

500.6
263
11.34

Texas Register

Volume 11, Number 34, May 6, 1986

Pages 2025-2128



FILE COPY

THIS DOCUMENT
RECEIVED
 TEXAS STATE LIBRARY

MAY 6 1986

Highlights

The Texas Department of Labor and Standards renews the emergency adoption of sections regarding industrialized housing and buildings. Effective date - May 1 ... page 2031
 The Texas Education Agency adopts an emergency amendment concerning classification of cer-

tificates and teacher certification in general. Effective date - April 23 page 2032

The Office of the Governor proposes new sections concerning administration of the Crime Victims Assistance Program. Earliest possible date of adoption - June 6 page 2038

**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.

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

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

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

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

a division of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-483-5581

Myra A. McDaniel
Secretary of State

Director
Dan Procter

Documents Section Coordinator
Cynthia Cooke

Document Editors
Molly Gardner
Sabra Noyes
Jane Orcutt

Document Filing
Lainie Cresse
Denise Roberts

Production Editors
Jody Allen
Lisa Bauer
Hollis Glaser

Typographers
Dawn VanCleave
Glynn Fluitt

Circulation Section Coordinator
Dee Wright

Circulation Assistant
Kristine Hopkins Mohajer

TAC Editor
W. Craig Howell

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

Illustrations courtesy of Texas Parks and Wildlife Department.

Table of Contents

The Governor

Appointments Made April 14

- 2029— Central Texas Region Community Development Block Grant Review Committee

Appointments Made April 15

- 2029— Concho Valley Region Community Development Block Grant Review Committee

Appointments Made April 16

- 2029— East Texas Region Community Development Block Grant Review Committee
- 2029— Panhandle Region Community Development Grant Review Committee
- 2029— Texas World Trade Council

Appointments Made April 17

- 2030— Coastal Bend Region Community Development Block Grant Review Committee
- 2030— Board of Directors, Red River Authority

Appointment Made April 18

- 2030— Texas World Trade Council

Appointments Made April 22

- 2030— Good Neighbor Commission
- 2030— Literacy Task Force

Emergency Rules

- Texas Department of Labor and Standards
- 2031— Industrialized Housing and Buildings

- Texas Education Agency
- 2032— Teacher Certification

- State Board of Insurance
- 2033— Property and Casualty Insurance

- Texas Water Commission
- 2033— Industrial Solid Waste and Municipal Hazardous Waste

- Comptroller of Public Accounts
- 2037— Central Administration

Proposed Rules

- Office of the Governor
- 2038— Criminal Justice Division
- Texas Education Agency
- 2050— Regional Education Service Centers
- 2051— Proprietary Schools and Veterans Education
- 2056— Teacher Certification

- Texas State Board of Public Accountancy
- 2057— Professional Conduct
- 2058— Certification as CPA

- Anatomical Board of the State of Texas
- 2059— Officers
- 2060— Executive Committee
- 2061— Meetings

- 2061— Distribution of Bodies
- 2063— Facilities: Standards and Inspections
- 2064— Hearing Procedures

- State Board of Insurance
- 2064— Property and Casualty Insurance

Withdrawn Rules

- Texas Water Commission
- 2090— Industrial Solid Waste Management and Municipal Hazardous Waste

Adopted Rules

- Texas Economic Development Commission
- 2091— Allocation of Private Activity Bonds
- Board of Vocational Nurse Examiners
- 2092— Education
- Texas Real Estate Commission
- 2093— Practice and Procedure
- 2093— Provisions of the Real Estate License Act
- 2093— Professional Agreements and Standard Contracts

- Texas Department of Health
- 2093— Abortion Facilities

- Comptroller of Public Accounts
- 2103— Tax Administration

- Texas Department of Human Services
- 2104— ICF/SNF

- State Board of Insurance
- 2105— Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

Open Meetings

- 2106— Texas Department of Agriculture
- 2107— Texas Air Control Board
- 2107— Texas Animal Health Commission
- 2107— Texas Commission for the Blind
- 2107— Texas Department of Community Affairs
- 2107— Texas Department of Corrections
- 2107— Texas Commission for the Deaf
- 2108— Council on Disabilities
- 2108— Texas Commission on Economy and Efficiency in State Government
- 2108— Texas Education Agency
- 2109— Texas Employment Commission
- 2109— Finance Commission of Texas
- 2109— Texas Department of Health
- 2109— Texas Health and Human Services Coordinating Council
- 2109— State Department of Highways and Public Transportation
- 2110— Texas Department of Human Services
- 2111— Texas Department of Labor and Standards
- 2111— Texas State Library and Archives Commission
- 2111— Texas Low-Level Radioactive Waste Disposal Authority
- 2112— Texas Music Commission

2112— Board of Nurse Examiners
2112— Texas Optometry Board
2112— Board of Pardons and Paroles
2112— Texas Parks and Wildlife Department
2112— Proprietary School Advisory Commission
2113— Public Utility Commission of Texas
2113— State Purchasing and General Services
Commission
2113— Railroad Commission of Texas
2114— Texas Real Estate Commission
2114— School Land Board
2115— Texas Sesquicentennial Commission
2115— Teacher Retirement System of Texas
2115— Texas Southern University
2115— Texas Woman's University
2115— University of Texas at Austin
2115— Texas Water Commission
2117— Regional Agencies

In Addition

Texas Department of Agriculture
2119— Notice of Texas Pork Producers Board
Biennial Election

Texas Air Control Board
2119— Contested Case Hearing
2120— Public Hearing

**Automated Information and Telecommunica-
tions Council**
2120— Notice of Modification of Request for
Proposal

State Banking Board
2120— Notice of Hearing

Texas Department of Community Affairs
2121— Notice of Contract Award

Comptroller of Public Accounts
2121— Edited Decision 12,863
2121— Edited Decision 16,385
2121— Edited Decision 16,769
2122— Edited Decision 17,151

Texas Commission for the Deaf
2122— Amended Consultant Contract Awards

Texas Department of Health
2122— Intent to Revoke a Certificate of
Registration
2124— Proposed Radioactive Material License
Issuance
2124— Public Hearings

**State Department of Highways and Public
Transportation**
2125— Consultant Contract Award

Texas A&M University System
2125— Request for Proposals

Texas Water Commission
2126— Enforcement Order
2126— Notice of Application for Waste
Disposal Permits

Texas Water Development Board
2127— Consultant Proposal Request

TAC Titles Affected

TAC Titles Affected—May

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

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

1 TAC §§3.601-3.644	2038
1 TAC §§81.1-81.9	2044
1 TAC §§81.1, 81.3-81.9, 81.12-81.14, 81.16	2042
1 TAC §81.21	2042
1 TAC §81.30, §81.31	2045
1 TAC §81.31-81.45, 81.47-81.49, 81.51-81.80, 81.82-81.84, 81.86, 81.87	2042
1 TAC §§81.40-81.53	2045
1 TAC §81.70	2047
1 TAC §§81.100-81.123	2047
1 TAC §81.101, §81.102	2043
1 TAC §§81.121-81.141	2043

TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Economic Development Commission

10 TAC §§102.1-102.9	2091
----------------------	------

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

16 TAC §§70.1-70.4	2031
16 TAC §§70.10-70.13	2031
16 TAC §§70.20-70.22, 70.25-70.27	2031
16 TAC §§70.30-70.42	2031
16 TAC §§70.50-70.52	2031
16 TAC §§70.101-70.105	2031
16 TAC §70.125, §70.126	2032

TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §§53.71-53.77	2050
19 TAC §§69.122, 69.124, 69.127, 69.129	2051
19 TAC §141.2	2032, 2056

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

22 TAC §233.1	2092
22 TAC §233.43	2092

Part XXII. Texas State Board of Public

Accountancy	
22 TAC §501.2	2057
22 TAC §511.26	2058
22 TAC §511.27	2058, 2059

Part XXIII. Texas Real Estate Commission

22 TAC §533.18	2093
22 TAC §535.201	2093
22 TAC §537.11	2093

TITLE 25. HEALTH SERVICES

Part IV. Anatomical Board of the State of Texas

25 TAC §§139.1-139.12	2066
25 TAC §§471.1-471.3	2059

25 TAC §471.4	2060
25 TAC §473.1	2060
25 TAC §475.2, §475.3	2061
25 TAC §477.2	2061
25 TAC §477.4	2061
25 TAC §477.6	2062
25 TAC §477.8	2062
25 TAC §479.1, §479.2	2063
25 TAC §479.5	2063
25 TAC §483.1	2064

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §5.2003, §5.2004	2033, 2064
28 TAC §7.54	2066
28 TAC §7.64	2067
28 TAC §7.1004	2068

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

31 TAC §§319.1-319.11	2069
31 TAC §§319.21-319.29	2071
31 TAC §§321.1-321.18	2075
31 TAC §§321.31-321.38	2077
31 TAC §§321.51-321.57	2078
31 TAC §§321.61-321.66	2079
31 TAC §§321.71-321.81	2080
31 TAC §336.2, §336.24	2034
31 TAC §336.43, §336.45	2035
31 TAC §§336.221, 336.223-336.226	2036
31 TAC §336.227	2090

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §1.42	2037, 2083
34 TAC §3.548	2083
34 TAC §5.54	2083
34 TAC §5.55	2085
34 TAC §3.299	2103

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

37 TAC §§1.122-1.125	2085
37 TAC §1.128	2086

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §16.7103	2104
40 TAC §27.4803	2087

Part III. Texas Commission on Alcohol and

Drug Abuse	
40 TAC §§155.41-155.45	2087

Part VI. Texas Commission for the Deaf

40 TAC §181.21	2088
----------------	------

Part IX. Texas Department on Aging

40 TAC §283.1-283.6	2088
---------------------	------

The Governor

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

Appointments Made April 14

Central Texas Region Community Development Block Grant Review Committee

For terms to expire January 1, 1988:

Bill T. Avrett
Mayor
City of Rockdale
P.O. Box 9
Rockdale, Texas 76567

Thomas Bowden
County Judge
County Courthouse
San Saba, Texas 76877

Robert Brown
City Councilman
188 North 31st Street
Gatesville, Texas 76528

Dan Wayne Carpenter
City Councilman
505 East 28th Street
Belton, Texas 76513

Forrest J. French
Mayor
City of Copperas Cove
709 Houston Street
Copperas Cove, Texas 76522

Robert Reed
City Alderman
P.O. Box 706
Lampasas, Texas 76550.

Issued in Austin, Texas, on April 14, 1988.

TRD-8003854 Mark White
Governor of Texas

★ ★ ★

Appointments Made April 15

Concho Valley Region Community Development Block Grant Review Committee

For terms to expire January 1, 1988:

William Mark Day (Chair)
McCulloch County Judge
Brady, Texas 76825

Tim Childers
Menard County Commissioner
P.O. Box 1028
Menard, Texas 76859

Aubrey Denman
Coke County Judge
P.O. Box 52
Robert Lee, Texas 76945

Wilbur R. Dunk
County Judge
Kimball County
County Courthouse
Junction, Texas 76849

C. Ross Foster
City Councilman
P.O. Box 686
Sterling City, Texas 76951

H. F. Ritchie
Mayor
P.O. Box 300
Big Lake, Texas 76932

Pat Rose
City Councilman
102 North Fifth Street
Junction, Texas 76849.

Issued in Austin, Texas, on April 15, 1988.

TRD-8003854 Mark White
Governor of Texas

★ ★ ★

Appointments Made April 16

East Texas Region Community Development Block Grant Review Committee

For terms to expire January 1, 1988:

Hershell Beck (Chair)
Mayor Pro Tem
City of Carthage
P.O. Box 400
Carthage, Texas 75633

E. M. Bradshaw
Mayor
City of Mineola
P.O. Box 179
Mineola, Texas 75733

Reginald O. Brown, Sr.
Anderson County Commissioner
P.O. Box 812
Palestine, Texas 75801

Joy Clark
Mayor
City of Chandler
P.O. Box 425
Chandler, Texas 75758

Eldridge Moak
City Councilman
501 El Paso
Jacksonville, Texas 75766

Dennis Wayne Teal
Mayor
P.O. Box 245
Canton, Texas 75103

Panhandle Region Community Development Block Grant Review Committee

For terms to expire January 1, 1988:

John J. Burns
Mayor
P.O. Box 25
Texline, Texas 79087

William Chamberlain
Donley County Commissioner
Naylor Route
Claredon, Texas 79226

Elisha Demerson
Potter County Commissioner
517 South Taylor
Amarillo, Texas 79101

Bob Hunnicutt
Hartley County Commissioner
P.O. Box F
Channing, Texas 79108

Jay Johnson
Swisher County Judge
223 North Floyd
Tulia, Texas 79088

Gladys Posey
Armstrong County Judge
P.O. Box 130
Claude, Texas 79019

Texas World Trade Council

For a term to expire February 1, 1987:

Ralph Thomas
2 Houston Center
Suite 2907
Houston, Texas 77010

Mr. Thomas is being appointed pursuant to Senate Bill 1409, 69th Legislature, 1985.

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

TRD-8803854

Mark White
Governor of Texas

★ ★ ★

Appointments Made April 17

Coastal Bend Region Community Development Block Grant Review Committee

For terms to expire January 1, 1988:

Richard Martinez Borchard (Chair)
Nueces County Commissioner
901 Leopard Street
Corpus Christi, Texas 78401

Carl Duncan
San Patricio County Commissioner
400 West Sinton Street
Sinton, Texas 78387

Octavio Figueroa
Mayor
City of Alice
P.O. Box 3229
Alice, Texas 78333

J. B. Garcia
Brooks County Judge
P.O. Box 515
Falfurrias, Texas 78355

Neil Meier
City Councilwoman
P.O. Box 90
Bayside, Texas 78340

Richard Pena
George West City Councilman
P.O. Drawer F
George West, Texas 78022

Robert B. Watson
Mayor
City of Aransas Pass
304 South Lamont
Aransas Pass, Texas 78336

Board of Directors, Red River Authority

For a term to expire August 11, 1989:

John W. Welch
Route 1
Telephone, Texas 75488

Mr. Welch is replacing William H. Summers of Whitewright, Grayson County, whose term expired.

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

TRD-8803854

Mark White
Governor of Texas

★ ★ ★

Appointment Made April 18

Texas World Trade Council

For a term to expire February 1, 1987:

Joseph Sacco
4001 Tanglewilde, #603
Houston, Texas 77063

Mr. Sacco is being appointed pursuant to Senate Bill 1409, 69th Legislature, 1985.

Issued in Austin, Texas, on April 18, 1986.

TRD-8803854

Mark White
Governor of Texas

★ ★ ★

Appointments Made April 22

Good Neighbor Commission

For a term to expire June 18, 1987:

Dr. Billy Reagan
2828 Bammel, #1105
Houston, Texas 77098

Dr. Reagan is replacing Nathan Safir of San Antonio, who resigned.

Literacy Task Force

For a term to continue at the pleasure of this governor:

Dorris Ellis
3341 Charleston
Houston, Texas 77021.

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

TRD-8803854

Mark White
Governor of Texas

★ ★ ★



Emergency

Rules

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

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards Chapter 70. Industrialized Housing and Buildings

Subchapter A. Legislative Intent, Purpose, Scope, and Definitions

★ 16 TAC §§70.1-70.4

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§70.1-70.4, and emergency amendments to emergency new §70.3 and §70.4, for a 60-day period effective May 1, 1986. The text of emergency new §§70.1-70.4 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 9). The text of the emergency amendments to §70.3 and §70.4 was originally published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1491).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603969 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 483-3127.

★ ★ ★

Subchapter B. Responsibility and Authority of Local Building Officials, Council, and Department

★ 16 TAC §§70.10-70.13

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§70.10-70.13, and emergency amendments to emergency new §70.11 and §70.12, for a 60-day period effective May 1, 1986. The text of emergency new §§70.10-70.13 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 11). The text of the emergency amendments to §70.11

and §70.12 was originally published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1491).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603970 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 483-3127.

★ ★ ★

Subchapter C. Standards and Codes

★ 16 TAC §§70.20-70.22, 70.25-70.27

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§70.20-70.22, and 70.25-70.27 and emergency amendments to emergency new §70.22 and §70.25, for a 60-day period effective May 1, 1986. The text of emergency new §§70.20-70.22 and 70.25-70.27 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 11). The text of the emergency amendments to §70.22 and §70.25 was originally published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1493).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603971 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 483-3127

★ ★ ★

Subchapter D. Administration and Enforcement

★ 16 TAC §§70.30-70.42

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§70.30-70.42, and emergency amendments to emergency new §70.30, and 70.32-70.40, for a 60-

day period effective May 1, 1986. The text of emergency new §§70.30-70.42 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 12). The text of the emergency amendments to §§70.30 and 70.32-70.40 was originally published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1493).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603972 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 483-3127.

★ ★ ★

Subchapter E. Fees and Reports

★ 16 TAC §§70.50-70.52

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§70.50-70.52, and emergency amendments to emergency new §70.50 and §70.52, for a 60-day period effective May 1, 1986. The text of emergency new §§70.50-70.52 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 16). The text of the emergency amendments to §70.50 and §70.52 was originally published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1495).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603973 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 483-3127.

★ ★ ★

Subchapter F. General and Miscellaneous

★ 16 TAC §§70.101-70.105

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§70.101-70.105,

and emergency amendments to emergency new §§70.101-70.105, for a 60-day period effective May 1, 1986. The text of emergency new §§70.101-70.105 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 17). The text of the emergency amendments to §§70.101-70.105 was originally published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1486).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603974 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 463-3127.

★ ★ ★

Subchapter G. Sanctions and Penalties

★ 16 TAC §70.125, §70.126

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of amended §70.125 and §70.126 for a 60-day period effective May 1, 1986. The text of the amended §70.125 and §70.126 was originally published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 17).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603975 Booker T. Morris, III
General Counsel
Texas Department of
Labor and Standards

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 463-3127.

★ ★ ★

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 141. Teacher Certification

Subchapter A. Certification of Teachers in General

★ 19 TAC §141.2

The Texas Education Agency adopts on an emergency basis an amendment to §141.2, concerning classes of teacher certificates. The amendment is adopted on an emergency basis because the portion of the section that would institute a new certification system, scheduled to become effective May 1, 1986, is not consistent with legislative mandates and must

be repealed. The current certification system will remain in effect until September 1, 1987.

The amendment is adopted on an emergency basis under the Texas Education Code, §§13.032(a) and (d)(1), which authorize the State Board of Education to make rules concerning classes of teaching certificates to be issued.

§141.2. Classes of Certificates.

[(a)] The following provisions concerning classes of teacher certificates shall be in effect until September 1, 1987 [May 1, 1986]:

(1)-(5) (No change.)

[(b) Effective May 1, 1986, classes of teacher certificates shall be as follows.

[(1) Classes of certificates. There shall be three classes of teacher certificates: provisional, standard, and professional, excluding vocational certificates.

[(2) The provisional certificate.

[(A) A provisional certificate shall be valid for three full years from the date of recommendation by an approved teacher education institution. The recommendation by an institution shall be within one year following completion of the program.

[(B) Requirements for teachers shall be as follows:

[(i) completion of a baccalaureate degree;

[(ii) completion of an approved teacher education program;

[(iii) recommendation by an approved teacher education institution; and

[(iv) submission of a satisfactory passing score on a comprehensive examination prescribed by the State Board of Education under the provision of §141.4 of this title (relating to Testing Requirements).

[(C) The provisional certificate shall be renewable once for three additional years with the completion of six semester hours from an institution with an approved program in the area of the certificate or assignment.

[(D) Persons failing to qualify for a renewed provisional certificate may apply in writing to the commissioner of education for an extension not to exceed one year from the date of application.

[(3) The standard certificate.

[(A) A standard certificate shall be valid for seven years and shall be renewable.

[(B) Requirements for the initial standard certificate shall be as follows:

[(i) possession of a valid provisional certificate;

[(ii) completion of three years of teaching experience and recommendation by the current or last employing school district;

[(iii) completion of 12 semester hours of upper division or graduate studies beyond the requirements for the current certificate in an approved teacher education institution; and

[(iv) recommendation by an approved teacher education institution.

[(C) Requirements for renewing the standard certificate shall be:

[(i) possession of a valid standard certificate;

[(ii) completion of 12 semester hours of upper division or graduate studies beyond the requirements for the current certificate in an approved teacher education institution; and

[(iii) recommendation by an approved teacher education institution.

[(4) The professional certificate.

[(A) A professional certificate shall be valid for life.

[(B) Requirements for the professional certificate for individuals holding the provisional certificate are as follows:

[(i) completion of three years of teaching experience and recommendation by the current or last employing school district;

[(ii) completion of a master's or doctor's degree in a certification/specialization area from an approved teacher education institution; and

[(iii) recommendation by an approved teacher education institution.

[(C) Requirements for the professional certificate for individuals holding the standard certificate shall be as follows:

[(i) completion of master's or doctor's degree in a certification/specialization area from an approved teacher education institution; and

[(ii) recommendation by an approved teacher education institution.

[(5) Persons whose certificates have expired may apply for recertification once at the level of the expired certificate based upon a deficiency plan issued by an approved teacher education institution in accordance with rules of the State Board of Education.

[(6) All persons holding a provisional or professional certificate issued under previous certification requirements will be safeguarded, their certificates will be permanent with no renewal requirements.]

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

TRD-8603825 W. N. Kirby
Commissioner of
Education

Effective date: April 23, 1986
Expiration date: August 21, 1986
For further information, please call
(512) 463-9212.



TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter C. Texas Medical Liability Insurance Underwriting Association

★ 28 TAC §§ 5.2003, § 5.2004

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended § 5.2003 and § 5.2004 for a 90-day period effective May 1, 1986. The text of the amended § 5.2003 and § 5.2004 was originally published in the January 7, 1986, issue of the *Texas Register* (11 Tex-Reg 85).

Issued in Austin, Texas, on April 28, 1986.

TRD-8603952 Nicolás Murphy
Chief Clerk
State Board of Insurance

Effective date: May 1, 1986
Expiration date: June 30, 1986
For further information, please call
(512) 463-6327.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 336. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Water Commission adopts on an emergency basis amendments to emergency new §§ 336.2, 336.24, 336.43, 336.45, and 336.221, 336.223-336.226, concerning industrial solid waste and municipal hazardous waste.

These sections are amended to address new permit requirements relating to the recycling of hazardous waste established by the administrator of the United States Environmental Protection Agency (EPA) on November 29, 1985 (50 Code of Federal Regulations 49164), pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code, § 6901 *et seq.* The new federal rules initiate regulation of hazardous wastes that are marketed and burned for energy recovery and require all existing marketers and burners who store hazardous waste fuel and who are not currently operating under interim status to file a notification of storage activities with the EPA by January 29, 1986, and submit a Part A permit application to the EPA by May 29, 1986. Marketers and burners already operating

pursuant to interim status but who operate existing hazardous waste fuel storage facilities newly subject to regulation by the November 29, 1985, rules, must also have filed a notification by January 29, 1986, and submit an amended Part A application by May 29, 1986. Because the rules have been promulgated pursuant to § 3004 (q) of the Hazardous and Waste Amendments of 1984 (HSWA), which amended RCRA, they are immediately effective in authorized states.

The commission has therefore adopted certain portions of these requirements on an emergency basis to bring state permitting requirements into conformity with federal requirements and establish provisions whereby existing marketers and burners of hazardous waste fuels may obtain interim status under state law.

Section 335.2 concerns permit requirements for the storage, processing, and disposal of industrial solid waste and hazardous waste. The emergency adoption amends subsection (c) of this section, relating to interim status for the on-site storage processing, and disposal of hazardous waste to specify that statutory and regulatory amendments under either the Texas Solid Waste Disposal Act or the federal RCRA that render the facility subject to a permit requirement will trigger the requirements to obtain interim status. The amendment will allow on-site facilities to obtain interim status based on the enactment of federal as well as state requirements and is useful in those cases where federal action precedes imposition of requirements under state law by a considerable period of time. Specifically, this provision allows facilities covered by the November 29 EPA rulemaking to obtain state interim status (without the need for state rulemaking) if they file a Part A application with the state by May 29, 1986.

Section 336.43(b), relating to permit requirements for on-site hazardous waste management facilities, is also amended in the same respect.

Section 336.45(b), relating to off-site facilities without a permit to reuse, recycle, or reclaim hazardous waste, is also amended by this adoption. The existing section refers specifically to July 5, 1985, the effective date of EPA's January 4, 1985, comprehensive rule relating to the recycling of hazardous waste, as the relevant date that triggers the applicability of interim status provisions for off-site facilities. Therefore, facilities must be in existence on that date and file a Part A application by that date to receive interim status. The emergency adoption amends subsection (b) of this section to refer more generally to facilities in existence on or before the effective date of requirements under RCRA that render a facility subject to a hazardous waste permit requirement and to require filing by the effective date of those requirements. This provision therefore operates to allow interim status for facilities

newly covered by new federal requirements relating to the recycling of hazardous waste, rather than limiting itself to the initial January 4, 1985, EPA regulation. As the other amendments to §§ 336.2 and § 336.43, this amendment would specifically allow facilities newly covered by the November 29, 1985, rules to obtain interim status.

The emergency adoption also amends § 336.24, relating to requirements for recyclable materials and nonhazardous recyclable materials, and §§ 336.221-336.227, relating to standards for the management of specific wastes and specific types of facilities (hazardous waste burned for energy recovery). Currently, these sections are based on the January 4, 1985, EPA rules on recycling of hazardous waste. The new EPA requirements have altered and in some cases, expanded, the scope of the January 4 rules. It is therefore necessary to amend these sections in state law, so that the universe of facilities subject to regulation (i.e., subject to the requirement to file a Part A application) is the same at both state and federal levels.

Subsection (c) of § 336.24 is amended to reflect new exemptions established in 40 Code of Federal Regulations, § 261.6(a)(3), relating to fuels derived from petroleum refining waste, and coke derived from indigenous petroleum refinery wastes.

Subsection (h) of § 336.24, and §§ 336.221-336.227, which establish specific waste management standards, have been amended to reflect new EPA provisions which remove the conditional exemption from regulation for spent materials and byproducts exhibiting a characteristic of hazardous waste; and the exemption for hazardous waste fuels produced from hazardous waste by blending or other treatment by a person who neither generated the waste nor burns the fuel.

Other changes made by the November 29, 1986, rulemaking, which are unrelated to the interim status provisions and universe of regulated facilities, are not addressed by this emergency adoption. These requirements (i.e., prohibition on marketing and burning of hazardous waste fuel in nonindustrial boilers, notification, and record-keeping requirements, etc.) will be proposed as permanent sections, as will be the sections amended on an emergency basis after adoption of Chapter 335, as proposed in the January 10, 1986, issue of the *Texas Register* (11 TexReg 123) and serialized in the January 24, 1986, issue of the *Texas Register* (11 TexReg 424). The emergency sections will continue in effect until they have been replaced by the permanent sections.

In addition, provisions in the November 29, 1986, rule relating to the recycling of used oil pursuant to the Used Oil Recycling Act of 1980, are not addressed by this adoption.

In summary, pursuant to these emergency amendments, persons who manage hazardous waste at an on-site facility who have previously filed a Part A permit application pursuant to the Texas Solid Waste Disposal Act, §4(f)(2), should submit a revised Part A permit application to the commission by May 29, 1986, to include wastes or activities that are newly identified, listed, or described by the November 29, 1985, publication of the *Federal Register*. All newly covered commercial or off-site facilities are also required to file a new or revised Part A application by that same date. Persons who have submitted Part B permit applications should also submit a revised Part A permit application containing information regarding wastes or activities that are newly listed, identified, or described in the November 29, 1986, issue of the *Federal Register*, to the commission before the May 29, 1986, deadline in these regulations. Copies of the state Part A application form may be obtained by contacting Ray Austin, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711, (512) 463-8185.

The commission finds that an urgent need exists to adopt these amendments on an emergency basis to maintain a state hazardous waste program which is consistent with the federal RCRA Program, including the deadlines set forth in the federal regulations published in the *Federal Register* on November 29, 1985. Under this adoption, persons qualifying for interim status, or in other cases exempted from regulation pursuant to new EPA rules, will also so qualify or be exempted under state law.

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

★ 31 TAC §336.2, §336.24

These emergency amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 of the commission. These emergency amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplish-

ment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.2. Permit Required.

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

(c) Any person who has commenced on-site storage, processing, or disposal of a hazardous waste on or before November 19, 1980, and who has filed a hazardous waste permit application with the commission on or before November 19, 1980, and in accordance with the rules and regulations of the commission, may continue the on-site storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §336.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of hazardous waste management facilities who have commenced the on-site storage, processing, or disposal of hazardous waste as defined in this subsection, or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §6901 *et seq.*, that render the facility subject to the requirement to have a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occurs. This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under

this section shall meet the requirements of §336.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a person has commenced the on-site storage, processing, or disposal of hazardous waste if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

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

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

§336.24 Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

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

(c) The following recyclable materials are not subject to regulation under Subchapters B-I of this chapter, (relating to Hazardous Waste Management-General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Prohibition on Open Dumps), respectively, or Chapter 305 of this title (relating to Consolidated Permits), or Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures before Public Hearing); Chapter 267 of this title (relating to Procedures during Public Hearing); Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner); Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission); and Chapter 273 of this title (relating to Procedures after Final Decision), except as provided in subsections (g) and (h) of this section:

(1)-(7) (No change.)

(8) the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 Code of Federal Regulations, §266.40(e) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining pro-

case after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 Code of Federal Regulations, §266.40(c);

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 Code of Federal Regulations, §266.40(c); and

(9) petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

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

(h) Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2)-(4) of this section [hazardous waste fuels that are spent materials and byproducts and that are hazardous only because they exhibit a characteristic of hazardous waste; and hazardous waste fuels produced from hazardous waste by blending or other processing by a person who neither generated the waste nor burns the fuel remain] are subject solely to the requirements of §336.4 of this title (relating to General Prohibitions) and §336.6 of this title (relating to Notification Requirements). The [Such wastes may also be subject to the] requirements of §§336.10-336.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements for Transporters of Class I Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Record-keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste; and Record-keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), do not apply to recyclable materials regulated under this subsection unless [as applicable, if] the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1)-(9) (No change.)

(i) (No change.)

Effective date: April 25, 1988
Expiration date: July 1, 1988
For further information, please call
(512) 483-8087.

★ ★ ★

Subchapter B. Hazardous Waste Management General Provisions

★ 31 TAC §336.43, §336.45

These emergency amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 of the commission. These emergency amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.43. Permit Required.

(a) (No change.)

(b) Any person who has commenced on-site storage, processing, or disposal of hazardous waste on or before November 19, 1980, and who has filed a hazardous waste permit application with the commission on or before November 19, 1980, and in accordance with the rules and regulations of the commission, may continue the on-site storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application. Owners and operators of hazardous waste management facilities who have commenced the on-site storage, processing, or disposal of hazardous waste as defined in subsection (c) of this section, or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article

4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §6901 *et seq.*, that render the facility subject to the requirement to have a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than:

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

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

§336.45. Effect on Existing Facilities.

(a) (No change.)

(b) Effect on off-site facilities without a permit to reuse, recycle, or reclaim hazardous waste. Any person who has commenced [on or before July 5, 1985] the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified, or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, [as amended by the regulations published on January 4, 1985, at 50 *Federal Register* 614, shall file an application with the commission] on or before the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §6901 *et seq.*, relating to the reuse, recycling, or reclamation of hazardous waste, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, [July 5, 1985] which includes the applicable information required by §336.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments [July 5, 1985], who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments [July 5, 1985], in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Water Commission approves or denies the application. Facilities that have received a permit for the reuse, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) to reflect new regulatory requirements.

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 April 24, 1988.

TRD-8803888

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

Effective date: April 25, 1986
Expiration date: July 1, 1986
For further information, please call
(512) 483-8087.

★ ★ ★

Subchapter H, Standards for the Management of Specific Wastes and Specific Types of Facilities Hazardous Waste Burned for Energy Recovery

★ 31 TAC §§336.221, 336.223-336.226

These emergency amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 of the commission. These emergency amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.221. *Applicability.*

(a) The regulations of §§336.221-336.227 of this title (relating to Hazardous Waste Burned for Energy Recovery) apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under the provisions governing incinerators that are adopted by reference in §336.112(a)(14) of this title (relating to Standards), except as provided by subsection (b) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel." Fuel pro-

duced from hazardous waste by processing, blending, or other treatment is also hazardous waste fuel. [However, except as provided under §336.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), hazardous waste fuels produced from hazardous waste by blending or other processing by a person who neither generated the waste nor burns the fuel are not subject to regulation under this chapter.]

(b) The following hazardous wastes are not regulated under §§336.221-336.227 of this title (relating to Hazardous Waste Burned for Energy Recovery):

(1) (No change.)

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations §261.4 and §336.24(c)(5)-(9) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Material), and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of §336.61(c) of this title (relating to Purpose, Scope, and Applicability).

§336.223. *Standards Applicable to Generators of Hazardous Waste Fuel.*

(a) Generators of hazardous waste fuel are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) [except that §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) exempts certain spent materials and byproducts from these provisions].

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

§336.224. *Standards Applicable to Transporters of Hazardous Waste Fuel.*

[(a)] Transporters of hazardous waste fuel (and hazardous waste that is used to produce a fuel) [from generator to marketer, or from a generator to a burner,] are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste) [except that §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) exempts certain spent materials and byproducts from these provisions].

[(b)] Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous waste fuel from marketers, who are not also the generators of the waste, to burners or other marketers.]

§336.225. *Standards Applicable to Marketers of Hazardous Waste Fuel.*

(a) Persons who market hazardous waste fuel are called "marketers." Marketers include generators who market hazardous waste fuel directly to a burner, [and] persons who receive hazardous waste from genera-

tors, and produce, process, or blend hazardous waste fuel from these hazardous wastes, and persons who distribute but do not process or blend hazardous waste fuel [are also marketers, but are not presently subject to regulation].

(b) Marketers [who are generators] are subject to the requirements of §336.69 of this title (relating to Accumulation Time), or to Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision) [except as provided by §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) for certain spent materials and byproducts]. Marketers who initiate a shipment of hazardous waste fuel must comply with manifesting and recordkeeping and reporting requirements applicable to generators in Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

[(c)] Marketers who receive hazardous waste from generators, and produce, process, or blend hazardous waste fuel from these hazardous wastes, are subject to regulation under all applicable provisions of Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chap-

ter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision), except as provided by §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) for certain spent materials and byproducts.]

(c)[(d)] The following requirements apply to the labelling of fuel containing hazardous waste.

(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, after February 6, 1985, it shall be unlawful for any person who produces, distributes, or markets any fuel that contains a hazardous waste to distribute or market such fuel if the invoice or the bill of sale fails:

(A) to bear the following statement: "Warning: This fuel contains hazardous waste;" and

(B) to list the hazardous wastes contained therein. Such statement must be located in a conspicuous place on every such invoice or bill sale and must appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the invoice or bill of sale.

(2) This requirement does not apply to fuels produced from petroleum refining hazardous waste containing oil if:

(A) such materials are generated and reinserted on-site into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a Standard Industrial Classification (SIC) number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) This requirement does not apply to fuels produced from oily materials resulting from normal petroleum refining production and transportation practices; if:

(A) contaminants are removed; and

(B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(4) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting

coke product would exceed one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

§336.226. *Standards Applicable to Burners of Hazardous Waste Fuel.* Burners that store hazardous waste fuel prior to burning are subject to the requirements of §336.69 of this title (relating to Accumulation Time), or to all applicable requirements in Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision), with respect to such storage [except as provided by §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) for certain spent materials and byproducts].

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

TRD-8603886

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

Effective date: April 25, 1986

Expiration date: July 1, 1986

For further information, please call
(512) 463-8087.

★ ★ ★
TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Practice and Procedure

★34 TAC §1.42

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §1.42, concerning definitions. The

amendment specifies that requests for settlement of penalty and interest assessments are not within the definition of the term "contested case." These requests are not within the jurisdiction of the agency's administrative law judges and will not be handled through the agency hearings process. Under the applicable provisions of the Tax Code, these settlements are discretionary with the comptroller and are not required to be disposed of as a part of a redetermination order.

This amendment is adopted on an emergency basis in an effort to reduce the number of assessments on which a hearing is requested and to reduce the number of issues involved in those hearings. Further, the amendment speeds the processing of assessments in which requests for settlement of penalty and interest is the only point of disagreement, thereby speeding up the collection of audit revenue.

This amendment is adopted on an emergency basis 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 provisions of Title 2 of the Tax Code.

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

Contested case or case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for redetermination or refund, as well as actions initiated by the agency to revoke or suspend permits or licenses administered by this agency on grounds other than failure to pay a final tax deficiency or failure to file a tax security. It does not include forfeitures of rights to do business, of certificates of authority, of articles of incorporation, or requests for or revocation of exemptions from taxation. Requests for settlement of amounts assessed or paid as penalty or interest with respect to a tax assessment are not contested cases. However, if a contested case results in an adjustment to a tax liability, the corresponding penalty and interest adjustment will also be made.

Issued in Austin, Texas, on April 28, 1986.

TRD-8603948

Bob Bullock
Comptroller of Public Accounts

Effective date: April 28, 1986

Expiration date: August 26, 1986

For further information, please call
(512) 463-4808.

★ ★ ★

Proposed Rules

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

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

TITLE 1.

ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice

Division

Subchapter A. Criminal Justice

Administration of the Crime

Victims Assistance Program

★ 1 TAC §§3.601-3.644

The Criminal Justice Division of the Office of the Governor proposes new §§3.601-3.644, concerning the administration of criminal justice grant funds. Under the federal Victims of Crime Act of 1984 (VOCA), the State of Texas is eligible to receive federal block grants for programs that provide services to victims of crimes. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for the administration of these grant funds. Sections 3.601-3.644 reflect Criminal Justice Division administrative policies, requirements, and operating procedures that apply to crime victims assistance projects which may receive VOCA funding under the Crime Victims Assistance Program.

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

Mr. Janecek also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance that applicants will be fully informed concerning the administrative policies and procedures and the special requirements for funding under the Crime Victims Assistance Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Gilbert Pena, Executive Director, Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, for a period of 30 days following publication in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor with the authority to adopt rules, regulations, and procedures as may be necessary.

§3.601. *Legal Authorization.* These sections are promulgated under the authority of Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor, with the authority to adopt rules, regulations, and procedures necessary to carry out provisions of the Act.

§3.602. *Applicability.* These sections shall apply only to applications and grants awarded to local units of government, state agencies, and nonprofit organizations for crime victims assistance projects operated and funded under the Victims of Crime Act of 1984 (VOCA), Public Law 98-473.

§3.603. *Compliance; Adoption by Reference.* Grantee/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. The Criminal Justice Division (CJD) adopts by reference the following documents and forms. Information regarding these adoptions by reference may be obtained from the Criminal Justice Division, Attention: Crime Victims Assistance Center, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

(1) Public Law 98-473, Title II, Chapter XIV, Victims of Crime Act of 1984;

(2) *Crime Victims Assistance Program: Project, Administrative, and Financial Guidelines*;

(3) *Crime Victims Assistance Program: Application Kit*;

(4) U.S. Department of Justice, *Crime Victim Assistance Grants: Final Guidelines*, *Federal Register*, Vol. 50, No. 205, October 23, 1985, pages 43011-43019;

(5) Office of Justice Programs, *OJP Guideline Manual, OJP M7100.1c, Financial and Administrative Guide for Grants*;

(6) Audit guidelines:

(A) U.S. General Accounting Office, *Standards for Audit for Governmental Organizations, Programs, Activities and Functions*;

(B) U.S. General Accounting Office, *Guidelines for Financial and Com-*

pliance Audits of Federally Assisted Programs;

(C) Office of Management and Budget, *Circular A-128, Audits of State and Local Government*;

(7) *Uniform Grant and Contract Management Standards* developed under directive of the Uniform Grant and Contract Management Act of 1981, Texas Civil Statutes, Article 4413, (32g);

(8) Criminal Justice Division forms for Crime Victims Assistance projects:

- (A) statement of grant award;
- (B) grantee acceptance notice;
- (C) grantee's request for funds;
- (D) grant adjustment notice;
- (E) performance report;
- (F) report of expenditure and status of funds;
- (G) property inventory.

§3.604. *Advisory Council.*

(a) Authority. The Governor's Victims of Crime Advisory Council (council) was created by Executive Order MW-37, March 18, 1986.

(b) Purpose. The council will advise the governor regarding Texas' participation in the federal Victims of Crime Act of 1984, Public Law 98-473, and will formulate suggested standards, procedures, and guidelines for implementation of the Act relating to the distribution of grant funds as authorized by the Act. The council has determined that funds available under the Act should be used in a manner that:

(1) enhances or expands the kinds of services presently available to victims of sexual assault, victims of spousal abuse, and victims of child abuse;

(2) stimulates services to victims of other kinds of crime;

(3) encourages the conservative expansion of effective existing victim assistance services;

(4) stimulates new services in areas where few or no victim services exist;

(5) discourages duplicative victim services;

(6) fosters interagency collaboration in providing services to victims of crime;

(7) encourages local commitment for future funding for new or expanded services; and

(8) encourages the use of volunteers to provide victim assistance services.

(c) Meetings. The council shall convene at the call of the chair.

(d) Quorum. A majority of the appointed members shall constitute a quorum for the purpose of conducting council business.

(e) Majority. A vote of the majority of the members present shall be sufficient for all actions of the council.

§3.605. Eligible Applicants. State agencies, local units of government, and nonprofit organizations are eligible to apply for grants for crime victim assistance projects that qualify under §3.606 of this title (relating to Project Requirements). Nonprofit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing crime victim assistance; the documentation shall be in compliance with §3.603 of this title (relating to Compliance; Adoption by Reference).

§3.606. Project Requirements.

(a) Eligible projects. Only those projects which provide services to victims of crime are eligible for grant funding. Such services must directly benefit individual crime victims, must address needs directly resulting from the crime, and may include the required coordination of those services and the training of service providers. Additionally, to be eligible, each project must:

(1) if it is a new project, receive at least 50% of its budget in cash from sources other than state grants or federal grants for categorical programs; or, if it is an existing project, must have a record of providing effective services to victims of crime, and receive at least 25% of its total budget in either in-kind contributions or in cash from sources other than state grants or federal grants for categorical programs;

(2) be operated by a state agency, local unit of government, or nonprofit organization, or by a combination thereof;

(3) utilize volunteers, unless a waiver of this requirement, based on compelling justification, is requested by the applicant and is approved by the executive director of the Criminal Justice Division;

(4) promote, within the community served, coordinated public and private efforts to aid crime victims; and

(5) assist victims in seeking available benefits under the Texas Crime Victims Compensation Program.

(b) Classification of projects. Projects shall be classified according to the four following categories:

(1) category one—projects having the principal mission of assisting victims of sexual assault;

(2) category two—projects having the principal mission of assisting victims of spousal abuse.

(3) category three—projects having the principal mission of assisting victims of child abuse.

(4) other victim assistance—this category shall include, but not be limited to, the following:

(A) any combination of categories one, two, and three;

(B) projects assisting victims of other types of crime;

(C) projects which provide training to persons who provide direct services to crime victims.

(c) Prioritization of project applications.

(1) Eligible applicants may submit not more than two applications under the categories named in subsection (b) of this section, relating to classification of projects. No more than one of those applications may be submitted under categories one, two, or three. Applicants submitting more than one application will be required to prioritize each application submitted

(2) Applications prioritized by the applicant as priority two will not be considered for funding until all applications numbered or qualifying as priority one have been considered, as provided in §3.609 of this title (relating to Review of Grant Applications).

§3.607. Allocation of Funds. The Criminal Justice Division shall allocate at least 10% of all available Victims of Crime Act funds to each of the following categories, as described in §3.606(b) of this title (relating to Project Requirements):

(1) victims of sexual assault;

(2) victims of spousal abuse; and

(3) victims of child abuse.

§3.608. Grant Applications.

(a) Grant applications for crime victims assistance projects must be prepared in accordance with all applicable documents, forms, and guidelines adopted by reference under §3.603 of this title (relating to Compliance; Adoption by Reference).

(b) Grant applications may not request more than \$50,000 for each proposed project.

§3.609. Review of Grant Applications.

(a) The Criminal Justice Division (CJD) will review only those grant applications that are submitted in compliance with the applicable documents and forms adopted by reference under §3.603 of this title (relating to Compliance; Adoption by Reference).

(b) The CJD will submit recommendations to the governor concerning each grant application reviewed.

(c) The CJD may recommend award of a grant, award of a grant with modification, or rejection of a grant application.

(d) Recommendations shall be based on applicable statutory requirements, rules, guidelines, fiscal constraints, and administrative Policies, and merit and quality of the grant application.

§3.610. Revision of Grant Application. The Criminal Justice Division may require

revision of a grant application to comply with all state and federal laws, guidelines, rules, regulations, and applicable administrative and financial requirements for crime victims assistance projects.

§3.611. Nonsupplanting Requirement. Each grantee shall certify that Victims of Crime Act of 1984 (VOCA) funds have not been used to replace federal, state, or local funds that would have been available for crime victims assistance services in the absence of VOCA funds. The certification shall be incorporated in each grantee's report of expenditure and status of funds referred to under §3.603 of this title (relating to Compliance; Adoption by Reference).

§3.612. Nonlobbying Certification.

(a) Each grantee shall certify that none of the grant funds, regardless of their source or character, including local cash and in-kind contributions, shall be used for the purpose of advocating particular legislation or administrative reform, or for influencing the outcome of any election.

(b) A finding that a grantee has violated this certification shall result in the immediate termination of funding of the project and the grantee shall not be eligible for future funding from the Criminal Justice Division.

§3.613. Bonding and Insurance. Each private nonprofit organization directly receiving grant funds from the Criminal Justice Division (CJD) must secure and maintain a commercial bond against the loss or theft of Victims of Crime Act grant funds.

§3.614. Award and Acceptance of Grant Award.

(a) The Criminal Justice Division (CJD) shall notify a grant applicant of final action on a grant application.

(b) Each grantee shall accept or reject a grant award in the form and manner prescribed by the CJD within 30 days of the grant award date. In any event, failure by the grantee to execute the grantee acceptance notice within 30 days of the award date shall be construed as a rejection of the grant award.

§3.615. Implementation of Grant. Each grantee shall implement the grant within 45 days of the designated start date indicated on the grant award statement. Failure by the grantee to implement a grant within 45 days will be construed by the Criminal Justice Division (CJD) as the grantee's relinquishment of the grant award. Any exception to this section will require the review and written approval of the CJD executive director.

§3.616. Operation of Grant. All grants shall be conducted in accordance with the following:

(1) applicable federal, state, or local laws, rules, regulations, policies, or guidelines; and

(2) terms, conditions, standards, or stipulations of grant agreements.

§3.617. Training. The Criminal Justice Division may provide funds for training for those persons (salaried or volunteer staff) who provide direct services to crime victims, which may include personnel employed by criminal justice, social services, mental health, or related agencies. Funds may only be used for training programs that improve the skills of service providers in meeting the needs of crime victims. Management training and training aimed at persons who do not provide direct services are not eligible for support. Training services supported with Victims of Crime Act grant funds must be within the state or a comparable geographic region and must be sponsored by a program that is an eligible recipient of these funds and that meets the requirements stated in §3.605 of this title (relating to Eligible Applicants).

§3.618. Cash Payments to Victims. Grant funds and required cash matching funds may not be used for cash payments to victims in lieu of providing in-kind assistance.

§3.619. Payment of Outstanding Liabilities.

(a) Upon completion of the grant period, a grantee must pay all valid outstanding liabilities within 90 days.

(b) All payments made after the completion of the grant period must relate to obligations encumbered before the end of the grant period.

§3.620. Grant Adjustments. The grantee must secure prior written approval from the Criminal Justice Division for any of the following:

- (1) changes in the project director, financial officer, or authorized official;
- (2) changes in the need, objectives, approach, or geographical location of the grant;
- (3) transfers of funds among direct cost budget categories exceeding 5.0% of the total grant budget;
- (4) changes in the number or job descriptions of personnel specified in the grant agreement;
- (5) changes in equipment amounts, types, or methods of acquisition;
- (6) changes in the grant or liquidation periods; or
- (7) other changes for which the grant agreement or *Uniform Grant and Contract Management Standards* require prior approval.

§3.621. Grant Extensions. The Criminal Justice Division will consider written requests, with accompanying justification, to extend grants beyond the project period specified in the statement of grant award.

§3.622. Requests for Funds. All grantee requests for funds shall be submitted to the comptroller of the Criminal Justice Division (CJD), in accordance with the instructions provided to the grantee and shall be in the form required by the CJD. Requests for funds will not be honored until any special condition which is a part of the statement

of grant award, and which requires a specified action by the grantee before grant funds may be released, has been satisfied.

§3.623. Obligation of Grant Funds. Grant funds may not, without advance written approval by the Criminal Justice Division, be obligated prior to the effective date or subsequent to the termination date of the grant period. Obligations must be related to goods or services provided and used for approved purposes.

§3.624. Third Party Participation.

(a) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

(b) Contracts over \$10,000, including any amendments, must be reviewed and approved as to form by the Criminal Justice Division prior to the release of any funds under the contract.

§3.625. Financial, Performance, and Inventory Reports. Each grantee shall submit financial, performance, and inventory reports in accordance with the instructions provided by the Criminal Justice Division (CJD). All reports shall be submitted in accordance with the prescribed CJD forms for such reports. Financial and inventory reports must be signed by the financial officer. Performance reports must be signed by the project director. Inventory reports are to accompany the final financial report.

§3.626. Deobligation of Funds. Any unobligated funds remaining with the grantee shall be returned immediately to the Criminal Justice Division with the final financial report.

§3.627. Cancellation of Project. The grantee shall notify the Criminal Justice Division, in writing, of the cancellation of any approved project immediately upon the determination to cancel the project.

§3.628. Misappropriation of Funds. The grantee must, immediately upon discovery, report to the Criminal Justice Division any evidence of misappropriation of funds.

§3.629. Security and Privacy. No recipient of monies under the Victims of Crime Act shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. This provision is intended, among other things, to assure the confidentiality of information provided by crime vic-

tims to crisis intervention counselors working for victim services programs receiving funds provided under this Act.

§3.630. Withholding Funds from Grantees. The Criminal Justice Division may withhold funds from a grantee when determination is made that the grantee has failed to comply with established rules, guidelines, standard grant conditions, special grant conditions, or contractual agreements on which the award of such grant is predicated or if federal funds for the Victims of Crime Act of 1984, are depleted or withdrawn.

§3.631. Conditions for Withholding Funds from Grantees.

(a) Withholding funds from specific projects. The Criminal Justice Division (CJD) may withhold funds from a specific project for reasons which include, but are not limited to, the following:

(1) failure to comply with any applicable federal or state laws, rules, regulations, policies, or guidelines, or with the terms, conditions, standards, or stipulations of any grant agreements;

(2) failure to submit reports of expenditure and status of funds, grantee's quarterly performance reports, or special required reports at the times and in the form established for such reporting;

(3) significant deficiencies or irregularities in records maintained by the grantee or its agent for operation and/or administration of the grant project;

(4) failure to conduct the grant project according to the terms of the application for grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice;

(5) failure to comply with any standard or special condition which has been made a part of the statement of grant award by reference or inclusion therein, or through the issuance of a grant adjustment notice; or

(6) failure to commence project operations within 45 days of the project start date.

(b) Withholding funds from all projects. The CJD may withhold funds from all projects operated by a grantee for reasons which include, but are not limited to, the following:

(1) failure to respond to any deficiency listed in this section;

(2) failure to return to the CJD within the required time any unused grant funds remaining on the expired grant; or

(3) refusal or an unwillingness to return to the CJD any grant funds which have been shown by an audit report and the CJD Audit Review Board to have been improperly accounted for or expended for ineligible purposes under a grant that has expired.

(c) Notification of withholding of funds. The CJD shall notify grantees of all deficient conditions constituting grounds for withholding funds and may give advance notification that funds will be withheld unless

the deficient conditions are corrected by a specified date.

(d) Appeals to the CJD. Grantees may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The request shall be directed to the executive director of the CJD together with any documentation in support of the reconsideration. The executive director will review the determination to withhold funds based on the documentation submitted, and the final determination will be transmitted in writing to the grantee.

(e) Release of funds. Funds shall be released when the CJD has been provided with satisfactory evidence that the deficient conditions have been corrected.

§3.632. Termination for Cause.

(a) The Criminal Justice Division (CJD) may terminate any grant for failure to comply with any of the following:

(1) applicable federal, state, or local laws, rules, regulations, policies, or guidelines;

(2) terms, conditions, standards, or stipulations of grant agreements; or

(3) terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(b) Termination of grants for cause shall be based on findings that:

(1) deficient conditions make it unlikely that the objectives of the grant will be accomplished;

(2) deficient conditions cannot be corrected within a period of time adjudged acceptable by the CJD; or

(3) a grantee has acted in bad faith.

(c) The CJD shall notify grantees of the conditions and findings constituting grounds for termination.

(d) Unexpended or unobligated funds awarded to a grantee shall, upon termination of a grant, revert to the CJD.

(e) A grantee may be adjudged ineligible for future grant awards if a grant awarded to the grantee is terminated for cause.

§3.633. Appeal of Termination of Grant.

(a) A grantee may appeal the termination of a grant by writing to the executive director of the Criminal Justice Division (CJD) within 10 days from the date of the termination notification.

(b) The grantee may submit written documentation in support of the appeal.

(c) The executive director of the CJD shall consider any documentation submitted by a grantee in support of an appeal.

(d) The decision of the executive director of the CJD concerning an appeal of a termination shall be final unless overturned by a court of competent jurisdiction.

§3.634. Audit Responsibilities.

(a) Pursuant to Office of Management and Budget (OMB) *Circular A-128, Audits of State and Local Governments*, grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of

their activities. These audits shall be made annually, unless the state or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Grantees, as well as their subgrantees, contractors, or other organizations under cooperative agreements or purchase of service contracts, are to arrange for examinations in the form of independent audits in conformance with OMB *Circular A-128*.

(b) These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by grant basis. The audit report must be forwarded to the Criminal Justice Division upon receipt by the grantee and must include:

(1) the auditor's report on financial statements of the recipient organization, and a schedule of financial assistance, showing the total expenditures for each federal assistance program;

(2) the auditor's report on compliance, containing:

(A) a statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(B) a negative assurance of those items not tested, and a summary of all instances of noncompliance; and

(C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that federal programs are being managed in compliance with applicable laws and regulations; the auditor's report must also identify the controls that were evaluated, the contracts that were not evaluated, and the material weaknesses identified as a result of that evaluation.

§3.635. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program, and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required nonfederal contributions for the purpose of determining whether the recipient has:

(1) financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the organization has internal accounting and other control systems to provide reasonable assurance that it is managing federal financial assistance programs in compliance with applicable laws and regulations; and

(3) the organization has complied with laws and regulations that may have material effect on its financial statements and on each federal assistance program.

§3.636. *Audit Implementation.* Grantees are required to specify their arrangement for complying with the provision of Office of Management and Budget *Circular A-128*, and include in their grant application, to the extent possible, the following information:

(1) the identity of the organization that will conduct the audit;

(2) approximate timing of when the audit will be performed;

(3) audit coverage to be provided (where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements); and

(4) an identification of the audit standards, if any, with which the grantee will not comply.

§3.637. *Audit Standards.* Examinations are to be conducted in accordance with the financial and compliance audit provisions of the U.S. General Accounting Office, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, adopted by reference under §3.603 of this title (relating to Compliance; Adoption by Reference).

§3.638. *Known or Suspected Violations of Laws.* Knowledge or suspicion of any legal violations that are encountered during audits—including fraud, theft, embezzlement, forgery, or serious irregularities—must be communicated in writing to the appropriate law enforcement authorities and to the Criminal Justice Division immediately upon discovery.

§3.639. *Grantee's Response to Audit Exceptions.* A grantee may, within a reasonable time not to exceed 10 working days, give notice of intent to submit documentation to respond to exceptions contained in an audit report by the Criminal Justice Division or by an independent auditor.

§3.640. *Documentation by Grantee.* Any documentation concerning an audit may be submitted to the Criminal Justice Division (CJD) comptroller, either in person or by mail. Documentation may be delivered to the CJD at the Sam Houston State Office Building, 3rd Floor, 201 East 14th Street, Austin, Texas, or may be mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Attention: Comptroller.

§3.641. *Audit Review Board.* The Audit Review Board (ARB) will consist of three members of the Criminal Justice Division (CJD) staff appointed by the CJD executive director. The ARB will review documentation submitted by grantees for legal, financial, and program acceptability under state rules, regulations, and guidelines.

§3.642. *Report of the Audit Review Board.* The Audit Review Board will make recommendations to the executive director for approval, disapproval, or approval as modified of audit exceptions. The determination by the executive director will be transmitted in writing to the grantee within 30 days.

§3.643. *Refunds to the Criminal Justice Division on Audit Review Board Determinations.* Grantees shall, within 30 days, refund all funds due after a final determination by the Audit Review Board and approval by the executive director of the Criminal Justice Division. Failure to comply with this provision shall subject participants to the provisions of §3.631 of this title (relating to Conditions for Withholding Funds from Grantees).

§3.644. *Civil Rights.*

(a) General. The Victims of Crime Act of 1984, provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 United States Code, 2000d (prohibiting discrimination in federally-funded programs on the basis of race, color, or national origin), the Rehabilitation Act of 1973, §504, 2 United States Code, 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 United States Code, 6101, *et seq.*, and the Department of Justice Nondiscrimination Regulations, 28 Code of Federal Regulations, Part 42, Subparts C, D, and G.

(b) Required assurances and information. To be eligible for funding under the Act, a crime victims assistance project must submit the following assurances and information:

(1) an assurance that the project will comply with all applicable nondiscrimination requirements;

(2) an assurance that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex, age, or handicap against the project, the project will forward a copy of the finding to the Criminal Justice Division (CJD);

(3) the name of a civil rights contact person who has lead responsibility for ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with the CJD and with the Office of Justice Programs, Office of Civil Rights Compliance; and

(4) an assurance that projects will maintain information on victim services provided by race, national origin, sex, age, and handicap.

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 April 29, 1986.

TRD-8604021 Gilbert J. Pena
Executive Director
Criminal Justice Division
Office of the Governor

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-1919.



Part IV. Office of the Secretary of State
Chapter 81. Elections

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Office of the Secretary of State, State Capitol, Room 128, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Office of the Secretary of State proposes the repeal of §§81.1, 81.3-81.9, 81.12-81.14, 81.16, 81.21, 81.31-81.45, 81.47-81.49, 81.51-81.80, 81.82-81.84, 81.86, 81.87, 81.101, 81.102, 81.111-81.113, and 81.121-81.141, concerning administrative rules for elections promulgated by the Office of the Secretary of State under the now repealed Election Code. In conjunction with this proposed repeal, new sections relating to and based on the new Election Code and the election laws are simultaneously proposed for adoption by the Office of the Secretary of State.

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

Mr. Walker also has determined that for each year of the first five years the repeals are in effect there is no public benefit anticipated as a result of enforcing the repeals. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to John Steiner, Director, Legal Section, Elections Division, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

The repeals are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to prepare detailed and comprehensive written directives and instructions relating to and based on the Election Code and the election laws.

Miscellaneous

★1 TAC §§81.1, 81.3-81.9, 81.12-81.14, 81.16

- §81.1. *Bilingual Elections.*
- §81.3. *Disqualification of Political Committee Members.*
- §81.4. *Declaration of Write-In Candidacy.*
- §81.5. *Elections Conducted under Article 4.08.*
- §81.6. *Abstract of Conviction.*
- §81.7. *Abstract of Death Certificate.*
- §81.8. *Definition of the Term "Voting Year."*
- §81.9. *1979 Optical Tabulator Voting System Directive.*
- §81.12. *Application for Absentee Ballot Voted by Personal Appearance Form.*
- §81.13. *Textual Material Required to be Printed on the Absentee Ballot and Carrier Envelopes.*
- §81.14. *Poll List Form.*
- §81.16. *Approval of Voting Booths by Secretary of State.*

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

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

TRD-8603877 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

Officers of Election

★1 TAC §81.21

§81.21. *Employee of Candidate Prohibited.*

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 April 23, 1986.

TRD-8603878 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.



Suffrage

★1 TAC §§81.31-81.45, 81.47-81.49, 81.51-81.80, 81.82-81.84, 81.86, 81.87

- §81.31. *Notification to Absentee Voters of Declared Write-In Candidates.*
- §81.32. *Who is Eligible to Vote under the Rules.*
- §81.33. *Residency Requirements.*
- §81.34. *Normal Absentee Voting Procedures.*
- §81.35. *Application for Ballot.*

- §81.36. *Federal Election Absentee Ballot Application Form.*
- §81.37. *Spanish Language Federal Election Absentee Ballot Application.*
- §81.38. *Where Absentee Ballots Sent.*
- §81.39. *Type of Ballot to Send.*
- §81.40. *Ballots Processed the Same as Other Absentee Ballots.*
- §81.41. *Disabled Voter Voting Absentee in Person at Entrance to the Absentee Voting Place.*
- §81.42. *Failure of Delivery by Postal Service of Voter Registration Certificate.*
- §81.43. *Omission of Certification Requirement on Carrier Envelope for Absentee Voting by Mail.*
- §81.44. *Medium by Which Information Can Be Transferred from Tax Assessor-Collectors to Secretary of States.*
- §81.45. *Use of Questionnaires or Other Written Information in Qualifying Registrants.*
- §81.47. *Signature of the Ballot Stub in Absentee Voting.*
- §81.48. *Implementation of Postage-Free Voter Registration System.*
- §81.49. *Business Reply Card Permits.*
- §81.51. *Business Reply Card Advance Deposit Trust Accounts.*
- §81.52. *"Regular" Postage Due Accounts.*
- §81.53. *Coordination of County and Secretary of State Records.*
- §81.54. *Notification Procedures.*
- §81.55. *Cancellation Date.*
- §81.56. *Filing Procedures in Registrar's Office.*
- §81.57. *Lists of Returned Registration Certificates.*
- §81.58. *Furnishing and Updating of Lists of Registered Voters for Use on Election Day.*
- §81.59. *Voters on List of Returned Voter Registration Certificates Who Take Certain Actions Fewer Than 30 Days Prior to March 1.*
- §81.60. *Voting by Persons on the List of Cancelled Registration Certificates.*
- §81.61. *Absentee Voting for Elections Held on or after March 1 through June 30 by Voters Whose Names Are on List of Cancelled Registration Certificates.*
- §81.62. *New Registration Procedures.*
- §81.63. *Oath of Office of Volunteer Deputy Registrars.*
- §81.64. *Qualification of Volunteer Deputy Registrar.*
- §81.65. *Handbooks.*
- §81.66. *Identification.*
- §81.67. *Voter Registration Forms.*
- §81.68. *Volunteer Deputies Not to Perform Duties of the Registrar.*
- §81.69. *Election Precinct Transfer Forms.*
- §81.70. *Replacement Certificate Application.*
- §81.71. *Registrar to Keep Accurate Records of Applications.*

- §81.72. *Applications Delivered to Registrar.*
- §81.73. *Volunteer Deputy Registrar Applications to Be Filed Alphabetically.*
- §81.74. *Removal of Volunteer Deputy Registrar.*
- §81.75. *Effect of Applications Filed with Deputy Registrar.*
- §81.76. *Voter Registration Cancellations for Reasons of Unsound Mind.*
- §81.77. *Registration of 17-Year-Olds.*
- §81.78. *Voter Registration Certificate (1978-1979).*
- §81.79. *Voter Registration Certificate Form (1980-1981).*
- §81.80. *Voters Whose Employment Involves Administration of an Election May Vote Absentee.*
- §81.82. *Voter Registration Application Form.*
- §81.83. *Voter Registration Change Form.*
- §81.84. *Absentee Voting by Paper Ballots and Punch Cards.*
- §81.86. *1982 Et Seq. Voter Registration Certificate Form.*
- §81.87. *Challenge Procedure for Registered Voter.*

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 April 23, 1986.

TRD-8603878 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

★ ★ ★

Official Ballot

★ 1 TAC §81.101, §81.102

- §81.101. *Marking the Ballot.*
- §81.102. *Use of Punch Card Stub as a Write-In Ballot.*

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 April 23, 1986.

TRD-8603879 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

★ ★ ★

Conducting Elections

★ 1 TAC §81.111-81.113

- §81.111. *Providing List of Registered Voters.*

- §81.112. *Vote Challenged.*
- §81.113. *Assistance to Voter.*

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 April 23, 1986.

TRD-8603880 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701

★ ★ ★

Nominations

★ 1 TAC §81.121-81.141

- §81.121. *Petition in Lieu of Filing Fee Form.*
- §81.122. *Application for a Place on the Party General Primary Ballot Form.*
- §81.123. *Primary Administrator.*
- §81.124. *Clerical Personnel.*
- §81.125. *Employee Fidelity Bond.*
- §81.126. *Estimating Voter Turnout and the Necessary Physical Requirements.*
- §81.127. *Office Rent.*
- §81.128. *Office Equipment.*
- §81.129. *Office Supplies and Copies of the Texas Election Code.*
- §81.130. *Telephone and Postage Charges.*
- §81.131. *Precinct Ballot Tabulators Used in Conjunction with the Punch Card and Optical Scanner Voting Methods.*
- §81.132. *Competitive Quotations for Services or Products.*
- §81.133. *Contracts for Labor.*
- §81.134. *Bank Account for Primary Fund Deposits and Expenditures.*
- §81.135. *Deposit of Currency.*
- §81.136. *List of Candidates and Filing Fees.*
- §81.137. *Signature on Checks; Authorization of Primary Fund Expenditures.*
- §81.138. *Payee of Checks Restricted to an Entity or Person.*
- §81.139. *Form of Payments; Petty Cash Fund; Documentation of Petty Cash Transactions.*
- §81.140. *Documentation of Expenses.*
- §81.141. *Forms.*

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 April 23, 1986

TRD-8603881 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701



Voter Registration

The Office of the Secretary of State proposes new §§81.1-81.9, 81.30, 81.31, 81.40-81.53, 81.70, and 81.100-81.123, concerning voter registration, absentee voting, voting systems, voting booths, and political parties. The purpose of these sections is to obtain and maintain uniformity in the application of provisions of the Texas Election Code regarding the previously stated topics.

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

Mr. Walker also has determined that for each year of the first five years the sections are in effect there is no public benefit anticipated as a result of enforcing the

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

Comments on the proposal may be submitted to John Steiner, Director, Legal Section, Elections Division, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

The new sections are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to prepare detailed and comprehensive written directives and instructions based on the Election Code and the election laws. These new sections are proposed in conjunction with the proposed repeal of administrative rules promulgated under the former election code, which was repealed effective January 1, 1986.

★1 TAC §§81.1-81.9

§81.1. *Application Forms Used by Volunteer Deputies.* Voter registration applications distributed or collected by volunteer deputy

registrars must be on forms either prescribed or approved by the secretary of state and approved by the voter registrar before their distribution.

§81.2. *Change Forms and Applications for Replacement Certificates Used by Volunteer Deputies.* Volunteer deputy registrars may distribute and collect voter registration change forms and applications for replacement certificates on forms prescribed or approved by the secretary of state and approved by the voter registrar before distribution. On receipt of a change form or replacement certificate application, the volunteer deputy registrar shall review it for completeness in the presence of the person submitting it and return the form to the person for completion and resubmission if the form does not contain the required information and signature. On receipt of a completed change form or replacement certificate application, the volunteer deputy registrar shall prepare a receipt in duplicate on a form supplied by the reg-

istrar. The receipt must contain the name of the person submitting the change form or replacement certificate application and the date the completed application is submitted to the volunteer deputy registrar. The volunteer deputy shall sign the receipt in the presence of the person submitting the change form or replacement certificate application and shall give the original to the applicant. The volunteer deputy shall deliver the duplicate receipt to the registrar with the change form or replacement certificate application. The registrar shall retain the receipt on file with the change form or replacement certificate application.

§81.3. Effective Date of Changed Registration. The date of submission of a completed voter registration change form to a volunteer deputy registrar is considered to be the date of submission to the volunteer deputy registrar for purposes of determining the effective date of the changed registration.

§81.4. Delivery of Change Form by Volunteer Deputy. A volunteer deputy registrar shall deliver in person to the registrar each completed voter registration change form and replacement certificate application submitted to the deputy in accordance with the deadlines for delivery of voter registration applications provided for delivery in the Texas Election Code, §13.042.

§81.5. Volunteer Deputy Not to Perform Duties of Registrar. A volunteer deputy registrar may not perform any official duties of the voter registrar, except as expressly authorized by law or by these sections.

§81.6. Notification to High School Deputies. The voter registrar shall notify each principal of each high school located in the registrar's county of the principal's duties as high school deputy registrar under the Texas Election Code, §13.046. The registrar shall provide to such high school principals the registration forms, notices, and receipt forms required for performance of the high school deputy registrar's duties under §13.046.

§81.7. Directive for High School Deputy Registrars. The directive for high school deputy registrars is adopted by reference. Copies are available from the Secretary of State's Elections Division, P.O. Box 12887, Austin, Texas 78711. The voter registrar shall provide a copy of this directive to each high school deputy registrar in the county.

§81.8. Submission of Lists to the Secretary of State. In addition to the lists required by the Texas Election Code, §18.063, to be delivered by the registrar to the secretary of state showing each new registration, cancelled registration, and change in registration information in the county since the delivery of the previous corresponding list, the registrar shall submit lists of such updated information on or after June 1, but before June 16 of each even-numbered year, and on or after December 1, but before December 16 of each even-numbered year.

§81.9. Duties of Elections Administrator. Where a county has created the position of elections administrator and a statute outside the Texas Election Code requires a duty or function to be performed by the county clerk, the county clerk shall perform such function or duty, unless the function or duty is related to elections governed wholly or in part by the provisions of the Election Code, in which case the county elections administrator shall perform such duty or function. On request, the secretary of state shall determine, if it is unclear from the provisions of the Election Code and these sections, whether a duty or function required by a particular statute outside the Texas Election Code to be performed by the county clerk shall be performed by the elections administrator.

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 April 23, 1986.

TRD-8603671 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

★ ★ ★

Absentee Voting

★ 1 TAC §81.30, §81.31

The new sections are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to prepare detailed and comprehensive written directives and instructions based on the Election Code and the election laws. These new sections are proposed in conjunction with the proposed repeal of administrative rules promulgated under the former election code, which was repealed effective January 1, 1986.

§81.30. Machines to be Sealed. Where absentee voting is conducted on voting machines, the absentee voting clerk shall seal such machines at the close of each day's voting in the presence of poll watchers, if any, and such seal shall be broken by the clerk in the presence of poll watchers, if any, the following morning when absentee voting resumes. The authority conducting the election may provide for a written record to be made by the absentee voting clerk of the numbers registered on the public counter each time the machine is sealed or unsealed.

§81.31. List of Declared Write-in Candidates for Mail Ballots. A list of declared write-in candidates shall be mailed with the other balloting materials to voters voting absentee by mail in the general election for state and county officers.

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 April 23, 1986.

TRD-8603872 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

★ ★ ★

Voting Systems

★ 1 TAC §§81.40-81.53

The new sections are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to prepare detailed and comprehensive written directives and instructions based on the Election Code and the election laws. These new sections are proposed in conjunction with the proposed repeal of administrative rules promulgated under the former election code, which was repealed effective January 1, 1986.

§81.40. Voting System Sample Ballots. Where punch-card or mechanical voting systems are to be used in the election, the authority responsible for procuring the election supplies may have a supply of sample ballots printed. Use of sample ballots is governed by the provisions of the Texas Election Code, §52.008 and §62.012. Voting system sample ballots may be printed in the format that would be used if the election were conducted using paper ballots. If mechanical voting devices are to be used in the election, the sample ballots may also be in the formats used for the ballot placards for such devices in the election. If punch-card voting system is to be used in the election, the sample ballot may also be in the format used for the ballot labels for use with the voting devices in the election. A sample ballot posted at a polling place must contain only those races and propositions for which voters voting at that polling place would be entitled to vote.

§81.41. Voting System Specimen Ballots.

(a) The specimen ballots provided for ballot formats to be used with mechanical voting devices must be selected from the ballot placards which will actually be used with the mechanical voting devices, and specimen ballots must be provided for each ballot format to be used in the election, provided that such a specimen ballot shall not be separated into strips as is the ballot placard which is placed in the voting machine, but must remain unseparated on one sheet of paper.

(b) The specimen ballots provided for ballot formats to be used with punch-card devices must be selected from the ballot

labels which will be used with the punch-card devices, and specimen ballots must be provided for each ballot format to be used with such punch-card devices in the election; provided that such a specimen ballot shall not be separated into pages as is the ballot label which is placed in the voting device, but must remain unseparated on one sheet of paper. Also, where punch-card specimen ballots are to be provided, an official punch-card for use with such voting system must be provided as part of the specimen ballot.

(c) All specimen ballots provided in accordance with this section must be labelled "specimen ballot," and their provision and use must otherwise conform to the requirements of the Texas Election Code, §52.007.

(d) Where optical scanner systems are to be used in the election, specimen ballots must be provided in accordance with the provisions of the Texas Election Code, §52.007.

§81.42. Paper Ballots for Precinct Chairman. In primary elections where voting for precinct chairman is to be conducted on paper ballots at polling places using voting machines, pursuant to the Texas Election Code, §124.034, the form of the paper ballot used must conform to the requirements of the Texas Election Code, Chapter 52, for paper ballots. Where voting for the party office of precinct chairman is to be conducted on separate paper ballots at polling places using electronic voting systems, pursuant to the Texas Election Code, §124.065, the form of the separate paper ballot used must conform to the requirements of the Texas Election Code, Chapter 52, for paper ballots.

§81.43. Optical Scanner Ballots. Optical scanner ballots may be divided into parts and printed upon two or more pages. Where all candidates for the same office or all party columns cannot be placed on the same face of the same page, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other party columns appear on the following page or pages. If the ballot is printed on more than one page, different tints of paper other than yellow, or some other suitable means may be used to facilitate the sorting of ballots. