Continental Hotel, 300 East Travis, San Antonio. Items on the agenda summary include welcome, the report on administrative hearings and auctioneer activities of the department, and other matters.

Contact: Monica Simien, E. O. Thompson Building, 920 Colorado Street, Austin, Texas 78711, (512) 475-6560.

Filed: January 28, 1986, 9:18 a.m.
TRD-8600964

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Texas Low-Level Radioactive Waste Disposal Authority

Monday, February 3, 1986, 1:30 p.m. The Texas Low-Level Radioactive Waste Disposal Authority will meet in Suite 300, 7703 North Lamar, Austin. Items on the agenda summary include introduction of visitors and guests, approval of minutes of the previous meeting; the general manager's report and communications; and public comments.

Contact: L. R. Jacobi, Suite 300, 7703 North Lamar, Austin, Texas 78752, (512) 451-5295.

Filed: January 23, 1986, 4:46 p.m.
TRD-8600843

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Texas State Board of Medical Examiners

Saturday, February 8, 1986. Committees of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Austin. Times, committees, and agendas follow.

10 a.m. The Ad Hoc Committee on Drugs Committee and Legislative Committee will meet jointly to consider possible rules. The committees also will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, as related to Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1), and Attorney General Opinion H-484, 1974.

Contact: Julie Stevens, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: January 27, 1986, 1:28 p.m.
TRD-8600955

1 p.m. The Standing Orders Committee will consider requests and possible rule changes. The committee also will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, as related to Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1), and Attorney General Opinion H-484, 1974.

Contact: Julie Stevens, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: January 27, 1986, 1:28 p.m.
TRD-8600954

3:30 p.m. The Examination Committee will review the new jurisprudence examination and review applicants. The committee also will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, as related to Article 4495b, §§2.05, 3.05(d), 4.05(d), and 5.06(e)(1), and Attorney General Opinion H-484, 1974.

Contact: Julie Stevens, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: January 27, 1986, 1:28 p.m.
TRD-8600953

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Board of Pardons and Paroles

Monday-Friday, February 3-7, 1986, 1:30 p.m. daily, Monday-Thursday and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners and inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713.

Filed: January 24, 1986, 10:38 a.m.
TRD-8600869

Tuesday, February 4, 1986, 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 review of the minutes; the TEC/BPP project; the Sunset review; the Main Hurdman contract for telecommunication; the executive director's report; the request for the attorney general opinion regarding the hearing procedures; the restitution cases; the revocation proclamation; the prerevocation warrant form; the rules update; and personnel matters.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: January 27, 1986, 4:29 p.m.
TRD-8600961

Tuesday, February 4, 1986, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons and restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other re-

prieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2704.

Filed: January 24, 1986, 10:39 a.m.
TRD-8600870

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Texas Peanut Producers Board

Thursday, February 6, 1986, 10 a.m. The Texas Peanut Producers Board of the Texas Department of Agriculture will meet in the Texas A&M University Research and Extension Center, U.S. Highway 281 at Intersection of FM Road 8, Stephenville. According to the agenda, the board will discuss the purchase of an office building, discuss the 1985 Farm Bill, and other business.

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: January 28, 1986, 9:56 a.m.
TRD-8600968

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Texas State Board of Physical Therapy Examiners

Friday, January 24, 1986, 2 p.m. The Texas State Board of Physical Therapy Examiners met in emergency session in Suite 260, Building C, Physical Therapy Board Office, 1300 East Anderson Lane, Austin. According to the agenda, the board considered testimony regarding the rules proposed by the board printed in the December 24, 1985, *Texas Register*. The emergency status was necessary because the hearing request was submitted to the Physical Therapy Board Office on January 22, 1986, by the Texas Physical Therapy Association.

Contact: Lois M. Smith, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-1846.

Filed: January 23, 1986, 2:15 p.m.
TRD-8600836

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Texas State Board of Public Accountancy

Tuesday, February 4, 1986, 9 a.m. The Technical Standards Review Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee will review the complaints 85-12-07L, 85-08-02L, 85-11-16L, and 85-11-17L; a discussion regarding the solicitation inquiry; and other pertinent matters.

Contact: Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752, (512) 451-0241.

Filed: January 24, 1986, 10:09 a.m.
TRD-8600866

Public Utility Commission of Texas

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

Monday, February 3, 1986, 10 a.m. A prehearing conference in Docket 5355—application of Rio Bravo Supply Corporation for a water certificate in Webb County.

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

Filed: January 23, 1986, 3:12 p.m.
TRD-8600860

Friday, February 7, 1986, 10 a.m. A prehearing conference in Docket 6685—application of Wharton County Electric Cooperative, Inc., for authority to change rates.

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

Filed: January 27, 1986, 2:49 p.m.
TRD-8600958

Monday, February 10, 1986, 10 a.m. A prehearing conference in Docket 6680—application of Victoria County Electric Cooperative, Inc., for authority to change rates.

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

Filed: January 24, 1986, 3:12 p.m.
TRD-8600907

Thursday, February 13, 1986, 10 a.m. A prehearing conference in Docket 6679—application of Hill Country Utility Company for a rate increase.

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

Filed: January 27, 1986, 2:49 p.m.
TRD-8600959

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Railroad Commission of Texas

Monday, January 27, 1986, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held in Room 12-126, 1701 North Congress Avenue, Austin. The revision concerned Docket 4931—application of South Rusk County Gas Company, Inc., to change rates in the environs of the City of Mount Enterprise; Dockets 5601 and 5602—statements of intent filed by West Texas Gas, Inc., to change rates in its Spearman and Dalhart Distribution Systems. The emergency status was necessary because these items were properly noticed for conference held on January 20, 1986, and were passed.

Monday, January 27, 1986, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held in the 12th floor conference room, William B. Travis Building, 1701 North Congress, Austin. The revision concerned whether to adopt proposed statewide Rule 1, 16 TAC §3.1, for the State of Texas. The emergency status was necessary because this item was properly noticed for the meeting of January 20, 1986, and was passed.

Contact: Kimberly L. Kiplin, P.O. Drawer 12967, Austin, Texas 78715, (512) 463-6921.

Filed: January 24, 1986, 10:53 a.m.
TRD-8600883

Monday, February 3, 1986, 9 a.m. The Railroad Commission of Texas will meet in the first floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: January 24, 1986, 10:53 a.m.
TRD-8600882

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: January 24, 1985, 10:57 a.m.
TRD-8600893

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: January 24, 1986, 10:56 a.m.
TRD-8600890

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: January 24, 1986, 10:52 a.m.
TRD-8600878

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: January 24, 1986, 10:56 a.m.
TRD-8600892

The LP-Gas Division director's report on division administration, budget, procedures,

and personnel matters. The commission will also consider the signing of final orders in LP-Gas Dockets 464—Cascade Caverns, Inc., 465—Bluebonnet Campers, Inc., 466—NGL Service Company, 467—Progreso Coop Gin, Inc., 468—Gene Messer Ford, Inc., and 469—Jay Mac Mechanical Company, Inc.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: January 24, 1986, 10:52 a.m.
TRD-8600879

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: January 24, 1986, 10:54 a.m.
TRD-8600884

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: January 24, 1986, 10:55 a.m.
TRD-8600889

Consideration of American Pipeline Company's application for a pipeline permit across various counties in Texas.

Contact: Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6923.

Filed: January 24, 1986, 10:53 p.m.
TRD-8600880

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: January 24, 1986, 10:53 a.m.
TRD-8600881

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: January 24, 1986, 10:57 a.m.
TRD-8600894

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: January 24, 1986, 10:56 a.m.
TRD-8600891

Various matters falling within the Surface

Mining and Reclamation Division's regulatory jurisdiction.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: January 24, 1986, 10:51 a.m.
TRD-8600876

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: January 24, 1986, 10:55 a.m.
TRD-8600887

Addition to the previous agenda:

Consideration of a performance under the contract for rehabilitation of the Brownsville and Rio Grande international railroads.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: January 24, 1986, 4:29 p.m.
TRD-8600919

Tuesday, February 4, 1986, 9:30 p.m. The Transportation Division of the Railroad Commission of Texas will meet in Room 12-126, 12th floor conference room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division will consider an oral argument in Docket 004532A1N—application of Jones Transfer, Inc., *et al.*, for a common carrier certificate to authorize the transportation of general commodities over territories as set out more fully in Notice 8036, *et al.*

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: January 24, 1986, 4:27 p.m.
TRD-8600918

Wednesday, February 19, 1986, 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 Avenue, 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: January 24, 1986, 10:59 a.m.
TRD-8600895

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House of Representatives

Friday, January 31, 1986, 10 a.m. The Committee on Retirement and Aging and the Committee on Criminal Jurisprudence will jointly meet in the Harris County Courtroom, Harris County Administration Building, 1001 Preston Avenue, Houston. According to the agenda, the committee will take testimony on the certification or licens-

ing of nursing home aides and the nursing home complaint procedure, and take testimony on abuse of the elderly.

Contact: Laura Calfee, P.O. Box 2910, Austin, Texas 78769, (512) 475-2935.

Filed: January 23, 1986, 11:12 a.m.
TRD-8600832

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Texas Savings and Loan Department

Thursday, February 6, 1986, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Briercroft Savings Association, Lubbock, Lubbock County, for branch offices at 3326 Fredericksburg Road, San Antonio, Bexar County, and 10200 San Pedro Avenue, San Antonio, Bexar County, from which record the commissioner will determine whether to grant or deny the applications. These applications are purchases from Alamo Savings Association.

Contact: Russell R. Oliver, Suite 210, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: January 24, 1986, 3:24 p.m.
TRD-8600908

Monday, February 10, 1986, 11 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the merger of Southwest Savings Association, Dallas, Dallas County, with Pioneer Savings Association, Waco, McLennan County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar, Austin, Texas 78705, (512) 479-1250

TRD-8600951

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University System of South Texas

Wednesday, February 5, 1986, 4 p.m. The Building Committee of the University System of South Texas Board of Directors will meet in the conference room, Embassy Suites, 1800 South Second Street, McAllen. Items on the agenda include the report on the Student Union renovations and the javelina statue project at Texas A&I University; and the review bids and award contract for the president's garage project at Texas A&I University.

Contact: Dr. Lawrence K. Pettit, P.O. Box 1238, Kingsville, Texas 78363, (512) 595-2208.

Filed: January 24, 1986, 1:44 p.m.
TRD-8600903

Thursday, February 6, 1986, 9 a.m. The Policy Study Committee of the University System of South Texas Board of Directors will meet in the Texas A&I University Citrus Center, Highway 83, Weslaco. According to the agenda, the committee will consider the amendment to the system policy regarding honorary degrees.

Contact: Dr. Lawrence K. Pettit, P.O. Box 1238, Kingsville, Texas 78363, (512) 595-2215.

Filed: January 24, 1986, 1:38 p.m.
TRD-8600902

Thursday, February 6, 1986, 10 a.m. The Board of Directors of the University System of South Texas will meet in the Texas A&I Citrus Center, Highway 83, Weslaco. According to the agenda summary, the board will consider the oath of office; the election of officers; the minutes of November 14, 1985, meeting; the increase of graduation fees at Texas A&I; the resolutions of appreciation; the gifts and donations; the personnel action; the reports from the Building Committee, Policy Study Committee, the presidents and chancellor; the discussion of personnel matters, the acquisition of real estate and legal matters within the University System of South Texas; and the time and place of next meeting.

Contact: Dr. Lawrence K. Pettit, P.O. Box 1238, Kingsville, Texas 78363, (512) 595-2215.

Filed: January 24, 1986, 1:49 p.m.
TRD-8600906

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Texas Southern University

Wednesday, January 29, 1986, 10:30 a.m. The Building and Grounds Committee of Texas Southern University met in Room 117, Hannah Hall, Texas Southern University, Houston. According to the agenda, the committee approved of payments for construction; change orders; improvements of land; the report on central plant expansion and renovation; the progress report on on-going construction projects; received bids on construction projects; and considered the purchase of real estate.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 23, 1986, 3:40 p.m.
TRD-8600847

Wednesday, January 29, 1986, 1:30 p.m. The Finance Committee of Texas Southern University met in Room 117, Hannah Hall, Texas Southern University, 3100 Cleburne Avenue, Houston. According to the agenda, the committee considered monthly fiscal reports on university operations; approved

short term university investments; and considered matters relating to the issuance of Rosewood projects bonds and Proposition II bonds.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 23, 1986, 3:40 p.m.
TRD-8600846

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Texas State Technical Institute

Friday, January 24, 1986, 5 p.m. The Facilities Committee of the Texas State Technical Institute (TSTI) Board of Regents met in emergency session via conference call originating from the TSTI-System Office, Waco. According to the agenda, the committee reviewed bids received for construction of student housing at TSTI-Harlingen. The emergency status was necessary because the student housing construction bids must be evaluated for awarding contracts to maintain building schedule.

Contact: Theodore A. Talbot, TSTI, Waco, Texas 76705, (817) 799-3611.

Filed: January 24, 1986, 1:01 p.m.
TRD-8600901

Monday, January 27, 1986, 2 p.m. The Executive Committee of the Texas State Technical Institute Board of Regents met in emergency session via conference call originating from the TSTI-System Office, Waco. According to the agenda, the committee evaluated and awarded the contract for construction of student housing at TSTI-Harlingen. The emergency status was necessary because the student housing construction bids must be evaluated for awarding contract to maintain building schedule.

Contact: Theodore A. Talbot, TSTI, Waco, Texas, 76705, (817) 799-3611.

Filed: January 24, 1986, 12:59 p.m.
TRD-8600900

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Texas Tech University

Thursday, January 30, 1986. Committees of the Texas Tech University Board of Regents and the Texas Tech University Health Sciences Center Board of Regents met jointly in the board suite, Administration Building, Texas Tech University campus, Lubbock. Days, times, committees, and agendas follow.

2 p.m. The Academic and Student Affairs Committees considered the finding of facts regarding the appointment of an employee to another position of honor, trust, or profit; and reports. The committees also met in executive session.

The Academic and Student Affairs Committee of the Texas Tech Health Sciences Center approved the educational criteria for satellite clinics, and ratified the leave of absence.

The Academic and Student Affairs Committee of the Texas Tech University Board of Regents ratified of leaves of absence, centers and institutes, and approved of full-time employment of a person over age 70.

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

Filed: January 23, 1986, 3:49 p.m.
TRD-8600858, 8600854

3:30 p.m. The Campus and Building Committees considered reports. The committees also met in executive session.

The Campus and Building Committee of the Texas Tech University Health Sciences Center Board of Regents approved the schematic design and authorization for the president to proceed with contract documents and receipt of bids for construction of phase I of the diagnostic center at the Health Sciences Center, and authorized the president to proceed with contract documents and receipt of bids for purchase and installation of the magnetic resonance imaging unit and related equipment for phase I of the new diagnostic center.

