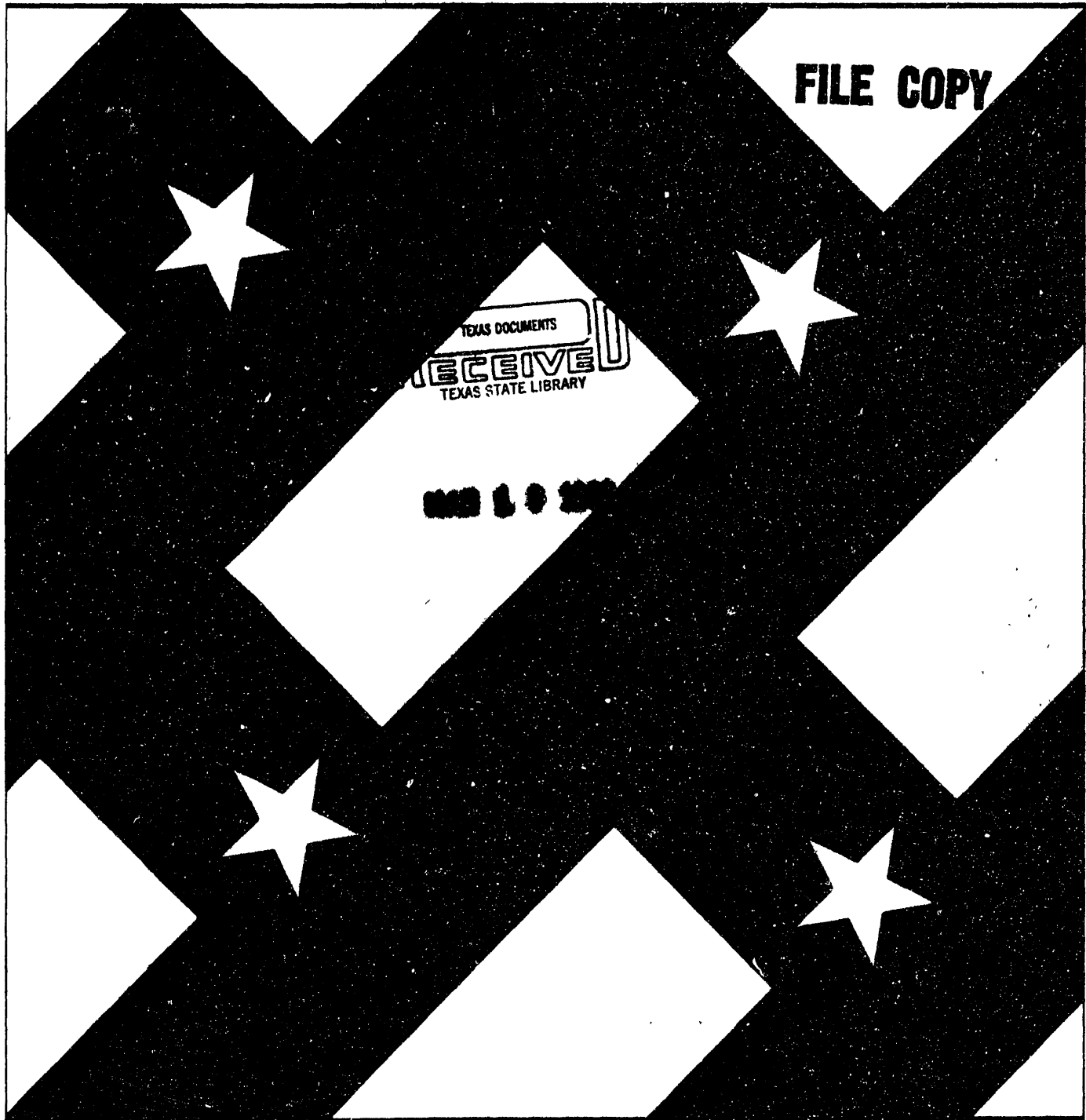


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Texas Register

Volume 11, Number 18, March 7, 1986

Pages 1097-1162



Highlights

The Public Utility Commission of Texas adopts an emergency amendment concerning substantive and general rules. Effective date - February 27.....page 1105

The Texas Water Commission adopts an emergency new section relating to application

processing and processing requirements. Effective date - March 3.....page 1106

The Office of the Secretary of State adopts an amendment concerning Uniform Commercial Code. Effective date - March 30.....page 1142

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

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "11 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 11 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



Texas Register Publications

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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 February 24

Family Practice Residency Advisory Committee

For a term to expire August 29, 1986:

Lillirene Ferrell
12422 South Garden
Houston, Texas 77071

Ms. Ferrell is replacing R. W. Baird of Marble Falls, whose term expired.

For terms to expire February 1, 1989:

T. D. (Rusty) Howell
P.O. Box 1689
Marshall, Texas 75670

Idris Traylor, Jr., M.D.
3601 63rd Drive
Lubbock, Texas 79413

Judson Williams, Ph.D.
4200 O'Keefe Drive
El Paso, Texas 79902

Mr. Howell, Dr. Traylor, and Dr. Williams are being reappointed pursuant to House Bill 536, 69th Legislature, 1985.

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

TRD-8602043 Mark White
Governor of Texas

★ ★ ★

Appointment Made February 25

Texas Committee for the Humanities

For a term to expire December 31, 1987:

William P. Wright, Jr.
1473 Woodland Trail
Abilene, Texas 79605

Mr. Wright is being reappointed.

Issued in Austin, Texas, on February 25, 1986.

TRD-8602043 Mark White
Governor of Texas

★ ★ ★



Appointment Made February 26

Texas World Trade Council

For terms to expire February 1, 1987:

L. Don Anderson
1802 Avenue Q
Lubbock, Texas 79401

Archie Bennett, Jr.
131 Hickory Ridge
Houston, Texas 77024

Mr. Anderson and Mr. Bennett are being appointed pursuant to Senate Bill 1409, 69th Legislature, 1985.

Issued in Austin, Texas, on February 26, 1986.

TRD-8602043 Mark White
Governor of Texas

★ ★ ★



Secretary of State

Under provisions of the Texas Election Code (Article 1.03), the secretary of state is authorized to issue opinions based on the election laws. Under provisions of Texas Civil Statutes (Article 6252-9c, §14A), the secretary of state is authorized to issue advisory opinions in response to written requests based on a real or hypothetical situation that relates to Article 6252-9c.

Questions on particular submissions should be addressed to the Office of the Secretary of State, Elections Division, P.O. Box 12887, Austin, Texas 78711, 1 (800) 252-9802 or (512) 463-5850.

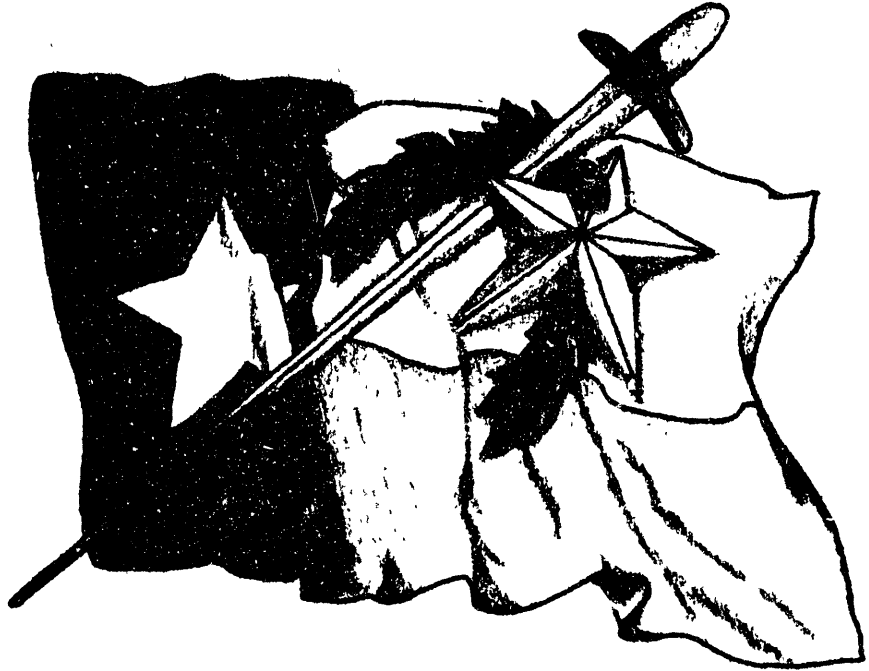
Opinion Issued February 19

Election Law Opinion MAM-7. Request from Mr. Frank Collazo, Jr., State Representative, regarding whether an officeholder may use political contributions to defray legal expenses and related costs he incurred as result of a criminal indictment filed against him for an alleged offense committed as a public servant.

Summary. An officeholder may use political contributions to defray ordinary and necessary legal expenses he incurred in successfully defending criminal charges when the complaint was filed against him in his capacity as an officeholder and as a direct result of performing an activity of office.

TRD-8602025

★ ★ ★



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 16. ECONOMIC REGULATION

Part II. Public Utility

Commission of Texas

Chapter 23. Substantive Rules

General Rules

★ 22 TAC §23.11

The Public Utility Commission of Texas adopts on an emergency basis an amendment to §23.11, concerning general reports. This action is necessary in order for the commission to have immediate access to contracts that utilities have entered into concerning fuel, transportation, and other costs that impact on Texas ratepayers. Pending cases necessitate this emergency action.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and to make decisions with respect to administering the provisions of this Act.

§23.11. *General Reports.*

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

(e) Fuel cost and use information.

Copies of all presently effective and future [fuel purchase or sale] contracts shall be executed by a generating electric utility, including municipally-owned generating electric utilities, or their affiliates for the purchase, transportation, or sale of fuel or electric power [available for examination or] filed with the commission [on request]. In the case of fuel for nuclear generating plants, contracts for the processing of fuel, including but not limited to fabrication, conversion, and enrichment, shall be filed. Each generating electric utility, including municipally-owned generating electric utilities, shall file monthly fuel reports on forms prescribed by the commission.

(f)-(p) (No change.)

(q) **Electric generating plant construction contracts.** Copies of all presently effective and future contracts executed by a generating electric utility, including municipally-owned generating electric utilities, or their affiliates with architect-engineers, constructors, and sub-contractors for the construc-

tion of electric generating plants, shall be filed with the commission. Technical design and architectural-engineering information, manuals, and related documents which contain trade secrets are not required to be filed by this subsection, provided however, that all information relating to architectural-engineering and construction costs shall be filed.

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

TRD-8602042

Rhonda Colbert Ryan
Secretary
Public Utility
Commission of Texas

Effective date: February 27, 1986

Expiration date: June 27, 1986

For further information, please call
(512) 458-0100.

★ ★ ★

Quality of Service

★ 16 TAC §23.66

The Public Utility Commission of Texas adopts on an emergency basis an amendment to §23.66, concerning arrangements between qualifying facilities and electric utilities. The commission determined this action is necessary in order that the commission make decisions on matters affecting ratepayers, have immediate access to cogeneration contracts entered into by utilities. Pending cases make this emergency action necessary.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and to make decisions with respect to administering the provisions of this Act.

§23.66. *Arrangements Between Qualifying Facilities and Electric Utilities.*

(a) (No change.)

(b) Scope.

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

(4) **Copies of all presently effective and future contracts executed by a generating electric utility, including municipally-owned generating electric utilities, or their affiliates for the purchase of power by an electric utility from a qualifying facility shall be filed with the commission.**

(c)-(m) (No change.)

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

TRD-8602037

Rhonda Colbert Ryan
Secretary
Public Utility Commission
of Texas

Effective date: February 27, 1986

Expiration date: June 27, 1986

For further information, please call
(512) 458-0100.

★ ★ ★

TITLE 28. INSURANCE

Part I. State Board of

Insurance

Chapter 5. Property and

Casualty Insurance

Subchapter D. Fire and Allied

Lines Insurance

★ 28 TAC §5.3501

The State Board of Insurance adopts on an emergency basis new §5.3501, requiring nonrate regulated insurers regulated under the insurance Code, Chapters 17-19, and subject to the insurance Code, Articles 5.35 and 5.36, to report in accordance with the current Texas property statistical plan for residential and commercial risks. The statistical plan is adopted by reference to be applicable to Chapters 17-19 insurers. The statistical plan specifies detailed information to be maintained by insurers writing property and multiperil insurance business in this state. The information relates, among other matters, to premiums, losses, claims, and exposure. The plan also specifies the time and manner of reporting the information required to be maintained. The insurers specified are not required to use rates promulgated by the State Board of Insurance. Heretofore, these insurers have not been required to maintain and report information to the board in the manner required by this emergency section. A rapidly increasing amount of business has been written by these companies. Because of this, the board has determined that effective rate regulation requires that it must receive from these insurers the information specified in the statistical plan to maintain effective rate regulation for the lines of insurance specified. Rate regulation is an

extremely important function of the board. It is now and has been historically of paramount importance to the public in general. Such regulation ultimately is determinative of the amount the public pays for certain insurance and relates directly to the solvency of certain insurers. For the information to be maintained properly for rate determination in the near future, the section must go into effect at the soonest possible time. The danger to effective rate regulation creates an imminent peril to the public welfare and requires that the section be adopted on an emergency basis. On October 15, 1985, the board adopted on an emergency basis Texas Administrative Code, §5.3501. Now the board adopts on an emergency basis Texas Administrative Code, §5.3501 with additional language to make clear that time and manner of reporting shall be as set forth in the current Texas property statistical plan for residential and commercial risks.

The new section is adopted on an emergency basis under the Insurance Code, Articles 1.24, 17.05, §§18, 18.12, and 19.08. Article 1.24 authorizes the board to address inquiries to an insurance company or to any holder of any authorization under the Insurance Code in relation to its business and condition or any matter connected with its transactions which the board deems necessary for the protection of the public good or for a proper discharge of its duties, and requires each addressee to promptly answer such inquiries. Article 17.25, §18, authorizes the board, whenever it deems it advisable, to compel written reports from Chapter 17 companies respecting their condition. Article 18.12 authorizes the board to require Loyds plan insurers to file information with the board. Article 19.08 requires Chapter 19 insurers to furnish certain information and reports to the board.

§5.3501. Statistical Reporting of Property and Multiperil Insurance by Insurers Regulated under the Insurance Code, Chapters 17-19. Insurers regulated under the Insurance Code, Chapters 17-19, and subject to the Insurance Code, Articles 5.35 and 5.36, shall report in accordance with the current Texas property statistical plan for residential and commercial risks. The time and manner of reporting is as set forth in the statistical plan, which plan is adopted herein by reference. Copies of the statistical plan may be obtained by contacting the Staff Actuary, Property and Casualty Actuarial Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998 or by contacting the Texas Insurance Advisory Association, P.O. Box 15, Austin, Texas 78782. Issued in Austin, Texas, on February 25, 1986.

TRD-8801877 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 28, 1986
Expiration date: June 26, 1986
For further information, please call
(512) 463-6327.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 281. Applications Processing

Applications Processing

★31 TAC §§281.1-281.24

The Texas Water Commission adopts on an emergency basis new §§281.1-281.24, relating to applications processing. The sections currently in effect concerning applications processing were adopted on an emergency basis by the commission on September 3, 1985, extended on January 2, 1986, and will expire on March 3, 1986. The Texas Water Commission proposed permanent sections for the same subject matter in the *Texas Register* on January 10, 1986, and has the authority under law to adopt the proposed permanent sections at the present time. The commission had decided to delay adoption of all currently proposed permanent sections to facilitate public comment. The Texas Water Commission finds that an urgent need exists to adopt these emergency sections to maintain uninterrupted regulation and otherwise alleviate an immediate peril to the public health, safety, and welfare which would result from a lapse in the regulations.

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy to the commission.

§281.1. Purpose. It is the intent of the Texas Water Commission to establish a general policy for the processing of applications for permits, licenses, and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of the commission that applications for permits, licenses, and other types of approvals listed in §281.2 of this title (relating to Applicability) be processed by the executive director according to the schedule established in this chapter.

§281.2. Applicability. These sections are applicable to the processing of:

- (1) applications for new or amended water use permits and extensions of time to commence and/or complete construction of water use facilities;
- (2) applications for new or amended waste discharge permits;
- (3) applications for new or amended injection well permits except those filed pursuant to §331.8 of this title (relating to Application Required for Existing Wells);

- (4) applications for new or amended industrial solid waste permits filed pursuant to §336.2(a) of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Groundwater Compliance Plan);

- (5) application for plan approval of reclamation projects (levees, etc.);

- (6) petitions for creation of water districts;

- (7) applications for the approval of engineering projects relating to the issuance of bonds for districts;

- (8) applications for the approval of substantial alterations to commission approved plans and specifications of districts;

- (9) applications for the use of surplus bond or related funds;

- (10) applications for approval to use commission directed escrow funds;

- (11) applications for a change in commission approved bond interest rates or maturity schedules;

- (12) applications for the approval of district fire department plans;

- (13) applications for the approval of district fire department financing;

- (14) applications for weather modification permits and licenses; and

- (15) applications for certificates of convenience and necessity.

§281.3. Initial Review.

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

(b) Applications made under §336.43 of this title (relating to Permit Required) or §331.8 of this title (relating to Application Required for Existing Wells) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this section. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on which the review will commence.

§281.4. Applications for Use of State Water.

(a) Applications for the use of state water must include:

- (1) complete application form(s), signed and notarized;
- (2) the payment of fees in accordance with §§295.131-295.139 of this title (relating to Water Use Permit Fees);
- (3) the verified legal status of the applicant;
- (4) appropriate ownership documents (including easements and consents);
- (5) an adequate map or plat;
- (6) the required engineering plans or studies; and

(7) any other information as the executive director or the commission may require.

§281.5. Application for Wastewater Discharge, Underground Injection, Hazardous Waste, and Industrial Solid Waste Management Permits. Applications for wastewater discharge, underground injection, hazardous waste, and industrial solid waste management permits must include:

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

(2) the payment of fees;

(3) the verified legal status of the applicant;

(4) the signature of the applicant, checked against agency requirements;

(5) the attachment of technical reports and supporting data required by the application;

(6) a list of adjacent and potentially affected landowners along with a map locating the property owned by these persons; and

(7) any other information as the executive director or the commission may require.

§281.6. Applications for Plan Approval of Reclamation Projects. Applications for plan approval of reclamation projects must include:

(1) complete application form(s), signed and notarized;

(2) an engineering report and supporting data;

(3) a list of adjacent and potentially affected landowners along with a map locating the land owned by these persons; and

(4) any other information as the executive director or the commission may require.

§281.7. Applications for Weather Modification Permits. Applications for weather modification permits and licenses must include:

(1) complete application form(s);

(2) the payment of fees;

(3) for weather modification permits, a notice of intention approved in form by the executive director in accordance with §289.17 of this title (relating to Notice of Intention); and

(4) any other information as the executive director or the commission may require.

§281.8. Petitions for the Creation of Water Districts. Petitions for the creation of water districts must include:

(1) the matters required by the Texas Water Code, §54.014 and §54.015;

(2) a plat showing district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22-24 inches by 36 inches) showing the locations of ex-

isting facilities, including potable water wells, water and wastewater treatment plants, streams, reservoirs, highways, roads, and other improvements; also, the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) a preliminary engineering report including the matters required by §311.11 of this title (relating to Municipal Utility Districts);

(5) a certification by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls; where the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) will file with the executive director of the commission a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s);

(6) a statement to the effect that a copy of the petition for creation of the proposed district was mailed to any city secretary or clerk in whose extraterritorial jurisdiction all or part of the district is located and to the commissioner's court of any county in which all or part of the proposed district is located;

(7) if applicable, a showing of compliance with the Texas Water Code, §54.016;

(8) for petitioners of proposed water districts in Harris, Montgomery, Fort Bend, Galveston, Brazoria, Chambers, Walker, Waller, Liberty, Polk, and San Jacinto Counties, a statement to the effect that the preliminary engineering report including the preliminary plan for proposed utilities and a plat showing the district boundaries and area have been sent to the southeast region office of the commission simultaneously with submission of the petition to the executive director;

(9) a market study as required by §311.46(5) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer); and

(10) the payment of fees required by §311.11 of this title (relating to Municipal Utility Districts); and

(11) any other information as the executive director or the commission may require.

§281.9. Applications for Approval of Engineering Projects Relating to the Issuance of Bonds for Districts. Applications for the approval of engineering projects relating to the issuance of bonds for districts must include:

(1) the subject matter contained in the Texas Water Code, §§55.503, 51.421, 54.516, or 12.082 and §311.43(a) of this title (relating to Application Requirements);

(2) a certified copy of the district board's resolution authorizing the submission of an application for bond issuance;

(3) a certified copy of the order or legislative act creating the district, and, if applicable, documents evidencing compliance with Texas Civil Statutes, Article 970a (8)(b), or, if these documents have previously been provided, a statement of the petition or bond application with which it was submitted;

(4) the appropriate filing fees as required by §293.43(d) of this title (relating to Application Requirements);

(5) an engineering report which meets the requirements of §293.43(e) of this title (relating to Application Requirements); and

(6) any other information as the executive director or the commission may require.

§281.10. Applications for the Approval of Substantial Alterations to Commission Approved Plans and Specifications of Districts. Applications for the approval of substantial alterations to commission approved plans and specifications of districts must include:

(1) a copy of the change order or addendum signed by the district's governing board, or a resolution or letter signed by the governing board indicating concurrence in the proposed change;

(2) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, or state;

(3) complete justification for the change;

(4) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and the new contract price or cost estimate;

(5) a statement indicating the amount and source of funding for the change in plans, including how the available funds were generated;

(6) the number of utility connections added or deleted by the change;

(7) any other information as the executive director or the commission may require;

(8) the appropriate filing fees as required by §311.81 of this title (relating to Substantial Alterations); and

(9) any other information as the executive director or the commission may require.

§281.11. Applications for the Use of Surplus Bond or Related Funds. Applications for the use of surplus bond or related funds must include:

(1) for engineering projects:

(A) a resolution by the governing board requesting approval of the project;

(B) construction plans and specifications approved by all agencies having jurisdictional responsibilities;

(C) complete justification for the project;

(D) a detailed cost summary;

(E) the number of utility connections to be added, if applicable, and the area served;

(F) the amount and source of funding, including how the available funds were generated;

(G) 100-year flood data for the area to be served, if not previously provided;

(H) any other information as the executive director or the commission may require;

(I) the appropriate filing fees as required by §311.82 of this title (relating to District Use of Surplus Bond or Related Funds); and

(J) any other information as the executive director or the commission may require;

(2) for expenditures other than engineering projects:

(A) a resolution by the governing board requesting approval of the expenditure;

(B) complete justification and an explanation of the purpose for which the funds are proposed to be expended;

(C) any other information as the executive director or the commission may require;

(D) the appropriate filing fees as required by §311.82 of this title (relating to District Use of Surplus Bond or Related Funds); and

(E) any other information as the executive director or the commission may require.

§281.12. Applications for Approval To Use Commission Directed Escrow Funds.

(1) Applications for approval to use commission directed escrowed funds for the purposes approved in the bond application must include:

(A) a resolution by the governing board requesting escrow release;

(B) evidence that the reasons for escrow have been satisfied;

(C) any other information as the executive director or the commission may require;

(D) the appropriate filing fees as required by §311.83 of this title (relating to District Use of Escrowed Funds); and

(E) any other information as the executive director or the commission may require.

(2) Applications for approval to use commission directed escrowed funds for purposes other than as approved by the commission with the bond application must include:

(A) for engineering projects:

(i) the documents required by §311.82(1) of this title (relating to District Use of Surplus Bond or Related Funds);

(ii) a copy of the governing board request for escrow release;

(iii) the appropriate filing fees as required by §311.83(b) of this title (relating to District Use of Escrowed Funds); and

(iv) any other information as the executive director or the commission may require.

(B) for purposes other than engineering projects:

(i) a resolution by the governing board requesting escrow release;

(ii) complete justification and explanation of the purpose for which the funds will be expended;

(iii) the appropriate filing fees as required by §311.83(b) of this title (relating to District Use of Escrowed Funds); and

(iv) any other information as the executive director or the commission may require.

§281.13. Applications for Change in Commission Approved Bond Interest Rates or Maturity Schedules. Applications for a change in commission approved bond interest rates or maturity schedules must include:

(1) where there is no change in approved plans, specifications, bond amount, or the required tax rate:

(A) a statement that there is no change in the approved plans, specifications, bond amount, or required tax rate, signed by the board president;

(B) a revised bond issue cost summary;

(C) the appropriate filing fees as required by §311.83(b) of this title (relating to District Use of Escrowed Funds); and

(D) any other information as the executive director or the commission may require;

(2) where there are changes in plans, specifications, bond amount, or the tax rate:

(A) a resolution by the governing board requesting approval of the change;

(B) the revised construction plans, specifications, cost summary, amortization schedule, and maturity schedule as applicable;

(C) complete justification for the changes;

(D) any other information as the executive director or the commission may require; and

(E) the appropriate filing fees as required by §311.84 of this title (relating to Change in Commission Approved Bond Interest Rates or Maturity Schedules).

§281.14. Applications for Approval of District Fire Department Plans. Applications for the approval of district fire department plans must include:

(1) the information required by the Texas Water Code, §50.055;

(2) the method proposed for district fire protection (i.e. establishment of a fire department, joint fire protection service between two or more districts, or contract with others for fire fighting services);

(3) the method proposed for financing the project including, if applicable, the amount and type of bonds (tax, revenue, combinations) proposed for issuance by the district;

(4) a certified copy of the district board's resolution authorizing submission of an application for fire protection plan approval;

(5) a certified copy of the district board's order adopting a fire protection plan and/or any proposed contract to be entered into by the district for this purpose, together with evidence that a hearing in conformance with the Texas Water Code, §50.055(g), was held whereby any person residing in the district could present testimony for or against the proposed plan and/or any proposed contract;

(6) evidence that a copy of the fire protection plan and proposed contracts as adopted by the district's board have been provided to the city having extraterritorial jurisdiction of the district; if the district is outside the jurisdiction of any city, then evidence that the county commissioner's court of the county in which the district is located has been provided a copy of the plan;

(7) the appropriate filing fees as required by §311.123 of this title (relating to Application Requirements for Fire Department Plan Approval);

(8) the district's fire protection plan, continuing the elements required by §311.123(f) of this title (relating to Application Requirements for Fire Department Plan Approval);

(9) a financial presentation for the district board's adopted plan which includes the information required by §311.123(g) of this title (relating to Application Requirements for Fire Department Plan Approval);

(10) a report describing the existing fire department and fire fighting services within 25 miles of the district, and including the information required by §311.123(g) of this title (relating to Application Requirements for Fire Department Plan Approval); and

(11) any other information as the executive director or the commission may require.

§281.15. Applications for Approval of Fire Department Financing. Applications for the approval of district fire department financing must include:

(1) the information required by the Texas Water Code, §50.055;

(2) a certified copy of the district board's resolution authorizing submission of an application;

(3) a certified copy of the fire protection plan and executed contracts as approved by the district's voters;

(4) an itemized description of any changes to the fire protection plan and the reason for each change or deferred service, if the plan authorized by the district's voters is not identical to that approved by the commission;

(5) the appropriate filing fees as required by §311.124(g) of this title (relating to Application Requirements for Fire Department Financing with Either Bond Issue Proceeds, Funding from Another Source, or a Combination Thereof);

(6) details of the plan approved by the district's voters or the incremental portion thereof as requested in the application, which includes the elements required under §311.124(i) of this title (relating to Application Requirements for Fire Department Financing with Either Bond Issue Proceeds, Funding from Another Source, or a Combination Thereof);

(7) an updated financial presentation as required by §311.124(j) of this title (relating to Application Requirements for Fire Department Financing with Either Bond Issue Proceeds, Funding from Another Source, or a Combination Thereof); and

(8) any other information as the executive director or the commission may require.

§281.16. Applications for Certificates of Convenience and Necessity. Applications for certificates of convenience and necessity must include:

(1) three copies of the appropriate application form prescribed by the executive director, completed as instructed, and properly executed;

(2) territorial maps filed in support of such application for initial or amended certificates that fulfill the following requirements.

(A) For water and sewer utilities, the area to be served shall be shown on a state highway county map, scale one inch equals two miles. It shall clearly define the proposed location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location, and service boundaries shall conform to verifiable landmarks such as roads, creeks, railroads, etc. Facilities shall be shown on United States Geological Survey 7½-minute series maps, subdivision plats, engineering planning maps, or other large scale maps.

(B) Three copies of each map shall be filed.

(C) Separate maps shall be filed for each county in which the reporting utility operates;

(D) If applicable, the map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the territory claimed. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facili-

ty can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location;

(3) three copies of any evidence as required by the commission to show that the applicant has received the required consent or permit of any other public authority having jurisdiction, for example, municipalities; and

(4) any other information as the executive director or the commission may require.

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

(a) Applications for use of state water. If an application for the use of state water, other than for a permit under §97.13 of this title (relating to Temporary Permit) or §297.17 of this title (relating to Emergency Permit), is received containing the information and attachments required by §281.3(c)(1) of this title (relating to Initial Review), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and a brief technical summary of the application to assist the chief clerk. The executive director shall forward a copy of the statement and brief technical summary to the chief clerk, along with a copy of the application. The chief clerk shall notify every person entitled to notification of the filing of an application under §303.176 of this title (relating to Notice of Application by Mail) by mail in the manner provided therein.

(b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit), for the use of state water is received containing the required information and attachments required by §281.3(c)(1) of this title (relating to Initial Review) as set forth therein, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing and shall forward a copy of the statement to the chief clerk. The chief clerk shall mail a copy of the statement of the receipt of the application and declaration of administrative completeness to every water rights holder of record with the commission who would be entitled to notice of hearing under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit).

(c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of state water under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Per-

mit), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the *Texas Register*. The chief clerk may include in the notice other information concerning the disposition of the application.

(d) Other applications. Upon receipt of an application described in §281.2(2)-(15) of this title (relating to Applicability) which contains the information and attachments required by §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Hazardous Waste, and Industrial Solid Waste Management Permits), §281.6 of this title (relating to Applications for Plan Approval of Reclamation Projects), §281.7 of this title (relating to Applications for Weather Modification Permits), §281.8 of this title (relating to Petitions for the Creation of Water Districts), §281.9 of this title (relating to Applications for Approval of Engineering Projects Relating to the Issuance of Bonds for Districts), §281.10 of this title (relating to Applications for the Approval of Substantial Alterations to Commission Approved Plans and Specifications of Districts), §281.11 of this title (relating to Applications for the Use of Surplus Bond or Related Funds), §281.12 of this title (relating to Applications for Approval To Use Commission directed Escrow Funds), §281.13 of this title (relating to Applications for Change in Commission Approved Bond Interest Rates or Maturity Schedules), §281.14 of this title (relating to Applications for Approval of District Fire Department Plans), §281.15 of this title (relating to Applications for Approval of Fire Department Financing), and §281.16 of this title (relating to Applications for Certificates of Convenience and Necessity), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of an application under §315.60 of this title (relating to Reclamation Projects and Levee Projects), Chapter 289 of this title (relating to Weather Modification), or §305.103 of this title (relating to Notice by Mail) in the manner provided therein.

(e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness shall contain the following information:

(1) the identifying number given the application by the commission;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the application.

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with §§305.91-305.105 of this title (relating to Actions, Notice, and Hearing).

§281.18. Applications Returned. If an application or petition is received which is not administratively complete, the staff shall notify the applicant of the deficiencies prior to expiration of the applicable review period established by §281.3(a) and (b) of this title (relating to Initial Review) by certified mail return receipt requested. If the additional information is received within 30 days of the deficiency notice, the staff will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If the required information is not forthcoming from the applicant within 30 days of the date of the deficiency notice, the executive director shall return the incomplete application to the applicant without prejudice.

§281.19. Technical Review.

(a) After an application is determined by the staff to be administratively complete on its face, the staff shall commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 75 working days. However, in the case of applications filed under §336.43(b) of this title (relating to Permit Required) or §331.8 of this title (relating to Application Required for Existing Wells), the technical review period shall commence upon assignment of the application to a staff member and continue for a period of time not to exceed 120 days.

(b) The applicant shall be promptly notified of any additional technical material as may be necessary for a complete staff review. If the applicant provides the information within the period of time prescribed by subsection (a) of this section, the staff will complete processing of the application within the technical review period extended by the number of days required for the additional data. If the necessary additional information is not received by the executive director prior to expiration of the technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the

applicant. In no event, however, will the applicant have less than 30 days to provide the technical data before an application is returned. Decisions to return material to the applicant during the technical review stage will be made on a case by case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned.

§281.20. Extension. If the staff determines that the technical review of an application cannot be completed within the period of time prescribed by §281.19(a) of this title (relating to Technical Review), the staff will furnish the executive director or his designee with information regarding the reasons which necessitate the delay and the amount of additional time required by the staff to complete the review. Any extension of the period for technical review must be approved by the executive director or his designee.

§281.21. Draft Permit and Compliance Summary.

(a) The executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(b) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The executive director shall send this summary together with the draft permit to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft permit;

(2) the type and quantity of wastes, fluids, or pollutants which are proposed to be or are being processed, stored, disposed of, injected, emitted, or discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit, including procedures whereby the public may participate in the final decision; and

(6) the name and telephone number of any persons to contact for additional information.

(c) The executive director shall prepare a summary which describes the compliance status of persons applying for permits issued under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7; the Injection Well Act, Texas Water Code, Chapter 27; and the Water Quality Control Act, Texas Water Code, Chapter 26. For applications filed under the Texas Solid Waste Disposal Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits relating to solid waste management activities within the jurisdiction of the Texas Water Commission. For applications filed under the Injection Well Act or Water Quality Control Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of the Texas Water Code. A compliance summary relating to an application for a permit to be issued under both the Texas Solid Waste Disposal Act and the Injection Well Act shall include information relating to both statutes. Upon completion of technical review and prior to issuance of public notice in accordance with §§305.91-305.105 of this title (relating to Actions, Notice, and Hearing), the executive director shall send the compliance summary, together with the draft permit and technical summary, if applicable, to the applicant and on request, to any other person. The compliance summary shall include information relative to the site which is the subject of the current application as well as other facilities owned or operated by the applicant which are under the commission's jurisdiction whether permitted or not. The summary shall cover the two-year period preceding the date on which technical review is complete and shall include:

(1) the date(s) and description of any citizen complaints received;

(2) the date(s) of all agency inspections;

(3) for each inspection, whether a condition of noncompliance was alleged by the inspector and a brief description of the resulting environmental impact;

(4) the date(s) of any agency enforcement action and the applicant's response to such action;

(5) for applicable facilities, the date(s) and description of any incident the applicant reported to the agency which required implementation of the facility's contingency plan; and

(6) the name and telephone number of a person to contact for additional information regarding compliance history.

§281.22. Referral to Commission. When administrative and technical review has been completed, the application shall be forwarded to the commission for filing and setting. For the purpose of providing adequate notice, the executive director shall include a recommendation to the commission of the area

wherein the application, if granted, would have a potential impact, and a mailing list of persons who may be affected.

§281.23. Application Amendment. No amendments to the application which would constitute a major amendment under §305.62 of this title (relating to Amendment), can be made by the applicant after the chief clerk has issued notice of the application and draft permit pursuant to §§305.91-305.105 of this title (relating to Actions, Notice, and Hearing) unless new notice is issued which includes a description of proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

§281.24. Effect of Rules. The time limits set out in these rules are not jurisdictional.

Issued in Austin, Texas, on February 25, 1986.

TRD-8601950

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

Effective date: March 3, 1986

Expiration date: July 1, 1986

For further information, please call
(512) 463-8070.

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Chapter 293. Water Districts Application Requirements

★31 TAC §293.43

The Texas Water Commission adopts on an emergency basis new §293.43, concerning application requirements.

The Texas Water Commission found that an urgent need existed to adopt this new section on an emergency basis because the emergency section for application requirements for approval of bonds currently in force will expire on March 3, 1986. A lapse in the regulations would constitute an imminent peril to the public health, safety, and welfare.

The Texas Water Commission will propose permanent regulations for the same subject matter in the *Texas Register* at the earliest practicable date.

Section 293.43 replaces §311.43 of the emergency rules adopted by the Texas Water Commission on September 3, 1985, and is renumbered as §293.43 to conform to the numbering system for the proposed permanent sections of the Texas Water Commission.

This new section is adopted on an emergency basis under the Texas Water Code §§5.103, 5.107, and 5.182, which provide the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and

to collect statutory fees from persons filing various applications with the commission.

§293.43. Application Requirements.

(a) Subsection (f), paragraph (1)(C)-(F), (H), and (J); paragraph (8)(C); paragraph (11)(B) and (C); paragraph (12)(A); paragraph (14)(A); paragraph (15)(C) and clauses (i) and (iii); and subparagraph (G) apply to developer projects and subdivision projects only.

Developer project is a district engineering project which provides water, sewer, or drainage service for property owned by a developer as defined by the Texas Water Code, §50.024(d). Subdivision project is a district engineering project which provides water and sewer service to households, commercial, and/or industrial development in a district where a developer is not involved. Other applicable items shall apply to all bond applications, developer and subdivision projects included. Refer to §311.46 of this title (relating to Thirty Percent of District Construction Cost to be Paid by Developer) for developer cost participation information on developer projects.

(b) An application covering the subject matter contained in the Texas Water Code, §§55.503, 51.421, 54.516, or 12.082 shall include provisions for statutory construction contract retainage.

(c) An application shall include a certified copy of the district board's resolution authorizing submission of application for bond issuance.

(d) An application shall comply with the Texas Water Code, §50.101, and, if applicable, Article 970a, §8(b), including consent by city having extraterritorial jurisdiction if not previously provided to the commission. If these documents have been provided, state the petition or bond application with which it was submitted.

(e) An application shall be accompanied by a filing fee of \$100 plus the cost of required notice.

(f) An application shall be accompanied by the engineering report. Engineer's seal must be affixed on the front cover of the engineering report or the cover letter if bound in the report. The engineering report shall contain:

(1) general information, including:

(A) name of district, county, amount of bond issue requested, type bonds proposed, bond interest rate, issue number, series, section of Water Code governing district powers, authority, and operation;

(B) general purpose of bond issue;

(C) total acreage within the district: total developable acreage within the district excluding public areas, undevelopable flood prone areas, etc.; acreage developed from proceeds of previous bond issues; acreage remaining to be developed after this proposed bond issue;

(D) table showing extent of previous and proposed improvements, i.e., num-

ber of acres and utility connections developed and to be developed by section and reserve;

(E) total projected connections and population at full development. (Explain if different from projections previously provided);

(F) table showing last bond issue utility connection projections vs. existing development at date of report preparation. (Itemize by number and type housing under construction, completed, and occupied);

(G) total bonds authorized by voters, including dates of elections and authorized but unissued bonds after this proposed sale;

(H) source and adequacy of water supply and waste water treatment capacity for present and proposed district needs. Waste discharge permit must be sufficient for existing and proposed sewer connections.

(I) complete description and estimated cost of facilities proposed for installation outside the district boundaries, including utility plants, force mains, gravity trunk lines, water mains, drainage ditches, and other water, wastewater, or drainage facilities;

(J) complete description of any unusual facilities required by entities having jurisdictional responsibilities, i.e. bridges, oversized utilities, concrete lined ditches, ditches designed for ultimate watershed development. Provide document or directive from the entity placing these requirements;

(K) if facilities proposed are of joint benefit to both the district and others, compute an equitable cost split based on benefits received and provide basis for cost split.

(2) History.

(A) Name the governmental entity authorizing district creation and give the effective date of the authorization and the initial acreage included.

(B) Give the present district acreage, and the date, authorization, and acreage added and/or deleted from the district.

(C) List any exceptions or waivers granted under previous or existing rules for construction prior to the proposed bond issue.

(D) Prepare a construction and nonconstruction cost summary of the last district bond project expenditures compared to the commission approved cost summary and explain deviation including change orders. A copy of the approved bond issue cost summary will be provided by the commission on request.

(E) Prepare a brief summary of any bond anticipation notes to be refunded by the bond issue. Include amounts, dates of issuance, interest rates, dates due, purpose, purchaser, and cost breakdown showing how the note proceeds were used.

(F) Include other data considered pertinent for evaluation of the feasibility of the proposed project.

(3) Location. Describe the district location in relation to cities, streams, reser-

voirs, major highways, land surveys, and other prominent features.

(4) Topography and flood hazards.

(A) Describe land features, including soil types, vegetation, streams, lakes, or reservoirs, marshland, drainage patterns, etc. and provide high and low elevations mean sea level (msl) in the district and in the area to be developed under the proposed bond issue.

(B) Provide complete flood hazards information. For streams, the 100-year estimated flood elevation should be stated at points where the stream enters and exits the district and/or the area to be developed under this bond issue; state the acreage subject to flooding in the area under consideration; provide the source of the information, i.e. U.S. Corps of Engineers, county flood control engineer, stream gauge information, etc. If data was compiled by district's engineer, provide supporting information for conclusions, including backwater computations for 100-year flood elevations. If reservoirs are involved, the following shall be provided: top of conservation pool elevation; top of flood control easement; maximum design high-water level; established 100-year flood contour and source of information. For hurricane tide and wave hazards, provide estimated frequency of occurrence, including the 100-year flood event and source of information. When area is subject to flooding, establish minimum habitable floor slab elevations. For districts not subject to flooding, provide complete justification for the conclusion.

(5) Proposed improvements.

(A) Consolidate itemized material quantities for this proposed project by area and facility. Also specifically identify all proposed improvements outside the district's boundaries.

(B) Describe each proposed facility or system and its relationship with existing or future improvements, including past and projected oversizing of trunk lines, mains, ditches, plants, etc.

(6) Need for the improvements. Provide the specific needs for improvements.

(7) Basis of design. Describe basis of design for all facilities, including water supply and distribution, wastewater treatment and collection, and drainage. Provide cross sections of existing gullies or streams if proposed for rectification. Also designate drainage areas contributing to underground storm sewer lines and drainage ditches. (Design criteria must be in accordance with good engineering practice.)

(8) Feasibility of project.

(A) Describe industry and other attractions to support district growth.

(B) Give past growth history of area.

(C) Provide a building schedule for residential and commercial unit construction.

(D) State specifically, why does growth potential of this district justify the

project? Subparagraphs (A), (B), and (C) of this paragraph are not required when a market study is included with the application.

(E) District financial stability.

(i) State the first-year debt service requirement and the average annual debt service requirement for bond indebtedness retirement for this and previous issues.

(ii) Provide estimated average income per connection and gross annual water and sewer service income, including special fees (taps), standby charges for utility availability, other.

(iii) Indicate operating expenses as a percent of gross income.

(iv) State anticipated net income from all services in dollars and as a percent of average annual debt service requirements.

(v) Provide a table showing computed tax rates over life of the bond period.

(F) Provide current tax rate and latest valuation of taxable property within the district.

(G) State bond cost per acre and per connection (equivalent connections) for improvements to be financed by this bond issue.

(9) Purchase of existing facilities.

(A) If existing facilities are constructed by others and are proposed for sale to the district, discuss:

(i) location and description of facilities;

(ii) proposed improvements or extensions;

(iii) number of residences and active utility connections;

(iv) conditions of option for district purchase;

(v) proof of expenditures, including copies of bid advertisement and tabulations, executed construction contracts, change orders, final pay estimates, and/or appraisal of facilities by an independent engineer who is not associated with the district or owner.

(B) Provide a table showing facilities proposed for purchase, including date construction was completed, cost determination, and cost to the district.

(C) Provide a positive statement indicating whether or not the facilities to be purchased can and are being integrated into the district's permanent utility systems. If not, justify why the district should purchase, then abandon part or all the facilities.

(10) Assumption of existing contracts.

(A) Describe contracts to be assumed by the district as they relate to the facilities being constructed and the parties to the executed contract.

(B) Provide a table showing all contracts to be assumed, i.e. facilities being constructed, contractor, date of contract execution, contract amount, status of completion; include all change orders by number, and by note state the requirement generating the change order.

(11) Summary of costs.

(A) A bond issue cost summary shall be prepared in accordance with the prescribed format, including explanatory foot notes, as shown in Appendix B to this Chapter.

(B) For developer projects only. Identify water and sewer conveyance lines by reference to the construction plan page number and itemize cost item number when such lines are exempt from developer cost participation.

(C) If a developer project is partially or totally exempt from cost participation, explain the exemption in detail and provide copies of contracts or other documents to fully validate the exemption. Validation documents shall be submitted as attachments to the engineering report.

(12) Additional information.

(A) Give the names and addresses of the fiscal agent, principal developers, and principal stockholders if the developer is a corporation for developer projects.

(B) Provide any other information necessary to adequately describe the project.

(13) Appendices. Provide the following information in the appendices section of the engineering report:

(A) bond amortization schedule together with schedule showing projected revenues and expenses—base tax rates on 90% collections unless historically otherwise; include tax assessor's certification of taxable property and current tax rate.

(B) resolution by the district's governing board establishing water and sewer rates;

(C) itemized construction costs by facility and section;

(D) index showing approval date and copies of approval letters for facility plans and specifications by all agencies having jurisdictional responsibilities; include copy of latest waste discharge permit. Identify approvals shown on plans and specifications. Cross reference to applicable construction contracts which are attachment (d) to the engineering report, as required by paragraph (15) of this subsection;

(E) certificate of compliance with §311.111 of this title (relating to Sanitary Sewer Service Lines and Connection).

(14) Exhibits. Include the following exhibits in the exhibit section of the engineering report:

(A) legible drawing (not necessarily to scale) showing district area divided into sections according to development under previous and proposed bond issues. Show section number or other identification, acreage, and value of corresponding bond issue. Also, show major utilities, roads, and other features sufficient for project orientation;

(B) designation of areas subject to flooding on contour map of the district. This may be shown on Exhibit (A) of the engineering report at the discretion of the de-

sign engineer provided the referenced drawing is to scale.

(15) Attachments. The following documents shall be attached to the engineering report:

(A) appraisals to support proposed district purchase of existing facilities in lieu of documentation specified under Attachment (D) of the engineering report;

(B) detailed construction plans and specifications for all facilities proposed under this bond issue. These plans and specifications must be prepared by a professional engineer registered in the State of Texas with the engineer's seal properly affixed on each sheet of the plans and the cover of specifications, and must be approved by all agencies having jurisdictional responsibilities;

(C) when planned unit development (high-density development with community facilities or grounds not normally open to the public) is involved, provide:

(i) dedication documents for street and/or utility easements within the district;

(ii) utility plans showing all easements and building lines;

(D) index and provide copies of all executed construction contracts, notice to bidders (advertisement affidavits or tear sheets), bid tabulations, and latest or final pay estimates. Positively identify contracts with documents listed under Appendix (D) of the engineering report. Staple copies of change orders inside the front cover of the contract document;

(E) special contracts and agreements:

(i) surface water supply contract or water well permit, if applicable;

(ii) agreements for use of non-owned facilities;

(iii) contracts with district for engineering, legal, and fiscal services;

(iv) option for district purchase of existing facilities or assumption of construction contracts in progress (agreement); Ascertain that all copies of documents were dated and properly executed by the parties concerned;

(v) any other contracts or agreements pertinent to the project;

(F) district map (with vicinity map inset) as of date of application on 22"-24" by 36" linen tracing or equal, field notes, survey traverse sheet, or computer sheet for current district boundaries;

(G) market study as required by §311.46(5) of this title (relating to Thirty Percent of District Construction Cost to be Paid by Developer).

(g) Additional data and information may be required by the executive director or the commission when deemed pertinent to the bond application under consideration.

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TRD-8601952

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

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For further information, please call
(512) 463-8070.

★ ★ ★

★ 31 TAC §293.52

The Texas Water Commission adopts on an emergency basis new §293.52, concerning district participation in regional drainage systems.

The Texas Water Commission found that an urgent need existed to adopt this new section on an emergency basis because the emergency section for district participation in regional drainage systems currently in force will expire on March 3, 1986. A lapse in the regulations would constitute an imminent peril to the public health, safety, and welfare. The Texas Water Commission will propose permanent regulations for the same subject matter in the *Texas Register* at the earliest practicable date.

Section 293.52 replaces §311.51 of the emergency rules adopted by the Texas Water Commission on September 3, 1985, and is renumbered as §293.52 to conform to the numbering system for the proposed permanent sections of the Texas Water Commission.

This new section is adopted on an emergency basis under the Texas Water Code §§5.103, 5.105, and 5.182, which provides the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.52. *District Participation in Cost of Regional Drainage Systems.* A district may use bond proceeds to pay assessments or charges for capacity in regional stormwater management systems, such expenditures to be subject to developer contributions under the 30% rule, provided:

(1) the regional stormwater system has been adopted by a public entity having drainage jurisdiction and regulatory authority over the construction of drainage improvements;

(2) participation in the regional system is required by the public entity having drainage jurisdiction to mitigate the impact of district development activity on flood potential and is required in lieu of any other drainage facilities within or outside of the district that could be constructed directly by the district for the same purpose;

(3) the cost of participation in the regional system is uniform over a given watershed or planning area and is established by the regulatory body of the public entity having drainage jurisdiction based on engineering studies of the proposed regional facilities required. Such studies should show that the charge for capacity in the regional system is comparable to the cost of alternative facilities constructed by individual districts, averaged throughout the watershed.

(4) the right to the capacity in the regional system purchased by the district is established by contract with the public entity having drainage jurisdiction.

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(512) 463-8070.

★ ★ ★

Chapter 295. Water Rights Procedural

Subchapter A. Requirements of Water Use Permit Applications

★ 31 TAC §§295.1-295.15

The Texas Water Commission adopts on an emergency basis new §§295.1-295.15, 295.31, 295.32, 295.41, 295.51, 295.61, 295.62, 295.71, 295.72, 295.81, 295.91, 295.101, 295.111, 295.121-295.126, 295.131-295.139, 295.151-295.160, 295.171-295.175, 295.181-295.186, 295.201, and 295.202, concerning water rights procedural.

Chapter 295 contains procedural water rights sections and is made up of provisions relating to applications for water rights, notice requirements, fees, and various actions by the commission, most of which are directly derived from former Texas Department of Water Resources Chapters 303, 305, and 307. Sections concerning substantive water rights are generally contained in emergency Chapter 297, concerning water rights, substantive.

The Texas Water Commission found that an urgent need existed to adopt these sections on an emergency basis because the emergency sections in Chapters 303, 305, and 307 currently in force will expire on March 3, 1986. A lapse in the sections would constitute an imminent peril to the public health, safety, and welfare.

The Texas Water Commission proposed permanent sections for the same subject matter in the *Texas Register* on January 10, 1986, and publication on January 14, 1986 and has the authority under law to adopt the proposed permanent sections at the present time. The Texas Water Commission has decided to delay adoption of

all of its currently proposed sections in order to facilitate public comment.

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt sections necessary to carry out its powers and duties under the code and the laws of the state.

§295.1. Use of Forms. The executive director will furnish, without charge, forms and instructions for preparing an application. The use of such forms is not mandatory, but the information required by such forms must be provided in any event. Supplements may be attached if there is not sufficient space on the printed form. If supplements are used, the data and information entered thereon shall be separated into paragraphs numbered to correspond with those on the printed form. A supplement explaining the project and planned operation may be attached to an application.

§295.2. Preparation of Application. All applications shall be typewritten or printed legibly in ink. Illegible applications will be returned to the applicant. Applicants will be notified if additional information is needed to process an application, pursuant to §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Hazardous Waste, and Industrial Solid Waste Management Permits) and §281.6 of this title (relating to Application for Plan Approval of Reclamation Projects). An application may be returned to the applicant pursuant to §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Hazardous Waste, and Industrial Solid Waste Management Permits) and §281.6 of this title (relating to Application for Plan Approval of Reclamation Projects). The applicant should confer with the staff of the executive director on any questions concerning preparation of the application, especially if the application is unusual or unique. Upon express written or verbal approval of the applicant or the applicant's agent, any employee of the commission may make nonsubstantive changes in any documents submitted by the applicant. Substantive changes in an application may be made only by the applicant or the applicant's agent who submitted the application and only in the form of a written, notarized amendment to the application signed by the proper person; provided, however, that no substantive changes may be made after an application has been filed with the chief clerk of the commission by the executive director.

§295.3. Name and Address. For each applicant, the full name, post-office address, telephone number, and social security or federal identification number shall be given. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be de-

signed by the trustee's name followed by the word "trustee." If one other than the named applicant executes the application, the name, position, post office address, and telephone number of the person executing the application shall be given.

§295.4. Source of Supply. The applicant shall clearly state the name of the source from which the diversion or use of water is proposed. Source refers not to the origin of the water, but to the stream, spring, or body of water from which the proposed diversion will be made. If the source has no name, it may be designated as an unnamed watercourse or an unnamed spring. If the source is a tributary, the next stream into which it flows and the river basin wherein it lies shall be given.

§295.5. Amount and Purpose of Diversion and Use. The total amount of water to be used shall be stated in definite terms, i.e., a definite number of acre-feet (annually or, in the case of a seasonal, emergency, or temporary permit application, over the period for which application is made. The purpose or purposes of each use shall be stated in definite terms. If the water is to be used for more than one purpose, the specific amount to be used for each purpose shall be clearly set forth. If the amount to be consumptively used is less than the amount to be diverted, both the amount to be diverted and the amount to be consumptively used shall be specified.

§295.6. Rate and Method of Diversion. If the applicant proposes to divert from a stream or reservoir, the maximum rate of diversion in gallons per minute or cubic feet per second shall be stated. The method to be used shall be described as portable pump, stationary pump, or gravity flow.

§295.7. Location of Diversion Point, Reservoir, and Dam. The application shall state the location of point(s) of diversion and, if applicable, the location of dam(s) or off-channel storage reservoir(s). These locations shall also be shown on the application maps with reference to a corner of an original land survey and/or other survey point of record, giving both course and distance. The distance and direction from the nearest county seat or town shall also be stated.

§295.8. Return and Surplus Water. The application shall describe the location at which return water or surplus water will be returned to the stream. If practicable, this must also be shown on the application map. In addition, the application shall state with as much accuracy as possible the quantity of return flow expressed in acre-feet per annum.

§295.9. Conservation Plan. The applicant shall furnish information concerning his or her plan to avoid waste and achieve water conservation in accordance with §297.1 of this title (relating to Definitions). Applications will not be considered complete until

a water conservation plan has been submitted to the executive director.

§295.10. Proposed Installation or Reservoir. If the applicant does not have the power of condemnation and proposes to inundate or to place any installation upon the land of another, the name(s) and address(es) of such landowner(s) shall be given. A copy of a duly acknowledged written easement, consent, or license from the landowner(s) or of a written lease or other evidence of agreement between the landowner(s) and the applicant shall be filed with the application.

§295.11. Multiple Ownership of Existing Reservoir. Except as otherwise provided herein, if an existing reservoir inundates land owned by more than one person, an application for a permit to authorize the dam and reservoir and to use state water impounded in the reservoir shall be joined by all of the landowners. A copy of any operating agreement affecting the reservoir or the distribution of water therefrom shall be submitted with the application. If there is incomplete joinder, the applicant shall submit the name and address of any landowner who does not join the application, and shall file a copy of an easement or a consent, license, lease, or other type of agreement from the landowner(s), as provided in §295.10 of this title (relating to Proposed Installation or Reservoir).

§295.12. Storage in Another's Reservoir. In an application for a permit to appropriate state water for storage in another's lawful reservoir and/or to divert and use water therefrom, a copy of a duly acknowledged document evidencing the consent of the reservoir owner shall be submitted. If the reservoir is a project of the Soil Conservation Service, U. S. Department of Agriculture, a copy of a duly acknowledged document evidencing consent from the Soil and Water Conservation District and any others having jurisdiction over the reservoir shall be provided.

§295.13. Interwatershed Transfers. An applicant seeking to transfer state water from one watershed to another watershed shall so state in the application. Hearing shall be held in the same manner as required for water use applications. For purposes of this section, a watershed refers to a named river basin or coastal basin.

§295.14. Signature of Applicant. The application shall be signed as follows.

(1) If the applicant is an individual, the application shall be signed by the applicant or the applicant's duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant. If the applicant is an individual doing business under an assumed name, the applicant shall attach to the application an assumed name certificate from the coun-

ty clerk of the county in which the principal place of business is located.

(2) A joint application shall be signed by each applicant or each applicant's duly authorized agent, with written evidence of such agency to be submitted with the application. If land is owned by both husband and wife, each shall sign the application. Joint applicants shall select one among them to act for and represent the others in pursuing the application with the commission, with written evidence of such representation to be submitted with the application.

(3) If the application is by a partnership, the application shall be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, it shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(4) If the applicant is an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate, and a current copy of the letters issued by the court shall be attached to the application.

(5) If the applicant is a corporation, public district, county, municipality or other corporate entity, the application shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, or resolutions which specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant is acting as trustee for another, the applicant shall sign as trustee, and in the application shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

§295.15. Sworn Application Required. Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

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TRD-8601954 James K. Rourke, Jr.
General Counsel
Texas Water Commission

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(512) 463-8070.



Additional Requirements for Irrigation

★31 TAC §295.31, §295.32

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas

Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.31. Ownership Information Required; Exceptions. An applicant, seeking the use of state water for irrigation of particular tracts of land, shall be required to offer proof to substantiate his or her ownership of the land, except as otherwise provided herein. This section does not apply to an applicant which is a water corporation, water district, river authority, or governmental entity authorized to supply water to others.

§295.32. Documents and Information To Be Submitted.

(a) An application to irrigate particular tracts of land shall contain the following information concerning the lands proposed to be irrigated:

(1) the original land survey or grant, the abstract number, and the name of the county in which the land is located;

(2) an aerial photograph, plat, or map submitted in accordance with §295.123 of this title (relating to Content Requirements of Maps) showing the tract of land within which a specified number of acres will be irrigated;

(3) a copy of the deed describing the applicant's land, showing recording information from the county deed records;

(4) a legal description of any lands involved in the application;

(5) if the application includes irrigation of any land not owned by applicant, a consent agreement from the landowner stating that the landowner recognizes that the permit will be owned by applicant and will not become appurtenant to the land. Renewal of a term permit issued under this chapter will require current documentation of consent agreements. This paragraph does not apply to an applicant who is a water corporation, water district, river authority, or governmental entity authorized to supply water to others or applicants diverting state water from the Rio Grande downstream of Amistad Reservoir.

(b) Applications requesting diversions of state water from the Rio Grande below Amistad Reservoir to irrigate land not owned by the applicant must demonstrate that the tract requested can be serviced from the authorized diversion points and with applicant's irrigation facilities.

(c) Applications requesting water diverted from the Rio Grande below Amistad Reservoir to irrigate land not owned by the applicant must provide the names and addresses of all owners of land to be included in the application. Notice of the request will be mailed by certified mail, at applicant's expense, to all affected landowners. Such landowners will be given two weeks within which to protest. If no protest is received, further notice will not be required.

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General Counsel
Texas Water Commission

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(512) 463-8070.



Additional Requirements for Dams and Reservoirs

★31 TAC §295.41

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.41. Plans To Be Prepared by Registered Engineer. Except where written approval of the executive director has been obtained, application plans for dam and reservoir projects, and plats and reports submitted in connection therewith, shall be prepared by a registered professional engineer as defined in the Texas Engineering Practice Act (Texas Civil Statutes, Article 3271a). Such plans, plats, and reports shall bear a certificate, signed by the engineer and to which the engineer's seal shall be affixed, stating that the application plans, plats, and/or reports were prepared by the engineer or under the engineer's direct supervision. The certificate and seal shall be affixed to each sheet of plans and plats, or the first sheet shall contain certification that a specified number of sheets following were prepared by the engineer or under the engineer's direct supervision. Affixing the certificate and seal once within a report shall be sufficient. The following certificate form should be used.

I certify that the _____ (described)
were prepared by me or under my direct supervision on _____, 19____.

(signature)
Registered Professional Engineer
(Seal) _____
(mailing address)

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(512) 463-8070.



**Requirements for Applications
for Permits Under Texas
Water Code, §11.143**

★31 TAC §295.51

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.51. *Application for Texas Water Code, §11.143, Permit.* An applicant for a permit under the Texas Water Code, §11.143, shall submit to the executive director a sworn application on a form furnished by or acceptable to the executive director and containing the following information:

(1) the name, post office address, telephone number, and social security or federal identification number of the applicant;

(2) the nature and purpose of the proposed use, and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey in which the dam or reservoir is located, and, to the best of applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey and/or other survey point of record;

(7) the approximate surface area to the nearest acre of the reservoir when it is full, and the average depth in feet when it is full;

(8) the approximate size in acres or square miles of the drainage area above the dam or reservoir; and

(9) if the permit is sought for irrigation:

(A) the total number of irrigatable acres in the area;

(B) the number of acres to be irrigated within the area in any one year;

(C) the distance and direction of the land to be irrigated from the midpoint of the dam or reservoir; and

(D) a copy of the deed describing the applicant's tract, with the recording information from the county deed records.

(a) an applicant for a Texas Water Code, §11.143, permit shall furnish an aerial photograph of the site. If no aerial photograph is available, the applicant shall submit a map upon which are outlined any areas to be irrigated and upon which the dam and reservoir are located by distance and direction from a corner of an original survey and/or other survey point of record.

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(512) 463-8070.

★ ★ ★

**Additional Requirements for
Applications for Temporary
Permits**

★31 TAC §295.61, §295.62

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.61. *Applications.* In addition to the general requirements for permit applications, an applicant for a temporary permit shall specify the period of time that water is proposed to be diverted. The application shall be accompanied by a vicinity map at least 8½ by 11 inches with sufficient information to enable the executive director to locate on the ground the diversion site and return water discharge points.

§295.62. *Extension of Time for Temporary Permits.* A holder of a temporary permit who is seeking an extension of time thereof shall submit a letter to the executive director requesting an extension for a specified period of time. The letter shall set forth reasons why the water was not diverted and used within the time allowed. The applicant shall also submit water use report(s) showing the amount of water used under the terms of the permit.

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Texas Water Commission

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(512) 463-8070.

★ ★ ★

**Requirements for Applications
for Amendments**

★31 TAC §295.71, §295.72

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.71. *Applications to Amend a Permit.* An applicant for an amendment to a water use permit or certificate of adjudication shall file an application prepared in the manner of an original application for a permit. However, the title of the application should be altered to reflect the fact that it is a request for an amendment. A proposed amendment, including an amendment on the motion of the executive director, shall be recorded in the same manner as a permit application.

§295.72. *Applications for Extensions of Time.* If construction work cannot be commenced or completed within the time periods established by a permit, the permittee may, before the expiration of the time period to commence or complete construction, apply for an extension of time in order to preserve the permit. Applications shall be in writing, shall be received by the executive director before the expiration date, and shall set forth the reasons why construction work could not be commenced or completed within the time required. Estimated time of commencement or completion also shall be set out.

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(512) 463-8070.

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**Requirements for Application
for Diversion for Domestic or
Livestock Use From
Un-sponsored and
Storage-Limited Projects**

★31 TAC §295.81

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.81. *Application.* A person seeking authorization to use state water for domestic or livestock use from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued, or a reservoir permitted for storage solely for the purpose of optimum development of the project, shall submit a letter setting forth the location of the diversion point, the diversion rate, the amount of water to be diverted, and a statement that the water will be used for domestic and livestock use. The executive director may require the filing of additional information.

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General Counsel
Texas Water Commission

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(512) 463-8070.

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Requirements for Application for Emergency Water Use Permit

★31 TAC §295.91

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.91. Application. An applicant for an emergency water use permit shall submit a written request setting forth the location of the diversion point, the diversion rate, the amount of state water to be diverted, the purpose of use, and a statement of the emergency condition which has prompted submission of the application.

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(512) 463-8070.

★ ★ ★

Filing Requirements for Water Supply Contracts and Amendments

★31 TAC §295.101

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.101. Documents To Be Filed.

(a) Application forms are available upon request from the executive director, but use of the forms is not required if the necessary information is supplied.

(b) A water supply contract to be submitted to the executive director in accordance with §297.101 of this title (relating to General Exceptions) shall be accompanied by a vicinity map showing the diversion point and place of use, and the contractual terms shall include the following:

(1) the cost of water to the purchaser, expressed as a cost per unit of measure;

(2) the effective date and termination date of the contract;

(3) the average quantity of water being furnished on an annual basis or, if the contract is for less than one year, the total quantity being furnished;

(4) the location of the purchaser's diversion point with reference to a corner of an original land survey and/or other survey point, giving both course and distance; and

(5) a statement that the contract's effectiveness is dependent upon the supplier's and/or the purchaser's compliance with this section and Chapter 297, Subchapter J of this title (relating to Contractual Water Supply Contracts and Amendments).

(c) If required to file an application for a contractual amendment in accordance with §297.102 of this title (relating to When Application Required), the supplier shall also submit a vicinity map and a copy of the related contract which conform to the requirements of subsection (b) of this section.

(d) If the holder of a contractual permit or amendment wishes to relinquish the contractual permit or amendment and file the contract under these sections, the holder may do so by:

(1) submission of a sworn statement to the executive director which states the contractual permit holder's intent to relinquish the contractual permit and to thereafter file the contract in accordance with these sections; and

(2) submission of a water supply contract which is in compliance with subsection (b) of this section, and §297.103 of this title (relating to Special Requirements for Downstream Sales of Water from a Storage Reservoir). Relinquishment of a contractual permit or amendment is effective upon receipt of a properly executed statement by the contractual permit holder and the filing by the executive director of the substituted water supply contract.

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(512) 463-8070.

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Requirements for Applications for Authorization to Convey Stored Water

★31 TAC §295.111

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt

rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.111. Application.

(a) Any seller or purchaser of stored water desiring to use the bed and banks of any natural watercourse to convey stored water shall file a copy of the purchase contract with the executive director and a written statement of the intended transit of the water setting forth the following:

(1) the name of the applicant and the place and purpose of use;

(2) the name of the watercourse, the bed and banks of which are to be used for the transportation of the water;

(3) the name of the owner of any reservoir located on the watercourse by which the waters are to be conveyed;

(4) the origin and the terminus of the proposed transported water;

(5) the time of commencement and termination of the transit;

(6) the number of acre-feet of water to be transported;

(7) the approximate flow at the point of origin in cubic feet per second of time;

(8) the number of the permit, certified filing, or certificate of adjudication which authorizes the storage; and

(9) the number of the permit, certified filing, or certificate of adjudication which authorizes the use of water proposed to be transported.

(b) An exception to the requirements of this subsection may be granted by the commission if an emergency exists and time does not permit following the procedures herein outlined. Further, the requirements of this subsection are not applicable if water is being released from upstream storage under the order of the commission.

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Maps, Plats, and Drawings Accompanying Application for Water Use Permit

★31 TAC §§295.121-295.126

This new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.121. Requirements. Except where written approval of the executive director has been

obtained, an application for a water use permit must be accompanied by application plans conforming to the following minimum requirements.

(1) The plans shall be prepared by a registered professional engineer. However, if irrigation is proposed, a registered public surveyor in compliance with the Texas Engineering Practice Act (Texas Civil Statutes, Article 3271a) and the Land Surveying Practices Act of 1979 (Texas Civil Statutes, Article 5282c) may prepare the plans.

(2) The plans shall be on tracing linen with waterproof ink. However, photographic reproductions are acceptable if on a stable mat film such as Chronar, Estar, Herculene, or approved equivalent. Aerial photographs or other forms of maps or plats may be considered acceptable for small projects, if appropriate.

(3) The scale shall be not less than one inch equals 2,000 feet.

(4) The dimensions of each sheet of plans on tracing linen or approved equivalent shall be 22-24 inches by 36 inches. There shall be a two-inch binding margin at the left-hand edge, and the other three edges shall have margins of not less than one-half inch.

(5) There shall be a title block on the lower right-hand corner of all sheets of tracing linen or approved equivalent. A title block shall be on the reverse side of all aerial photographs or acceptable alternative plats or maps. The title block shall include the following information:

- (A) name of project;
 - (B) name and address of the owner;
 - (C) the county in which the project is to be located; and
 - (D) the sheet or photograph number and the total number of sheets; for example: "Sheet 1 of 1", "Sheet 4 of 6".
- (6) If applicable, match lines must be shown on appropriate sheets of plans.

§295.122. Drawings Not To Be Folded. Drawings, maps, and aerial photographs shall not be folded. If mailed, they must be protected by a tube or heavy envelope.

§295.123. Content Requirements of Maps. Maps or plats shall be drawn to a scale not less than one inch equals 2,000 feet, and shall show the following:

- (1) the location and extent of the proposed works, accompanied by a vicinity map;
- (2) the location of each point of diversion, by course and distance from a corner of an original land survey and/or other survey point of record;
- (3) the location at which return water or surplus water will be discharged into a stream, by course and distance from a corner of an original land survey and/or other survey point of record;
- (4) the name of the river, stream, or other source of supply, with the direction of flow indicated;
- (5) the position and area of all lakes, reservoirs, or basins intended to be used, and the water line thereof; and
- (6) the location and ownership of all existing canals, laterals, ditches, conduits, reservoirs, or other works of like character,

indicated by appropriate symbols to differentiate these works from the proposed works.

§295.124. Additional Requirements for Dams and Reservoirs.

(a) In addition to the preceding requirements, maps, or plats submitted with application plans for dam and reservoir projects shall include the following, if applicable:

(1) a plan of the dam showing location of all pertinent features, including structures, spillway discharge channels, roads, and property lines;

(2) a topographic map covering dam-site, reservoir area, spillways, streambed downstream from the dam, spillway and outlet works, discharge channels for maximum high-water level and normal maximum high-water level, with waterline contours shown in heavy lines on reservoir area, and the source of the topographic and supplementary information for determination of contours;

(3) a survey tie of a station on the centerline of the dam to a corner of an original land survey and/or other survey point of record;

(4) a longitudinal profile along the axis of the dam and abutments showing elevations of the original groundline and locations of bottom of core trench or other cutoff facilities; the top of the impervious stratum, if any; soil boring logs; all outlet works, with inlet and outlet invert elevations; and top of dam;

(5) plans, profiles, and cross sections of spillways and discharge channels, in appropriate dimensions;

(6) a cross section of the dam at its maximum height, showing all pertinent dimensions and details;

(7) the drainage area, in square miles;

(8) preliminary plans of service and emergency spillways, showing adequacy of these spillways to pass anticipated floods. The following information shall be provided: elevation-area-capacity curves and tables for the proposed reservoir to maximum high-water elevation; spillway discharge-rating curves and water surface profiles for spillway discharge channels, including tailwater elevation; and survey of receiving channel for determination of downstream discharge conveyance capacity. Derivation of the spillway design storm, flood routing through reservoir, and calculated surcharge and freeboard shall be shown in report form. Spillway adequacy of proposed and existing dams will be evaluated utilizing standard engineering procedures and techniques including, but not limited to, those employed and recommended by the U.S. Army Corps of Engineers, U.S. Soil Conservation Service, U.S. Bureau of Reclamation, and the American Society of Civil Engineers.

(b) All elevations shall be referred to mean sea level datum.

(c) Plans of a proposed enlargement of a dam shall be drawn to clearly distinguish between the limits of the new and old work.

(d) The executive director may require the filing of additional information which, in his opinion, may be necessary to determine the feasibility of the project.

§295.125. Requirements for Temporary Permits. An application for a temporary permit shall be accompanied by a vicinity map at least 8½ by 11 inches with sufficient information to enable the executive director to locate on the ground the diversion site and return water discharge points.

§295.126. Requirements for Texas Water Code, §11.143, Permits. An applicant for a Texas Water Code, §11.143, permit shall furnish an aerial photograph of the site. If no aerial photograph is available, the applicant shall submit a map upon which are outlined any areas to be irrigated and upon which the dam and reservoir are located by distance and direction from a corner of an original survey and/or other survey point of record.

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Subchapter B. Water Use Permit Fees

★ 31 TAC §§295.131-295.139

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.131. Fees Required. Statutory fees must accompany an application or petition in order for it to be considered by the commission. Employees of the commission are expressly prohibited from processing any application or petition unless the proper fees are tendered. The executive director shall charge and collect for the benefit of the state the fees hereinafter provided, and it shall be his duty to make a record thereof at the time same becomes due and to render an account to the party charged therewith. Each fee is a separate charge and is in addition to other fees, unless provided otherwise.

§295.132. Filing, Recording, and Notice Fees.

(a) The following fees shall be submitted with any application for a water use permit:

- (1) filing fee—\$100;
- (2) recording fee—\$1.25 per page;
- (3) notice fee. The cost of mailing notice to persons in the affected river basin varies. The executive director will advise the applicant of the number of persons to whom notice is mailed and the mailing cost. The applicant shall pay such mailing cost.

(b) The cost of any required publication shall be paid by the applicant directly to the newspaper involved.

(c) The following are examples of applications or petitions subject to the filing and recording fee:

- (1) application for a permit;
- (2) application to amend a permit, certified filing, or certificate of adjudication;
- (3) application to alter, enlarge, extend, or otherwise change any permitted reservoir, dam, main canal, or diversion work;
- (4) application for extension of time.

§295.133. One-Time Use Fees.

(a) In addition to the filing, recording, and notice fees stated in §295.132 of this title (relating to Filing, Recording, and Notice Fees), the following use fees shall be submitted at the time an application for an appropriation is made:

(1) for the use of state water for irrigation, a fee of \$.50 per acre to be irrigated each year;

(2) for the impoundment of state water, except under the Texas Water Code, §11.142, a fee of \$.50 per acre-foot of storage, based on the total holding capacity of the reservoir at normal maximum operating level;

(3) for the use of state water for any temporary purpose, a fee of \$1.00 per acre-foot or fraction thereof;

(4) for other uses of state water not specifically named in this section, a fee of \$1.00 per acre-foot to be diverted annually. However, no political subdivision may be required to pay fees to use water to recharge underground freshwater-bearing sands and aquifers or for the abatement of natural pollution.

(b) If the total fee for a permit exceeds \$1,000, the applicant shall pay at least one-tenth of the use fee when the application is filed, one-tenth within 30 days after notice is mailed to the applicant that the permit is granted, and the balance before the applicant begins to use state water under the permit. If the applicant does not pay all of the amount owed before beginning to use state water under the permit, the permit is annulled and reverts to the status of a pending, filed application requiring notice, the payment of notice fees, and the balance of the use fees.

§295.134. Maximum Fees. A fee under §295.133 of this title (relating to One-Time Use Fees) for one use of state water under a permit from the commission shall not exceed \$25,000. The fee for each additional use of state water under a permit for which the maximum fee is paid shall not exceed \$5,000. Temporary water permit use fees under §295.133 of this title (relating to One-Time Use Fees) shall not exceed \$500.

§295.135. Inquiries as to Fees. Any inquiries as to fees should be made in advance to the executive director. The applicant is charged with the duty of tendering correct fees according to law. In case of disagreement between the applicant and the executive director over the proper amount of the fees required, the application will be filed under pro-

test in accordance with the Texas Tax Code, §§112.051-112.060, and the fees paid by the applicant will be placed in suspense to await a decision by the attorney general.

§295.136. Return of Fees. Other than the filing and recording fees required by statute, all fees paid pertaining to an application for a water use permit which have not been expended in the processing of the application will be placed in suspense until action is taken by the commission upon the application. If the permit is not granted, unexpended fees will be returned to the applicant. If the application is granted in part, excess use fees will be returned to the applicant. No fees will be returned to any applicant who has failed to notify the executive director of the applicant's social security or federal identification number.

§295.137. Diversion From Un-sponsored or Storage-Limited Projects. No use fees shall be required of an applicant for authorization for the use of state water for domestic and livestock use from either a reservoir constructed by the federal government for which no permit has been issued or a reservoir permitted for storage solely for the purpose of optimum development of the project.

§295.138. Extension of Time To Commence or Complete Construction. When notice of an application to extend time for commencement or completion of construction is required, the applicant shall pay fees not to exceed \$1,000, apportioned as follows:

- (1) filing and recording fees as stated in these sections;
- (2) any required mailing fees; and
- (3) extension fee, to be equivalent to one-time use fees established under §295.134 of this title (relating to Maximum Fees).

§295.139. Miscellaneous Fees.

(a) The fee for mailing copies of commission records shall be established by the State Purchasing and General Services Commission in accordance with Texas Civil Statutes, Article 6252-17a, §9.

(b) The fee for each certificate with seal shall be \$1.00.

(c) The fee for examination or search of commission records when the state has no interest shall be \$.50 for each half hour or fraction of a half hour spent in examination or search of the records.

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Subchapter C. Notice Requirements for Water Use Permit Applications

★ 31 TAC §§295.151-295.160

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.151. Notice of Application and Commission Action.

(a) At the time an application for a permit to use state water has been filed by the executive director with the chief clerk of the commission, the commission shall give notice by mail to those persons specified in §295.153 of this title (relating to Notice By Mail). At such time, the chief clerk shall furnish a copy of the notice to the applicant, and the applicant shall cause such notice to be published, pursuant to §295.152 of this title (relating to Notice By Publication).

(b) A notice of application and commission action shall:

(1) state the name and address of the applicant;

(2) state the date on which the application was received by the commission;

(3) state the date the application was filed by the executive director with the chief clerk;

(4) state that the executive director has determined that the application is administratively complete;

(5) state the application number;

(6) state the type of permit the applicant is seeking;

(7) state the purpose and extent of the proposed appropriation of water;

(8) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;

(9) specify the time and location where the commission will consider the application;

(10) give a general description of the location and area of any land to be irrigated; and

(11) give any additional information the commission considers necessary.

§295.152. Notice By Publication.

(a) If notice by publication is required, the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within the section of the state where the source of water is located.

(b) The date of publication shall be on or before the date of publication directed by the chief clerk of the commission. In any event, the date of publication shall be not less than 30 days before the date set for commission consideration of the application.

§295.153. Notice By Mail.

(a) If notice by mail is required, the commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this section for each type of application. The commission shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) For an application for a permit pursuant to the Texas Water Code, §11.121, or for an amendment to the Texas Water Code, §11.121 permit, a certified filing, or a certificate of adjudication pursuant to Texas Water Code, §11.122, and §295.158 (b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(2) all navigation districts within the river basin concerned; and

(3) other persons who, in the judgment of the commission, might be affected.

(c) For an application for a permit pursuant to the Texas Water Code, §11.143, or for an amendment pursuant to the Texas Water Code, §11.122, to a Texas Water Code, §11.143 permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under Texas Water Code, §11.142, and pursuant to §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each person whose claim or appropriation has been filed with the commission or its predecessor agencies and whose diversion point is downstream from the location of the dam or reservoir as described in the application; and

(2) other persons who, in the judgment of the commission, might be affected.

(d) For an application to amend a certified filing authorizing diversions from a reservoir which is exempted under the Texas Water Code, §11.142, which, if granted, will cause a change in the reservoir so that it would no longer be exempt under the Texas Water Code, §11.142, notice shall be mailed to the persons listed in subsection (b) of this section.

(e) For an application to authorize the use of state water for domestic and livestock use from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued, the commission shall issue such notice as it deems appropriate.

§295.154. Notice for Temporary Water Use Permit.

(a) For an application for a temporary water use permit for which a hearing is required, notice of the hearing shall be sent by first-class mail to each complainant under §295.181 of this title (relating to Provisional Disposition of Application for Temporary

Permit) and to diverters of record with the commission who are located below the applicant's proposed point of diversion and who would, in the judgment of the commission, be affected by the applicant's withdrawals. The notice shall be mailed not less than 15 days (including Saturdays, Sundays, and holidays) prior to the date set for hearing.

(b) Notice of a hearing on an application for a temporary water use permit need not be published in any newspaper unless so ordered by the commission.

(c) Notice of a hearing on an application for a temporary water use permit shall contain a general statement regarding the proposed quantities, use, and period of use of the requested water, and a statement of the date, time, and place of the hearing.

(d) No mailed notice is required in connection with an application for an extension of time for a temporary permit.

§295.155. Notice for Interwatershed Transfers. Notice of an application seeking to transfer water from one watershed to another shall be given in the manner provided for a water use permit application to the watershed which is the source of supply. In addition, notice shall be given to users of record in the receiving watershed who are located below the point of introduction. For purposes of this section, a watershed refers to a named river basin or coastal basin.

§295.156. Notice for Emergency Water Use Permits. An emergency permit for the diversion and use of state water for a period of not more than 30 days under Texas Water Code, §11.139, may be granted without the necessity of issuing the notice required for other permits issued by the commission.

§295.157. Notice of Hearing. A hearing on an application may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest advocate, and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk of the commission will mail such notice to these persons not less than 10 days before the date of the hearing.

§295.158. Notice of Amendments to Water Rights.

(a) On motion of executive director.

(1) If the executive director determines to file a petition to amend a water right, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed by certified mail to the water right holder at the last address of record with the commission.

(2) This notice shall be given at least 15 days before a petition is filed with the commission.

(b) Requiring mailed and published notice. Unless authorized by subsection (c) of this section, applications for amendments to permits, certified filings, or certificates of adjudication, including, but not limited to, those of the following nature, must comply with requirements for a water use permit, including the notice requirements in the Texas Water Code, §11.132, and this subchapter:

(1) to change the place of use when other water users of state water may be affected;

(2) to increase an appropriation and/or rate or period of diversion;

(3) to change the purpose of use when the change would authorize a greater consumption of state water or would materially alter the period of time when state water could be diverted;

(4) to add points of diversion which would result in a greater rate of diversion or impair other water rights;

(5) to remove or modify the requirements or conditions of a water right which were included for the protection of other water rights;

(6) to change a point of diversion which may impair other water rights;

(7) to relocate or enlarge a reservoir; or

(8) to extend the period of duration of any term permit.

(c) Not requiring mailed and published notice.

(1) Only an application to amend an existing permit, certified filing, or certificate of adjudication which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Upon filing such an application, the commission shall consider whether additional notice is required based on the particular facts of the application.

(2) Applications of the following descriptions may not require additional notice:

(A) to correct errors inadvertently made in the preparation of a permit or certificate of adjudication, such as in the name of the water right holder, boundary description, or other details incorrectly transcribed;

(B) to cure ambiguities or ineffective provisions in a water right;

(C) to reduce an appropriation or rate of diversion;

(D) to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest.

If no protest is received, further notice will not be required;

(E) to change the point of diversion when the existing rate of diversion will not be increased and there are no interjacent water users of record between the originally authorized point of diversion and the new one, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(F) to add additional points of diversion where the existing rate of diversion will not be increased and there are no water users of record between any originally authorized point of diversion and the new one to be added, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(G) to increase the rate or period for diversion from a storage reservoir.

(d) Correction of water rights by the commission. Notice of the proposed amendment shall be given to the water right holder, the executive director, the public interest advocate, and all parties to the previous proceeding on the water right to be corrected.

§295.159. Notice of Extension of Time To Commence or Complete Construction. If the new date of proposed commencement of construction is more than four years from the date of issuance of the permit, or if the new proposed completion time is more than five years from the date of completion required in the original permit, notice of an application for extension of time shall be mailed and published as required by the Texas Water Code, §11.132 and §11.143, and §295.151 of this title (relating to Notice of Application and Commission Action), §295.152 of this title (relating to Notice By Publication), and §295.153 of this title (relating to Notice By Mail). The chief clerk shall mail notice of the public hearing to the same persons to whom notice of the application for the permit was mailed. The applicant shall be required to publish notice of the hearing in the same manner in which an applicant for a water use permit is required to publish notice of an application. No other notice is required.

§295.160. Notice of Applications to Convey Stored Water. If the commission has received a written statement of a proposed conveyance of stored water, it shall send notice to each diverter of record on the watercourse between the origin and terminus of the transit. The notice shall set forth the approximate time that delivery will be

commenced and completed, the legal consequences that could result from the unlawful diversion and taking of such water in transit, and other details the commission considers appropriate. The expense of mailing notice shall be charged to the applicant. These provisions may be waived by the commission if an emergency condition exists and time does not permit following the procedure outlined. Further, the requirements of this section are not applicable if water is being released from upstream storage under order of the commission.

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Subchapter D. Public Hearing

★ 31 TAC §§295.171-295.175

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.171. Request for Public Hearing.

(a) A request for public hearing on an application for a water use permit or amendment made by the applicant, the executive director, or an affected person who objects to the application must be made in writing and must be submitted to the commission within 30 days after the publication of the notice of application. The commission may extend the time allowed for submitting a request for public hearing.

(b) A written request for a hearing from an affected person who objects to the application shall contain the following information:

(1) the name, mailing address, and phone number of the person making the request;

(2) the application number or other recognizable reference to the application;

(3) a brief description of the interest of the requester, or of persons represented by the requester; and

(4) a brief description of how the application, if granted, would adversely affect such interest.

§295.172. Public Hearing. The commission may conduct a public hearing on any application. If the commission has received a request for public hearing which it determines is in compliance with §295.171 of this title (relating to Request for Public Hearing), if it determines that a public hearing would serve the public interest, or if a commissioner

requests a public hearing, the commission shall conduct a public hearing. If the commission determines that a public hearing must be held, the matter shall be remanded for hearing. See §295.157 of this title (relating to Notice of Hearing).

§295.173. Action on Application Without Public Hearing. The commission may take action on an application requiring public notice at a regular meeting, without holding a public hearing, provided:

(1) at least 30 days prior to the regular meeting at which action is taken, notice of the application has been given by publication and by mail;

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been submitted by the executive director, the applicant, or an affected person who objects to the application; and

(3) no commissioner has submitted a request for public hearing within the 30-day period after publication of the notice or requests a public hearing at the regular meeting of the commission at which action on the application could be taken according to such notice.

§295.174. Applications for Temporary Permits, Emergency Permits, and Authorization to Divert Water From Un-sponsored and Storage-Limited Projects for Domestic and Livestock Purposes. The sections in this subchapter, relating to requests for public hearings and the requirements to hold public hearings in certain circumstances, do not apply to applications for temporary water use permits, emergency water use permits, or authorization to divert water from un-sponsored and storage-limited projects for domestic and livestock purposes. In these specified instances, the commission may conduct such hearings as it deems appropriate. However, the commission shall conduct a hearing on a temporary permit if it has been provisionally issued and if the permit has been cancelled upon request of the executive director, pursuant to §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit).

§295.175. Cancellation of Water Rights. The commission shall conduct a hearing to determine whether a water right should be cancelled, in whole or in part, under the Texas Water Code, §§11.171-11.186, if the executive director requests such a hearing. A hearing under the Texas Water Code, §11.146, is required in order to determine whether a permit has been or should be forfeited and cancelled in whole or in part for failure of the permittee to commence or complete construction, unless permittee executes a form abandoning all rights under the permit and waiving rights to notice and hearing thereon. No hearing is required if the water right holder executes a form abandoning all rights under the water right and waiving the right to notice and hearing.

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Subchapter E. Special Actions of the Commission

★ 31 TAC §§295.181-295.186

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.181. *Provisional Disposition of Application for Temporary Permit.*

(a) Provisional disposition. The executive director shall review each application for a temporary permit and make a recommendation as to whether or not sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. If the application is for not more than 10 acre-feet of water and for a period of not more than one year, if no valid complaint has been received by the commission prior to or during the pendency of the application from a person alleging the matters set out in subsection of this section, and if it appears to the executive director that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights, the application will be forwarded to the commission, any member of which shall have the authority to make provisional disposition of the application by issuing a temporary permit to the applicant.

(b) Action upon receipt of complaint. If a complaint is received before or after diversions are commenced under a temporary permit issued provisionally as provided in subsection (a) of this section from a person alleging that he is the owner of a water right or is a lawful user of water on the stream affected by the temporary permit and that the diversion of water under the temporary permit will impair the rights of the complainant, the executive director shall make an immediate investigation to determine whether there is a reasonable basis for such complaint. If it appears from a preliminary investigation that there is a probability that diversions under the temporary permit will result in injury to the complainant, the executive director shall request that the commission immediately notify, and the commission shall immediately notify, the holder of such temporary permit that the permit is cancelled without notice and hear-

ing and that no further diversions may be made under it pending a full hearing, as provided in §295.174 of this title (relating to Applications for Temporary Permits, Emergency Permits, and Authorization to Divert Water From Un-sponsored and Storage-Limited Projects for Domestic and Livestock Purposes).

§295.182. *Application for Authorization to Divert Water From Un-sponsored and Storage-Limited Projects for Domestic and Livestock Use.*

(a) Authorization by commissioner. Any commissioner is authorized to issue a letter authorizing the diversion of water from un-sponsored or storage-limited projects for domestic and livestock use.

(b) Revocation of authorization. When compliance with the conditions contained in the letter authorizing the diversion of water is not occurring or, in the case of domestic use, water becomes reasonably available through a water supply system, the authorization may be revoked by sending a letter of revocation to the user setting forth the basis for the revocation and signed by a commissioner.

(c) Application for emergency permit. The commission may grant or deny, in whole or in part, the application. Any permit issued will be recorded in the office of the commission and a certified copy of same transmitted to the applicant.

§295.183. *Application for an Amendment Based on a Water Supply Contract Action of the Commission.* The commission shall approve, in whole or in part, the application and issue an amendment based on a water supply contract only if it determines that:

(1) the supplier has met the requirements of §§297.101-297.108 of this title (relating to Water Supply Contracts and Amendments);

(2) the proposed contractual amendment is not detrimental to the public welfare, including a consideration of whether the contract, together with all other contracts previously submitted by the supplier and contractual permits in effect at the time the commission considers the application, provides for the storage, diversion, or use of state water in excess of the water right of the supplier; and

(3) the proposed sale will not impair existing water rights.

§295.184. *Extension of Time for Construction.* The commission may, by entering an order of record, extend the time to commence or complete construction for a reasonable period of time.

§295.185. *Condemnation.* Full authority is lodged with the commission to condemn existing works, the existence or operation of which may, in the judgment of the commission, become a public menace or a danger to life and property. The existence of such works may be brought to the attention of the commission by complaint.

§295.186. *Reservoirs Without Low-Flow Outlets.* The commission may order the owner of a lawful dam to install a low-flow outlet or other means sufficient to pass such flows as the commission finds necessary to satisfy the rights of downstream domestic and livestock users and the senior and superior rights of other authorized users.

Issued in Austin, Texas, on February 25, 1986.

TRD-8601968

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

Effective date: March 3, 1986
Expiration date: July 1, 1986
For further information, please call
(512) 463-8070.

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Subchapter F. Miscellaneous

★ 31 TAC §§295.201, §295.202

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.201. *Filing of Instruments.*

(a) Received date. All instruments, correspondence, and material delivered to the executive director shall be stamped or marked "Received" and the date thereof clearly indicated.

(b) Acceptance of water use permit application for filing. Any water use permit application requiring commission action shall not be formally accepted for filing by the commission until it is reviewed by the executive director as to form, fees, and data required by law and declared administratively complete under §281.3 of this title (relating to Initial Review). No substantive changes may be made after an application has been filed with the chief clerk of the commission by the executive director. Applications for permits to appropriate state water or amendments to permits, certified filings, or certificates of adjudication shall not be considered filed as required by the Texas Water Code, §11.141, until declared administratively complete by the executive director and filed by the executive director with the chief clerk of the commission.

§295.202. *Reports.*

(a) Annual reports. Every person who takes water from a stream or reservoir during the preceding calendar year shall submit a written report to the commission. Blank forms for recording the information required by the Texas Water Code, §11.031 and §11.032(a), shall be mailed to all surface water users during January of each year. Water use report forms shall be furnished to anyone on request. In completing the reports, a water user shall fill in the blanks to the best of his ability in accordance with the

instructions that accompany each form. The report must be returned to the executive director not later than March 1 of each year to avoid the penalties prescribed by the Texas Water Code §11.031(b). Water users under the jurisdiction of the Rio Grande Watermaster shall return their annual reports to the Rio Grande Watermaster so that office can prepare and submit water use data covering the area of watermaster control. No report is required to be filed by persons who divert water solely for domestic and livestock purposes.

(b) Reports by temporary permit holders. Upon the expiration of the period for which a temporary permit is granted, the appropriator shall cease diverting water and file a written report with the executive director, stating the amount of water and the date of cessation of use.

(c) Report on time limitations for construction. Within 10 days after beginning construction or installation of diversion and distribution facilities, a permittee shall file a statement with the executive director showing that work was begun within the time limit allowed. Immediately upon completion of the project a similar statement must be filed with the executive director showing that the work was completed within the specified time limitations.

(d) Report of contractual sales.

(1) The purchaser under a contract to supply state water shall submit annual written reports to the executive director in accordance with subsection (a) of this section indicating the total amount of water diverted each month and the total amount diverted each week. Purchasers diverting from the perimeter of a reservoir need to report only monthly diversions.

(2) The supplier shall submit annual written reports to the executive director in accordance with subsection (a) of this section indicating the total amount of water diverted and used each month for each purpose and the total amount released downstream each week to each purchaser under the storage water right specified in the contract. A separate reporting of the amount of water estimated for transmission losses shall be made.

(3) These reporting requirements shall apply to all contractual permits and water supply contracts.

(4) For purposes of this subchapter, a week is the period from Saturday midnight to Saturday midnight.

Issued in Austin, Texas, on February 25, 1986.

TRD-8801989 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: March 3, 1986
Expiration date: July 1, 1986
For further information, please call
(512) 463-8070.

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The following emergency adoptions submitted by the Texas Water Commission will be serialized beginning in the March 11, 1986, issue of the *Texas Register*. The effective date of the adoptions is March 3, 1986.

Chapter 297. Water Rights, Substantive

Subchapter A. Definitions

31 TAC §297.1 (new)

Subchapter B. Classes of Permits

31 TAC §§297.11-297.20 (new)

Subchapter C. Type of Uses

31 TAC §§297.21-297.25 (new)

Subchapter D. Diversion From Un-sponsored or Storage-Limited Reservoirs

31 TAC §297.31, §297.32 (new)

Subchapter E. Issuance and Conditions of Water Permit or Certificate of Adjudication

31 TAC §§297.41-297.52 (new)

Subchapter F. Amendments to Water Rights; Corrections to Water Rights

31 TAC §297.61, §297.62 (new)

Subchapter G. Cancellation and Revocation of Water Rights

31 TAC §§297.71-297.74 (new)

Subchapter H. Conveyances of Land and Water Rights

31 TAC §§297.81-297.83 (new)

Subchapter I. Conveying Stored Water

31 TAC §§297.91-297.94 (new)

Subchapter J. Water Supply Contracts and Amendments

31 TAC §§297.101-297.108 (new)

Chapter 299. Dams and Reservoirs

Subchapter A. General Provisions

31 TAC §§299.1-299.5 (new)

Subchapter B. Design and Evaluation of Dams

31 TAC §§299.11-299.18 (new)

Subchapter C. Construction Requirements

31 TAC §§299.21-299.31 (new)

Subchapter D. Removal of Dams

31 TAC §299.51 (new)

Subchapter E. Emergency Action

31 TAC §299.61 (new)

Chapter 301. Levee Improvement Districts, District Plans Reclamation, and Levee and Other Improvements.

Subchapter A. General Provisions

31 TAC §§301.1-301.7 (new)

Subchapter B. Levee Improvement Districts and Approval of District Plans of Reclamation

31 TAC §§301.21-301.23 (new)

Subchapter C. Approval of Levees and Other Improvements

31 TAC §§301.31-301.46 (new)

Subchapter D. Notice and Hearing

31 TAC §§301.51-301.56 (new)

Subchapter E. Unauthorized Levees and Other Improvements

31 TAC §§301.61-301.63 (new)

Subchapter F. Fees

31 TAC §§301.71-301.74 (new)

Subchapter G. Districts to File Information with Executive Director

31 TAC §301.81 (new)

Chapter 305. Consolidated Permits

Subchapter A. General Provisions

31 TAC §305.1, §305.2 (new)

Subchapter B. Emergency Orders, Temporary Orders, and Executive Director Authorizations

31 TAC §§305.21-305.30 (new)

Subchapter C. Application for Permit

31 TAC §§305.41-305.53 (new)

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

31 TAC §§305.61-305.65 (new)

Subchapter E. Actions, Notice, and Hearing

31 TAC §§305.91-305.105 (new)

Subchapter F. Permit Characteristics and Conditions

31 TAC §§305.121-305.128 (new)

Subchapter G. Additional Conditions for Solid Waste Storage, Processing, or Disposal Permits

31 TAC §§305.141-305.146 (new)

Subchapter H. Additional Conditions for Injection Well Permits

31 TAC §§305.151-305.159 (new)

Subchapter I. Hazardous Waste Incinerator Permits

31 TAC §§305.171-305.174 (new)

Subchapter J. Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses

31 TAC §§305.181-305.184 (new)

Subchapter K. Research, Development, and Demonstration Permits

31 TAC §§305.191-305.194 (new)

Subchapter L. Groundwater Compliance Plan

31 TAC §305.401 (new)

Subchapter M. Waste Treatment Inspection Fee Program

31 TAC §§305.501-305.506 (new)

Chapter 325. Certificates of Competency

Subchapter A. Certificates of Competency

31 TAC §§325.1-325.16 (new)

Chapter 329. Drilled or Mined Shafts

Subchapter A. General Provisions

31 TAC §§329.1-329.19 (new)

Chapter 331. Underground Injection Control

Subchapter A. General Provisions

31 TAC §§331.1-331.13 (new)

Subchapter B. Jurisdiction Over In Situ Uranium Mining

31 TAC §§331.31-331.36 (new)

Subchapter C. General Standards and Methods

31 TAC §§331.41-331.48 (new)

Subchapter D. Standards for Class I Wells

31 TAC §§331.61-331.67 (new)

Subchapter E. Standards for Class III Wells

31 TAC §§331.81-331.86 (new)

Subchapter F. Standards for Class III Well Production Area Development

31 TAC §§331.101-331.107 (new)

Subchapter G. Consideration Prior to Permit Issuance

31 TAC §§331.121, §331.122 (new)

Subchapter H. Standards for Class V Wells

31 TAC §§331.131-331.133 (new)

Chapter 336. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

31 TAC §§336.1-336.15, 336.17-336.24, and 336.30 (new)

Subchapter B. Hazardous Waste Management General Provisions

31 TAC §§336.41, 336.43-336.47 (new)

Subchapter C. Standards Applicable to Generators of Hazardous Waste

31 TAC §§336.61-336.63, 336.65-336.71, 336.73-336.76 (new)

Subchapter D. Standards Applicable to Transporters of Hazardous Waste

31 TAC §§336.91-336.94 (new)

Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

31 TAC §§336.111-336.126 (new)

Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

31 TAC §§336.151-336.177 (new)

Subchapter G. Location Standards for Hazardous Waste Storage, Processing, or Disposal

31 TAC §§336.201-336.206 (new)

Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

Undesignated Head. Recyclable Materials Used in a Manner Constituting Disposal

31 TAC §§336.211-336.214 (new)

Undesignated Head. Hazardous Waste Burned for Energy Recovery

31 TAC §§336.221-336.227 (new)

Undesignated Head. Recyclable Materials Utilized for Precious Metal Recovery

31 TAC §336.241 (new)

Undesignated Head. Spent Lead-Acid Batteries Being Reclaimed

31 TAC §336.251 (new)

Subchapter I. Prohibition on Open Dumps

31 TAC §§336.301-336.308 (new)

Chapter 337. Enforcement

Subchapter A. Enforcement Generally

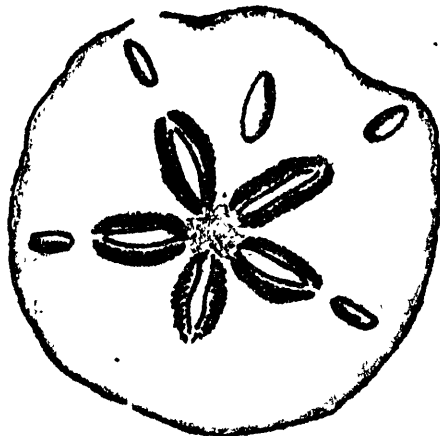
31 TAC §§337.1-337.5 (new)

Subchapter B. Enforcement Hearings

31 TAC §§337.31-337.40 (new)

Subchapter C. Water Rights Enforcement

31 TAC §§337.51-337.54 (new)



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 35. Pharmacy Services Subchapter UUUU. Support Documents

★ 40 TAC §35.9804

The Texas Department of Human Services adopts on an emergency basis an amendment to §35.9804, concerning the Vendor Drug Program in its Pharmacy Services Chapter. Section 35.9804 is amended to replace the flat rate base dispensing fee with a system that provides for the opportunity for profit on each transaction. Providers are reluctant to fill needed high-cost prescriptions under the current flat rate because they realize a very small profit.

The inability to have high-cost prescriptions filled could result in serious health problems that could lead to the recipient being placed in a hospital or nursing home. Failure to implement this amendment would result in imminent peril to the health, safety, and welfare of individuals whose lives may be endangered from the inability to obtain high-cost prescription drugs. In response to Vendor Drug Program providers who express their inability to continue providing services under the current reimbursement methodology the department developed a revised system that modifies the methodology.

The current methodology provides for a flat rate dispensing fee that includes incentive reimbursement for additional services of free delivery, automated tape billing, use of patient profiles, provider continuing education, and 24-hour service. The new methodology uses the statewide average dispensing expense (\$3.26), allows a 5.5% opportunity for profit on each transaction, and retains the incentive reimbursement for free delivery service.

Implementation of the new reimbursement methodology for payment in the Vendor Drug Program is scheduled for March 1, 1986.

The amendment is adopted on an emergency basis under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§35.9804. Reimbursement Methodology for the Pharmacy Dispensing Fee.

(a) Introduction.

(1) The Texas Department of Human Services [Resources] reimburses [will reimburse] contracted Medicaid pharmacy providers on a cost-related basis for prescription dispensing services and drug products provided to Medicaid recipients. This is accomplished through assignment of a dispensing

fee for each prescription [provider]. The dispensing fee shall not include the cost of drugs]. The dispensing fee is determined after analysis of statewide financial and statistical information regarding the total cost [expenses] of dispensing prescriptions. [This information is gathered each year from pharmacy providers submitting cost reports.]

(2) The methodology for determining the dispensing fee is based on the projected statewide average dispensing expense and the opportunity for profit for each prescription. The average dispensing expense is determined by applying the cost-finding methodology; the opportunity for profit is based on the total cost of the transaction to the provider. [The reimbursement methodology is composed of two separate and distinct parts: the cost-finding methodology and the dispensing fee determination methodology.] The cost-finding methodology provides for the gathering of financial and statistical information from providers in a consistent manner. Cost finding includes adjusting and recasting expense data to yield reasonable and reliable dispensing expenses for each provider. These dispensing expenses are projected from the various provider reporting periods to a future dispensing fee period with a projected dispensing expense per prescription calculated for each provider. The current statewide average dispensing expense has been determined to be \$3.26. [The dispensing fee determination methodology uses the projected dispensing expense per prescription data produced from the application of the cost-finding methodology to determine the dispensing fee for each provider.]

(b) (No change.)

(c) Method for determining the total transaction cost for each prescription. [Dispensing fee determination methodology.] The total cost to the provider for each prescription transaction is determined by adding the statewide average dispensing expense to the estimated acquisition cost (EAC) of the drug product.

[(1) Prospective determination. The dispensing fee is determined prospectively.

[(2) Dispensing fee period. The dispensing fee period is the annual period January 1 through December 31.

[(3) Variable fee. The dispensing fee can vary among providers, and consists of a basic dispensing fee for basic services and additional dispensing fees as described in this section.

[(4) Basic dispensing fee determination.

[(A) Projected grand mean dispensing expense per prescription. The grand mean in each cost area is determined by dividing the sum of all projected expenses by the sum of all prescriptions dispensed. The two cost area grand means are then added together to obtain the grand mean dispensing expense per prescription.

[(B) Opportunity for profit. A projected amount is determined based upon Medicaid prescription dispensing activities.

The projected grand mean revenue per prescription from the dispensing of Medicaid prescriptions is used to determine a projected grand mean profit per prescription which is expected to yield a profit margin percentage of 5.5%. Profit margin is defined as profit before federal income tax, divided by net sales. Opportunity for profit included in the dispensing fee determination does not include any actual profit which may result from discounts obtained by a provider in the cost of drugs. The provision of an opportunity for profit is a method to determine a fair and equitable dispensing fee. In no way is it intended to limit the actual profit of a particular provider.

[(C) Basic dispensing fee. The projected grand mean dispensing expense per prescription is added to the projected grand mean profit per prescription to determine the basic dispensing fee for basic services.

[(5) Additional dispensing fee determination. Characteristics and the method of determination of the amount of each additional dispensing fee are as follows:

[(A) a provider using and maintaining drug profile records for all Medicaid recipients. The additional dispensing fee for this characteristic is determined by multiplying the projected grand mean dispensing expense per prescription by 0.03.

[(B) a provider offering no-charge prescription delivery service to all Medicaid recipients and providing such service. The additional dispensing fee for this characteristic is determined by multiplying the projected grand mean dispensing expense per prescription by 0.03.

[(C) a provider offering 24-hour prescription call service to all Medicaid recipients and providing such service. The additional dispensing fee for this characteristic is determined by multiplying the projected grand mean dispensing expense per prescription by 0.01.

[(D) a provider engaging the services of a pharmacist who has completed at least one continuing education program during the provider's last preceding fiscal year. Such programs must be directly related to drug therapy and usage which improve skills in the practice of pharmacy. The additional fee for this characteristic is determined by multiplying the projected grand mean dispensing expense per prescription by 0.01.

[(E)] a provider submitting claims in an automated format prescribed by the department. The additional fee for this characteristic is determined by multiplying the projected grand mean dispensing expense per prescription by 0.02.

[(6) Assignment of dispensing fees.

[(A) Standard dispensing fees. Each provider is assigned the basic dispensing fee and any applicable additional fee except as detailed in subparagraph (B) of this paragraph.

[(B) Exceptions to standard dispensing fees; hospital pharmacies. Hospital

pharmacies are assigned a dispensing fee determined by multiplying the basic dispensing fee by 0.5. Hospital pharmacies can not be assigned additional dispensing fees.

[(7) On-site verification of provider characteristics. A periodic on-site verification is made of the characteristics which are used to assign additional fees.

[(8) Responsibility of provider to notify department of change in characteristics.

[(A) A provider adding a characteristic for which an additional fee is assigned must notify the department. A reasonable amount of time not to exceed 30 days is required before the new fee can become effective.

[(B) A provider deleting a characteristic for which an additional fee is assigned must notify the department. A reasonable amount of time not to exceed 30 days from the date the characteristic is deleted is allowed for the provider to notify the department.

[(9) Recoupment of fee overpayments. An overpayment to a provider resulting from the use of an incorrect assigned fee will be recouped. The amount of overpayment will be determined after allowing for the 30-day grace period from the date the provider ceased to possess the characteristic.

[(10) Appeals procedure. Appeals are resolved in accordance with the established administrative procedures of the Texas Department of Human Resources.]

(d) Dispensing fee determination. When determining the dispensing fee for each prescription transaction, the total transaction cost is divided by .945, and the result is reduced by the EAC. This methodology results in a 5.5% opportunity for profit on the selling price, and yields a consistent profit margin on each transaction. The methodology does not intend to limit the actual profit of a particular provider.

(1) A provider offering and providing no-charge prescription delivery service to all Medicaid recipients requesting the service. An additional incentive, paid on each prescription transaction, may be allowed for providers who provide free prescription delivery services. The amount of this incentive is determined by the board of the Department of Human Services. On-site verification of no-charge delivery services is conducted periodically by department staff. Providers must notify the department within 30 days of the date no-charge delivery services are added or deleted. An overpayment to a provider resulting from failure to report deletion of delivery services is recouped beginning with the 31st day after deletion of the service.

(2) Recoupment and appeals. An overpayment to a provider resulting from the use of an incorrect assigned fee is recouped. Appeals are resolved according to established procedures of the department.

(3) Exceptions to standard dispensing fees; hospital pharmacies. Hospital phar-

macies are assigned a dispensing expense determined by multiplying the statewide average dispensing expense by 0.5. The total transaction cost and the dispensing fee determinations are calculated as indicated in subsections (c) and (d) of this section. The reduced dispensing expense is used in lieu of the statewide average dispensing expense on each transaction. Hospital pharmacies are not eligible for the incentive paid for no-charge delivery.

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

TRD-8602032

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: March 1, 1986

Expiration date: June 29, 1986

For further information, please call
(512) 450-3768.

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Part V. Veterans Land Board

Chapter 175. General Rules of the Veterans Land Board

★ 40 TAC §§175.2-175.21

The Veterans Land Board adopts on an emergency basis new §§175.2-175.21, concerning the administration and operation of the Veterans Land Program.

The new sections cover application procedures, eligibility, loan commitments, severances, forfeitures, prizes, and other aspects of the administration and operation of the Veterans Land Program.

These new sections are adopted to prevent a lapse in the time period during which the existing sections are repealed and the new sections that have been proposed for permanent adoption become effective.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code, §161.063, which authorizes the board to adopt rules that it considers necessary and advisable.

§175.2. Application/Eligibility.

(a) Applications material to participate in the Veterans Land Program must be made on forms furnished by the board. These forms and other materials may be obtained from the Veterans Land Board, Stephen F. Austin Building, 1700 North Congress, Austin, Texas, 78701.

(b) To participate in the program the veteran must meet the following eligibility requirements:

- (1) be at least 18 year of age;
- (2) be a citizen of the U.S.;
- (3) have served at least 90 consecutive days in the Army, Navy, Air Force, Coast Guard, or Marine Corps, unless discharged earlier because of a service-con-

nected disability. This service must have been after September 16, 1940;

(4) must not have been dishonorably discharged;

(5) must not have previously participated in the land or housing program as a veteran;

(6) have been a bona fide resident of the State of Texas at the time of his or her enlistment, induction, commissioning, or drafting, or have been a legal resident of Texas at least five years immediately prior to the date of filing his or her application; and

(7) be a bona fide resident of Texas at the time the application is filed.

(A) For purposes of this chapter, bona fide resident means a person actually living in the State of Texas, with the intention to remain;

(B) Legal resident, as used in this chapter, means someone who actually resides within the State of Texas, or who has only been absent from the state due to military service or for some other involuntary reason, yet who has maintained his or her residence in the state. Texas residency may be documented by submitting one or more of the following:

(i) Texas driver's licenses, or identification cards issued by the Texas Department of Public Safety;

(ii) Texas voter registration cards;

(iii) Texas motor vehicle registrations;

(iv) receipts for the payment of mortgage, rent, or utilities, showing the veteran's name and address;

(v) Texas property tax receipts;

(vi) payroll checks, employment records, or retirement checks containing the veteran's name and address; or

(vii) any other documentation that the board deems appropriate.

(C) The board may require the applicant to execute an affidavit of Texas residency on a form prescribed by the board. This affidavit shall be necessary if:

(i) there is a question about a veteran's bona fide residence at the time of entry into military service; or

(ii) there is a question about a veteran's bona fide residence at the time he seeks to participate in the program; or

(iii) the applicant was not a bona fide resident of Texas at the time of entry into the service, but has been a legal resident of the state at least five years immediately prior to making application.

(c) Active duty military personnel who otherwise meet the requirements listed in this section are eligible even though stationed out of state at the time of application.

(d) A person may participate in the program as a veteran one time only. Such participation may be by way of an original contract, taking an assignment of contract, or by successfully bidding in a forfeited land sale. Any person, including a veteran who

has already participated in the program, may take an assignment of a contract as a non-veteran, in which case a higher interest rate shall be charged.

(e) If an eligible Texas veteran dies after he has filed an application and contract of sale with the board, but before the purchase has been completed, the surviving spouse may complete the transaction. In addition, the unmarried surviving spouse of a veteran who died in the line of duty shall be eligible to participate in the program if the following requirements are satisfied:

(1) the surviving spouse has not remarried and is a bona fide resident of Texas at the time of filing the application with the board;

(2) at the time of enlistment, induction, commissioning, or drafting, the deceased veteran was a bona fide resident of Texas (the five-years residence alternative is not available);

(3) the deceased veteran was a citizen of the United States of America at time of death;

(4) the deceased veteran had served on active duty in the Army, Navy, Air Force, Coast Guard, or Marine Corps after September 16, 1940. The deceased veteran need not have served at least 90 continuous days of active duty;

(5) neither the deceased veteran nor the unmarried surviving spouse previously participated in the Veterans Housing Assistance program or the Veterans Land Program; and

(6) the board must be furnished certification from the United States Veterans Administration that the unmarried surviving spouse is currently entitled to benefits as the spouse of a veteran who died in the line of duty. The board may also determine that the line of duty requirement is satisfied upon presentation of other evidence.

(f) Applications and contracts must be signed by the veteran. An attorney in fact may not sign these documents for the veteran.

(g) No application shall be approved to purchase land under the program:

(1) which provides for or recognizes a second or subordinate lien as a part of the original purchase price for any tract; or

(2) where there is evidence that the benefits derived from the use of the land will not pass to the veteran purchaser.

(h) An application may also be rejected, and the contract declared breached by the chairman of the board, at his or her option, if:

(1) the veteran purchaser or seller fail to perform their contractual obligations within a reasonable length of time;

(2) there is a failure to convey marketable title; or

(3) there exists any other good and sufficient reason, as determined by the chairman of the board.

(i) If for any reason a veteran's application is not processed to completion, the down payment will be refunded to the vet-

eran, together with the unused portion of any fees that have been deposited with the board.

(j) Each application will be considered as a wholly separate transaction, independent of any other agreement, transaction, or contingency. The board will not consider an application which contains a provision making it contingent upon the success or completion of another agreement or transaction.

(k) Any requirement of this section, or of any section within this chapter, which is not otherwise required by the constitution or statutes of this state, may be waived on a case by case basis by the Veterans Land Board. Any waiver request must be in writing and must describe the circumstances surrounding the request, including the reason(s) why the waiver is necessary.

§175.3. Land Selection.

(a) Land selected by a veteran for purchase through the program must:

(1) be situated in Texas;

(2) contain at least 10 net acres (excluding land lying in public roads and/or canals);

(3) have a good and marketable title;

(4) be contiguous, if more than one tract of land is selected; and

(5) have direct access to a public road. If the tract does not directly abut a public road, a perpetual access easement must be conveyed to the board. This easement must meet the county width requirement for publicly maintained roads and, in any event, must be at least 30-foot wide. The easement must be conveyed to the board by general warranty deed or dedicated to the public or subdivision owners. If the easement is conveyed to the board by deed, it must be described by metes and bounds. This description must contain specific tie calls to both the tract and a public road. If the easement is dedicated, the deed to the board must refer to the recording information of the subdivision plat or other dedication instrument. Easements and roads must be usable by standard automobiles during normal weather.

(b) The board will not purchase a tract of land which was wholly owned by the veteran or his spouse, separately or jointly, within three years of the date of application.

(c) If the veteran or his spouse owns an undivided interest in the land he or she has selected, the board may approve the application after the tract has been partitioned and a copy of the recorded partition instrument is furnished to the board. If the land is not partitioned, the board may nonetheless approve purchase of the tract. In that case, the board will reduce the amount it will pay for the tract in proportion to the amount of the undivided interest retained.

(d) The board will not purchase land in which the seller or any prior owner is to retain any interest.

(e) The board will not approve any application the net effect of which is to

refinance the purchase of a tract by a veteran or his spouse.

(f) A tract must be free and clear of all liens when the board takes title to it.

(g) The board reserves the right to refuse to purchase any tract for any reason.

§175.4. Land Description.

(a) Land selected to be purchased by the board must be described by a legally sufficient metes and bounds description. The property description must contain:

(1) a general description of the land, specifying the county, acreage contained, parent tract, and original survey or grant in which the land is situated. The general description may also contain references to instruments in the chain of title, to recorded plats and subdivisions, and to other like data, if applicable.

(2) a specific description of the land, describing each side of the land by specific courses and distances, and further identifying the land by calls for bounds, such as trees, fences and adjacent boundaries, and monuments.

(b) If the land selected is in a subdivision, a lot and block description of the tract may be substituted for the metes and bounds description. If a lot and block description is to be used, the board must be furnished a copy of the recorded subdivision plat. This plat must show the recording information and the signatures of the county commissioners evidencing their acceptance of the plat. The plat must also show courses and distances for the boundary lines of all tracts. If the tract selected is not located on a public road, the easement to the tract must be shown on the plat. The appropriate language dedicating any easement to the public or to the subdivision owners must also be included on the plat.

(c) Field note descriptions must tie to a corner of an original survey or grant, if such a tie is not impractical to obtain. If it is impractical to tie to the corners of the original survey or grant, the description may tie to the surrounding properties and to permanent landmarks or monuments. It may also tie to an established subdivision corner. If the tie is to a subdivision corner, a certified copy of the subdivision plat must be provided.

(d) The field note description must be prepared from a ground survey and must be of a kind generally acceptable to title companies in the State of Texas for the purpose of deleting the survey exception clause.

(e) Each corner of the land must be conspicuously and permanently marked by concrete or steel monuments or by monuments of like substances, either natural or artificial. All monuments must be incorporated into the field note description of the property.

(f) When a roadway or easement crosses a tract, it shall be described so that its location and acreage may be determined.

(g) Property descriptions may be examined by the board for acreage and closure. The board's calculation of acreage will control.

(h) The surveyor should be instructed to include only that land to which the seller has good title. He should not include any land outside an encroaching fence or the like, unless the fence or other object can be removed and reestablished along the survey line, or an appropriate quitclaim or boundary agreement can be obtained from the adjacent owner or owners.

§175.5. Appraisal of Land.

(a) Before property is purchased it shall be appraised by one of the board's appraisers. The appraisal has no connection with the negotiations between the veteran and the seller regarding the purchase price. It is made exclusively for the board to ensure that its investment will be properly secured. A tract of land may have a specific value to a particular veteran which is greater than the amount which the board will invest in the property. In this event, the veteran must pay the cash difference between the board's loan amount and the purchase price.

(b) If the appraisal amount is less than the purchase price agreed upon, the veteran may cancel the transaction. The veteran should provide a written cancellation notice to the seller and the board and request that the board return his down payment and the unused portion of the fee deposits.

(c) Each veteran must personally accompany one of the board's appraisers on a physical inspection of the land to be purchased. However, in the case of a veteran stationed outside the continental United States, the veteran may have his or her personal representative inspect the land with the appraiser.

(d) Any improvement existing on the land may be considered by the board in making the appraisal. If improvements are considered in determining the value of the property, the board may in accordance with §175.6(c) of this title (relating to Commitment by the Board) require the purchase of an insurance policy covering fire and hazard losses.

§175.6. Commitment by the Board.

(a) After reviewing the appraisal, and any other relevant information, the board shall issue a commitment showing the amount it will invest in the land selected. The veteran and seller shall be notified of the commitment amount.

(b) If the commitment amount is less than the purchase price, one of the following should be done:

(1) amend the contract price to conform to the commitment amount;

(2) amend the contract price, with the veteran paying to the board the difference between the amended price and the commitment amount, if necessary;

(3) pay to the board the difference between the contract price and the commitment amount;

(4) amend the contract to increase the acreage to make up for the difference; or

(5) cancel the loan application.

(c) If improvements on the land are considered by the board in determining the commitment amount, their value will be amortized over their lifetime as determined by the appraiser. Similarly, when land is situated in an underground irrigation water area, the installments will be accelerated for the purpose of protecting the board's investment against the risk of any diminishment of the water reserve.

§175.7. Title Examination.

(a) The board will designate an attorney or title company in the county where the land is located to serve as its closing representative. The veteran or seller may submit the name of a closing representative for the board's consideration. The representative will be paid for examining title and for closing the transaction. If the designated representative is an attorney, a fee of \$100 will be paid. If the representative is a title company, a \$25 fee will be paid. The board will also pay up to \$30 to cover recording costs. The board will not pay a closing representative for preparing and filing application papers, drafting, instruments, or for rendering services of a similar nature. If an attorney provides such services he is to be paid directly by the veteran or seller.

(b) It is the seller's responsibility to obtain a commitment for title insurance and to provide copies of it to the closing representative and the board.

(c) The seller shall also provide the following, as applicable:

(1) releases of any outstanding liens;

(2) proof that all taxes have been paid through the last taxable year;

(3) evidence that taxes have been prorated as of the date of sale, or that satisfactory arrangements have been made with the veteran regarding taxes, including rollback taxes;

(4) releases of any mineral leases that have expired, or an affidavit of non-production and nonpayment of annual delay rentals;

(5) any instruments in the chain of title necessary for the board to make a proper showing of ownership to a lessee under an existing mineral lease; and

(6) fees for recording all instruments other than the deed from the seller to the board and the contract of sale between the board and the veteran.

(d) Among other things, the veteran will be required:

(1) to furnish a fire and hazard insurance policy if there are any improvements on the land which have been considered by the board in determining the amount to be

invested, together with a receipt showing the first year's premium has been paid; and

(2) to execute an affidavit showing that he has taken possession of the land, has inspected the land and found no one in adverse possession, and that the taxes have been prorated to his satisfaction.

(e) If an attorney is designated as closing representative, he or she shall prepare a deed conveying title to the land to the board. This deed must:

(1) name the veterans land board of the State of Texas as grantee;

(2) state the full and true consideration to be paid;

(3) specify all reservations of oil, gas, and other minerals affecting the property;

(4) specify all easements, leases, and/or other exceptions which might affect the property; and

(5) contain a general warranty. Special warranty deeds are not acceptable.

(f) If a title company is designated as closing representative, the board will prepare the deed upon submission of a title commitment and other closing papers.

(g) When the title insurance commitment has been completed and submitted, the closing representative shall forward it, along with the original and one copy of the proposed deed, if any, to the board. The board must also be provided copies of all reservations and exceptions listed in the title insurance commitment or proposed deed. The board's attorneys will examine the closing papers (and draft a warranty deed if needed). If all is in order, the board will request the state comptroller to issue a treasury warrant in the amount of the purchase price. When the warrant is received by the board, it will be forwarded with the other closing materials to the representative so that the transaction can be completed.

(h) When the closing representative is satisfied that all closing requirements have been met, he shall require the seller to execute and tender the deed, and shall, on behalf of the board, tender the consideration to the seller. The closing representative shall also require the veteran to execute the contract of sale and purchase. The veteran must execute this personally. No other person is authorized to execute it for him.

(i) The closing representative shall file the deed and contract of sale and purchase for recording, together with any additional instruments which should be recorded. The recorded originals of the deed to the board and the contract of sale and purchase shall be sent to the board, where they will be made a part of the veteran's permanent file.

(j) The board has obtained a group credit life insurance policy for the benefit of both veterans and nonveterans who are purchasing land through the program. If the contract holder obtains the insurance and dies while it is in force, the principal balance (exclusive of any delinquencies) of the veteran's account as of the date of death will

be paid in full. The policy will be terminated when the contract holder dies or pays the account in full.

175.8. Contract of Sale and Purchase.

(a) The contract of sale and purchase will be prepared by the board. It is to be executed by both the veteran and the chairman of the board.

(b) The board will specify the terms of the contract for each transaction.

(c) Each contract of sale and purchase shall bear a rate of interest designated by the board and shall not exceed 30 years in duration.

(d) If the tract contains improvements or is located in an underground irrigation water area, the chairman may require accelerated installments for the purpose of protecting the board's investment.

(e) Installment payments on a veteran-purchaser's contract of sale and purchase shall be due and payable in the following manner:

(1) For transactions which have closed before January 1, 1984, installment payments will be made on a semiannual basis, unless the veteran-purchaser elects to change to a monthly payment schedule.

(2) For transactions which close after January 1, 1984, payments will be made on a monthly basis.

(3) The installment dates will be specified in the contract.

(f) Advance payments may be made at any time. When making an advance payment the veteran should provide the board with written instructions as to the nature of the payment (i.e. whether it is an additional payment against principal or an advance installment payment). Making an additional payment against principal will not relieve the veteran of his obligation to make each installment payment as it becomes due.

(g) All taxes (state, school, water district, city, or any other tax) shall be kept current. Evidence of their payment shall be submitted to the board by May 1 of each year.

(h) If there are any material errors in the contract, the chairman may execute a correction contract. This instrument will then be provided to the veteran for his signature.

§175.9. Death of a Purchaser.

(a) Upon the death of the purchaser, if the account is insured under the group life insurance plan, the board should be notified at once and furnished with a certified copy of the death certificate and an \$80 deed fee, which is not paid under the group insurance plan.

(b) If the account is not insured at the time of the purchaser's death, the board should be furnished:

(1) certified copies of all probate proceedings, if any; or

(2) an affidavit of heirship, if the purchaser dies intestate and no administration is necessary for the estate.

(c) The person or persons acquiring the rights of the deceased purchaser should

indicate to the board that they are willing to accept the obligations of the contract of sale and purchase.

(d) Upon receipt of the items listed in subsections (a), (b), and (c) of this section, the records of the board will be changed to reflect the new ownership.

§175.10. Insurance Losses.

(a) All proceeds received for insurance losses must be deposited with the board. These proceeds may be used to repair or replace the damaged or destroyed improvements, or they may be applied to the principal balance of the veteran's account.

(b) Normally, when there has been a loss the insurance company will issue a check jointly payable to the veteran and the board. The veteran should endorse the check and forward it to the board. The proceeds will be held in a special account until the damaged or destroyed improvement has been repaired or replaced, or until it has been determined that the proceeds are to be applied to the principal balance of the veteran's account.

(c) If there has been a partial loss, repairs shall be made in order to prevent further deterioration. If the loss is total, the veteran will have the option of rebuilding the improvement or applying the proceeds to the principal balance of his account. If applying the proceeds to the principal balance of the account pays it in full, any unused funds will be refunded to the veteran, or his or her designee, as soon thereafter as practicable.

(d) When an improvement is repaired or replaced, and the loss is under \$500, the veteran should:

(1) submit to the board itemized statements showing the materials and labor furnished; and

(2) submit to the board an affidavit showing that all of the materials and labor specified in the statements were actually used in the repair or replacement of the improvement.

(e) When an improvement is repaired or replaced and the loss is over \$500, the veteran should:

(1) submit to the board an itemized statement showing the materials and labor furnished; and

(2) allow sufficient time for the board to make a physical inspection of the repaired or replaced improvement.

(f) Reimbursement from the insurance proceeds may be made directly to the veteran or his creditors. If reimbursement is to be made to the veteran, the itemized statements mentioned in subsections (d)(1) and (e)(1) of this section must show that payment has already been made by the veteran. If reimbursement is to be made to the creditors, the veteran must authorize the board in writing to pay the creditors.

(g) Reimbursement can be made only when the damaged or destroyed improvement has been repaired or restored.

(h) If proceeds from insurance losses are not completely used in restoring improvements to their original condition, the remaining balance on deposit will be applied to the principal balance of the veteran's account.

(i) The application of insurance proceeds to the principal balance of the veteran's account shall not relieve him of the obligation to make the regular installment payments.

§175.11. Transfer of Contract of Sale and Purchase.

(a) After the original veteran-purchaser has been in possession of the tract for at least three years from the date of closing, the contract of sale and purchase may be transferred in one of the following ways:

(1) the contract may be assigned to an eligible veteran without any increase in the interest rate.

(2) the contract may be assigned to a nonveteran, a veteran who has previously participated in the program, or a firm or corporation with an increase in the interest rate. The new rate of interest shall be set by the board.

(b) The contract may be transferred before the expiration of the three-year period only if the veteran dies, becomes financially incapacitated, or in the event of an involuntary transfer by court order or proceedings, such as bankruptcy, sheriff's sale, or divorce. Affidavits, certified copies of proceedings and other documentation may be requested by the board in connection with this exception.

(c) If the veteran attempts to transfer, sell, or convey the property before the three-year period has elapsed, the board may forfeit the account and order the property to be sold. In the alternative, the board may require that the account be paid in full and a penalty paid, or approve the unauthorized transfer upon the payment of the penalty and receipt of such other documentation as may be required. The penalty shall be the difference between the account's interest rate and the interest rate charged to nonveterans at the time the unacceptable transfer or conveyance is discovered.

(d) No assignment shall be effective until approved by the chairman of the board.

(e) Upon request, the board will furnish to the assignor, or to one designated by him, the forms and information necessary to complete a transfer.

(f) An assignment will not be approved if it is executed by an attorney in fact.

(g) If married, the veteran's spouse must join in the assignment.

(h) If the assignor wishes to reserve any interest in the property, he must obtain the approval of the board prior to the assignment. An assignment will not be approved if the assignor attempts to reserve any interest in the contract of sale and purchase.

(i) The board is not responsible for the condition of title subsequent to the execution of the contract of sale and purchase with

the original veteran-purchaser. The assignee should satisfy himself as to condition of title before accepting an assignment.

§175.12. Severances.

(a) If a veteran wishes to have clear title to a portion of the land he is purchasing, he may obtain a severance deed from the board for that portion. To accomplish this the following steps should be taken.

(1) A current ground survey of the portion to be severed must be made by a qualified surveyor. The survey requirements of §175.4 of this title (relating to Land Description) must be met. The field notes and plat prepared from the ground survey must be submitted to the board.

(2) Both the tract to be severed and the remaining tract must have access to a public road. If the severed tract includes all of the road frontage, a 60-foot access easement to the portion remaining under contract must be conveyed to the board.

(3) Upon receipt of the field notes and plat, the board will have an appraisal made to determine the amount to be paid for the severed acreage. The veteran will be notified of the result of this appraisal. This amount, which will be applied against the principal of the veteran's account, should be submitted to the board, along with an \$80 deed fee. The board will then issue a deed, conveying clear title to the severed portion.

(b) The board will not issue severance deeds listing anyone besides the original veteran purchaser or the last approved assignee as the grantee.

(c) All requests for severances will be subject to the approval of the chairman of the board.

(d) The chairman of the board is authorized to enter into, and execute on behalf of the board, an agreement recognizing that an improvement, when constructed, shall not attach to and become a part of the realty for the duration of any obligation incurred by a purchaser in connection with the erection of such improvement.

§175.13. Sale of a Material Asset, and Improvements.

(a) Material assets.

(1) No sale of timber, rock, gravel, sand, chemicals or other material asset, the loss of which tends to lower the value of the land, shall be effective until approved by the chairman of the board.

(2) The chairman will prescribe the form or forms of instruments necessary to effectuate a sale, and will approve any such sale on behalf of the board.

(3) At least 1/2 of the proceeds from the sale of a material asset shall be paid to the board. This amount will be applied toward the principal balance of the veteran's account.

(b) Improvements.

(1) Before any improvements may be removed from the property, the veteran must obtain written permission to do so from the chairman of the board.

(2) The veteran's request should be in writing and addressed to the chairman of the board, and advise the amount to be paid, if any, and the reasons for removal.

§175.14. Mineral Leases.

(a) When applicable, a veteran may execute mineral leases covering the land being purchased through the board. The following conditions must be met.

(1) No oil and gas lease will be accepted unless the board's standard form is used. Copies of this form will be furnished upon request.

(2) The lease must be approved by the chairman of the board.

(3) Each lease must state the actual and true consideration to be paid.

(4) At least 1/2 of all proceeds, including bonus, rentals, and royalties received under the terms of such leases, shall be paid to the board and applied toward the principal balance of the account. If an account is delinquent, the board will require that additional payments of bonus, rental, and royalty be paid until the delinquency is satisfied. Payments made in this manner will not relieve the veteran of his obligation to make the regular installment payments.

(5) The lease term may not exceed 10 years, except when a lease is held in force by production. However, coal and lignite leases may be executed, with board approval, for terms up to 40 years.

(6) No lease may contain a provision for an option, renewal or release for any term, nor may such provision be provided for by separate instrument.

(b) Each executed mineral lease must be submitted to the board in duplicate. The approved original will be returned for recording with the county clerk. One half of the bonus payment should accompany the lease, along with a service fee in the amount of \$100. If the account is delinquent, all of the bonus payment, or as much as may be required, should be sent to the board to satisfy the delinquency.

(c) At least five acres around and including improvements on a tract must be excluded from all leases executed for iron ore, gravel, coal, or other substances, the mining or development of which tends to destroy the surface value of the land.

(d) The veteran may lease the property for agricultural, hunting or grazing purposes or for other surface uses without obtaining the approval of the board. However, if the tract is forfeited the rights of the lessee are then terminated.

§175.15. Approval of Easements.

(a) A contract holder may, with the approval of the board, grant easements or rights of way. These are of four general types:

(1) a right of way granted to the state or county for roads, channels etc. The forms to be used in granting such an easement may be obtained from the board or the

State Department of Highways and Public Transportation;

(2) utility easements for pipelines, electric lines, etc. The board requires use of its form when granting such an easement, except when an easement for a waterline is to be granted. In that case the Federal Highways Administration (FHA) form may be used. If an FHA form is used, a course and distance description of the waterline must be attached;

(3) flowage easements granted in connection with dams and reservoir projects. The agency administering the project furnishes the forms for such easements. An elevation contour map of the acreage involved, together with an engineer flood data sheet, may be used in place of a course and distance description; and

(4) easement for right of way purposes. The board does not require the use of a specified form for easements of this type. However, a form that may be used as a guide is available from the board.

(b) If a Veterans Land Board (VLB) form is not used, the following paragraph must be inserted into the grant of easement. This paragraph more fully explains the conditions of ownership of the tract of land: "The land herein described is under Contract of Sale and Purchase to grantor herein who will receive a deed to said lands from the Veterans Land Board when all terms of said contract have been complied with. Grantor executes this instrument with the light approval of the Veterans Land Board in accordance with the regulations of said board, which approval is signified by the signature hereon of its chairman." A signature block must be provided at the conclusion of the instrument, as follows:

Approved this _____ day of _____, 19____
Veterans Land Board of the State of Texas

by: _____
Chairman, Veterans Land Board

(c) The contract holder must submit two original grants of easement to the board. These must be signed by the contract holder and acknowledged by a notary public.

(d) A fee of \$40 per easement is to be paid to the board for review and approval of such easements. This fee is to be submitted to the board, along with the duplicate easement documents and any consideration paid, at the time the board's approval is requested.

(e) The consideration paid for the easement must be stated clearly and accurately. Statements such as "10 dollars and other good and valuable consideration" are not acceptable.

(f) All cash consideration paid for an easement must be submitted to the board. The board will distribute the consideration in light of the account's payment record, the amount of consideration and the effect on the value of the land. At least 1/2 of the con-

sideration will be retained by the board and applied to the principal balance of the account.

(g) Any payment made to compensate for temporary damage to the land, such as to growing crops or to plowed fields, should be paid directly to the contract holder. The amount of such payment and its purpose must be specifically stated in the grant of easement.

(h) If payment is made for permanent damage to or depletion of the land (such as the cutting of timber), 1/2 of that amount must be paid to the board. This amount is to be applied to the principal of the veteran's account.

(i) If the easement is to be donated, the grant of easement should so state.

§175.16. *Payment in Full.*

(a) When an account is paid in full the board will draft a deed conveying the land to the original veteran-purchaser or the last approved assignee. If a deed is executed to someone other than the legal owner, the deed and the rights thereto shall inure to the benefit of the legal owner. An \$80 fee must be paid to the board for issuance of the deed.

(b) The board will accept a cashier's check, certified check, personal check, money order, or cash as final payment.

(c) The board will furnish a final statement to the contract holder at any time upon request.

§175.17. *Fees and Deposits.* In addition to the fees cited in this chapter the board is authorized and required to collect the following fees when they are applicable:

(1) fee for each appraisal—\$120;

(2) contract of sale and purchase transfer fee for each transfer—\$140;

(3) mineral lease service fee for each lease executed by the purchasers—\$100;

(4) reappraisal fee, when required by the board—\$120;

(5) fee for servicing and filing each easement—\$40;

(6) service fee for each contract of sale and purchase—\$70;

(7) fee for homesite, severance deed or pay-in-full deed—\$80;

(8) fee for reinstatement of a forfeited account:

(A) if forfeited for the first time \$25 for each month (or any portion thereof) the account has been in a forfeited status;

(B) if forfeited for the second time \$50 for each month (or any portion thereof) the account has been in a forfeited status;

(C) if forfeited for the third time (and thereafter) \$250 for each month (or any portion thereof) the account has been in a forfeited status; and

(9) fee for processing a veterans loan application, including administrative costs and legal expenses—\$375.

§175.18. *Resale of Forfeited Land.* Land revested in the board by forfeiture of a con-

tract may be resold to the highest bidder in a forfeited land sale. The board shall set terms, conditions, and guidelines governing the sale, and shall make these available to any prospective bidder for a reasonable fee. These terms shall include, but are not limited to the following.

(1) The first time a tract is offered for sale it may only be resold to a veteran who meets the eligibility requirements of §175.2 of this title (relating to Application/Eligibility).

(2) Any tract not purchased the first time it is offered for sale may be resold to any bidder approved by the board.

(3) Each bidder shall be required to deposit, in cash, an amount designated by the board.

(4) The land shall be sold under contract of sale and purchase not to exceed 30 years in duration.

(5) Each contract of sale and purchase shall conform to the provisions of the Natural Resources Code and shall be in such form, and contain such terms and conditions, as the chairman of the board may prescribe.

(6) The board may reject any and all bids.

(7) If a successful bidder refuses to execute a contract of sale and purchase, the money submitted with his bid is forfeited and shall be deposited in the state treasury and credited to the fund.

§175.19. *Subdivision Loan Processing.*

(a) To qualify for subdivision loan processing a seller must:

(1) have, or plan to have at least five tracts of land available for sale to veterans in the same subdivision or development;

(2) agree to comply with all local ordinances and regulations regarding the subdivision or resubdivision of land; and

(3) agree to provide the services and materials described in this section to interested veterans in order to facilitate the board's processing of loans.

(b) A written request for subdivision loan processing of an existing or proposed subdivision must be submitted to the board.

(c) Those sellers who qualify for subdivision loan processing may request the board to perform a preliminary appraisal of the subdivision. This preliminary appraisal process will include:

(1) establishing high and low per acre values for the subdivision. The board will use these valuations in determining how much it will loan for the purchase of tracts in the subdivision;

(2) advising the seller, when appropriate, of the best subdivision plan, so as to maximize land values of the gross acreage for sale; and

(3) discussing requirements for roads, easements, water sources, and other factors affecting land values. Recommendations will be made if appropriate.

(d) The fee for the preliminary subdivision appraisal is \$2.00 per acre, calculated on gross acreage available in the subdivision. The minimum fee is \$250.

(e) After the preliminary appraisal has been completed and the seller indicates that tracts within a subdivision are ready for sale to veterans, the seller may make arrangements with the board for appraisals of specific tracts. The board will commit itself to a loan value based upon these appraisals even though a specific veteran purchaser has not yet been identified. To obtain these appraisals, the seller must:

(1) supply a ground survey of each tract of land by a registered surveyor.

(2) submit to the board a certified copy of a recorded subdivision plat if the tracts are to be sold by lot and block numbers. This plat must contain evidence that it has been approved and accepted by the county commissioners.

(3) obtain a title insurance commitment for each tract;

(4) request a field appraisal of each tract by the board. A fee of \$120 is charged in advance for each appraisal. This fee will be refunded to the seller if the tract is sold to a veteran through the Veterans Land Program; and

(5) furnish a recorded subdivision plat, if requested by the board.

(f) Sellers may arrange to obtain application packets from the board. These packets will not have an application serial number or a 90-day void date on them and will be handled as follows.

(1) The application packet will be inactive until a veteran purchases it from the seller for \$25 and that amount is received by the board, along with the veteran's name, address, and phone number.

(2) The board will then assign a serial number and a 90-day void date to the application.

(3) The veteran and the seller may complete an application the same day it is sold to the veteran and mail the completed packet to the board at that time.

(4) The application becomes the property of the veteran when it is activated and it may be used for the purchase of any land that the veteran wishes to buy which qualifies for the veteran land program.

(g) Sellers using the subdivision loan processing system should help veterans complete all forms and documents required for processing and closing loans. Sellers will also be responsible for having veterans:

(1) submit the correct amounts for down payments and fees required by the board; and

(2) provide any missing documentation needed in order to qualify, process or close a loan.

(h) Completed application packets must be received by the board within 30 days of the date the application contract is signed.

(i) Application packets are to be submitted by the seller and must include:

(1) a copy of the recorded subdivision plat or other evidence of compliance with local regulations and ordinances; and

(2) a title insurance commitment for the tract to be purchased.

(j) Due to the nature and purpose of the subdivision loan processing program, it is the seller's responsibility to work with the veteran and the board to expedite the processing of the loan. For this reason it is suggested that the seller designate one individual to serve as a contact person with the board. This person should be familiar with the board's forms, rules, procedures, and any other requirements necessary for successful processing of the loan. In this regard it is also suggested that the contact person familiarize himself and maintain regular contacts with the board's field staff, county committees, local veterans' service officers, and the title company providing insurance.

§175.20. *Delinquencies and Forfeiture Procedures.*

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

(1) *Account*—The loan account a borrower holds with the Veterans Land Board. The account includes the amount of the unpaid principal balance of the loan, any delinquent amount and the contracts, forms and other information relating to a borrower's loan with the board.

(2) *Borrower*—The person presently obligated to make the loan installment payments set forth in the contract. The borrower may be the original veteran purchaser, or a nonveteran purchaser at a forfeited land sale, or the last board-approved assignee of the original veteran purchaser.

(3) *Contract*—The contract of sale and purchase between the board and a borrower.

(4) *Current*—The account is in good standing with no payments delinquent.

(5) *Delinquent amount*—The total amount needed to bring an account current. This delinquent amount includes all past due installments plus all accrued penalty interest. The delinquent amount does not include the reinstatement penalty.

(6) *Forfeiture*—The action by which the board declares a borrower to be in breach of his or her contract by virtue of failing to perform a material term of the contract, including, but not limited to, timely payment of the loan installments. Once a contract is forfeited, a borrower no longer has any rights under the terms of the contract.

(7) *Installment*—The amount of the periodic loan payment specified by the contract.

(8) *Partial payment agreement*—A written agreement with the account-holder of a schedule of partial payments to be made to clear the delinquent amount prior to the date of the next installment due date.

(9) *Penalty interest*—The interest which accrues on a loan installment which has become delinquent.

(10) *Reinstatement penalty*—The amount charged to a borrower (whose contract has been forfeited by the board) in order to reinstate the contract. The reinstatement penalty includes the costs of notifying the borrower of delinquencies, forfeiture and forfeiture procedures, and all other costs of processing the reinstatement of a forfeited contract. The reinstatement penalty is in addition to the amount necessary to bring the account current.

(b) *Partial payment agreements (PPAs)* may be granted at any time prior to the date the account is forfeited, providing the account meets the following requirements. The option of including more than two semiannual installments in the partial payment agreement will be made on a case by case basis.

(1) The account is not currently on a partial payment agreement.

(2) The account has not been on a partial payment agreement in the past 12 months.

(c) When a scheduled loan installment is not received by the board within five days of the due date stated in the contract, the installment becomes delinquent and shall accrue penalty interest at the rate of 1½ percentage points above the contract interest rate. The account shall continue in a delinquent status until the full amount of the installment, plus accrued penalty interest, has been received by the board.

(1) If an account remains in a delinquent status for 150 or more consecutive days, it shall become eligible for forfeiture by the board.

(A) For contracts with semiannual installment payments the following shall apply.

(i) Within 30 days of an installment becoming delinquent, the board shall send a delinquency notice to the borrower advising that the installment is delinquent and requesting payment.

(ii) If payment of the delinquent amount is not received within 60 days of the installment due date, the board shall thereafter send a second delinquency notice to the borrower advising that the installment is delinquent and requesting payment.

(iii) If payment of the delinquent amount is not received within 120 days of the installment due date, the board shall thereafter send a third delinquency notice to the borrower advising that the installment is delinquent and requesting payment.

(B) For contracts with monthly installment payments the following shall apply.

(i) After installment payments have become two months delinquent, the board shall send a delinquency notice to the borrower advising that the account is delinquent and requesting payment.

(ii) After installment payments have become four months delinquent, the board shall send a second delinquency notice to the borrower advising that the account is delinquent and requesting payment.

(C) If payment of the delinquent amount is not received within 60 days of the date the final delinquency notice was sent to the borrower, the board may, at any time thereafter, notify the borrower in writing of a date by which payment must be received. This notice shall advise the borrower that failure to make the payment by that date shall make the contract eligible for forfeiture and shall state that if forfeiture occurs all payments made by the borrower shall be lost.

(D) If payment of the delinquent amount is not received by the date specified and described in subparagraph (C), the contract may be forfeited by the board 30 days after written notice of the impending forfeiture has been provided to the borrower. This notice shall clearly indicate that no further notice of impending forfeiture will be given to the borrower and it must specify the reason the contract is subject to forfeiture. The notice must be sent by registered mail to the last known address of the original veteran purchaser and his subsequent assignees.

(2) The contract is also subject to forfeiture if the provisions of the Natural Resources Code, Chapter 161, the contract, or the rules of the board are not satisfied. The board must give 30 days written notice to the borrower, the original veteran purchaser (if different from the borrower) and all board-approved assignees of the original veteran purchaser, if any, and must specify the reason why the contract is subject to forfeiture. This notice will be sent by registered mail to the last known addresses of these parties. If the reason for forfeiture is cured or corrected within 30 days the board shall not declare a forfeiture. If a contract is subject to forfeiture for any of the previously stated reasons, or because the veteran purchaser has assigned the contract to a non-veteran without obtaining the board's permission and without using the board's forms, the board may, at its option, require that the account be paid in full, including penalties and interest which the board may deem appropriate, within 60 days of the above notice. Title to the tract will then be deeded to the borrower.

(3) The board is the sole judge of forfeiture of any contract.

(d) The board may consider forfeiting a contract for which the 30-day notice period described in subsection (c)(2) of this section has elapsed. The board shall indicate on its agenda for said meeting that the forfeiture of contracts shall be considered.

(1) A forfeiture shall be effective at the time the board meets and adopts a resolution directing its chairman to endorse on the wrapper that contains the papers of the sale, or on the purchase contract filed in the General Land Office, the word "forfeited"

(or words of similar import), the date of the action, and to officially sign the document. At that time, the land and all payments previously made are forfeited.

(2) Notice of the board's action in forfeiting the contract shall be mailed to the county clerk of the county in which the land is located.

(3) The borrower shall be notified by registered mail sent to his last known address that the contract has been forfeited and that he must vacate the premises within 45 days of the date of the letter.

(4) If deemed necessary, the board shall request the attorney general to institute legal proceedings to enforce the forfeiture, to recover the full amount due at the time the forfeiture occurred, or to protect any other right to the land. The liability of the original veteran purchaser and any subsequent assignee or assignees are joint and several, but the original veteran purchaser is primarily liable for payment of the money under the contract.

(5) When the forfeiture is effective, the full title to the land shall revert in the board. Any interest in the mineral estate which the board acquired at purchase shall likewise revert in the board. The board shall recognize, and continue in force and effect, any outstanding valid oil, gas, or mineral lease and collect all rentals, royalties, or other amounts payable under the lease. The board may also lease the land on terms it considers proper:

(A) A lease for agricultural and grazing purposes is subject to cancellation upon the resale of the property.

(B) The board may execute oil, gas, and mineral leases by following the same procedure provided for the School Land Board in the lease of Public School Land.

(6) If a contract has been forfeited and the title to the land reverted in the board, it may be reinstated under the following circumstances.

(A) The borrower, the original veteran purchaser (if different from the borrower), and all board-approved assignees have a right to reinstate the contract at any time before the date on which the board meets and orders the land to be advertised for resale or for lease for mineral development.

(i) Any person wishing to exercise a right of reinstatement shall submit to the board payment of the delinquent amount (including penalty interest), the reinstatement penalty (including costs incident to the reinstatement), and evidence that there are no delinquent taxes due and owing as of the date and time of reinstatement. Any person failing to make such a timely submission shall lose his or her right of reinstatement.

(ii) If there is only one person who has a right of reinstatement (there having been no board approved assignments of the contract), the chairman of the board is authorized to reinstate the contract at any time before the board meets to order the

tract advertised for sale upon receipt of payment of the monies and documents described in clause (i) of this subparagraph.

(iii) If more than one person appears to have a right of reinstatement for the same tract of land, the chairman shall not be authorized to reinstate the contract prior to the date and time the board meets to order the tract advertised for sale. In this event, all persons wishing to exercise a right of reinstatement to the same tract must each submit to the board the monies and documents described in clause (i) of this subparagraph. When the board meets to order the tract advertised for sale, it shall review the submissions of all persons wishing to exercise a right of reinstatement. If, in the judgment of the board, any submission is incomplete, the party making such submission shall be deemed to have failed to exercise his or her right of reinstatement. Any monies and documents submitted by such persons shall be returned. If there are still two or more persons who satisfy the requirements to reinstate the same contract, the board shall decide, in its discretion, who may exercise the right to reinstate. Such determinations shall be made on a case by case basis.

(B) After the tract has been ordered advertised for sale, there is no right of reinstatement. However, the borrower, the original veteran purchaser (if different from the borrower), or any board-approved assignee may petition the board to permit reinstatement. In this event, reinstatement may only be approved by the board at a regular meeting.

(i) Reinstatement may only be permitted if the board has not accepted a bid for the tract and the rights of third parties have not vested. The board, in its discretion, may set conditions which must be satisfied before reinstatement will be permitted under this subsection. If the board permits reinstatement, the chairman shall be authorized by the board to make a written agreement with the party seeking reinstatement, setting forth all conditions for reinstatement, including a date by which these conditions must be satisfied. The conditions shall include, but are not limited to, the following: payment of the delinquent amount (including penalty interest), payment of the reinstatement penalty (including costs incident to the reinstatement), and submission of tax certificates evidencing that there are no delinquent taxes on the land. When the board determines that all conditions set forth in the agreement have been satisfied, it shall reinstate the contract.

(ii) The failure of the party seeking reinstatement to satisfy all conditions of the agreement before the date specified therein shall set aside the agreement and the board's offer to reinstate the contract shall be revoked.

(iii) The board shall be the sole judge of whether the conditions of the agreement have been satisfied and the agreement shall so state.

(C) A contract shall not be reinstated until all conditions for reinstatement have been satisfied. Preferably all conditions will be satisfied simultaneously. However, under no circumstances will the board accept payment of the delinquent amount until all other conditions for reinstatement have been satisfied.

§175.21. Prizes and Inducements.

(a) The Natural Resources Code, §161.222(a) and §161.333(a), requires veterans to make an initial payment in an amount set by the board's rules. In order to carry out the intent of this requirement that veterans have equity in any tract purchased through the program, it is the policy of the

Veterans Land Board to approve no transaction, the net effect of which involves the seller, realtor, or any party to the transaction other than the veteran, directly or indirectly paying the down payment. This includes inducements such as zero coupon bonds, savings bonds, etc.

(b) Subsection (a) of this section shall not be construed to prevent a veteran from contracting with the seller or any other party to a transaction for the payment of program fees and other expenses associated with closing the transaction, including but not limited to, survey costs, title examination, attorney's fees, and appraisal.

(c) Subsection (a) of this section shall not be construed to prohibit privileges in-

cidental to the ownership of land and available to all purchasers in the same subdivision such as participation in a property owners association and/or joint ownership of recreational areas such as parks, lakes, etc.

Issued in Austin, Texas, on February 26, 1986.

TRD-8602078

Garry Mauro
Chairman
Veterans Land Board of
the State of Texas

Effective date: March 4, 1986
Expiration date: March 11, 1986
For further information, please call
(512) 463-5009.

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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.)

The board's action on an emergency matter may be effective for 120 days and is renewable one time for a period not exceeding 60 days immediately following the 120-day period.

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

The State Board of Insurance has approved a filing by the Surety Association of Amer-

ica, of one endorsement form for use with health maintenance organization bond.

The one rider SR 8143a (Enforcement 220) is to be used only with Comprehensive 3-D Policy Form A or commercial blanket bond issued to a health maintenance organization in Texas to extend the discovery period for fraud or dishonesty losses to three years. The three-year discovery period applies in the event a health maintenance organization goes out of business, is sold, is voluntarily liquidated, or becomes bankrupt.

It is the board's opinion and the board finds this filing should be approved as an emergency filing under the Insurance Code, Article 5.97, §(j), as there is a clear and compelling necessity that immediate action be taken to permit issuance of this bond in compliance with the Texas Health Maintenance Organization Act, §30. That provision requires that a health maintenance organization shall maintain in force on all officers and employees a fidelity bond, which said bond shall obligate the surety to pay such loss of money

or other property as the health maintenance organization shall sustain through acts of fraud or dishonesty by an employee or officer. This form will permit health maintenance organizations to comply with statutory law.

This filing is effective for 120 days from and after the date of its filing for publication in the Office of the Secretary of the State.

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

Issued in Austin, Texas, on February 25, 1986.

TRD-8601879

Nicholas Murphy
State Board of
Insurance

Effective date: February 26, 1986
For further information, please call
(512) 463-6327.

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Proposed

Rules

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

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

TITLE 16. ECONOMIC REGULATION Part II. Public Utility Commission of Texas Chapter 23. Substantive Rules General Rules ★ 16 TAC §23.11

(Editor's note: The Public Utility Commission of Texas 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 Public Utility Commission of Texas proposes an amendment to §23.11, concerning fuel cost reports. Rapidly changing fuel prices and the potential impact on consumers makes it imperative that the commission have the latest accurate information regarding contracts in order that proper decisions can be made.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for small businesses as a result of enforcing or administering the section. The effect on state government is an estimated maximum additional cost of \$5,000 per year for the first five-year period. The effect on local government is an estimated additional cost of less than \$500 per year for the first five year-period.

Ms. Ryan 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 that the commission can make more accurate judgments based on knowledge from contracts the utilities have entered into and ultimately set rates more equitable to both the rate payer and the utility. 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 Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which

provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

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

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

TRD-8602041 Rhonda Colbert Ryan
Secretary
Public Utility
Commission of Texas

Earliest possible date of adoption:
April 7, 1986
For further information, please call
(512) 458-0100.

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Rates ★ 16 TAC §23.24

The Public Utility Commission of Texas proposes an amendment to §23.24, concerning form and filing of tariffs. Instead of four copies of tariffs being filed, five are required in order that Consumer Affairs may have a working copy.

Rhonda Colbert Ryan, secretary of the commission, 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.

Ms. Ryan also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased scrutiny of provisions in utility tariffs that affect consumer service. 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 Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and en-

force rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

§23.24. Form and Filing of Tariffs.

(a) (No change.)

(b) Requirements as to size, form identification, and filing of tariffs.

(1) Every public utility shall file with the commission filing clerk five [four] copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility services by September 1, 1976. It shall also file five [four] copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(2)-(4) (No change.)

(c)-(i) (No change.)

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

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

TRD-8602039 Rhonda Colbert Ryan
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption:
April 7, 1986
For further information, please call
(512) 458-0100.

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Customer Service [Quality of Service]

★ 16 TAC §23.51 [23.65]

The Public Utility Commission of Texas proposes an amendment to §23.65, concerning electric submetering. The section is amended to include mobile home parks, water, and wastewater within the scope of the commission's submetering rules. Guidelines are provided for the administration of submetering. It also seems more proper to move this section, which is renumbered, from §23.65, regarding

quality of service, to §23.51, regarding customer service.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section. The effect on state government is an estimated additional cost of \$7,800 per year for the first five-year period.

Ms. Ryan 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 to provide guidelines for and scrutiny of the methods employed by apartment, condominium, and trailer park owners in submetering electric, water, and wastewater services provided to tenants. 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 Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

§23.51. [§23.65] Utility [Electric] Submetering.

(a) General rules.

(1) Purpose and scope.

(A) The provisions of this section are intended to establish a comprehensive regulatory system to assure that the practices involving submetering and billing of dwelling units are just and reasonable to the tenant and the [apartment] owner and to establish the rights and responsibilities of both the [apartment] owner and tenant. The provisions of this section shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, creed, sex, or marital status.

(B) For purposes of enforcement, both utilities and [apartment] owners are subject to the enforcement pursuant to the Public Utility Regulatory Act, which may involve civil penalties of up to \$5,000 for each offense and criminal penalties for willful and knowing violations.

(2) Application. The provisions of this section shall apply to existing apartment houses or mobile home parks utilizing electrical, water, or wastewater submetering as of the effective date of this section as well as those apartment houses and mobile home parks which engage in utility [electrical] submetering as defined by this section at any subsequent date. By statutory requirement,

[after January 1, 1978.] no incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit. Therefore, the provisions of this section shall also apply to such apartment houses and condominiums in the event submetering is chosen.

(3) (No change.)

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

(A) Apartment house—A building or buildings containing more than five dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

[(B) Apartment Owner—For purposes of enforcement, record keeping, and reporting, any owner, operator, or manager of any apartment house engaged in submetering.]

[(B)][(C)] Commission—The Public Utility Commission of Texas.

(C) [(D)] Dwelling unit—A room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities, or a mobile home in a mobile home park.

[(D)][(G)] Hearing—Any proceeding based on an application, petition, complaint, or motion.

[(E) Electric metering—Individual apartment dwelling unit metering performed by a utility company.]

[(E)][(H)] Master meter—A meter used to measure, for billing purposes, all electric or water usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units therein.

[(F) Electric submetering—Apartment dwelling unit metering performed by the apartment owner.]

(F) [(I)] Month or monthly—The period between any two consecutive meter readings by the utility, either actual or estimated, at approximately 30-day intervals.

(G) Owner—For purposes of this section, any owner, operator, or manager of any apartment house or mobile home park engaged in electric, water, or wastewater utility submetering.

[(H) Utility metering—Individual apartment dwelling unit metering of electric, water, or wastewater utility service performed by a utility company.]

(I) Utility service—For purposes of this section, utility service shall include electric, water, and wastewater service only.

[(J) [(F)] Utility submetering—Individual dwelling unit metering of electric, water, or wastewater utility service performed by the owner.]

(b) Records and reports.

(1) The [apartment] owner shall maintain and make available for inspection by the tenant the following records:

(A) the billing from the utility to the apartment owner for the current month and the 12 preceding months;

(B) the calculation of the average cost per kilowatt-hour of per gallon for the current month and the 12 preceding months;

(C) all submeter readings and tenant billings for the current month and the 12 preceding months;

(D) all submeter test results for the current month and the 12 preceding months.

(2) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at the convenience of both the apartment owner and tenant.

(3) All records shall be made available to the commission upon request.

(c) Billing. All rental agreements between the [apartment] owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued thereon, that electrical consumption, water consumption, or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the [apartment] owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the [apartment] owner. Each [apartment] owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary as approved by the commission to assure that the tenant is informed of his rights and the [apartment] owner's responsibilities under this section of the substantive rules.

(1) Rendering and form of bill.

(A) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the scheduled reading date of the utility's master meter.

(B) The unit of measurement shall be a kilowatt-hour (KWH) for electric submetering and a gallon for water or wastewater submetering.

(C) The [apartment] owner shall be responsible for determining that the energy or water consumption billed to any dwelling unit shall be only for that [energy]

submetered [for] and consumed within that unit.

(D) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in subparagraph (H) of this paragraph. The submetered bill must clearly state "submetered electricity" or "submetered water" or "submetered wastewater" as applies.

(E) The bill shall reflect only submetered usage. Utility [Electrical] consumption for all common facilities will be the responsibility of the [apartment] owner and not of the tenant. Allocation of central systems for air conditioning, heating, and hot water are not prohibited by these rules as set forth in §23.50 of this title (relating to Central System or Nonsubmetered Master-metered Utilities.)

(F) The [apartment] owner shall not impose any extra charges on the tenant over and above those charges which are billed by the utility to the [apartment] owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by these sections.

(i) A one-time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

(ii) A reconnect fee may be applied if service to the tenant is disconnected for nonpayment of submetered bills in accordance with subsection (d)(1) of this section. Such reconnect fee shall be calculated based on the average actual cost of the owner [landlord] for the expenses associated with the reconnection, but under no circumstance shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(G) The tenant's submeter bills shall be calculated in the following manner:

(i) after the [apartment] electric bill is received from the utility, the [apartment] owner shall divide the net total charges for electrical consumption, plus applicable tax, by the total number of kilowatt-hours to obtain an average cost per kilowatt hour. This average kilowatt-hour cost shall then be multiplied by each tenant's kilowatt-hour consumption to obtain the charge to the tenant. The computation of the average cost per kilowatt-hour shall not include any penalties charged by the utility to the [apartment] owner of disconnect, reconnect, late payment, or other similar service charges.

(ii) The tenant's water or wastewater submeter bills shall be calculated in the following manner: after the water or wastewater bill is received from the utility, the owner shall divide the net total charges for the water or sewer consumption, plus applicable tax, by the total number of gallons to obtain an average cost per gallon. This average gallonage cost shall then be multiplied by each tenant's gallonage consumption to obtain the charge to the tenant. The consumption of the average cost per gallon shall not include any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges.

(H) The tenant's electric and water or wastewater submeter bill shall show all of the following information:

(i) (No change.)

(ii) the number of kilowatt-hours or gallons metered;

(iii) the computed rate per kilowatt-hour or gallons;

(iv) the total amount due for electricity or water used;

(v) a clear and unambiguous statement that the bill is not from the [electric] utility, which shall be named in the statement;

(vi)-(ix) (No change.)

(2) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for submetered [electrical] service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(3) Disputed bills. In the event of a dispute between the tenant and the [apartment] owner regarding any bill, the [apartment] owner shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the [apartment] owner of the dispute.

(4) Tenant access to records. The tenants of any dwelling unit [in an apartment house] whose electrical consumption, water consumption, or wastewater based on water consumption is submetered shall be allowed by the [apartment] owner to review and copy the master billing for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house or mobile home park for the current month and for the 12 preceding months.

(5) (No change.)

(6) Overbilling and underbilling. If submetered billings are found to be in error, the [apartment] owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the [apartment] owner may backbill the tenant for the amount which was underbilled. The backbilling is not to exceed six months unless the owner can produce records to identify and justify the additional amount of backbilling. If the underbilling is \$25 or more, the [apartment] owner shall offer to such tenant a deferred payment plan option, for the same length of time as that of the underbilling. However, the [apartment] owner may not disconnect service if the tenant fails to pay charges arising from an underbilling more than six months prior to the date the tenant was initially notified of the amount of the undercharges and the total additional amount due. Furthermore, adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(d) Discontinuance of service.

(1) Disconnection for delinquent bills.

(A) Utility service may only be disconnected for nonpayment of utility bills. A tenant's [electric] utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of [electric] service.

(B) Under these provisions, a tenant's electric service may not be discontinued for nonpayment of water or wastewater service and water or wastewater service may not be discontinued for nonpayment of electric service.

(2) Disconnection on holidays or weekends. Unless a dangerous condition exists, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the apartment house or mobile home park are not available for the purpose of making collections and reconnecting service.

(e) Submeters.

(1) Submeter requirements.

(A) Use of submeter. All electrical energy or water sold by an [apartment] owner shall be charged for by meter measurements.

(B) Installation by [apartment] owner. Unless otherwise authorized by the commission, each [apartment] owner shall be responsible for providing, installing, and maintaining all submeters necessary for the

measurement of electrical energy, water, or wastewater to its tenants.

(2) Submeter records. Each [apartment] owner shall keep the following records:

(A) Submeter equipment record. Each [apartment] owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(B) (No change.)

(3) Submeter readings. Submeter unit indication. In general, each meter shall indicate clearly the kilowatt-hours or gallons for which charge is made to the tenant.

(4) Submeter tests on request of tenant. Each [apartment] owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's presence or in that of the tenant's authorized representative, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards of self-contained watt-hour meters as established by the latest edition of American National Standards Institute, Incorporated, (ANSI), Standard C12 (American National Code for Electricity Metering), or by the standards set by the American Water Works Association (AWWA) for water, or wastewater meters, a charge of up to \$15 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, [for self-contained watt-hour meters as established by the latest edition of American National Standards Institute, Incorporated, Standard C12,] no charge shall be made to the tenant for making the test. Following completion of any requested test, the [apartment] owner shall promptly advise the tenant of the results of the test.

(5) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (e)(4) of this section for self-contained watt-hour meters as established by the latest edition of American National Standards Institute, Incorporated Standard C12,] proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with subsection (c)(6) of this section. If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

(6) Bill adjustment due to conversion. If, during the 90-day period preceding the installation of [electric] meters or submeters, an [apartment] owner increases rental rates, and such increase is attributable to increased costs of utilities, then such [apartment] owner shall immediately reduce

the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90-day period.

(7) Location of submeters. Submeters, [and] service switches, or cut-off valves in conjunction with the submeters shall be installed in accordance with the latest edition of ANSI, [American National Standards Institute, Incorporated] Standard C12, or by the standards set by the AWWA, [or other standards as may be prescribed by the commission,] and will be readily accessible for reading, testing, and inspection, where such activities will cause minimum interference and inconvenience to the tenants.

(8) Submeter testing facilities and equipment.

(A) Qualified expert. Each [apartment] owner shall engage an independent qualified expert to provide such instruments and other equipment and facilities as may be necessary to make the submeter tests required by this section. Such equipment and facilities shall generally conform to ANSI, [American National Standards Institute, Incorporated] Standard C12, or to the AWWA unless otherwise prescribed by the commission, and shall be acceptable to the commission and shall be available at all reasonable times for the inspection by its authorized representatives.

(B) Portable standards. Each [apartment] owner engaged in electrical, water, or wastewater submetering shall, unless specifically excused by the commission, provide or utilize a testing firm which provides portable test instruments as necessary for testing billing submeters.

(C) Reference standards. Each [apartment] owner shall provide or have access to suitable indicating [electrical] instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing submeters.

(D) (No change.)

(E) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least every 120 days during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the [apartment] owner.

(9) Accuracy requirements for submeters.

(A) Limits. No submeter that exceeds the test calibration limits for self-contained watt-hour meters as set by the ANSI, [American National Standards Institute, Incorporated] Standard C12, or by the AWWA, shall be placed in service or left in service. All electrical current transformers, potential transformers, or other such devices used in conjunction with an electric [the]

submeter shall be considered part of the submeter and must also meet test calibration and phase angle limits set by ANSI C12 and C57.13 for revenue billing. A nameplate shall be attached to each transformer and shall include or refer to calibration and phase angle data and other information required by ANSI C12 and ANSI C57.13 for revenue billing. Whenever on installation, periodic, or other tests, an electric [a] submeter or transformer is found to exceed these limits, it shall be adjusted, repaired, or replaced. Whenever on installation, periodic, or other tests, a submeter is found to exceed these limits, it shall be adjusted.

(B) (No change.)

(10) (No change.)

(11) Testing of electric submeters in service. Standard electromechanical single stator watt-hour meters with permanent braking magnets shall be tested in accordance with ANSI C12 standards for periodic, variable interval, or statistical sampling testing programs. All other types of submeters shall be tested at least annually unless specified otherwise by the commission.

(12) Restriction. Unless otherwise provided by the commission, no dwelling unit may be submetered unless all dwelling units [in the apartment house] are submetered.

(13) Same type meters required. All submeters [in an apartment house] which are served by the same master meter shall be of the same type, such as induction or electronic.

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 February 27, 1986.

TRD-8602040

Rhonda Colber Ryan
Secretary
Public Utility
Commission of Texas

Earliest possible date of adoption:

April 7, 1986

For further information, please call
(512) 458-0100.

★ ★ ★

Quality of Service

★ 16 TAC §23.66

(Editor's note: The Public Utility Commission of Texas 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 Public Utility Commission of Texas proposes an amendment to §23.66, concerning contracts between electric utilities and qualifying utilities. Because of volatile fuel prices, particularly the declining market price of gas, it is imperative that the commission have access to co-generation contracts.

Rhonda Colbert Ryan, secretary of the commission, 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.

Ms. Ryan 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 that the commission will have access to the latest and most accurate information. 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 Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendment is proposed under Texas Civil Statutes, Article 1448c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

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

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

TRD-8602038 Rhonda Colbert Ryan
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption:
April 7, 1986
For further information, please call
(512) 458-0100.

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Part IV. Texas Department of Labor and Standards Chapter 69. Manufactured Housing Division Fee Structure

★ 16 TAC §§69.30-69.35

The Texas Department of Labor and Standards proposes the repeal of §§69.30-69.35, concerning modular decal fees, modular home monitoring fees and reports, permanent foundation installation inspection fees, modular design review fees, and modular certificate fees.

John P. Steele, director, Manufactured Housing Division, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Steele also has determined that for each year of the first five years the repeal are in effect the public benefit anticipated as a result of enforcing the repeal will be a more concise Chapter 69. Modular buildings were redefined by the 69th Legislature, 1985, as industrialized housing, and are now regulated under Texas Civil Statutes, Article 5221f-1. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to John P. Steele, Director, Manufactured Housing Division, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

- §69.30. *Modular Decal Fee.*
- §69.31. *Modular Home Monitoring Fee and Report.*
- §69.32. *Permanent Foundation Installation Inspection Fee.*
- §69.33. *Modular Design Review Fee.*
- §69.34. *Modular Alteration Fee.*
- §69.35. *Modular Certification Fee.*

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 February 27, 1986.

TRD-8602095 Allen Parker, Sr.
Commissioner
Texas Department of
Labor and Standards

Earliest possible date of adoption:
April 7, 1986
For further information, please call
(512) 463-3127.

★ ★ ★

Standards and Requirements

★ 16 TAC §§69.66-69.81

The Texas Department of Labor and Standards proposes the repeal of §§69.66-69.81, concerning modular standards and requirements. The sections are repealed because they are old and obsolete. Modular homes were redefined as industrialized housing by the 69th Legislature, 1985, and are now regulated by Texas Civil Statutes, Article 5221f-1.

John P. Steele, director, Manufactured Housing Division, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Steele also has determined that for each year of the first five years the repeal is in effect there will be no public benefit anticipated as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to John P. Steele, Director, Manufactured Housing Division, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to adopt rules and regulations and take all action necessary to assure compliance with the intent and purpose of the Act, and to provide for uniform enforcement of all provisions of the Act.

- §69.66. *Modular Home Installation Requirements.*
- §69.67. *Modular and HUD-Code Custom Construction.*
- §69.68. *Modular Housing Identification Number.*
- §69.69. *Modular Home Decal.*
- §69.70. *Modular Manufacturer Self-Certification Decal.*
- §69.71. *Modular Home Data Plate Requirements.*
- §69.72. *Modular Home Manufacturer Certification Requirements.*
- §69.73. *Modular Manufacturer Certification Report.*
- §69.74. *Modular Design Review Agency Requirements.*
- §69.75. *Modular Design Review Agency Responsibility.*
- §69.76. *Modular Manufacturer Design Submittal Requirements.*
- §69.77. *Modular Housing Construction.*
- §69.78. *Modular Codes and Standards Incorporated by Reference.*
- §69.79. *Design Requirements.*
- §69.80. *Prohibited Materials and Procedures.*
- §69.81. *Required Tests.*

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 February 27, 1986.

TRD-8602093 Allen Parker, Sr.
Commissioner
Texas Department of
Labor and Standards

Earliest possible date of adoption:
April 7, 1986
For further information, please call
(512) 463-3127.

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General Requirements

★ 16 TAC §69.129

The Texas Department of Labor and Standards proposes the repeal of §69.129, concerning modular consumer complaint handling and remedial action. This is an obsolete section since the 69th Legislature, 1985, redefined modular housing as industrialized housing under Texas Civil Statutes, Article 5221f-1.

John P. Steele, director, Manufactured Housing Division, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Steele also has determined that for each year of the first five years the repeal is in effect there will be no public benefit anticipated as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to John P. Steele, Director, Manufactured Housing Division, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to adopt rules and regulations and take all action necessary to assure compliance with the intent and purpose of the Act, and to provide for uniform enforcement of all provisions of the Act.

§69.129. *Modular Consumer Complaint Handling and Remedial Action.*

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 February 27, 1986

TRD-8602094

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

Earliest possible date of adoption:

April 7, 1986

For further information, please call
(512) 463-3127.



TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy Chapter 511. Certification as CPA

Educational Requirements

★ 22 TAC §511.57

The Texas State Board of Public Accountancy proposes the repeal of §511.57, concerning the definition of accounting course requirements to take the Uniform CPA Examination. The repeal is proposed simultaneously with proposed new §511.57 concerning the same substantive area.

Bob E. Bradley, 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. Bradley 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 that the new educational requirements will insure a stronger foundation for audit training of prospective CPA's. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary or advisable to insure high standards of professional competency and learning.

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 February 26, 1986.

TRD-8601942

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

Earliest possible date of adoption:

April 7, 1986

For further information, please call
(512) 451-0241.

★ ★ ★

★ 22 TAC §511.57

The Texas State Board of Public Accountancy proposes new §511.57, concerning the definition of accounting courses requirements to take the Uniform CPA Ex-

amination. The section establishes the accounting core courses areas together with a listing of other accounting courses areas. The new section is proposed simultaneously with the proposed repeal of existing §511.57.

Bob E. Bradley, 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. Bradley 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 that the new educational requirements will insure a stronger foundation for audit training of prospective CPA's. There is no anticipated economic cost for those previously applying to take the exam. Others may adjust courses to be taken.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, on or before March 7, 1986, at 9 a.m.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary or advisable to insure high standards of professional competency and learning.

§511.57. *Definition of Accounting Courses.*
The board will accept as accounting courses all passing semester hours (without repeat) shown on official transcripts in the following subject areas:

- (1) accounting core courses:
 - (A) elementary accounting, intermediate accounting, advanced accounting;
 - (B) cost accounting;
 - (C) auditing, internal accounting control, and evaluation;
 - (D) report writing (principally writing financial reports, internal control reports, and management letters);
 - (E) financial statement analysis;

and

- (F) accounting theory.
- (2) other accounting courses:
 - (A) income tax accounting;
 - (B) accounting systems, accounting consultation;
 - (C) accounting for specialized businesses or industries (such as governmental organizations, fiduciaries, banks, etc.);
 - (D) CPA coaching courses in auditing, practice and theory (if offered for credit); and
 - (E) any other course which is principally accounting or auditing in nature but which may be designated by some other name (and the verification of which is obtained in writing from the particular college or university).

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 February 26, 1986.

TRD-8602048

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

Earliest possible date of adoption:

April 7, 1986

For further information, please call
(512) 451-0241.

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Part XXIII. Texas Real Estate Commission Chapter 533. Practice and Procedure

★22 TAC §533.18

The Texas Real Estate Commission proposes an amendment to §533.18, concerning contested case; presiding officer. The amendment clarifies the authority of the agency's chairman to either preside over contested cases or to designate another member of the Texas Real Estate Commission to preside or to rule upon the admissibility of evidence or upon amendments to pleadings. The membership would continue its practice of collectively arriving at the findings of fact and conclusions of law and entering the final order in cases presented before the membership.

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

Mr. Moseley 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 the clarification of the procedure followed in contested cases heard by the membership of the Texas Real Estate Commission. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711

The amendment is proposed under Texas Civil Statutes, §5(e), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§533.18. Contested Case: Presiding Officer.

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

(c) The chairman of the commission or a member designated by him shall preside over hearings conducted before the commission membership. The chairman of the com-

mission or a member designated by him for that purpose shall rule on the admissibility of evidence or amendments to pleadings.

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 February 26, 1986.

TRD-8602085

Mark A. Moseley
Legal Counsel
Texas Real Estate
Commission

Earliest possible date of adoption:

April 7, 1986

For further information, please call
(512) 465-3960.

★ ★ ★

Chapter 535. Provisions of the Real Estate License Act Registration and Certification: Fees

★22 TAC §535.201

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Real Estate Commission, P.O. Box 12188, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Real Estate Commission proposes the repeal of §535.201, concerning the registration of real estate inspectors. This repeal is necessary to conform the agency's rules with a recent amendment to Texas Civil Statutes, Article 6573a, §18C, which replaced the registration process with a licensing procedure for real estate inspectors. The agency is no longer empowered to register inspectors.

Mark A. Moseley, legal counsel, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Moseley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be clarification of the agency's rules with regard to real estate inspectors. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Jack Morris, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 6573a, §5(e), which authorize the Texas Real Estate Commission

to make and enforce all rules and regulations necessary for the performance of its duties.

§535.201. Registered Real Estate Inspectors: Registration and Certification: Fees.

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

Issued in Austin, Texas, on February 26, 1986.

TRD-8602086

Mark A. Moseley
Legal Counsel
Texas Real Estate
Commission

Earliest possible date of adoption:

April 7, 1986

For further information, please call
(512) 465-3960.

★ ★ ★

Chapter 537. Professional Agreements and Standard Contracts Standard Contract Forms

★22 TAC §537.11

The Texas Real Estate Commission proposes an amendment to §537.11, concerning use of standard contract forms by real estate licensees. The amendment clarifies a real estate licensee's obligation to use contract form addendum or other forms promulgated by the agency in lieu of forms which might be available to the licensee from other sources. The amendment also prohibits a license from adding language to a promulgated form which deals with a subject for which an addendum has been promulgated. For example, the amendment requires a licensee to use a temporary lease form promulgated by the agency instead of writing provisions concerning a temporary lease form promulgated by the agency instead of writing provisions concerning a temporary lease into the terms of a promulgated earnest money contract. By requiring use of standard forms, the amendment also serves to reduce error in negotiation of sales, and avoids the unauthorized practice of law by real estate licensees.

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

Mr. Moseley 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 clarification of real estate licensees' obligation to use standard forms promulgated by the Texas Real Estate Commission. The economic cost to individuals who are required to comply with

the section would be the cost of purchasing supplies of the eight promulgated addendum forms, generally available from printers for between \$3.00 and \$5.00 for 50 copies.

Comments on the proposal may be submitted to the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, §16(e), which authorize the Texas Real Estate Commission to adopt rules and regulations requiring real estate brokers and salesman to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

§37.11. *Use of Standard Contract Forms.*

(a) (No change.)

(b) When negotiating contracts binding the sale, exchange, lease, or rental of any interest in real property, a real estate license shall use only those contract forms, **addenda, or other forms** promulgated by the Texas Real Estate Commission for that kind of transaction with the following exceptions:

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

(c) (No change.)

(d) A licensee shall not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. [However,] In negotiating real estate transactions, the licensee may fill in forms for such transactions, using [except as otherwise permitted by these rules] exclusively [those printed] forms which have been approved and promulgated by the Texas Real Estate Commission [as the required standard forms to be used by all real estate licensees] or such forms as are otherwise permitted by these sections. When filling in such a form, the licensee may only fill in the blanks provided and may not add to or strike matter from such form, except that licensees shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties. A licensee shall not add to a promulgated earnest money contract form factual statements or business details for which a contract addendum, temporary lease, or other form has been promulgated by the commission for mandatory use. Nothing herein shall be deemed to prevent the licensee from explaining to the principals the meaning of the factual statements and business details contained in the said instrument so long as the licensee does not offer or give legal advice. It is not the practice of law as defined in this Act for a real estate licensee to complete a contract form which is either promulgated by the Texas Real Estate Commission or prepared by the Texas Real Estate Broker-Lawyer Committee and

made available for trial use by licensees with the consent of the Texas Real Estate Commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee for trial use may be used on a voluntary basis after being approved by the commission.

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

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

Issued in Austin, Texas, on February 28, 1986.

TRD-8602087

Mark A. Moseley
Legal Counsel
Texas Real Estate
Commission

Earliest possible date of adoption:

March 7, 1986

For further information, please call
(512) 465-3960.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 141. Massage Therapists

★25 TAC §141.7, §141.13

The Texas Department of Health proposes amendments to §141.7 and §141.13, concerning the registration of massage therapists. The amendments concern registration procedures and massage therapy instructors. The amendment to §141.7 provides for the inclusion of certain registration information in advertising. The amendment to §141.13 provides that an instructor who teaches more than two apprentice/students shall comply with the requirements for massage therapy schools recognized by the department.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The cost of compliance with the requirement relating to advertising for small businesses will be the cost of additional advertisement space. This cost will vary with the type and size of advertisement. The cost of compliance with the amendment relating to massage therapy instructors will not exceed \$150 per year. It is not anticipated that any large businesses will be affected by these sections.

Mr. Seale also has determined that for each year of the first five years the sec-

tions are in effect the public benefit anticipated as a result of enforcing the sections will be assurance that persons purporting to be registered massage therapists have met the department requirements for registration and that applicants for registration as a massage therapist receive proper instruction to qualify for registration as required by House Bill 2012. The anticipated economic cost to individuals who are required to comply with the amendment relating to advertising as proposed will be the additional cost of advertisement. Comply with the amendment relating to massage therapy instructors will not exceed \$150 per year.

Comments on the proposal may be submitted to Gerald Guthrie, Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be received for 30 days after the proposed rules are published in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4512k, §7, which provide the Texas Board of Health with the authority to adopt rules concerning the regulation and registration of massage therapists in Texas.

§141.7. *Registration Procedures.*

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

(d) Registration name and number.

(1) State-registered massage therapists must include their name as it appears on the registration certificate and their state registration number on all forms of advertising.

(2) Massage establishments must include on all forms of advertising the name, as it appears on the registration certificate, and the state registration number of each massage therapist practicing therein.

§141.13. *Massage Therapy Instructor.*

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

(c) An instructor teaching more than two apprentice/students shall comply with the requirements for massage therapy schools recognized by the department.

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

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

TRD-8602033

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

Proposed date of adoption:

April 12, 1986

For further information, please call
(512) 458-7531.

★ ★ ★

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 1. ADMINISTRATION

Part IV. Office of the Secretary of State Chapter 95. Uniform Commercial Code Information Requests

★1 TAC §95.41

The Office of the Secretary of State adopts an amendment to §95.41, without changes to the proposed text published in the January 21, 1985, issue of the *Texas Register* (11 TexReg 363).

The amendment will clarify the procedure and cost of obtaining copies of uniform commercial code documents from the Office of the Secretary of State.

Upon request, the Office of the Secretary of State will issue copies of uniform commercial code documents on file with its office. If the copies are made by the agency, there will be a charge of \$1.00 per page, but not less than \$5.00. For copies made by the person requesting the documents, the charge will be \$.75 for the first page, and \$.25 for each page thereafter.

No comments were received concerning the adoption of the section.

The amendment is adopted under Texas Civil Statutes, Article 6252-17a, §13, which provide each governmental body with the authority to promulgate rules of procedure by which public records may be inspected.

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 February 27, 1986.

TRD-8602036 Myra A. McDaniel
Secretary of State

Effective date: March 30, 1986
Proposal publication date: January 21, 1986
For further information, please call
(512) 463-5701.



TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy Chapter 501. Professional Conduct

General Provisions

★22 TAC §501.1

The Texas State Board of Public Accountancy adopts an amendment to §501.1, without changes to the proposed text published in the January 7, 1986, issue of the *Texas Register* (11 TexReg 87).

The amendment is required to provide the current citation of statutory authority for the Texas State Board of Public Accountancy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the State Board of Public Accountancy with the authority to sections relating to professional conduct.

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 February 27, 1986.

TRD-8602079 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: March 21, 1986
Proposal publication date: January 7, 1986
For further information, please call
(512) 451-0241.



★22 TAC §501.2

The Texas State Board of Public Accountancy adopts an amendment §501.2, without changes to the proposed text published in the January 7, 1986, issue of the *Texas Register* (11 TexReg 88).

The amendment is required to provide the current citation of statutory authority for

the Texas State Board of Public Accountancy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate sections relating to professional conduct.

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 February 27, 1986.

TRD-8602080 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: March 21, 1986
Proposal publication date: January 7, 1986
For further information, please call
(512) 451-0241.



Client Records

★22 TAC §501.31

The Texas State Board of Public Accountancy adopts an amendment to §501.31, without changes to the proposed text published in the January 7, 1986, issue of the *Texas Register* (11 TexReg 88).

The amendment is required to provide the current citation of statutory authority for the Texas State Board of Public Accountancy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate section relating to professional conduct.

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 February 27, 1986.

TRD-8602081

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

Effective date: March 21, 1986

Proposal publication date: January 7, 1986

For further information, please call
(512) 451-0241.

★ ★ ★

Chapter 503. Definitions Definitions

★22 TAC §503.1

The Texas State Board of Public Accountancy adopts an amendment to §503.1, without changes to the proposed text published in the January 7, 1986, issue of the *Texas Register* (11 TexReg 88).

The amendment is required to provide the current citation of statutory authority for the Texas State Board of Public Accountancy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate sections relating to professional conduct.

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 February 27, 1986.

TRD-8602082

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

Effective date: March 21, 1986

Proposal publication date: January 7, 1986

For further information, please call
(512) 451-0241.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Spinal Screening Program

★25 TAC §§37.141-37.152

The Texas Department of Health adopts new §§37.141-37.152. Sections 37.142, 37.148, and 37.150 are adopted with changes to the proposed text published in the December 6, 1985, issue of the *Texas Register* (10 TexReg 4679). Sections 37.141, 37.143-37.147, 37.149, 37.151, and

37.152 are adopted without changes to the proposed text and will not be republished.

The sections implement the requirements of House Bill 832, 69th Legislature, 1985, concerning the establishment of a program to detect abnormal spinal curvature in children.

Specifically, the new sections concern purpose, definitions, scope of the department's authority, standards for screener and instructor training, termination of screener or instructor training, termination of screener or instructor participation, standards for spinal screening services, responsibilities of public and private schools, inspection of school screening records, transfer of individual records between schools, standards for screening tests and screener approval, monitoring and recordkeeping of program activities, confidentiality, and non-discrimination provisions.

Concerning §37.142, the following nine comments were received.

A commenter recommended that the department add a section covering the training of health professionals. The department disagrees, because the statutory authorization is limited to the training of non-health practitioners. The statute does not authorize the department to adopt sections covering the training of health professionals.

A commenter recommended that the term "child's health record" be retitled as "health record." The department disagrees, because the change would not clarify or improve the definition, since the official health record on a child may be kept individually or collectively.

A commenter recommended that the definition of "conflict of interest" be clarified by stating that the persons who provide the professional examination should not be the screeners or related to screeners in any way. The department agrees, and has clarified the definition accordingly.

A commenter recommended that the definition of "professional examination" be clarified by specifying which professionals are acceptable to the department for diagnosis and treatment. The department disagrees, because the statute does not authorize the department to adopt sections in this area. Individual licensing statutes determine the scope of licensing activities.

A commenter recommended that the section define "school" and add the term to the list of definitions. The department agrees, and has added the definition.

A commenter recommended that the section define "school administrator." The department disagrees that a definition of the term is necessary, because the addition of a definition of "school" to the section and the explanations concerning

school administrator in §37.148 satisfactorily describe the term.

A commenter recommended that the definition of "school spinal screening experience" is unnecessary. The commenter did not give a reason for the recommended deletion. The department's position is that it is appropriate for the section to define the term because the definition clarifies the use of the term throughout the section.

A commenter recommended that the definition of "screening" should be amplified to include the views of standing erect, front, back, and side views of the forward-bend test. The department disagrees that this modification would add anything to the definition, because the proposed definition already includes these views.

A commenter recommended that the section contain a definition of "screening program" as distinguished from the screening procedure. The department disagrees, because such a definition would not clarify or add anything to the proposed section.

Concerning §37.144, the following two comments were received.

A commenter recommended that the section specify that a volunteer provider should not be responsible for the requirements of proposed §37.144(3)(D). The department agrees; however, no change to the section is necessary because the proposed subparagraph does not make the volunteer provider responsible for these requirements.

A commenter recommended that a one-year certification would be more appropriate than a five-year certification. The department disagrees, because it is impractical to recertify and retrain non-health practitioners every year. A five-year certification period is the most practical requirement.

Concerning §37.147, a commenter recommended that paragraph (2) regarding over referrals should be deleted, because they will not be eliminated by additional screening. The department disagrees, because the experience of programs in other states indicates that our additional screening will eliminate or reduce over referrals. Therefore, the paragraph has not been deleted.

Concerning §37.148, the following seven comments were received.

A commenter recommended that the manner or recordkeeping should be left to the school district. The department agrees, and has appropriately modified the provisions in the section.

A commenter recommended that the section contain a provision making the school responsible for followup on a student when a determination to refer cannot be made immediately. The depart-

ment disagrees, because such students should be referred immediately.

A commenter recommended that the section should give the schools the discretion to determine how parents should be notified. The department disagrees, because the statutory provisions clearly describe the method by which schools are to notify the parents.

A commenter recommended that the section should require a new affidavit for each screening. The department agrees, and has modified the section to require an affidavit for each year that screening is required.

A commenter recommended that the section should not require the schools to ensure that parents take the child for a professional examination, and felt that this is an unreasonable burden on the schools. The department agrees, and has changed the section to require that schools monitor, and not ensure, that parents take the child for a professional examination.

A commenter recommended that subsections (h) and (j), as proposed, could involve breaches of confidentiality. It should be sufficient to satisfy the intent of these subsections if only the numbers of students could be submitted. The department agrees, and has modified subsection (j) to address this issue.

A commenter recommended that the section contain provisions requiring the recording of passing status. The department agrees; however, no section change is necessary because subsection (i) covers this requirement.

Concerning §37.150, the following two comments were received.

A commenter recommended that the section should provide that the schools should be able to maintain their own records, which consist or retrievable information, and which are at the disposal of the department to inspect as necessary. The department agrees with the recommended procedure, but has made appropriate changes to §37.148, not §37.150.

A commenter recommended that the appropriate title of the subsection should be "Cooperation and Coordination." The department agrees, and has modified the title accordingly.

The Austin Independent School District was the only commenter. The district did not oppose the sections in their entirety, but had a number of questions, concerns, and recommendations.

The new sections are adopted under Texas Civil Statutes, Article 4477-70, §2 and §3, which provide the Texas Board of Health with the authority to adopt rules to establish a program to detect abnormal spinal curvature in children.

§37.142. Definitions. The following words and terms, when used in these sec-

tions, shall have the following meanings, unless the context clearly indicates otherwise.

Abnormal spinal curvature—An anatomic, structural deviation from the normal spinal curve, such as scoliosis or kyphosis.

Approved instructors—Includes department staff and those health practitioners who are appropriately licensed under state law, with at least two years of school spinal screening experience, and who successfully complete the department's instructor training course.

Approved training program—A program that meets the criteria set by the department for training individuals to conduct spinal screening.

Board—The Texas Board of Health.

Certification training—Department-approved training which qualifies the individual to receive a certificate stating that the person may perform spinal screening or teach a spinal screening course.

Child health record—The official health record(s) maintained in a school on a child.

Conflict of interest—The use of the screening process for solicitation of follow-up services which enable the individual, his/her immediate family members or professional associates to benefit financially, or earn favors or free publicity as a result of the screening process.

Department—The Texas Department of Health.

Forward-bend test—The department-approved screening procedure to assess a possible presence of an abnormal spinal curvature.

Health practitioner—Any person who has completed a course of study in a field of health, and who is appropriately licensed under state law, which includes physicians, chiropractors, physical therapists, and registered nurses.

Non-health practitioner—A person who is not a health practitioner, which generally includes teachers, coaches, trainers, parents, and volunteers.

Professional examination—An evaluation performed by a health practitioner licensed under state law and whose expertise addresses the diagnostic needs of the individual identified as having a possible spinal deformity.

School—An educational institution that admits children who are between 5-21 years of age, which includes an individual school campus.

School spinal screening experience—Experience in spinal screening obtained in a school-based health program.

Screeners—Individuals who perform the actual screening tests. These may be health practitioners who are licensed under state law or nonhealth practitioners who have successfully completed a department-approved course in spinal screening.

Screening—The forward bend test, which is used for the determination of the

need for a professional examination to diagnose a spinal deformity.

Training—Department-approved training conducted by a qualified instructor to enable a trainee to perform approved spinal screening.

§37.148. Responsibilities of Public and Private Schools.

(a) Beginning September 1, 1986, all children in grades six and nine attending public and private schools shall be screened for abnormal spinal curvature before the end of the school year. The screening requirements may also be met by a professional examination as defined in §37.142 of this title (relating to Definitions).

(b) Beginning September 1, 1986, children not previously screened who are entering the 6th and 9th grades after the scheduled screening has been performed, shall be screened within 120 days of enrollment in the school.

(c) The screening requirement for children entering grade six or nine may be met if the child has been screened for spinal deformities during the previous year. Schools may implement a program that includes screening in the 5th and/or 8th grades.

(d) The chief administrator of each school shall ensure that every child in grades six or nine complies with the screening requirements or submits an affidavit of exemption. An affidavit shall be signed by the child's parent, managing conservator, or guardian that spinal screening conflicts with the tenets and practices of a recognized church or religious denomination of which the child is an adherent or a member. This affidavit shall be submitted to the school's chief administrator on or before the day of the screening procedure each year the screening is performed, to meet the requirements of the Act. A copy of this affidavit shall be filed in the child's health record.

(e) If the spinal screening test indicates that a child may have an abnormal spinal curvature, the individual performing the test shall fill out a report on a form prescribed by the department. The chief administrator of the school shall retain one copy of such report and send the original to the parent(s), managing conservator, or guardian of the child screened. The form shall contain information regarding the results of the screening and shall be accompanied by a letter advising the parent, managing conservator, or guardian of his/her responsibility to select an appropriate health practitioner for the examination.

(f) A copy of the previously mentioned report shall be filed at the child's school and an entry shall be made in the child's health record. The original is returned with the final diagnosis and the plans for treatment, as indicated.

(g) The chief administrator of each school shall monitor the referral process and encourage a professional exam, and may

provide information about crippled children's services to families unable to afford private care.

(h) A list of children who failed the spinal screening test may be kept to assist in determining whether a professional examination has occurred.

(i) Proof of screening shall be provided by an entry in the child's health record stating that the child has undergone screening tests that meet the standards outlined in these sections. Such an entry shall also include the results of screening.

(j) Personnel performing screening may maintain a list of children screened for spinal deformities as proof of screening.

(k) In cases when a professional examination was performed in lieu of the required screening test, the date, results, name, and title of the professional performing the exam shall be entered in the child's health record.

(l) The chief administrator of each school shall ensure that each individual complies with the screening requirements in these sections.

(m) Each school shall submit to the department an annual report of spinal screening performed during the school year no later than June 30 of the reporting year. The report shall be submitted by the chief administrator of each school district as specified on a form issued by the department.

(n) The child's health record shall be acceptable as proof of screening if such record contains entries of screening results. In such a case, the original or a true and correct copy of that record may be transferred between schools and shall be honored by the governing body of the school upon transfer of a student from another school in Texas or another school within the United States.

§37.150. Further Responsibilities of the Department.

(a) Quality assurance activities.

(1) In order to monitor the quality of spinal screening services, department personnel may enter schools during normal hours and inspect records maintained on children subject to screening in each school for the purpose of ascertaining statistical information, and may directly observe the spinal screening process.

(2) The department shall compile records and statistics from all spinal screening activities reported to this program in order to collect data concerning the quality of the diagnostic outcomes of children with possible abnormal spinal curvature.

(b) Coordination and cooperation. The department shall encourage coordination and cooperation in areas where more than one entity provides spinal screening so that the efforts of each entity are complementary rather than augmented and duplicative.

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 February 27, 1986.

TRD-8602102

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

Effective date: March 21, 1986

Proposal publication date: December 6, 1985

For further information, please call
(512) 458-7236.

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TITLE 31. NATURAL RESOURCES CODE

Part IV. School Land Board

Chapter 153. Exploration and Development

Highway Right-of-Way Leases

★31 TAC §§153.61-153.66

The School Land Board adopts new §§153.61-153.66. Sections 153.62 and 153.63 are adopted with changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4947). Sections 153.61 and 153.64-153.66 are adopted without changes and will not be republished.

The new sections establish procedures for leasing highway right-of-way tracts. Changes are made to the new sections to incorporate industry comments and to clarify the meaning of the sections.

The sections establish which right-of-way tracts may be leased and what materials must be submitted by individuals applying to lease a right-of-way. In addition the sections explain how preferential right-of-way leases may be issued to certain individuals and establish a sealed-bid method for non-preferentially leasing rights-of-way. Consequently, these sections encourage leasing of state minerals under rights-of-way by streamlining and publicizing the leasing process.

TIPRO commented against the new sections and suggested language changes in §153.62 and §153.63, and asked to eliminate §153.62(c)(3), the requirement that adjacent mineral owners provide notarized affidavits of the consideration paid for their private leases on adjacent tracts.

The School Land Board agrees with TIPRO's suggested language changes and incorporated them into the sections. However, the School Land Board cannot eliminate the requirement for affidavits of the consideration paid for private, adjacent leases. The highway leasing statute, Natural Resources Code, §34.0514, requires highway right-of-way leases be issued under the same terms as those on private, adjacent leases; consequently, the School Land Board needs notarized affidavits to

verify the consideration paid for these private, adjacent leases.

The new sections are adopted under the Natural Resources Code, §34.0515, which provides the School Land Board with the authority to adopt sections to carry out the provisions of the highway leasing statute.

§153.62. Initiating the Leasing Process.

(a) Upon its own motion, the School Land Board may initiate the leasing of right-of-way tracts by providing notice to adjacent mineral owners, in accordance with §153.63 (a) and (b) of this title (relating to Notifying Adjacent Mineral Owners).

(b) Anyone may apply to lease acreage in a right-of-way tract by submitting an application to the General Land Office. Any applicant must take the following steps.

(1) Submit a written application which includes a map showing the boundaries and dimensions of the right-of-way tract which the applicant proposes to lease.

(2) Determine the adjacent mineral owners, as defined in §153.63(a) of this title (relating to Notifying Adjacent Mineral Owners) by searching the tax assessor-collector records and county clerks records in the county where the proposed tract is located.

(3) Submit the name and addresses of any adjacent mineral owners listed in the county records.

(4) Submit an affidavit stating that there was no well capable of producing in paying quantities within 2,500 feet of the right-of-way tract boundaries as of January 1, 1985.

(5) Submit a \$100 processing fee payable to the commissioner of the General Land Office.

(c) A person who holds a lease or leases on lands adjacent to a right-of-way and who applies to lease an adjoining right-of-way must satisfy the requirements of subsection (b) of this section. In addition, such an adjacent mineral lessee must submit the following materials:

(1) written waiver of the statutory notice to which the applicant is entitled;

(2) certified copy or a reproduction of a certified copy of his or her recorded lease or leases on the land adjacent to the right-of-way tract. If a lease has not been recorded, an applicant must submit a copy of the lease along with an affidavit which verifies that the submitted copy is a true and correct copy of the lease on the adjacent acreage; and

(3) notarized affidavit of the consideration paid for the lease or leases on the adjacent land.

§153.63. Notifying Adjacent Mineral Owners.

(a) If land adjoining a right-of-way tract is unleased, then an "adjacent mineral owner" as used in §§153.61-153.66 of this title (relating to Highway Right-of-Way Leases) refers to the holder or holders of the

mineral estate in the adjoining land. If land adjoining a right-of-way tract is subject to an existing oil and gas lease, then an "adjacent mineral owner" refers to all working interest holders of the lease on the adjoining acreage. If land adjoining a right-of-way tract has been leased but undivided mineral interests remain unleased, then "adjacent mineral owner" refers to any unleased, undivided mineral interest holder, as well as the working interest holder of the lease.

(b) Each adjacent mineral owner must receive notice of the proposed leasing of the right-of-way tract; however, an adjacent mineral owner may waive this notice by mailing a written waiver to the General Land Office. The General Land Office shall send notice to adjacent mineral owners by registered mail. If the person or entity who initiates the leasing process cannot locate the identity or address of an adjacent mineral owner in the county records, then notice shall be by publication as provided in 1985 Vernon's Texas Session Law Service, Chapter 327, §2, page 2545. Each notice will describe the tract to be leased so that the tract can be located on the ground.

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 February 26, 1986.

TRD-8602056 Garry Mauro
Commissioner
General Land Office

Effective date: March 21, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 463-5009.

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

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

★ 34 TAC §3.341

The Comptroller of Public Accounts adopts an amendment to §3.341, without changes to the proposed text published in the January 31, 1986, issue of the *Texas Register* (11 TexReg 591).

The amendment exempts the additional copies from sales tax when the original document was exempt and subjects all magazine subscriptions to sales tax.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt,

and enforce rules relating to the administration and enforcement of the sales tax.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602106 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 1, 1986
For further information, please call
(512) 463-4806.

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Subchapter V. Bingo Regulation and Tax

★ 34 TAC §3.541

The Comptroller of Public Accounts adopts an amendment to §3.541, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 210). The amendment deletes burdensome language which is repetitive of statutory provisions. The title is also changed to properly reflect the substance of the revised section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602107 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 14, 1986
For further information, please call
(512) 463-4806.

★ ★ ★

★ 34 TAC §3.542

The Comptroller of Public Accounts adopts the repeal of §3.542, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 212). This repeal is necessary so that a substantially revised section can be adopted. The revised section is adopted concurrent with this repeal.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602109 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 14, 1986
For further information, please call
(512) 463-4806.

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The Comptroller of Public Accounts adopts new §3.542, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 212). The section previously in effect is repealed simultaneously. The new section notifies potential applicants that criminal history investigations will be conducted, and requires the applicants to submit information which will enable the appropriate authorities to conduct this investigation.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602108 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 14, 1986
For further information, please call
(512) 463-4806.

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★ 34 TAC §3.543

The Comptroller of Public Accounts adopts an amendment to §3.543, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 212). The amendment is an addition to provisions concerning reapplication for licenses. Persons whose licenses are revoked or forfeited currently may not reapply within one year after revocation or forfeiture. The amendment provides that if a license is denied for reasons

which would be sufficiently serious to justify revocation of an existing license, such as the applicant or other interested person having been convicted of a crime of moral turpitude, the applicant having misrepresented or concealed pertinent facts in connection with the application, or other grounds specified in subsection (b)(1), the person may not reapply within one year. The amendment also deletes obsolete language.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602110 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 14, 1986
For further information, please call
(512) 463-4606.

★ ★ ★

★34 TAC §3.544

The Comptroller of Public Accounts adopts an amendment to §3.544, without changes to the proposed text published in the January 21, 1986, issue of the *Texas Register* (11 TexReg 386). The amendment consists of deletion of a number of definitions which are repetitive of statutory provisions. This will simplify and shorten this section, thereby improving its clarity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602111 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 21, 1986
For further information, please call
(512) 463-4606.

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★34 TAC §3.548

The Comptroller of Public Accounts adopts an amendment to §3.548, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 213). The amendment consists primarily of deletions of language which is repetitive of statutory provisions. There are also minor clarifications to existing language.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602112 Bob Bullock
Comptroller of Public
Accounts

Effective date: March 24, 1986
Proposal publication date: January 14, 1986
For further information, please call
(512) 463-4606.

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**Part IV. Employees
Retirement System of
Texas
Chapter 67. Hearings on
Disputed Claims**

**★34 TAC §§67.1, 67.3, 67.5, 67.7,
67.9, 67.11, 67.13, 67.15, 67.17,
67.19, 67.21**

The Employees Retirement System of Texas adopts the repeal of §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, and 67.21, without changes to the proposed text published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 34).

The simultaneous adoption of the repeal and replacement of new sections provides better guidance to persons who appeal cases to the board of trustees concerning procedures followed by the agency in contested cases.

Since the sections are being repealed, the sections will not function after adoption of the repeal.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Title 110B, §25.102, which provide the Board of Trustees of the Employees Retirement System of Texas with the au-

thority to adopt rules for the transaction of any business of the board.

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 February 26, 1986.

TRD-8601934 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: March 19, 1986
Proposal publication date: January 3, 1986
For further information, please call
(512) 476-6431, ext. 178.

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**★34 TAC §§67.1, 67.3, 67.5, 67.7, 67.9,
67.11, 67.13, 67.15, 67.17, 67.19,
67.21, 67.23, 67.25, 67.27, 67.29,
67.31, 67.33, 67.35, 67.37, 67.39,
67.41, 67.43, 67.45, 67.47, 67.49,
67.51, 67.53, 67.55, 67.57, 67.59,
67.61, 67.63, 67.65, 67.67, 67.69,
67.71, 67.73, 67.75, 67.77, 67.79,
67.81, 67.83, 67.85, 67.87, 67.89,
67.91, 67.93, 67.95, 67.97, 67.99,
67.101, 67.103, 67.105, 67.107,
67.109, and 67.111**

The Employees Retirement System of Texas adopts new §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.29, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.59, 67.61, 67.63, 67.65, 67.67, 67.69, 67.71, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107, 67.109, and 67.111 Sections 67.1, 67.3, 67.5, 67.7, 67.43, 67.47, and 67.111 are adopted with changes to the proposed text published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 34). Sections 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.29, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.59, 67.61, 67.63, 67.65, 67.67, 67.69, 67.71, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107, and 67.109 are adopted without changes and will not be republished.

Adoption of new Chapter 67 provides better guidance to persons who appeal cases to the board of trustees concerning procedures followed by the agency in contested cases.

The new sections provide guidance to appellants, agency staff, and hearings examiners with respect to procedures to be followed in ERS hearings.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Title 110B, §25.102, which provide the board of trustees of the employees retirement system of Texas with the authority to adopt rules for the transaction of any business of the board.

§67.1. Purpose and Scope.

(a) Purpose of Chapter. The purpose of this chapter is to provide an orderly and efficient system of procedure before the Board of Trustees of the Employees Retirement System of Texas to facilitate the administration of the laws of the state within its jurisdiction. This chapter's sections shall be given a fair and impartial construction to attain these objectives.

(b) Scope of Chapter. This chapter shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the board of trustees where notice and hearing are required. This chapter's sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the board of trustees or the substantive rights of any person.

(c) Texas Rules of Civil Procedure. Proceedings under this chapter shall be conducted in accordance with the Texas Rules of Civil Procedure (including future amendments thereto), except where such rules conflict with a provision of this chapter, in which event the provision of this chapter shall control.

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

Agency—Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education) which makes rules or determines contested cases.

Board—The Board of Trustees of the Employees Retirement System of Texas.

Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Examiner (hearings examiner)—Any person appointed by the executive director to conduct hearings.

Executive director—The executive director of the Employees Retirement System of Texas.

Insured—A person who is or claims to be entitled to participate in the Uniform Group Insurance Program established by the Texas Employees Uniform Group Insurance Benefits Act, the Insurance Code, Article 3.50-2.

Member—A person who is a member, retiree, or beneficiary of any retirement system administered by the board.

Order—The whole or a part of the final disposition, whether affirmative, neg-

ative, injunctive, or declaratory in form, of the board in a matter other than rulemaking.

Party—Each person or agency named or admitted as a party in a contested case.

Person—Any natural person, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Pleading—A written allegation by the parties or the Employees Retirement System of Texas of their or its respective claims. Pleadings may take the form of applications, petitions, appeal letters, complaints, briefs, exceptions, replies, motions, notices, or answers.

Proceeding—Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of an appeal if the matter is a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Trustee—One of the elected or appointed members of the decision-making body defined as the board.

§67.5. Appeal of Denied Claims.

(a) When the executive director denies a claim, the applicant has 30 days from the date the executive director's letter is mailed by certified mail to file written notice of the appeal. The denial letter will inform the applicant of this right. In most cases, administrative hearing of the appeal will be held in Austin.

(b) As used in this section, the term "applicant" includes any duly authorized representative of such person.

(c) In computing time under this section, the day after any mailing by the executive director shall be counted as the first day of the time period. A document is considered to be filed with the executive director when it is received by the executive director or when it is postmarked, whichever is earlier.

(d) The executive director shall decide whether a notice of appeal is timely filed under this section. The executive director's decision constitutes final agency action on the issue and no administrative appeal from the executive director's decision is available.

§67.7. Filing of Documents. All documents relating to any proceeding pending or to be instituted before the board shall be filed with the executive director. They shall be deemed filed as provided for in §67.5 and §81.9 of this title (relating to Appeal of Denied Claims and Grievance Procedure).

§67.43. Dismissal Without Hearing.

(a) The hearings examiner may entertain motions for dismissal without a hearing for any of the following reasons:

- (1) failure to prosecute a claim;
- (2) unnecessary duplication of proceedings or res adjudicata;

(3) withdrawal or voluntary dismissal of appeal;

(4) moot questions or obsolete petitions; and

(5) lack of jurisdiction.

(b) The hearings examiner shall dismiss the appeal of any person who has filed written notice of the appeal but who defaulted by:

(1) failing to personally appear at the hearing if the appellant is not represented by an attorney at law unless such appearance is waived by agreement of all the parties;

(2) failing to personally appear at the hearing if the appellant is represented by an attorney at law unless the appellant gives notice at least ten days prior to the date of the hearing that the appellant will not personally appear or unless such appearance is waived by agreement of all parties; or

(3) failing to request a hearing or take some other action specified by the hearings examiner within 30 days after notice is mailed of intention to dismiss the claim.

(c) For good cause, the executive director may permit reinstatement of an appeal.

§67.47. Postponements or Continuances.

(a) The hearings examiner may postpone or continue a hearing for good cause upon the motion of any party or the hearings examiner.

(b) A motion for postponement or continuance shall be in writing, shall be filed with the executive director no later than 5 p.m. on the last work day before the date of the hearing, and shall set forth the specific grounds upon which it is sought; provided, however, once a contested case has actually proceeded to a hearing, a postponement or continuance may be granted by the hearings examiner upon either oral or written motion.

§67.111. Conflicting Claims to Benefits.

(a) Upon being served with official notice that two or more persons have conflicting claims to funds payable from a program administered by the board, the executive director shall require all parties claiming the benefits or funds to give written notice of exactly what they want from the system and the factual and legal basis of their claims.

(b) If the executive director determines, from the notices presented and from any agency investigation that conflicting claims for funds or benefits may be valid, the conflicting claims shall be treated as a contested case and adjudicated according to the provisions of this chapter. The executive director shall determine what portion of the benefits or funds is reasonably in dispute and what portion of the benefits or funds is reasonably in dispute and will cause that amount to be withheld from distribution until either a lawful settlement of the conflicting claims, acceptable to the executive director, is agreed to in writing by all of the parties involved or a final order has been entered

and the time for appeal has passed. Upon receipt of such order or written settlement agreement, with such other safeguards as the executive director may require, the withheld funds shall be disbursed in accordance with the order or agreement.

(c) The portion of funds or benefits not in dispute shall be paid in accordance with customary system procedures.

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

Issued in Austin, Texas, on February 26, 1986.

TRD-8601933 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: March 19, 1986
Proposal publication date: January 3, 1986
For further information, please call
(512) 476-6431.

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Chapter 81. Insurance

★34 TAC §81.5

The Employees Retirement System of Texas adopts an amendment to §81.5, without changes to the proposed text published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 34).

Adoption of this amendment clarifies the intent of the section concerning eligibility for dependent life coverage under the Texas Uniform Group Insurance Program.

Where a retiree was previously precluded from adding dependent life coverage because an eligible dependent was either an active state employee or a covered dependent of an active state employee, the retiree may add coverage for that eligible dependent upon the dependent's termination of state employment, other than by retirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Insurance Code, Article 3.50-2, §4A, which provides the Board of Trustees with the authority to provide standards for determining eligibility for participation in the state group insurance program.

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

Issued in Austin, Texas, on February 26, 1986.

TRD-8601932 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: March 19, 1986
Proposal publication date: January 3, 1986
For further information, please call
(512) 476-6431, ext. 178.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. ICF-MR

Subchapter C. Eligibility for Participation as an Intermediate Care Facility for the Mentally Retarded

★40 TAC §27.203

The Texas Department of Human Services adopts an amendment to §27.203, without changes to the proposed text published in October 15, 1985, issue of the *Texas Register* (10 TexReg 4004).

The amendment allows facilities serving Level V and VI residents to locate within one mile of each other and in unincorporated areas.

The amendment changes the provider application process to allow more facilities to open to serve clients.

The department received three written comments on the proposed changes. The Texas Association of Private ICF-MR Providers supported the proposed changes, but considered these changes to be a modest first step toward carrying out public policy for development of more community-based services. The association recommended additional changes which were beyond the scope of this section. The department supports the development of services to meet mentally retarded Texans' needs. The department also supports the evaluation of service delivery recommendations in light of their usefulness and compliance with federal regulations.

The Texas Planning Council for Developmental Disabilities supported the amendment.

The Texas Education Agency (TEA) opposed the proposed amendment and expressed three concerns. The first involved potential fiscal implications for local areas as a result of clustering of facilities. The department disagrees with the premise that the proposed modifications will encourage clustering, because the rule will have a one-mile limitation for location of service delivery for ICF-MR Level V and VI facilities, and the three-mile limitation for ICF-MR I facilities remains in effect. Also, the rule continues to require documentation of access to community resources (including access to educational services for eligible residents), documentation of the need for the proposed ICF-MR service, and identification of other ICFs-MR within the same community. These requirements must be met before approval of a proposed facility's application.

TEA's second concern was that small rural or semi-rural school districts might have trouble securing qualified personnel to provide appropriate services to residents. Although the department acknowledges that some areas of the state have trouble securing certain professional services, the documentation requirements mentioned previously should minimize any negative impacts on service delivery. Should service delivery problems occur, the ICF-MR or local independent school district may contact the department to resolve the problems.

TEA's final concern relates to potential fiscal implications for the local area resulting from cost exclusion of educational services under the Medicaid Program, as outlined by the U.S. Department of Health and Human Services - Health Care Financing Administration. This concern is beyond the scope of this rule and is being addressed cooperatively by all agencies involved in the ICF-MR Program.

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 February 28, 1986.

TRD-8602049 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: March 21, 1986
Proposal publication date: October 15, 1985
For further information, please call
(512) 450-3766.

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Open Meetings

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

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

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

Texas Amusement Machine Commission

Friday, March 14, 1986, 1:30 p.m. The Commissioners' Meeting of the Texas Amusement Machine Commission will meet in Suite 100, 1606 Headway Circle, Austin. According to the agenda summary, the commissioners will consider a report and adoption of administrative rule changes concerning the proration of the occupation tax; license and registration certificate fees; a report from the attorney general's office concerning city ordinances relating to coin-operated machines; a report and discuss concerning the executive order MW-36; and a report on current operations and a report and recommendations of the advisory committee.

Contact: Jim Lusk, , P.O. Box 13226, Austin, Texas 78711, (512) 835-4767.

Filed: March 3, 1986, 3:19 p.m.
TRD-8602132

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Texas Antiquities Committee

Friday, March 14, 1986, 9:30 a.m. The Texas Antiquities Committee will meet in Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee will approve minutes of the January 17, 1986 meeting; review nominations for State Archeological Landmarks; designations of State Archeological Landmarks; a demolition permit request by the El Paso Independent School District for the demolition of Guille/"Old Bowie" High School; and the staff report. The committee will also meet in executive session.

Contact: Dr. William Reeder, P.O. Box 12276, Austin, Texas 78711, (512) 463-6098.

Filed: February 28, 1986, 3:18 p.m.
TRD-8602088



Texas Department of Corrections

Monday, March 10, 1986, 10 a.m. The Texas Department of Corrections will meet in the City Council Chambers, 504 North Queen Street, Palestine. According to the agenda summary, the board will discuss operations; inmate affairs; medical finance; agriculture; business; construction, industries; director's items; and the Windham school system. The board will also meet in executive session.

Contact: O. L. McCotter, P.O. Box 99, Huntsville, Texas 77340, (409) 295-6371, ext. 1160.

Filed: February 28, 1986, 3:08 p.m.
TRD-8602084

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Texas State Board of Dental Examiners

Thursday-Saturday, March 13-15, 1986, 8 a.m. The Texas State Board of Dental Examiners made a revised addition to the agenda for the meeting to be held in the Castillian ABC Meeting Room, Shamrock Hilton Hotel, 6900 South Main Street, Houston. The additions concern discussion of request from Dr. Paul Fraternali for the reinstatement of prescription writing privileges; request for reinstatement from Dr. Steve Kirk; hotel accommodations for upcoming examinations; dental laboratory registration for Joe S. Fernandez; budget assessment for the 1986-1987 biennium (Executive Order MW-36); and the 1987 examination dates.

Contact: William S. Nail, 411 West 13th Street, Suite 503, Austin, Texas 78701, (512) 463-5536.

Filed: February 28, 1986, 12:57 p.m.
TRD-8602077

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Interagency Council on Early Childhood Intervention

Tuesday, March 11, 1986, 8:30 a.m. The Interagency Council on Early Childhood Intervention will meet in the second floor con-

ference room, 1101 East Anderson Lane, Austin. According to the agenda summary, the council will review and discuss fiscal year 1988-1989 budget request. The council will also meet in executive session to discuss personnel.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: February 28, 1986, 4:15 p.m.
TRD-8602100

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Texas Commission on Economy and Efficiency in State Government

Friday and Saturday, March 7 and 8, 1986, 9 a.m. daily. The Committee on Purchase, Supply, Inventory, and Housekeeping of the Texas Commission on Economy and Efficiency in State Government will meet in Room 101, John H. Reagan Building, Austin. According to the agenda summary, on Friday, the committee will consider appearances by the comptroller's office, State Aircraft Pooling Board, Energy Conservation Division of the Public Utility Commission of Texas, State Purchasing and General Services Commission, and appearances by representatives of selected major state agencies. On Saturday, the committee will continue consideration of Friday presentations by major state agencies.

Contact: Chris Kuykendall, P.O. Box 12128, Austin, Texas 78711, (512) 463-1155.

Filed: February 27, 1986, 4:20 p.m.
TRD-8602044

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Texas Education Agency

Thursday, March 6, 1986, 3 p.m. The Committee of the Whole of the Texas Education Agency of the State Board of Education will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will review of the process of adoption and standard

setting for the examination for the certification of educators in Texas and discuss pending litigation. The committee will also meet in executive session for the discussion of pending litigation in accordance with the provisions of Texas Civil Statutes, Article 6252-17, §2(e).

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: February 26, 1986, 3:45 p.m.
TRD-8602007

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Texas Employment Commission

Tuesday, March 11, 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 prior meeting notes; internal procedures of commission appeals; tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 10; and set the date of the next meeting.

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

Filed: March 3, 1986, 2:15 p.m.
TRD-8602130

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Texas Health and Human Services Coordinating Council

Monday, March 10, 1986, 1:30 p.m. The Texas Health and Human Services Coordinating Council will meet in Room 106, 105 West 15th Street, Austin. According to the agenda summary, the council will approve minutes of the November 26, 1986 meeting; consider the update on council projects including indigent health care working group, latch-key children, residential contract care, data report, office of youth care investigations, and adolescent parents and teen pregnancy report; future council activities and structure; new business; and determination of 1986 meeting dates.

Contact: Beck Runte, 311-a East 14th Street, Austin, Texas 78701, (512) 462-2195.

Filed: February 28, 1986, 4:22 p.m.
TRD-8602099

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State Board of Insurance

Friday, February 28, 1986, 3 p.m. The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board discussed personnel matters including the legal and compliance program. The emergency status was necessary because of the need for decisions on personnel matters while

all necessary administrative staff is available to implement such decisions.

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

Filed: February 28, 1986, 11:45 a.m.
TRD-8602071

The Commissioner's Hearing Section of the State Board of Insurance will meet in the State Insurance Building, 1110 San Jacinto Street, Austin. Days, times, rooms, and agendas follow.

Monday, March 10, 1986, 9 a.m. In Room 342, the section will consider Docket 9199—application for approval of amendments to the articles of incorporation of Transamerica Insurance Company of Texas, Hye.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6524.

Filed: February 28, 1986, 3:56 p.m.
TRD-8602097

Monday, March 10, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9217—application of Edward Arvel Applegate, Gladewater, for a resident insurance adjuster's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6524.

Filed: February 28, 1986, 3:56 p.m.
TRD-8602096

Tuesday, March 11, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9216—whether the application of Mendall S. Kaliff, San Antonio, for a property and casualty local recording agent's multiple line license should be issued by the State Board of Insurance.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: March 3, 1986, 11:50 a.m.
TRD-8602128

Wednesday, March 12, 1986, 9 a.m. In Room 342, the section will consider Docket 9198—whether disciplinary action should be taken against Virginia L. Berge, Cleburne, who holds a Group II, insurance agent's license issued by the State Board of Insurance.

Contact: O. A. Cassity, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: March 3, 1986, 11:50 a.m.
TRD-8602126

Thursday, March 13, 1986, 9 a.m. In Room 353, the section will consider Docket 9218—whether policy forms PP-3085, PP/A 3085-1, GA-3000, and PPC 3085 of Maccabees Mutual Life Insurance Company, should be approved pursuant to review under the Texas Insurance Code, Article 1.33(d).

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: March 3, 1986, 11:51 a.m.
TRD-8602125

Thursday, March 13, 1986, 9 a.m. In Room 342, the section will consider Docket 9213—whether disciplinary action should be taken against Citizens Fidelity Insurance Company, Waco, which holds a certificate of authority issued by the State Board of Insurance regarding issuance of 1,000 policies written on form IP-CFI(3.44) (3.53) 10-81 (75) which were neither filed nor approved by the State Board of Insurance prior to issuance of the policies.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: March 3, 1986, 11:51 a.m.
TRD-8602123

Thursday, March 13, 1986, 10 a.m. In Room 342, the section will consider Docket 9214—whether disciplinary action should be taken against Citizens Fidelity Insurance Company, Waco, which holds a certificate of authority issued by the State Board of Insurance regarding issuance of 14,000 policies written on form IP-CFI(3.44)(3.53)1-81(100) which were neither filed nor approved by the State Board of Insurance prior to issuance of the policies.

Contact: O. A. Cassity, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: March 3, 1986, 11:52 a.m.
TRD-8602124

Monday, March 17, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9202—reinsurance agreement whereby Anderson County Mutual Association, Palestine, will be reinsured by Southern Medical Life Insurance Company, Waco.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: March 3, 1986, 11:52 a.m.
TRD-8602127

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State Board of Morticians

Tuesday, March 4, 1986, 8:30 a.m. The State Board of Morticians made an emergency addition to the agenda for the meeting held in Conference Room B, Building B, 8100 Cameron Road, Austin. According to the agenda summary, the board will review a request for an extension of the six month period to register as an apprentice; review an apprentice application; and review complaints. The emergency status was necessary because all credentials and materials were not received until after the final deadline.

Contact: John W. Shocklee, Suite 550, Building B, 8100 Cameron Road, Austin, Texas 78753, (512) 834-9992.

Filed: February 28, 1986, 11:49 a.m.
TRD-8602073

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Board of Pardons and Paroles

Tuesday, March 4, 1986, 9:30 a.m. The Board of Pardons and Paroles made an emergency revision to the agenda for a meeting held at 8610 Shoal Creek Boulevard, Austin. The revision concerned consideration and action on the review of minutes; the Sunset Commission recommendations; rules update; the interagency agreement with TDC, Department of Mental Health and Mental Retardation, and the board; the interagency agreement with Texas Employment Commission concerning the NIC letter; the executive director's report; consideration of budget reduction; and personnel matters. The emergency status was necessary because the board decided to take under consideration a budget reduction at the regular monthly board meeting.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459 2704.

Filed: March 3, 1986, 10:32 a.m.
TRD-8602113

Monday-Friday, March 10-14, 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: February 28, 1986, 11:21 a.m.
TRD-8602061

Tuesday, March 11, 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 reprieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2704.

Filed: February 28, 1986, 11:21 a.m.
TRD-8602062



Public Building Authority

Thursday, March 6, 1986, 9 a.m. The Public Building Authority made an emergency addition to the agenda for the meeting held at Rotan Mosle, 100 NBC Building, San Antonio. According to the agenda, the authority will approve minutes from the November 13, 1985 meeting; review financial reports from the agency and treasurer's office; the presentation of 1985 overview; a report on building projects; a report on the status of energy efficiency improvement projects; a report on refund of TPBA Series 1985A bonds; and set the time and place for the next meeting. The authority will also meet in executive session to discuss personnel matters. The emergency status was necessary because of late addition to the agenda due to current bond market conditions.

Contact: Gayle Colby, 907 Sam Houston Building, Austin, Texas 78701, (512) 463-5544.

Filed: March 3, 1986, 2:52 p.m.
TRD-8602131

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Public Utility Commission of Texas

Wednesday, March 5, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas made an emergency addition to the agenda for the meeting to be held in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The addition concerns Docket 6387—application of General Telephone Company of the Southwest to revise its ECENTREX Tariff. The emergency status was necessary because of the statutory deadline.

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

Filed: February 27, 1986, 3:02 p.m.
TRD-8602028

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

Thursday, March 13, 1986, 10 a.m. A hearing on the merits in Docket 6734—complaint of Tere Morello against Texas Utilities Electric Company regarding billing and disconnection dispute.

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

Filed: February 27, 1986, 3:01 p.m.
TRD-8602030

Monday, March 17, 1986, 10 a.m. A prehearing conference in Docket 6717—complaint of Tillman Johnson against Sam Houston Electric Cooperative.

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

Filed: February 28, 1986, 3:07 p.m.
TRD-8602089

Monday, March 17, 1986, 1:30 p.m. A prehearing conference in Docket 6644—appeals by Central Power and Light Company of rate making ordinances.

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

Filed: March 3, 1986, 3:04 p.m.
TRD-8602134

Wednesday, March 19, 1986, 10 a.m. A prehearing conference in Docket 6735—application of Wood County Electric Cooperative, Inc., for authority to change rates.

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

Filed: March 3, 1986, 2:59 p.m.
TRD-8602135

Friday, April 18, 1986, 10 a.m. A hearing on the merits in Docket 6678—petition of Houston Lighting and Power Company for refund of fuel savings and adjustment for fixed fuel factors.

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

Filed: February 27, 1986, 3:02 p.m.
TRD-8602029

Monday, May 19, 1986, 10 a.m. A hearing on the merits in Docket 6689—application of Southwestern Bell Telephone Company for a new tariff offering dial 976 service.

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

Filed: February 28, 1986, 3:06 p.m.
TRD-8602090

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State Purchasing and General Services Commission

Tuesday, March 11, 1986, 10 a.m. The State Purchasing and General Services Commission will meet in Room 916, L.B.J. Building, 111 East 17th Street, Austin. Items on the agenda include consideration of the final adoption of proposed amendments to commission Rule 115.3 and proposed new commission Rules 111.18 and 111.19; the appeal of Sky Dive San Marcos, Inc., to the proposed award of the sale of Inventory 1501, Airplane 1960 Beachcraft 18 (C-454) SN/51-11729 (Surplus Property Sale DPS-9142-L) to A. C. Aubin; the discussion of the impact of Governor's Executive Order MW-36; and set the date and time for the next

meeting. The commission also will meet in executive session to consider certain internal administrative and management matters affecting staffing, assignments, duties, responsibilities, and procedures of the commission's Facilities Construction and Space Management Division.

Contact: John R. Neel, Room 914, L.B.J. Building, Austin, Texas 78701, (512) 463-3446.

Filed: March 3, 1986, 10:20 a.m.
TRD-8602122

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Railroad Commission of Texas

Monday, March 3, 1986, 9 a.m. The Oil and Gas Division made an emergency revision to the agenda for a meeting held in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The revision concerned Oil and Gas Docket 20-86,874—consideration of recommendation of proposed statewide Rule 70 (16 TAC §3.65) for the State of Texas. The emergency status was necessary because this item was properly noticed for the meeting of February 24, 1986, and was passed.

Contact: Lisa C. Anderson, P.O. Box 12967, Austin, Texas 78711, (512) 463-7291.

Filed: February 28, 1986, 10:58 a.m.
TRD-8602064

Monday, March 10, 1986, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, 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: February 28, 1986, 11 a.m.
TRD-8602072

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) 445-1204.

Filed: February 28, 1986, 10:57 a.m.
TRD-8602058

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: February 28, 1986, 10:59 a.m.
TRD-8602067

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: February 28, 1986, 11 a.m.
TRD-8602070

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: February 28, 1986, 10:57 a.m.
TRD-8602050

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 474—Ervin Plumbing and Supply, Inc., 475—Don Hardy Race Cars, Inc., 476—Centroplex Outdoors, Inc., 477—Eastex Camper Sales, Inc., 479—Sepco Industries, Inc., 480—Struve Mercantile Co. Inc., 481—Gene's Campers and Repairs, and 482—Younger Brothers, Inc.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: February 28, 1986, 10:56 a.m.
TRD-8602054

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: February 28, 1985, 10:59 a.m.
TRD-8602066

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: February 28, 1985, 10:58 a.m.
TRD-8602063

Consideration of All American Pipeline Company's application for a permit across various counties in Texas.

Contact: Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6923.

Filed: February 28, 1985, 10:58 a.m.
TRD-8602065

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: February 28, 1985, 11 a.m.
TRD-8602069

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: February 28, 1985, 10:57 a.m.
TRD-8602059

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: February 28, 1985, 10:59 a.m.
TRD-8602068

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters; bond release under Permit 17 due to issuance of Permit 22 for Oak Hill to the Texas Utilities Mining Company; and bond release for Increment 8 of Permit 13 due to issuance of Permit 24 for the South Hallsville Mine to the Sabine Mining Company.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: February 28, 1985, 10:56 a.m.
TRD-8602057

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: February 28, 1985, 11 a.m.
TRD-8602074

Wendesday, Marh 19, 1986, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the Waller Creek Plaza Hotel and Executive Center, Austin. According to the agenda summary, the division will conduct a statewide oil and gas hearing.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: February 28, 1986, 11:04 a.m.
TRD-8602075

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Texas Real Estate Commission

Tuesday, March 11, 1986, 9:30 a.m. The Texas Real Estate Commission will meet in the boardroom, second floor, College Station Hilton, 801 East University Drive, College Station. Items on the agenda summary include the minutes of February 17, 1986, commission meeting; staff reports for the month of January, 1986; Executive Order MW-36; consideration of the complaint information concerning Rodger W. Gamino; discussion on motions for rehearing before

commission procedure; and consideration of motions for rehearing and/or probation. The commission also will meet in executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6252-17, §2(c).

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: March 3, 1986, 10:42 a.m.
TRD-8602120

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Texas Rehabilitation Commission

Friday, March 14, 1986, 9:30 a.m. The Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet in Room 2.120, Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. Items on the agenda summary include the approval of minutes; the chairman's report including the NADDC report and the proposed council policy revision; the executive director's report including the ADD report, fiscal year 1986 Developmental Disabilities Program budget, fiscal year 1986 Developmental Disabilities Program grants, 1986 Developmental Disabilities grants conference, and the Autism Task Force; the Planning Committee and Monitoring and Evaluation Committee report including the final draft of Developmental Disabilities state plan for fiscal year 1987-1989, preliminary discussion of fiscal year 1987 RFPs; the Advocacy and Public Information Committee report including the Sunset review process recommendation, federal legislation and policy items concerning House Rule 3889 and §1793, the discussion of legislative strategies, the discussion of public information strategies; the Nominating Committee report; the election of council vice-chair; public comments; and announcements.

Contact: Roger Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8044.

Filed: March 3, 1986, 10:40 a.m.
TRD-8602121

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Stephen F. Austin State University

Monday, March 10, 1986, 1 p.m. The Board of Regents of Stephen F. Austin State University will meet in Room 307, Austin Building, Stephen F. Austin State University, Nacogdoches. According to the agenda, the board will consider the university plan for reduction of expenditures for fiscal year 1986-1987; and personnel items.

Contact: William R. Johnson, P.O. Box 6078 SFA, Nacogdoches, Texas 75962, (409) 569-2201.

Filed: February 28, 1986, 10:44 a.m.
TRD-8602053

Teacher Retirement System of Texas

Friday, March 14, 1986, 9 a.m. The Board of Trustees of the Teacher Retirement System of Texas will meet in the TRS Board Room, 1001 Trinity, Austin. According to the agenda summary, the board will approve minutes; consider an award of retiree health insurance contracts; investments for the quarter ending February 28, 1986; recommendations at the Insurance Advisory Committee (IAC) meeting; appointments to the IAC; appointment to the medical board; changes to signature authorization; proposed amendment to rules and regulations; the report of the general counsel; and the report of member benefits division. The board will also meet in executive session to discuss personnel matters.

Contact: Bruce Hineman, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: March 3, 1986, 4:12 p.m.
TRD-8602133

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Texas State Technical Institute

Saturday, March 15, 1986, 8 a.m. The Board of Regents of the Texas State Technical Institute (TSTI) will meet at the Central Administration Building, Texas State Technical Institute, Waco. According to the agenda summary, the board will approve minutes; discuss fiscal affairs including request for budget changes, and lease agreements-TSTI Amarillo; human resources including salary increases for fiscal year 1987, and the appointment of manager of campus services; facilities including construction of parking log at TSTI Harlingen; instruction including classes with less than ten students, policies relating to instruction, statement of purpose for TSTI, and name, definition, and scope for TSTI Harlingen; and the president's recommendations including ratification of executive committee approval, approval of various foundations annual operating plans, and acceptance of title to real property at TSTI Harlingen.

Contact: Theodore A. Talbot, Texas State Technical Institute, Waco, Texas 76705, (817) 799-3611 ext. 3900.

Filed: February 28, 1986, 4:16 p.m.
TRD-8602098

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The Advisory Council for Technical-Vocational Education in Texas

Wednesday, March 12, 1986, 10 a.m. The Planning Committee of the Advisory Council for Technical-Vocational Education in Texas will meet in Suite 424, Texas Employment Commission Annex Building, 12th and Trinity Streets, Austin. According to the agenda, the committee will review the final

draft of the master plan for vocational education in Texas and develop recommendations to be submitted to the advisory council at a regular council meeting on March 21, 1986.

Contact: Val Blaschke, P.O. Box 1886, Austin, Texas 78767, (512) 463-5490.

Filed: February 28, 1986, 9:09 a.m.
TRD-8602051

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Texas Water Commission

Tuesday, March 4, 1986, 10 a.m. The Texas Water Commission made an emergency addition to the agenda for the meeting to be held in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. The addition concerns authorizing the executive director to execute a contract with the University of Texas at Austin-LBJ School of Public Affairs in an amount not to exceed \$14,338 for a study of selected river authorities and water districts in support of the water district and river authority study committee authorized in Senate Bill 249, 69th Legislature. The emergency status is necessary because of the terms and time of the contract, this matter needs to be considered by the commission as soon as possible.

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

Filed: February 27, 1986, 4:31 p.m.
TRD-8602046

Tuesday, March 11, 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; a release from escrowed funds; the use of surplus funds; proposed water quality permits; amendments and renewals; the certification of a proposed project for underground water development; and a water use application.

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

Filed: February 27, 1986, 4:31 p.m.
TRD-8602045

Tuesday, March 11, 1986, 10 a.m. The Texas Water Commission made a revised addition to the agenda for the meeting held in Room 118, 1700 North Congress Avenue, Austin. The addition concerns the application by Longhorn Town Utility District for use of \$150,799 in surplus funds; and consideration of adoption of emergency rules relating to underground water conservation district generally (31 TAC §§293.21-293.24).

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

Filed: February 28, 1986, 3:22 p.m.
TRD-8602092

Tuesday, April 8, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the auditorium, MBank, 910 Travis Street, Houston. According to the agenda summary, the office will consider application of George E. Stourton, doing business as Pleasanton Utilities, 414 Civil Drive, League City, Texas 77573 for Permit 13150-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 95,000 gallons per day from the proposed Pleasanton Wastewater Treatment Plant which is to serve a proposed residential subdivision. The meeting is rescheduled from January 29, 1986.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 3, 1986, 3:16 p.m.
TRD-8602141

Tuesday, April 8, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the auditorium, MBank, 910 Travis Street, Houston. According to the agenda summary, the office will consider application of George E. Strourton, doing business as Spring Utilities, 414 Civil Drive, League City, Texas 77573, for Permit 13088-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 293,000 gallons per day from the proposed Spring Colony Wastewater Treatment Plant which is to serve a development consisting of multi-family housing, offices, restaurants, and a motel. The meeting is rescheduled from January 29, 1986.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 3, 1986, 3:15 p.m.
TRD-8602142

Wednesday, April 9, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider application of Senna Hills, Ltd., 1301 Capitol of Texas Highway South, Suite A300, Austin, Texas 78746 for Permit 13238-01 to authorize the disposal of treated domestic wastewater effluent by irrigation at a volume not to exceed an average of 190,000 gallons per day. The applicant proposes to build a domestic wastewater treatment plant to serve approximately 300 acres of proposed single-family and multi-family residences. The treated effluent will be used to irrigate 100.5 acres comprised of several small parcels of land located within the proposed 400-acre development. Application rates for the irrigated land shall not exceed 2.7 acre-feet/acre/year. No discharge of pollutants into the waters of the state is authorized by this permit.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875
TRD-8602140

Thursday, April 10, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the County Courtroom, First Floor, Henderson County Courthouse, Athens. According to the agenda summary, the office will consider application of Participation Development Corporation, Inc., P.O. Box 2026, Malakoff, Texas 75148 for renewal of Permit 11506-01 which authorizes a discharge of treated wastewater effluent at a volume not to exceed an average flow of 100,000 gallons per day from the Arrowhead Sewage Treatment Plant which is located approximately seven miles southwest of the City of Eustace on the north shoreline of Cedar Creek Reservoir, at a point approximately two miles west of RM Road 90 and five miles north of State Highway 31 in Henderson County. The effluent is discharged to an impoundment on an unnamed tributary of Cedar Creek Reservoir, thence via the unnamed tributary into Cedar Creek Reservoir in Segment 0818 of the Trinity River Basin.

Contact: Kay Trostle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 3, 1986, 3:17 p.m.
TRD-8602139

Tuesday, May 6, 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 Application 3565A of W. R. Gibson who seeks to amend Certificate of Adjudication 12-3565 to delete the term contained in special condition 5.B, all being more fully set out in the application, Brazos River Basin, Comanche County.

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

Filed: March 3, 1986, 3:22 p.m.
TRD-8602136

Tuesday, May 6, 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 Application 12-356A of W. R. Gibson who seeks to amend Certificate of Adjudication 12-3562 to delete the expiration date, all being more fully set out in the application, Brazos River Basin, Comanche County.

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

Filed: March 3, 1986, 3:22 p.m.
TRD-8602137

Tuesday, May 6, 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 Ap-

plication 12-3561A of W. R. Gibson who seeks to amend Certificate of Adjudication 12-3561 to delete the term contained in special condition 5.B, all being more fully set out in the application, Brazos River Basin, Comanche County.

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

Filed: March 3, 1986, 3:18 p.m.
TRD-8602138

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Texas Youth Commission

Thursday, March 13, 1986, 10 a.m. The Texas Youth Commission (TYC) will meet at the Gainesville State School, Gainesville. According to the agenda summary, the commission will consider the naming of the south Texas regional facility; wage and hour standards and the impact on TYC programs; the process for soliciting proposals from the private sector; the report of the state auditor; bids for the sale of land at Corsicana State Home; the approval of appropriation transfers; federal funds; a report of suspected mistreatment investigations; and a response to first year report of the Morales Consultant Committee.

Contact: Ron Jackson, P.O. Box 9999, Austin, Texas 78766, (512) 452-8111.

Filed: March 3, 1986, 1:43 p.m.
TRD-8602129

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Regional Agencies

Meetings Filed February 28

The Archer County Appraisal District, Board of Directors, will meet at 211 South Center Street, Archer City, on March 12, 1986, at 5 p.m. Information may be obtained from A. G. Reis, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Dallas Central Appraisal District, Board of Directors, met at Texas Commerce Bank, 1420 West Mockingbird Lane, Dallas, on March 5, 1986, at 7:30 a.m. The Appraisal Review Board, will meet at the same location, on March 14, 1986, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Texas Commerce Bank, Dallas, Texas 75247, (214) 631-0520.

The Hockley County Appraisal District, Board of Directors, will meet at 1103-C Houston Street, Levelland on March 10, 1986, at 7 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

**The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder on March 4, 1986 at 7:30 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.
TRD-8602052**

Meetings Filed March 3

The Dallas Area Rapid Transit, South Africa Task Force, met at 601 Pacific Avenue, Dallas on March 4, 1986 at 3 p.m. The Board of Directors met at the same location on March 4, 1986 at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Hickory Underground Water Conservation District Number 1, Board and Advisors, will meet at the District Office, 2005 Old Nine Road, Brady, on March 13, 1986 at 7 p.m. Information may be obtained from Rick Illgner, 2005 Old Nine Road, P.O. Box 1214, Brady, Texas 76825, (915) 597-2715.

Meeting Filed March 4, 1986

**The San Patricio County Appraisal District, Board of Directors, will meet at the Courthouse Annex, Sinton, on March 13, 1986 at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.
TRD-8602150**

**The Houston-Galveston Area Council will hold a public hearing at 3555 Timmons, fourth floor, Houston, on March 20, 1986 at 2 p.m. A meeting of the NRAC will be held at the same location on the same date, at 3 p.m. Information may be obtained from Carl E. Masterson, 3555 Timmons, Houston, Texas 77227 (713) 993-4561.
TRD-8602104**



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 Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the Banking Commissioner for the Commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the Commissioner.

On February 26, 1986, the Banking Commissioner received an application to acquire control of Iredell State Bank, Iredell; by Danny Joe Jackson, Allen; Herbert Liston Waddle, Lancaster; Jerry Lee Davis, Leonard; and George Frank Karlen, Duncanville.

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

Issued in Austin, Texas, on February 26, 1986.

TRD-8602027 William F. Aldridge
Director of Corporate Activities
Department of Banking

Filed: February 27, 1986
For further information, please call (512) 475-4451.

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State Banking Board Notice of Hearing

As no opposition has been noted in the application for domicile change by Marion State Bank, Marion, Texas, the hearing previously scheduled for Friday, March 7, 1986, has been cancelled.

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

TRD-8602083 William F. Aldridge
Director of Corporate Activities
State Banking Department

Filed: February 28, 1986
For further information, please call (512) 475-4451.

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Texas Department of Community Affairs Correction of Error

A miscellaneous document submitted by the Texas Department of Community Affairs contained an error as published in the February 25, 1986, issue of the *Texas Register* (11 TexReg 1012).

The document should read as follows:

Texas Department of Community Affairs Announcement of Contract Awards

The Texas Department of Community Affairs announces that the units of general local government listed below have each been selected as contract recipients for marginal projects under the Community Development Project Fund or the Area Revitalization Fund of the Texas Community Development Program established pursuant to Texas Civil Statutes, Article 4413 (201), §4A. Although the proposed amount of funding for each contract is indicated, a contract is not effective until executed by the unit of local government and the executive director of the Texas Department of Community Affairs.

Community Development Project Fund

<u>List of Cities/Counties</u>	<u>Amount of Funding</u>
Seadrift	\$151,150
Dallam County	\$170,275
Odem	\$176,393
Jourdanton	\$ 60,378
Somerville	\$ 64,142
Melissa	\$ 81,166
Lorenzo	\$193,630
Culberson County	\$ 80,062
Franklin County	\$76,572
Edcouch	\$362,785
Greenville	\$ 81,166
Higgins	\$77,476
Corrigan	\$265,641

Area Revitalization Fund

<u>List of Cities/Counties</u>	<u>Amount of Funding</u>
Cunney	\$186,869

Comptroller of Public Accounts Edited Decision 17,337 and 17,338

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

Comptroller's Administrative Decision 17,337 and 17,338 (Sales Tax)—Petitioner asserts that it accepted agricultural exemption certificates from farmers in good faith and that it should not be required to conduct detailed interrogations regarding these certificates to determine if the purchases are to be used exclusively for agriculture production. Held, tax due. The tax payer must bring himself clearly within the terms of the exemption, establishing that the

computer and software are exclusively used in the production, processing, packing, or marketing of agricultural products. A single divergent use dissolves the exemption. If petitioner sells the computer to a farmer who also buys an accounting program or a video game then he would be on notice of the nonexclusive use of the computer. Comptroller's Decision issued on August 25, 1980.

Summary issued in Austin, Texas, on February 14, 1986.

TRD-8602105 Bob Bullock
Comptroller of Public Accounts

Filed: March 3, 1986
For further information, please call (512) 463-4806.

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Office of Consumer Credit Commissioner Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricultural/ Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 03/3/86-03/09/86	18.00%	18.00%
Monthly Rate— Article 1.04(c)(1) 03/01/86-03/31/86	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 04/01/86-06/30/86	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 04/01/86-06/30/86	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 04/01/86-06/30/86	14.17%	N/A
Standard Annual Rate— Article 1.04(a)(2) ⁽²⁾ 04/01/86-06/30/86	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 04/01/86-06/30/86	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 04/01/86-06/30/86	18.00%	N/A
Judgment Rate—Article 1.05, §2 03/01/86-03/31/86	10.00%	10.00%

(1) For variable rate commercial transactions only.

(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)

(3) Credit for personal, family, or household use

(4) Credit for business, commercial, investment, or other similar purpose.

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

TRD-8602050 Al Endsley
Consumer Credit
Commissioner

Filed: February 28, 1986
For further information, please call (512) 479-1280.

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Texas Commission for the Deaf Amended Consultant Contract Awards

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Commission for the Deaf (TCD) published notice of consultant contract awards. The invitation for the service proposal request appeared in the June 4, 1985, issue of the *Texas Register* (10 TexReg 1803). The notice of awards was published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3337).

Under the terms of the contract which a contractor originally entered into September 1, 1985, the contractors agree to provide services to eligible deaf and hearing impaired individuals. Services to be delivered through the contract include interpreter services, information and referral services, services to elderly deaf persons, and message relay services. The amendment now includes a professional services contract to maintain services statistics in addition to the contractor's administrative duties of handling services billing submitted to TCD. The amendment also consists of new provisions for fees, per hour, per type of certificate held as listed under 40 TAC §181.18 concerning fees for interpreting services for the deaf, which are adopted by TCD for reimbursing interpreter services rendered by the contractors.

Furthermore, the amendment for each contractor now constitutes either increment or decrement of TCD funding allocation pursuant to the TCD rules 40 TAC §181.26(j), concerning contract awards and allocations. Some contractors have not utilized all of the available funds from the first six-month period of their fiscal year 1986 contracts based on cost analysis and project and expenditures from September through December, 1985, with a comparative analysis of fiscal year 1985 expenditures and service units. Other contractors really need more funds than what were allocated originally.

The following names and addresses of the contract awards and the total value of the contract for fiscal year 1986 and contract increment or decrement for fiscal year 1986 for each contractor are: Central Texas Council for the Deaf/Hearing Impaired, P.O. Box 8792, Waco, Texas 76714, \$7,427: decreased to \$6,163; Corpus Christi Area Council for the Deaf, 5151 McArdle, Corpus Christi, Texas 78411, \$16,152: decreased to \$15,353; Deaf Action Center, 3115 Crestview, Dallas, Texas 75235, \$45,266: increased to \$47,197; Deaf Council of Greater Houston, 6901 Fannin #203F, Houston, Texas 77030, \$41,594: increased to \$47,869; East Texas Deaf and Hearing Association, 215 West Bow, Tyler, Texas 75702, \$6,164: decreased to \$3,354; El Paso Center of the Deaf, Inc., 1005 East Yandell, El Paso, Texas 79902, \$20,548: increased to \$23,200; HEAR-SAY, 2525 Murworth #207, Houston, Texas 77054, \$8,406: decreased to \$7,091; Highland Council for the Deaf, P.O. Box 1935, Big Spring, Texas 79721, \$11,344: decreased to \$9,219; Lubbock Community Services for the Deaf, 4236 22nd Place, Lubbock, Texas

79410, \$7,465: decreased to \$4,716; Panhandle Council for the Deaf, 909 South Bivins, Amarillo, Texas 79104, \$7,445: decreased to \$5,056; San Antonio Council for Advancement of Services to the Deaf, 2803 East Commerce, San Antonio, Texas 78203, \$21,661: decreased to \$19,470; Southeast Texas Council for the Hearing Impaired, P.O. Box 10076, Lamar Station, Beaumont, Texas 77710, \$9,213: decrease 1 to \$8,763; Tarrant County Services for the Hearing Impaired, 2500 Lipscomb, Fort Worth, Texas 76110, \$35,931: increased to \$37,219; Texoma Council for the Deaf, 800 North Travis, Sherman, Texas 75090, \$9,783: decreased to \$7,490; Travis County Council for the Deaf, 2201 Post Road, Room 100, Austin, Texas 78704, \$42,461: increased to \$39,239; and West Texas Services for the Deaf, P.O. Box 8107, Abilene, Texas 79699, \$3,362: decreased to \$1,593.

The original contract represents two fiscal years. The contract has a beginning date of September 1, 1985, and an ending date of August 31, 1987. However, the fiscal year 1985 amendment to the original contract will be effective March 1, 1985, and continue until August 31, 1986. The fiscal year 1987 amendments including new reallocations will be subject to TCD commissioners' approval for the fiscal year 1987 budget proposal in August, 1986.

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

TRD-8602047 Larry D. Evans
 Executive Director
 Texas Commission for the Deaf

Filed: February 28, 1986
 For further information, please call (512) 469-9891 (Voice/TDD).

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Texas Department of Health Availability of 1985 Block Grant Annual Reports

Under authority of the Omnibus Budget Reconciliation Act of 1981, the Texas Department of Health has prepared 1985 annual reports on the Maternal and Child Health Services and Preventive Health and Health Service Block Grants. Included in the annual reports are needs and priorities, goals and objectives, types of services, state activities, financial summary, and legislative proposals.

The purpose of this notice is to inform the public of the availability of these annual reports for inspection and comment. The 1985 block grant annual reports may be viewed at the Texas Department of Health, 1100 West 49th Street, Austin, and the following regional offices: Public Health Region 1, Old Health Center Building, 300 Victory Drive, Canyon, Texas 79016, (806) 655-7151; Public Health Region 2, 4709 66th Street, Lubbock, Texas, 79414, (806) 797-4331; Public Health Region 3/12, 2300 East Yandell, El Paso, Texas, 79903, (915) 553-4972; Public Health Region 4, Commerce Plaza Office Building, 1290 South Willis, Suite 100, Abilene, Texas, 79605, (915) 695-7170; Public Health Region 5, 2561 Matlock Road, Arlington, Texas, 76015, (817) 460-3032; Public Health Region 6, 2408 South 37th Street, Temple, Texas, 76503, (817) 778-6744; Public Health Region 7/10, 1517 West Front Street, Tyler, Texas 75702, (214) 595-3585; Public Health Region 8, 1401 South Rangerville Road, Harlingen, Texas 78552, (512) 423-0130; Public Health Region 9, Old Memorial Hospital, Garner Field Road, Uvalde, Texas, 78801, (512) 278-7173; Public Health Region 11, 1110 Avenue G, Rosenberg, Texas, 77471, (713) 342-8685.

In addition, the reports may be viewed at the following local health departments: Corpus Christi-Nueces County Public Health District, 1702 Horne Road, Corpus Christi, Texas, 78416, (512) 851-7200; Grayson County Health Department, 2600 Cedar Street, Laredo, Texas 78044, (512) 723-2051; San Angelo-Tom Green County Health Department, 2 City Hall Plaza, San Angelo, Texas, 76902, (915) 657-4214; San Antonio Metropolitan Health District, 332 West Commerce Street, San Antonio, Texas, 78285, (512) 299-8781; Texarkana-Bowie County Family Health Center, 902 West 12th Street, Texarkana, Texas, 75504, (214) 792-8211; Victoria County Health Department, 107 West River Street, Victoria, Texas, 77902, (512) 578-6281; Wichita Falls-Wichita County Public Health District, 1700 Third Street, Wichita Falls, Texas, 76301, (817) 322-9702.

Comments on the Maternal and Child Health Services Block Grant 1985 annual report may be sent to Walter P. Peter, Jr., M.D., Chief, Bureau of Maternal and Child Health. Comments on the Preventive Health and Health Services Block Grant 1985 annual report may be sent to P. Clift Price, M.D., Associate Commissioner, Personal Health Services. The address for the Texas Department of Health is 1100 West 49th Street, Austin, Texas, 78756.

Issued in Austin, Texas, on February 28, 1986.

TRD-8602101 Robert A. MacLean
 Deputy Commissioner
 Professional Services
 Texas Department of Health

Filed: February 28, 1986
 For further information, please call (512) 458-7236.

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Public Hearing

Notice is hereby given that the following applications for solid waste sites have been filed.

The City of Earth presently holds Solid Waste Permit 34 issued by the Texas Department of Health for the operation of a Type II municipal solid waste site located within the city limits of Earth at 300 South Elm, in Lamb County. The said permit holder has now filed an application to amend the permit to add a five-acre extension to the northern side of the existing disposal site. The total site will consist of approximately 10.13 acres of land, and is to daily receive approximately 4.25 tons of solid waste under the regulatory jurisdiction of the department.

The City of Hamlin presently holds Solid Waste Permit No. 15 issued by the Texas Department of Health for the operation of a Type II municipal solid waste site located three miles southwest of Hamlin, 0.6 mile southeast of the junction of FM Road 668 with FM Road 2142, and 0.5 mile south of FM Road 2142 in Fisher County. The said permit holder has now filed an application to amend the permit by adding 24.66 acres of land to the south side of its existing site which is to daily receive approximately 10.35 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health. The application adequately addresses land use, groundwater protection, surface water protection, access, site development and operation, and other regulatory requirements so that the disposal site should not significantly endanger the health, welfare, or physical property of the area residents or the environment.

The City of Port Arthur has filed Application 1815 with the Texas Department of Health to operate a proposed Type I municipal solid waste disposal site to be located approximately two miles west of Port Arthur, adjacent to the north side of State Highway 73 and adjacent to the west side of the city's existing landfill, in Jefferson County. The site consists of approximately 279 acres of land, and is to daily receive approximately 231 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health. The application adequately addresses land use, access, groundwater and surface water protection, site development and operation, and other regulatory requirements, so that the disposal site should not significantly endanger the health, welfare, or physical property of area residents or the environment.

Swor Sand and Gravel, Inc., has filed Application 1749 with the Texas Department of Health to operate a proposed Type IV municipal solid waste disposal site to be located inside the city limits of Lewisville at the end of the College Street extension, approximately 0.5 mile east of the MK&T Railroad, and approximately one mile south of the Lewisville Dam, in Denton County. The site consists of approximately 85 acres of land, and is to daily receive approximately 240 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health. The proposed site is a partially abandoned sand-and-gravel pit that is to be filled with brush, construction/demolition waste, and rubbish only. The application adequately addresses land use, access, groundwater and surface water protection, site development and operation, and other regulatory requirements, so that the disposal site should not significantly endanger the health, welfare, or physical property of area residents or the environment.

The applications are being processed and the final decision will be made by the department pursuant to the provisions of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the Texas Department of Health Municipal Solid Waste Management Regulations, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

No public hearings will be held on these applications unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application.

If a hearing is requested by a person affected, notice of such hearing will be provided to the requester and will also be published in a newspaper of general circulation in the area where the site is located at least 30 days prior to the date of such hearing. If no request for a hearing is received within 30 days of the date of publication of the said notice in a newspaper of general circulation, the department will make a decision. If a hearing is requested, it will be conducted, and the final decision will be rendered, in accordance with the applicable rules contained in the department's "Municipal Solid Waste Management Regulations," including all changes in effect as of August 20, 1985.

Requests for a public hearing and/or requests for a copy of the technical summary of the application prepared by the Bureau of Solid Waste Management shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete application

for The City of Earth may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region II headquarters located at 4709 66th Street, Lubbock, Texas 79414, (806) 797-4331. A copy of the complete application for the City of Hamlin may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 4 headquarters, located at Commerce Plaza Office Building, 1290 South Willis, Suite 100, Abilene, Texas 79605, (915) 695-7170. A copy of the complete application for the City of Port Arthur may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 7/10 headquarters, located at 1517 West Front Street, Tyler, Texas 75710, (214) 595-3585. A copy of the complete application for the Swor Sand and Gravel, Inc., may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 5 headquarters, located at 2561 Matlock Road, Arlington, Texas 76015, (817) 460-3032.

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

TRD-8602035 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: February 27, 1986

For further information, please call (512) 458-7271.

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Texas Savings and Loan Department Notice of Application of Change of Control

Texas Civil Statutes, Article 852a, §11.20, requires any person who intends to acquire control of a state-chartered savings and loan association to file an application with the Savings and Loan Commissioner for approval of the transaction. A hearing may be held if the application is denied by the Commissioner.

On February 25, 1986, the Savings and Loan Commissioner received an application for approval of the acquisition of control of Armed Forces Savings Association, Del Rio, Texas, by the Hallmark Savings Group, comprised of the following: Jerry Stiles, Plano; John Anthony Bryant, Richardson; Tommy Mason Parker, Dallas; Christopher Lynn White, Garland; Gerry Lee Stehle, Dallas.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on February 28, 1986.

TRD-8602103 Russell R. Oliver
General Counsel
Texas Savings and Loan Department

Filed: February 28, 1986

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

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Texas Water Commission Annual Inspection Report

The Texas Water Commission announces the availability of the annual inspection report of hazardous waste management activities. The report required by the Solid Waste Disposal Act §7 (e), Texas Civil Statutes, Article 4477-7), summarizes the inspection strategy and the results of the inspections of hazardous waste treatment, storage, and disposal facilities conducted by the Texas Water Commission's predecessor agency, the Texas Department of Water Resources, during state fiscal year (SFY) 1985.

The report delineates hazardous waste facility inspections into three categories: (1) those facilities found to be compliant with all hazardous waste regulations; (2) those facilities with only minor or clerical violations; and (3) those facilities found to have substantive, non-clerical violations. For the latter category, the report identifies the violations and summarizes corrective actions or describes the status of unresolved violations. Those facilities with substantive violations unresolved at the end of the state fiscal year will be re-addressed in the annual inspection report of state fiscal year 1986.

Information in the report was compiled from computerized inspection and compliance monitoring files compiled by the Texas Water Commission, Hazardous and Solid Waste Division, Program Support Unit.

Copies of the report may be obtained by writing to Publications Distribution Library, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711.

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

TRD-8602026 James K. Rourker, Jr.
General Counsel
Texas Water Commission

Filed: February 27, 1986
For further information, please call (512) 463-8178.

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Notice of Application for Provisionally Issued Temporary Permits

Notice is given by the Texas Water Commission of provisionally issued temporary permits issued during the period of February 24-28, 1986.

These permits were issued without notice and hearing pursuant to the Texas Water Code, §11.138, and commission rules 31 TAC §303.91-303.93.

The executive director has reviewed each application and found that sufficient water was available at the proposed point of diversion to satisfy the requirements of the applications as well as all existing water rights. It is further noted that these diversions are for not more than 10 acre-feet of water and for a period of not more than one year. If a complaint is received before or after diversions are commenced, a preliminary investigation shall be made by the executive director to determine whether there is a reasonable basis for such complaint. Should the investigation indicate that there is a probability that diversions could result in injury to the complainant, the permit will be canceled, and the application will revert to the status of a pending application and no further diversions may be made until a public hearing is held. Notice of the hearing shall then be sent to the complaining person.

Information concerning any aspect of these permits may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8218.

Listed are the names of the permittees, diversion point, watercourse, amount of water authorized, period of time of the permit, permit number, and the date issued/administratively-complete.

TXP Operating Company; from the stream crossing near Jackson Road, approximately one mile west of Edinburg, Hidalgo County; drainage ditch, tributary Edinburg Main Canal; 10 acre-feet, six-month period; TP-5403; February 24, 1986

Issued in Austin, Texas, on February 28, 1986.

TRD-8602091 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: February 28, 1986
For further information, please call (512) 463-7898.

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Request for Proposals

The Texas Water Commission (TWC) announces that it wishes to retain the services of a consultant to perform remedial investigation/feasibility studies (RI/FS) for the industrial transformers superfund site (also known as the Sol Lynn site). Contingent upon approval by the TWC, the consultant's services may be extended to include follow-on architectural/engineering activities at the industrial transformers site if and when funds become available. This project will be conducted by the TWC through Cooperative Agreement V-006461 with the Environmental Protection Agency (EPA) and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), referred to as Superfund and the Texas Water Code, Chapter 26, Subchapter H.

The EPA may negotiate with potentially responsible parties (PRP) to execute activities in this solicitation in lieu of the TWC. Accordingly, all future TWC activities are subject to the outcome of the EPA negotiations with the PRP. No legal liability on the part of TWC or the State of Texas for payment of any money shall arise unless and until funds are made available through the Federal Superfund Program.

Objectives. The objectives of the investigation and feasibility studies are to:

- (1) characterize the site in terms of wastes present; lateral and vertical extent of contamination in surface waters, ground waters, sediments, and soils; rate and direction of waste migration; target receptors (population at risk, threatened resources, sensitive ecosystems); site geology and hydrology; and
- (2) develop and evaluate alternative remedial measures considering economic feasibility, technological feasibility, environmental impacts, and timeliness of completion, and offer recommendations regarding the most feasible remedial alternatives.

Budget and Schedule. The maximum budget allowable will be consistent with the specific scope of work and the cooperative agreement as determined by the TWC. Budgeted funds for the remedial investigation and feasibility studies are \$210,000 and \$75,000 respectively.

Submittal Information. Microfiche copies of the relevant files are available through Sheldon Seibel, Records and Library Services Section, (512) 463-8562. A copy of the request for proposals (RFP) may be obtained in three ways:

(1) by sending a regular or certified letter requesting a copy of the RFP to: Mr. Arthur Talley, Texas Water Commission, Hazardous and Solid Waste Division, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711; Upon receipt, the TWC will transmit the RFP to the potential offeror by certified mail;

(2) by sending a regular or certified letter requesting a copy of the RFP to the address listed in item (1) with a prepaid self-addressed overnight or expedited delivery return envelope to accommodate approximately six pounds of 8½" by 11" material; or

(3) in person with a signed letter of receipt at Room 304, Employees Retirement System Building, 18th and Brazos Streets, Austin.

Mr. Talley is the designated person to whom proposals may be made. Additional information may be obtained by calling (512) 463-7786. Five copies of each proposal must be received at the address listed in items (1) or (3) before 5 p.m., April 7, 1986, which is the closing date for offers. All statements submitted in response to this request

must address the items as described in the RFP. Any and all information submitted by an offeror in variance with the RFP instructions will not be reviewed or evaluated. All contracting procedures shall be conducted in accordance with all applicable state and federal rules.

Upon submittal, the proposals shall become the property of the State of Texas. The contents of the proposal shall be considered as a part of the public record unless otherwise identified by the consultant. The submittal of confidential or proprietary information should be under separate cover on or before the due date. Confidential submittals should be limited and must include an explanation of the basis for confidentiality. TWC reserves the right to reject or return confidential information.

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

TRD-86C 331

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

Filed: February 27, 1986

For further information, please call (512) 463-8572.

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