The Campus and Building Committee of Texas Tech University appointed the project engineer to upgrade water distribution system at the Agricultural Field Laboratories, Lubbock County; the award contracts for the business administration computer facility and bathroom renovations in four residence halls; received bids for the Meats Laboratory renovation, construction of second floor in Industrial Gallery of the museum, renovation of exterior doors and windows in the residence halls, install air conditioning for the housing office in Doak Hall; and ratified the acceptance of dates.

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

Filed: January 23, 1986, 3:50 p.m.
TRD-8600856, 8600852

4:30 p.m. The Athletic Affairs Committee of the Texas Tech University Board of Regents considered reports. The committee also met in executive session.

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

Filed: January 23, 1986, 3:50 p.m.
TRD-8600851

Friday, January 31, 1986, 8 a.m. Committees of the Texas Tech University Board of Regents and the Texas Tech University Health Sciences Center Board of Regents will meet jointly in the board suite, Administrative Building, Texas Tech University campus, Lubbock. Times, committees, and agendas follow.

10 a.m. The Finance and Administration

Committees will approve of the new Optional Retirement Program and Tax Sheltered Annuity Program carrier; approve bid group voluntary dental insurance for faculty and staff, the traffic and parking regulations; approve the formation of the Texas Tech University and Health Sciences Center research foundation; the higher education assistance fund allocation, the internal audit organization; reports, and the status of computing.

The Finance and Administration Committee of the Texas Tech University Health Sciences Center Board of Regents will consider the purchase of an ambulatory clinic building and 5.0 acres of land in Amarillo, for the Regional Academic Health Center; approve to employ full-time an employee who is age 70; acceptance of gift-in-kind with value in excess of \$100,000, the helicopter project, and establishment of the position of the executive vice president.

The Finance and Administration Committee of Texas Tech University Board of Regents will consider the sale of electrical facilities at the east campus property, and ratification of the oil and gas lease.

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

Filed: January 23, 1986, 3:49 p.m.
TRD-8600857, 8600853

10 a.m. The Board of Regents of Texas Tech University Health Sciences Center and Texas Tech University will act on the minutes; reports of the Academic and Student Affairs Committee, the Finance and Administration Committee, and the Campus and Building Committee. The board also will meet in executive session.

The Board of Regents of Texas Tech University will report and act on the Development Committee.

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

Filed: January 23, 1986, 3:46 p.m.
TRD-8600855, 8600859

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Texas Water Commission

Wednesday, January 29, 1986, 10:30 a.m. The Texas Water Commission will meet in Room 200, Emergency Medical Services Building, 7411 Park Place, Houston. According to the agenda summary, the commission received testimony and public comments on proposed new rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:34 a.m.
TRD-8600934

Friday, January 31, 1986, 10 a.m. The Texas Water Commission will meet in emergency session in Room 501, Government Plaza Building, 400 Mann Street, Corpus Christi. According to the agenda summary, the commission will receive testimony and public comments on proposed new rules, 31 TAC §§324.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies. The emergency status is necessary because it relates to Chapter 325 rules.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:34 a.m.
TRD-8600941

Friday, January 31, 1986, 11 a.m. The Texas Water Commission will meet in emergency session in Room 103, Lubbock County Courthouse, 904 Broadway, Lubbock. According to the agenda summary, the commission will receive testimony and public comments on proposed new rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies. The emergency status is necessary because it relates to Chapter 325 rules.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:34 a.m.
TRD-8600940

Monday, February 3, 1986, 10 a.m. The Texas Water Commission will meet in emergency session on the second floor, Administration Building, Trinity River Authority, Central Regional Wastewater Systems Facilities, 6500 West Singleton, Dallas. According to the agenda summary, the commission will receive testimony and public comments on proposed new rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies. The emergency status is necessary because it relates to Chapter 325 rules.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:35 a.m.
TRD-8600942

Monday, February 3, 1986, 10:30 a.m. The Texas Water Commission will meet at the University Building, University of Texas at Tyler, 3900 University Boulevard, Tyler. According to the agenda summary, the commission will receive testimony and public comments on proposed rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies. The emergency status is necessary because it relates to Chapter 325 rules.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:35 a.m.
TRD-8600943

Tuesday, February 4, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider water district bond issues, release from escrow, the use of surplus funds, the appointment of district directors, the water quality proposed permits, amendments and renewals, water right application, and the setting of hearing dates.

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

Filed: January 27, 1986, 9:29 a.m.
TRD-8600928

Wednesday, February 5, 1986, 9 a.m. The Texas Water Commission will meet in the Texas A&M Research Center Auditorium, 7887 North Highway 87, San Angelo. According to the agenda summary, the commission will receive testimony and public comments on proposed rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:35 a.m.
TRD-8600935

Wednesday, February 5, 1986, 9 a.m. The Texas Water Commission will meet in the City Council Chambers, second floor, El Paso City Hall, El Paso. According to the agenda summary, the commission will receive testimony and public comments on proposed rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:35 a.m.
TRD-8600936

Friday, February 7, 1986, 10 a.m. The Texas Water Commission will meet in Room 305, Amarillo City Hall, 509 East Seventh Avenue, Amarillo. According to the agenda summary, the commission will receive testimony and public comments on proposed rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:36 a.m.
TRD-8600937

Wednesday, February 7, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will receive testimony and public comments on proposed rules, 31 TAC §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations companies.

Contact: Ken Petersen, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 27, 1986, 9:35 a.m.
TRD-8600934

Wednesday, February 12, 1986, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the application by Forrest Roan for proposed water quality Permit 13175-01, Colorado River Basin; application by Dudley's Feedlot Company for amendment to Permit 01760, Canadian River Basin, and application by Associates Utility Company for proposed water quality Permit 13112-01, Neches River Basin.

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

Filed: January 27, 1986, 9:31 a.m.
TRD-8600929

Thursday, February 13, 1986, 10 a.m. The Hearings Examiners of the Texas Water Commission will meet in Room 215, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the examiners will consider Application 3334A of the City of Teague.

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

Filed: January 27, 1986, 9:27 a.m.
TRD-8600927

Wednesday, February 19, 1986, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will examine the feasibility of the local flood protection project, Palo Blanco and Cibolo Creeks, in the vicinity of Falfurrias, Brooks County.

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

Filed: January 27, 1986, 9:32 a.m..
TRD-8600930

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West Texas State University

Tuesday, February 4, 1986, 9 a.m. The Board of Regents of West Texas State University (WTSU) will meet in Room 211, Virgil Henson Activities Center, West Texas State University, Canyon. According to the agenda summary, the board will consider reports from the president of the student body; the executive director of West Texas State University Alumni Association, the vice president for Academic Affairs; the vice president for Finance and Administrative Services; and the president of WTSU; approval of minutes; approval of the Intellectual Property Policy; ratification of the alumni contract; the business and finance items including the budget changes, construction contract, and implementation of emergency tuition and fee loans; faculty, staff, and curriculum items; the election of vice chairman and secretary; and committee appointments. The board also will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g).

Contact: Texas Smith, WTSU, Canyon, Texas 79016, (806) 656-3962.

Filed: January 27, 1986, 11:14 a.m.
TRD-8600944

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Regional Agencies

Meetings Filed January 23

The Atascosa County Appraisal District, Board of Directors, met at 1010 Zanderson, Jourdanton, on January 30, 1986, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas, (512) 769-2730.

The Bastrop County Appraisal District, Appraisal Review Board, met at 1200 Cedar Street, Bastrop, on January 29, 1986, at 7 p.m. Information may be obtained from Lorraine Perry, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925.

The Leon County Central Appraisal District, Board of Directors, met at the district office, Centerville, on January 27, 1986, at 7:30 p.m. Information may be obtained from Tom G. Holmes, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The North Plains Groundwater Conservation District 2, Board of Directors, will meet at 702 East First Street, Dumas, on February 3, 1986, at 10 a.m. Information may be obtained from Orval E. Allen, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401.
TRD-8600833

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Meetings Filed January 24

The Amarillo Mental Health and Mental Retardation Center, Executive Committee of the Board of Trustees, and Board of Trustees, met in the boardroom, 1901 Mid-Park, Amarillo, on January 30, 1986, at noon and 1 p.m. respectively. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Dallas Area Rapid Transit, Board of Directors, met at 601 Pacific Avenue, Dallas, on January 28, 1986, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Mental Health and Mental Retardation Center of East Texas, Board of Trustees, met in the boardroom, 2323 West Front Street, Tyler, on January 30, 1986, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Middle Rio Grande Development Council, Board of Directors, met for an agenda revision at the Civic Center, 600 North Sixth, Carrizo Springs, on January 29, 1986, at 1:30 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The Texas Municipal League (Risk and Insurance Management Services), Board of Trustees (Workers' Compensation/Joint Self-Insurance Funds), will meet at the Hilton Inn, 505 Avenue Q, Lubbock, on February 3, 1986, at 2 p.m. Information may be obtained from Susan Horton, 211 East Seventh Street, Suite 1020, Austin, Texas 78701-3283, (512) 478-6601.

The Tyler County Tax Appraisal District, Board of Directors, will meet at 103 Pecan, Woodville, on February 4, 1986, at 4 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.
TRD-8600888

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Meetings Filed January 27

The Callahan County Appraisal District, Board of Directors, will meet on the first floor, Courthouse, Baird, on February 3, 1986, at 7 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165.

The Carson County Appraisal District, Board of Directors, met in emergency session at 102 Main Street, Panhandle, on January 30, 1986, at 1 p.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068.

The Gonzales County Appraisal District, Board of Directors, met in emergency session at 928 St. Paul Street, Gonzales, on January 27, 1986, and February 13, 1986, at 5 p.m. Information may be obtained from Sherian Cleveland, P.O. Box 867, Gonzales, Texas 78629.

The Jasper County Appraisal District, Board of Directors, will meet at the Evadale ISD Administrative Building, Jasper, on February 3, 1986, at 6:30 p.m. Information may be obtained from David W. Luther, Courthouse Annex, Jasper, Texas 75951, (409) 384-2544.

The Middle Rio Grande Development Council, Texas Review and Comment System Committee, met in emergency session at the Civic Center, Carrizo Springs, on January 29, 1986, at 1 p.m. Information may be obtained from Oralia Saldua, 612 D. Bedell, Del Rio, Texas 78840, (512) 774-4741.

The Wise County Appraisal District, Appraisal Review Board, met at 206 South State, Decatur, on January 30, 1986, at 9:30 a.m. Information may be obtained from Angela Smith, P.O. Box 509, Decatur, Texas 76234, (817) 627-3081.
TRD-8600912

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Meetings Filed January 28

The Ark-Tex Council of Governments, Executive Committee, met at K-Bob's Restaurant, 1904 South Jefferson, Mount Pleasant, on January 30, 1986, at 5:30 p.m. Information may be obtained from Genevieve Burtchell, (214) 832-8636.

The Bexar Appraisal District, Appraisal Review Board will meet at 535 South Main, San Antonio, on January 31, 1986, at 9 a.m. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District 1, Board of Directors, will meet at the district office, Highway 81, Natalia, on February 3, 1986, at 10 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Brown County Appraisal District, Board of Directors, will meet at 403 Fisk Avenue, Brownwood, on February 3, 1986, at 7 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Carson County Appraisal District, Board of Directors, will meet at 102 Main Street, Panhandle, on February 12, 1986, at 9 a.m. Information may be obtained

from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068.

The Dawson County Central Appraisal District, Board of Directors, will meet at 611 North Dallas Avenue, Lamesa, on February 5, 1986, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Education Service Center Region IV, Board of Directors, will meet in the boardroom, 7145 West Tidwell, Houston, on

February 11, 1986, at 6 p.m. Information may be obtained from Tom Pate, Jr.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on February 4, 1986, at noon. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Lavaca County Central Appraisal District, Board of Directors, will meet at the appraisal district office, Hallettsville, on

February 10, 1986, at 4 p.m. Information may be obtained from J. P. Davis, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Tarrant Appraisal District, Board of Directors, met in Suite 300, 1701 River Run, Fort Worth, on January 30, 1986, at 10 a.m. Information may be obtained from Cecil Mae Perrin, 1701 River Run, Suite 300, Fort Worth, Texas, (817) 332-8522.

TRD-8600963

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 Air Control Board Notice of Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of January 13-20, 1986.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

A-Allright Concrete, Houston; concrete batch; 8513 Reservoir, Harris County; 6451B; modification

Thomson Components-Mostek, Carrollton; semiconductor manufacturing facility; Carrollton, Dallas County; 7758A; modification

Thomson Components-Mostek, Carrollton; semiconductor manufacturing facility; Carrollton, Dallas County; 8825A; modification

Milpark, Ingleside; bulk barite handling; 301 Shore Drive, San Patricio County; 7241A; modification

David Buster, Inc., Sulphur Springs; hot mix asphalt plant; Sulphur Springs, Hopkins County; 9440B; modification

Centex Cement Corporation, McAllen; cement storage and handling; McAllen, Hidalgo County; 7545A; modification

United Hardwood Products, Inc., Fort Worth; wood products; 3517 North Sylvania, Tarrant County; 5149B; modification

Liquid Energy Corporation, Bridgeport; gas processing plant; State Highway 114, Wise County; 16926; new

Cardell Cabinets, Inc., San Antonio; paint spray line; 3215 North Pan Am Expressway, Bexar County 6478A; modification

Duinick Brothers and Gilchrist (Texas Division), Wills Point; asphalt concrete plant; Two W Ranch, Kaufman; 16878; new

Rescar, Inc., West Orange; railcar coating facility; FM Road 105 and Foreman Road; 156A; modification

Issued in Austin, Texas, on January 23, 1986.

TRD-8600864 Paul M. Shinkawa
Director of Hearings
Texas Air Control Board

Filed: January 24, 1986
For further information, please call (512) 451-5711, ext. 354.

★ ★ ★ Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, Texas Civil Statutes, Article 4477-5, §3.09; the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the procedural rules of the Texas Air Control Board (TACB), Rule 103.11(4), the TACB and the Texas Water Commission (TWC) will conduct a public hearing to receive testimony concerning revisions to the rules of each agency.

Specifically, the TACB is proposing to add a new chapter, titled "Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities," and the TWC is proposing to add new Subchapter L to Chapter 335 of its industrial solid waste and municipal hazardous waste rules. These additions are in response to amendments to House Bill 2358 adopted by the 69th Legislature, 1985. These amendments stipulate the responsibilities of the TACB in relation to permit applications to the TWC for hazardous waste or solid waste management facilities. House Bill 2358 requires that joint rules be promulgated by the TACB and the TWC on this topic.

The proposed new sections include seven new sections which outline the procedures to be followed in reviewing permit applications from existing, new, or modified hazardous or solid waste management facilities. The general and specific requirements for such facilities are also enumerated. The substantive requirements of the sections are the same for both agencies.

The hearing will be held at 10 a.m. on February 18, 1986, in the auditorium of the Texas Air Control Board, 6330 Highway 290 East, Austin. Public comment, both oral and written, on the proposed revisions is invited at the public hearing. The hearing is structured for the receipt of narrative comments. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to answer questions informally immediately before and after the hearing.

Written comments now presented at the hearing may be submitted up to and including February 18, 1986. Persons submitting written comments should provide copies of their comments to both agencies. Comments should be mailed to the following persons and addresses: Lane Hartsock, Regulation Development Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723; and Mary Reagan, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711.

Materials received by 4 p.m. on that date will be considered by the agencies prior to any final action on the proposed revisions. Five copies of all written comments would be helpful to agencies in making their review.

Copies of the proposed revisions are available for inspection at the central office of the TACB, 6330 Highway 290 East, Austin, Texas 78723; at the regional offices of the TACB; and in Room 1029-B of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. For further information, call Lane Hartsock, TACB, at (512) 451-5711, or Mary Reagan, TWC, at (512) 463-8087.

Issued in Austin, Texas, on January 23, 1986.

TRD-8600886

Bill Stewart
Executive Director
Texas Air Control Board
Larry R. Soward
Executive Director
Texas Water Commission

Filed: January 24, 1986

For further information, please call (512) 451-6711, ext. 354

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Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, Article 4477-5, §3.09; the Administrative Procedure and Texas Register Act, Article 6252-13a, §5; and the Procedural Rules of the Texas Air Control Board (TACB), the TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

Specifically, the TACB is proposing to revise §101.24 to clarify applicability, to allow additional time for fee payment in certain cases, and to require the payment of a one-time supplemental inspection fee. The Legislature specified in the appropriations act for the 1986-1987 biennium that a certain amount of the TACB budget funds would be collected by the agency in the form of fees. Amendments to the Texas Clean Air Act (TCAA) require the payment of inspection fees and became effective on September 1, 1985, and §101.24 was adopted by the board on September 20, 1985, with an effective date of October 21, 1985.

Inspection fees are due and payable for fiscal year 1986 during December 1985, and January 1986, with some late payments to arrive after January 31. The total revenue that will be collected through inspection fees for fiscal year 1986 projected to be insufficient to maintain the TACB at its budgeted level. To correct this revenue shortfall, the TACB proposes to require and to collect a supplemental inspection fee for fiscal year 1986, based upon the fees currently required in §101.24. Based on current revenue projections the supplemental fee could represent as much as a 65% increase in the fiscal year 1986 inspection fee; however, the actual amount of any increase will be determined at the time the section is considered for adoption. Final consideration of the proposed section revisions will occur sometime after the current February 28, 1986, deadline for receipt of all inspection fees, including late payments.

The proposed changes to §101.24(a) clarify the applicability of the section to all accounts, not just those which have been assigned TACB account numbers. The proposed changes to §101.24(B) clarify the intent of the subsection. A new paragraph added to §101.24(c) provides additional time for payment of fees by those accounts which recently have been assigned account numbers. A new paragraph added to §101.24(d) requires payment of a supplemental inspection fee by all accounts, including accounts which have yet to be assigned TACB account numbers.

The hearing will be held at 2 p.m. on February 18, 1986, in the auditorium of the Texas Air Control Board, located at 6330 Highway 290 East, Austin. Public comment, both oral and written, on the proposed amendment is invited at the public hearing. The hearing is structured for the receipt of narrative comments. Interrogation or cross-examination is not permitted; however a TACB staff member will be available to answer questions informally immediately before and after the hearing.

Written comments not presented at the hearing may be submitted to the TACB central office in Austin up to and including February 19, 1986. Materials received by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Five copies of all written comments would be helpful to the board in making its review.

Copies of the proposed revisions are available for inspection at the central office of the TACB, located at 6330 Highway 290 East, Austin, Texas 78723, and at the regional office of the agency. For further information call Barry Irwin at (512) 451-5711.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600793

Bill Stewart
Executive Director
Texas Air Control Board

Filed: January 22, 1986

For further information, please call (512) 452-5711 ext. 354

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Texas Department of Community Affairs Public Hearings

The Texas Department of Community Affairs announces the following six public hearings to solicit comments on the proposed final statement for the Texas Community Development Program for fiscal year 1986. Topics to be discussed include the proposed final statement, the purpose and goals of the program, eligible applicants and activities, fund allocations, the application process, project selection criteria, proposed procedural changes, and the past use of Texas Community Development Program funds (federal fiscal year 1985). Copies of the proposed final statement and proposed procedural changes will be available at these hearings.

Public comments may be presented at any of the following hearings or may be submitted in writing to the Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711, attention: Community Development and Housing Division, by March 3, 1986.

The following is a list of each of the six public hearings by regions, date, time, and location:
Lower Rio Grande, South Texas, Coastal Bend—February

17, 1986, 6 p.m., central jury room, Cameron County hall of justice, 917 East Harrison, Brownsville; Permian Basin, Concho Valley, West Texas—February 20, 1986, 1 p.m., Region 18 Educational Service Center, Midland Airport, Midland; South Plains, Panhandle, Nortex, West Central—February 21, 1986, 1 p.m., conference room, South Plains Association of Governments, 3424 Avenue H, Lubbock; North Central, Texoma, Ark-Tex, East Texas, Heart of Texas—February 25, 1986, 6 p.m., Hawes-Grinland room, Grand Prairie community center, 121 West Church, Grand Prairie; Houston/Galveston, Deep East Texas, South East Texas, Brazos Valley—February 27, 1986, 1 p.m., city council chambers, Huntsville city hall, 1212 Avenue M, Huntsville; Capital Area, Central Texas, Alamo Area, Golden Crescent, Middle Rio Grande—March 3, 1986, 9 a.m., room 105, Reagan Building, 105 West 15th Street, Austin.

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

Issued in Austin, Texas, on January 24, 1986.

TRD-8600609 Douglas C. Brown
General Counsel
Texas Department of Community
Affairs

Filed: January 24, 1986
For further information, please call (512) 834-6060.

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Employees Retirement System of Texas Consultant Contract Award

The Employees Retirement System of Texas published a request for proposal in the October 8, 1985, issue of the *Texas Register* (10 TexReg 3913) to obtain a private consultant to audit the insurance carrier of the State Uniform Group Insurance Program for fiscal year 1984-1985. The proposal selected was that of Coopers & Lybrand; One American Center, Suite 1800; 600 Congress Avenue; Austin, Texas 78701.

The effective date of the contract was January 25, 1986, and all reports are to be filed within 90 days of that date. The total cost of the project will be \$39,000.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600816 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Filed: January 22, 1986
For further information, please call (512) 476-6431, ext. 178.

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Texas Department of Health Adopted Rules

In this issue of the *Texas Register*, the department adopts an amendment to its hospital licensing standards, which are adopted by reference in §133.21. The amendment adds a new Chapter 11 to the standards, which establish minimum standards governing the transfer of patients between hospitals. Because of strong public interest in these standards, the new Chapter 11 is being published in its entirety, with changes as a result of public comments, as follows:

Chapter 11. Rules Governing Hospital Patient Transfer Policies.

11-1. General Provisions.

11-1.1. Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

11-1.1.1. Board—The Texas Board of Health.

11-1.1.2. Department—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

11-1.1.3. Designated provider—A provider of health care services, selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, CHAMPUS, a business corporation, an employee organization, a county, a public hospital, a hospital district or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

11-1.1.4. Director—The director, Hospital and Professional Licensure Division, Texas Department of Health.

11-1.1.5. Division—Division of hospital licensing, Texas Department of Health.

11-1.1.6. Emergency services—Services that are usually and customarily available at the respective hospital and that must be provided immediately to:

11-1.1.6.1. sustain a person's life;

11-1.1.6.2. prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ; or

11-1.1.6.3. provide for the care of a woman in active labor, or provide for a medically appropriate transfer as required by the provisions of this chapter.

11-1.1.7. Hospital—A hospital licensed by the department under the Texas Hospital Licensing law, Texas Civil Statutes, Article 4437f.

11-1.1.8. Hospital administration—A person who has the authority to represent a hospital during the transfer from, or receipt of patients into the facility.

11-1.1.9. Law—The Texas Hospital Licensing Law, Texas Civil Statutes, Article 4437f.

11-1.1.10. Patient—An individual seeking medical treatment who:

11-1.1.10.1. may or may not be under the immediate supervision of a personal attending physician;

11-1.1.10.2. has one or more undiagnosed or diagnosed medical conditions; and

11-1.1.10.3. who, within reasonable medical probability, requires immediate or continuing hospital services and medical care.

11-1.1.11. Physician—An individual licensed by the Texas State Board of Medical Examiners to practice medicine within the State of Texas.

11-1.1.12. Policy—Includes one or more policies established by the governing body of the hospital to govern patient transfers.

11-1.1.13. Stabilize—Stabilization includes adequate evaluation and initiation of treatment to assure that transfer of a patient will not, within reasonable medical probability, result in death or loss or serious impairment of bodily functions, parts, organs. There may be times, however, when stabilization of the patient's vital signs is not possible because the hospital or emergency department does not have the appropriate equipment or personnel to correct the underlying process (e.g., thoracic surgeon on staff or cardiopulmonary bypass capability). In these cases, evaluation, and treatment should be performed and transfer should be carried out as quickly as possible. For guidelines on evaluation and treatment, consult

"Guidelines for Transfer of Patients," American College of Emergency Physicians, Annals of Emergency Medicine, December, 1985; 14:1221-1222.

11-1.2. Transfer Policy Required.

11-1.2.1. The governing body of each hospital shall adopt a policy relating to patient transfers that is consistent with standards contained in this chapter.

11-1.2.2. The transfer policy shall be adopted by the governing body of the hospital after consultation with the medical staff and submitted to the director for initial review not later than April 1, 1986. Thereafter, the governing board shall submit the policy as provided by §11-3.

11-1.2.3. If possible, each governing body shall implement its transfer policy by adopting transfer agreements with other hospitals.

11-2. Minimum Standards for Patient Transfer Policies.

11-2.1. Discrimination. The hospital policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

11-2.1.1. Disclosure. The hospital's policy shall recognize the right of an individual to request transfer into the care of a physician and a hospital of his own choosing; however, if a patient is transferred for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or hospital administration regarding the availability of medical care and hospital services at a reduced cost or no cost to the patient, the physician or hospital administration must fully disclose to the patient the eligibility requirements established by the patient's chosen physician or hospital.

11-2.2. Patient Evaluation. The hospital's policy shall provide that each patient who arrives at the hospital is:

11-2.2.1. evaluated by a physician who is present in the hospital at the time the patient presents or is presented; or

11-2.2.2. evaluated by a staff physician on call who:

11-2.2.2.1. is physically able to reach the patient within 15-20 minutes after being informed that a patient is present at the hospital who requires immediate medical attention; and

11-2.2.2.2. is available by direct telephone or radio communication with authorized personnel at the hospital under orders to assess and report the patient's condition to the physician; and

11-2.2.3. is personally examined and evaluated by the physician before an attempt to transfer is made; however,

11-2.2.4. after receiving a report on the patient's condition from the hospital's nursing staff by telephone or radio, if the physician on call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on call may order the transfer by telephone or radio.

11-2.2.5. Physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the hospital staff member receiving the order and counter signed by the physician authorizing the transfer as soon as possible. The patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to §11-2.6 of this chapter, relating to quality of care.

11-2.3. Hospital Personnel; Written Protocols; Standing Delegation Orders; Eligibility and Payment Information. The policies of both transferring and receiving hospitals shall provide that licensed nurses and other qualified personnel are available, and on duty to assist with patient

transfers, or provide accurate information regarding eligibility and payment practices, and that written protocols or standing delegation orders are in place to guide hospital personnel when a patient requires transfer to another hospital.

11-2.4. Patients Requiring Emergency Services.

11-2.4.1. Except as provided by §§11-2.4.2-11-2.4.4 of this chapter, the hospital's policy shall provide that the transfer of patients requiring emergency services, as determined by a physician, may be undertaken for medical reasons only.

11-2.4.2. The hospital's policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Texas Civil Statutes, Article 4438f, §§3.03-3.05 and §§11.04-11.06, relating to mandated providers, as those requirements may apply to a patient requiring emergency services.

11-2.4.3. The hospital's policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist between a patient in need of emergency services and a designated provider.

11-2.4.4. The hospital's policy shall recognize the right of an individual to request transfer into the care of a physician and a hospital of the individual's own choosing.

11-2.5. Transfer of Nonemergency Patients.

11-2.5.1. Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized facility.

11-2.5.2. The hospital's policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Texas Civil Statutes, Article 4438f, §§3.03-3.04, §11.04, and §11.05, relating to mandated providers, as those requirements apply to the transfer of nonemergency patients.

11-2.5.3. The hospital's policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist between a patient in need of nonemergency services and a designated provider.

11-2.5.4. The hospital's policy shall recognize the right of an individual to request a transfer into the care of a physician and a hospital of the individual's own choosing.

11-2.6. Physician's Duties; Standard of Care.

11-2.6.1. The transferring physician shall determine and order life support measures which are medically appropriate to stabilize the patient prior to transfer and to sustain the patient during transfer.

11-2.6.2. The transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

11-2.6.3. In determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

11-2.6.4. Except as modified by §11-2.2.4, prior to each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to assure that the proper transfer procedures are used.

11-2.6.5. Prior to transfer, the transferring physician shall secure a receiving physician and a receiving hospital that are appropriate to the medical needs of the patient and that will accept responsibility for the patient's medical treatment and hospital care.

11-2.7. Quality of Care Review. The hospital's policy shall provide that the hospital's medical staff review appropriate records of patients transferred from the hospital to determine that the appropriate standard of care has, in fact, been met.

11-2.8. Internal Enforcement. The governing body shall enforce its patient transfer policy in the same fair manner as it enforces the other policies and procedures that the governing body has adopted for the governance of the hospital.

11-2.9. Medical Record.

11-2.9.1. The hospital's policy shall provide that a copy of those portions of the patient's medical record which are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving hospital with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, then the records should be forwarded to the receiving physician and hospital as soon as possible. The medical record shall contain at a minimum:

11-2.9.1.1. brief description of the patient's medical history and physical examination;

11-2.9.1.2. working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

11-2.9.1.3. reason for the transfer;

11-2.9.1.4. results of all diagnostic tests, such as laboratory tests;

11-2.9.1.5. pertinent x-ray films and reports; and

11-2.9.1.6. any other pertinent information.

11-2.10. Memorandum of Transfer.

11-2.10.1. The hospital's policy shall provide that a memorandum of transfer be completed for every patient who is transferred.

11-2.10.2. The form and content of the memorandum of transfer shall be prescribed by the director.

11-2.10.3. The memorandum shall contain the following information:

11-2.10.3.1. the patient's full name, if known;

11-2.10.3.2. the patient's address and next of kin, if known;

11-2.10.3.3. the name, telephone number and address of both the transferring and receiving physicians;

11-2.10.3.4. the name and address of both the transferring and receiving hospitals;

11-2.10.3.5. the time and date on which the patient first presented or was presented to the transferring physician and transferring hospital;

11-2.10.3.6. the time and date on which the transferring physician secured a receiving physician;

11-2.10.3.7. the time and date on which the actual patient transfer was undertaken;

11-2.10.3.8. the time and date on which the receiving physician assumed responsibility for the patient; and

11-2.10.3.9. the time and date on which the patient was admitted to the receiving hospital.

11-2.10.4. The memorandum of transfer shall be signed by the transferring physician or a hospital staff member acting under the physician's orders pursuant to §11-2.2.4 and §11-2.2.5 of this chapter and hospital administration.

11-2.10.5. The receipt of the memorandum of transfer shall be acknowledged in writing by both the receiving hospital administration and physician.

11-2.10.6. A copy of the memorandum of transfer shall be retained by both the transferring and receiving hospitals. The memorandum shall be filed separately from the patient's medical record and in a manner which will facilitate its inspection by the division.

11-3. Departmental Review of Hospital Transfer Policy; Approval; Rejection.

11-3.1. Submission. Together with a hospital's application for a license or a license renewal under the law, the governing body of each hospital shall submit the following:

11-3.1.1. a copy of the hospital's current transfer policy;

11-3.1.2. a copy of the hospital's memorandum of transfer form; and

11-3.1.3. affidavits executed by both the chairman and secretary of the governing body attesting to:

11-3.1.3.1. the adoption of the policy;

11-3.1.3.2. the policy's effective date; and

11-3.1.3.3. the fact and method of the policy's implementation and its communication to the appropriate employees and to the medical staff on the date on which the application for license or application for license renewal was submitted to the division.

11-3.2. Review. Before the hospital's application for license or application for license renewal is considered, the division will review the policy and the memorandum of transfer form to determine that the policy, the memorandum of transfer form, and the method of implementation are consistent with the requirements contained in these rules.

11-3.3. Approval. After its review of the policy and the form, if the division determines that both the policy and the form are consistent with the requirements contained in this chapter, the division will notify the governing body of the hospital and the hospital administration that the policy and the form have been approved.

11-3.4. Rejection. If the division has reason to believe that either the policy, the memorandum of transfer form, or the governing body's implementation of the policy are not consistent with the requirements contained in this chapter, the division shall give notice to the governing body of the hospital and to the hospital administration that either the policy, the form, or the method of implementation, or any combination of the three is deficient.

11-3.5. Deficiency Notice. The deficiency notice shall contain the following:

11-3.5.1. a complete statement of the deficiency(ies);

11-3.5.2. recommendations for correction or an offer of consultation;

11-3.5.3. a time period, not to exceed 30 days, within which the corrections shall be made and the policy, form, or method of implementation resubmitted to the division, unless otherwise provided by the director.

11-3.6. Amendments to the Policy.

11-3.6.1. The governing body of a hospital may adopt proposed amendments to a transfer policy which has been approved by the division. The governing body shall submit the proposed amendments to the division for review before the amendments are implemented.

11-3.6.2. The division shall review the amendments and shall approve or reject them in the same manner as provided for the review of the original policy.

11-4. Complaints.

11-4.1. If an individual wishes to report a complaint, an alleged violation of the law relating to patient transfer or of these rules, the individual shall notify the director by phoning the director at 1-512-458-7531 or by writing the Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Initial notification of a complaint or alleged violation may be in writing, by telephone, or by personal visit to the director's office.

11-4.2. Upon receipt of the complaint, the director shall send to the complainant an acknowledgment letter and a complaint form which must be completed and returned to the director before further action can be taken. Upon the receipt of the complaint form, the director shall inform the physician(s) and/or hospital(s) that the complaint has been filed.

11-4.3. The division shall review, investigate and resolve the complaints.

11-4.4. If the complaint is resolved by an agreement in writing among the complainant, the persons who are the subject of the complaint and the division, the complaint file will be closed.

11-4.5. The division may hold informal conferences during the complaint review and investigation process for the purpose of resolving the complaint.

11-4.6. At least once each quarter, the division shall notify the complainant of the status of the complaint until the complaint is finally resolved.

11-4.7. If the division determines that there are insufficient grounds to support the complaint, the division shall dismiss the complaint and give written notice of the dismissal to the complainant and the persons who are the subject of the complaint.

11-4.8. If the division has reason to believe that the facts alleged in the complaint may constitute a violation of the law or this chapter, the division shall undertake to enforce the law and this chapter as provided in the law and §11-5 of this chapter.

11-4.9. At least quarterly, the director shall report to the board the number of complaints received and a statistical summary of their nature and disposition, and in addition shall advise the board of any pattern of persistent or significant violation by a hospital or a physician.

11-5. Enforcement.

11-5.1. Violations. The governing body of a hospital violates the law and this chapter if the governing body fails or refuses to:

11-5.1.1. adopt a transfer policy which is consistent with the standards in this chapter;

11-5.1.2. adopt a memorandum of transfer form which meets the minimum standards for content contained in this chapter; or

11-5.1.3. enforce the transfer policy and the use of the memorandum of transfer.

11-5.2. Notice; Opportunity For Correction; Enforcement Actions.

11-5.2.1. If the division has reasonable cause to believe that the governing body of a hospital has violated the law or the standards in this chapter, the division shall provide notice to the governing body of the violation or violations and an opportunity for correction. If the governing body fails or refuses to correct the violation, the division may undertake any or all of the following enforcement actions:

11-5.2.1.1. refuse to issue a license or a renewal license;

11-5.2.1.2. suspend, modify, or revoke an existing license;

11-5.2.1.3. seek injunctive relief as provided by the law;

11-5.2.1.4. seek civil penalties as defined in the law;

11-5.2.1.5. notify the appropriate provider licensing agency and the board.

11-5.2.2. The division shall provide the governing body with notice of its intent to seek administrative or judicial relief.

11-5.3. Action by the division to refuse to issue or reissue a license, or to suspend or revoke a hospital license, shall be preceded by granting the governing body an opportunity for a hearing before the department to contest the proposed action. Notice and hearing will be governed by the board's formal hearing rules in 25 TAC §§1.21-1.32 and the applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Issued in Austin, Texas, on January 23, 1988.

TRD-8800844

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

Filed: January 23, 1988

For further information, please call (512) 458-7838.

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Proposed Radioactive Material License Issuance

Notice is hereby given by the Texas Department of Health that it proposes to issue the following radioactive material license: radioactive material License 7-3880, to be issued to Good Shepherd Medical Center, 621 North Fifth Street, Longview, Texas 75601.

The license authorizes Good Shepherd Medical Center to receive radioactive waste from others in quantities not to exceed 50 cubic feet per year and the following Class A activities for groups found in *Texas Regulations for the Control of Radiation* Part 44.5(a):

Group II
100 mCi

Group III
1 Ci

The Division of Licensing, Registration, and Standards has determined that: the proposed issuance has no significant impact on the human environment; the licensee is qualified by reason of training and experience to use the material in question for the purpose requested, in accordance with these regulations, in such a manner as to minimize danger to public health and safety, and the environment; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety, and the environment; the issuance of the license will not be inimical to public health and safety, or have a detrimental impact on the environment; and the licensee satisfies any applicable special requirements in the TRCR, Parts 41 and 44.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(a), as amended, and as set out in TRCR, Part 13.5(a).

A person affected is defined as a person who is a resident of a county, or a county adjacent to a 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 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.

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. Should no request for a public hearing be timely filed, the license will be issued 14 days following the end of the 30-day period of notice.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the issuance of this specific radioactive material license may be

obtained by contacting Mr. Lacker, at the address previously stated. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on January 24, 1986.

TRD-8600924 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: January 24, 1986

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

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Texas Department of Human Services Correction of Error

Proposed rules submitted by the Texas Department of Human Services contained several errors as published in the December 13, 1985, issue of the *Texas Register*.

On page 4789, the second sentence of §79.2110 should read: "The department or its agents [its contractors, or the attorney general's unit] can collect the money involved."

The last sentence of §79.2115(b) should read: "Recovery of overpayments may be estimated by applying an appropriate percentage, through sampling methods, over the total claims paid for a particular service for a specified period of time."

On page 4790, §79.2105(6) should read: "failing to comply with the terms of the Medicaid contract or provider agreement, assignment agreement, the provider certification on the Medicaid claim form, or regulations published by the department;"

The proposed rules published on pages 4789-4794 should have an earliest possible date of adoption of January 13, 1986.

Request for Proposal

The Texas Department of Human Services (DHS) Nutrition Education and Training (NET) Program announces a request for proposal (RFP) for the development and standardization of ethnic recipes and the development of a three-week cycle menu.

Description of Services. A contract will be awarded for the purpose of developing, standardizing, and field-testing ethnic food recipes geared to cultural tastes in Texas and which met USDA quantity recipe guidelines. Stated contributions to meal pattern requirements and computer analysis of ingredients must be provided. A three-week cycle menu to include breakfast, lunch, and afternoon supplement, using a variety of ethnic foods and other USDA standardized recipes will be developed. The cycle menu should be well accepted in all regions of Texas, reflect variety in nutritional and sensory quality, and include computer analysis of nutrient content.

Limitations. Public or private nonprofit or for-profit agencies, public and private schools, universities, and land grant universities having adequate personnel and facilities to standardize and test quantity food recipes will be eligible to submit a proposal for this project.

Terms of Contract. The contract will begin May 1, 1986, and end May 1, 1987. The total amount of the contract will not exceed \$10,000.

Procedure for Selecting Contractor. Competitive negotiation procedures will be used in awarding this contract. A panel composed of DHS and NET staff will evaluate all proposals submitted. Final selection will be based on degree to which proposal meets guidelines specified in the request for proposal, qualifications and related experience of project directors, budget, implementation plan, and timeline for proposed activities.

Contact person. To receive a detailed copy of the request for proposal, contact Alexa Sparkman, NET Program Coordinator, 560-W, Texas Department of Human Services, P.O. Box 2960, Austin, Texas 78769, (512) 490-3141.

Closing Date. All proposals must be received by DHS no later than 5 p.m. April 15, 1986.

Issued in Austin, Texas, on January 27, 1986.

TRD-8600932 Martin W. Johnston
Commissioner
Texas Department of Human Services

Filed: January 27, 1986

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

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Texas Department of Mental Health and Mental Retardation Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Mental Health and Mental Retardation is requesting proposals for consulting services.

Description of Services. The department invites consulting firms to offer their services to assist the Texas Department of Mental Health and Mental Retardation with the management of the preliminary systems design of the client assignment and registration component of the client information system. The project will include organization of the project, development of functional and technical specifications, evaluation of application software, selection of hardware and systems software, cost/benefit analysis, and development of the installation schedule of the system.

Contact Persons. Requests for proposal may be obtained by calling or writing Sally Anderson or Mike Laritz, Information Services, P.O. Box 12668, Austin, Texas 78711, (512) 465-4570.

Closing Date. Proposals are due by 1 p.m. on March 17, 1986.

Evaluation and Selection. Selection will include the following: the experience and qualification of the consultant in conducting similar projects; the consultant's reputation with previous customers; the timeliness of the proposed work; the suitability of the work plan; and the projected cost.

The consulting service required is the continuation of a current project. The Texas Department of Mental Health and Mental Retardation intends to contract with the current consultant unless it receives a substantially better offer.

Issued in Austin, Texas, on January 24, 1986.

TRD-8600922 Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: January 24, 1986
For further information, please call (512) 465-4591.

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Public Hearings

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has established its planning and budget schedule for fiscal years 1987-1989. The TDMHMR administers mental health federal block grant funds. Public hearings will be held to solicit comments on the use of these block grant funds and other funds in the development of the department's operating budget for fiscal year 1987, the legislative appropriations request for the 1988-1989 biennium, and the department's Initial Strategic Plan, 1986-1991.

Public and private sector representatives, including advisory groups, clients, providers of services, agencies, and other interested persons are invited to testify.

The dates, locations, and times for hearings at seven locations (El Paso, Lubbock, San Antonio, Harlingen, Waco, Arlington, and Lufkin) were published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 77). An additional hearing has been scheduled for Thursday, February 13, 1986, from 1-5 p.m., at the Houston-Galveston Area Council of Governments, 3555 Timmons Lane, Houston.

Copies of the preliminary intended use report for the mental health block grant funds and the Initial Strategic Plan 1986-1991 will be available at all departmental facilities, community MHMR centers, all regional councils of government, and at the public hearings.

Comments may be submitted in writing to the TDMHMR, Office of Strategic Planning, P.O. Box 12668, Austin, Texas 78711.

Contact Person. For further information, contact Buddy Matthijetz, Director, Office of Strategic Planning TDMHMR, P.O. Box 12668, Austin, Texas 78711, (512) 465-4582.

Issued in Austin, Texas, on January 24, 1986.

TRD-8600823 Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: January 24, 1986
For further information, please call (512) 465-4591.

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Railroad Commission of Texas Correction of Error

A withdrawal of a rule submitted by the Railroad Commission of Texas contained an error as published in the December 27, 1985, issue of the *Texas Register* (10 TexReg 5004).

The withdrawal of §3.31 should have been of the emergency, not the proposed, rule.

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Texas Savings and Loan Department Correction of Error

Adopted repeals submitted by the Texas Savings and Loan Department contained an incorrect effective date in the December 13, 1985, issue of the *Texas Register* (10 TexReg 4795). The correct date should be December 27, 1985.

A miscellaneous document published in the December 27, 1985, issue contained an error as published at 10 TexReg 5024. The name of the association on the third line down in the second paragraph of "Application for Change of Control of an Association" should be Coastal Bend Savings and Loan Association.

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Texas Tech University Consultant Contract Award

Description. This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. Following publication of the consultant proposal request in the October 25, 1985, issue of the *Texas Register* (10 TexReg 4196), Texas Tech University and Texas Tech University Health Sciences Center executed a contract with Peat, Marwick, Mitchell and Company, 1624 15th Street, Lubbock, Texas 79408, to serve as a consultant.

Under the contract, the consultant will measure and compare the ultimate performance of involved functional departments, before and after system implementation; review the environment of the new financial systems, with the supporting policies, office systems and procedures, and the structures of organizational responsibilities within functional areas; measure the extent to which recommended system changes and flow charts of redesigned major system cycles have been successfully implemented; measure the extent to which identified problems, objectives, and anticipated benefits have been achieved; and prepare detailed recommendations for actions to be taken, that will maximize benefits of the system implementation project, and provide guidance for optimizing future projects.

Cost and Dates. The amount of the contract will be \$88,000, plus out-of-pocket and administrative expenses. The beginning date of the contract is December 15, 1985, and the closing date will be August 31, 1986.

Due Date of Documents. The consultant will report to the university on or before August 3, 1986.

Issued in Lubbock, Texas, on January 21, 1986.

TRD-8600782 Freda Pierce
Liaison and Certifying Official
Texas Tech University

Filed: January 22, 1986
For further information, please call (806) 742-3841.

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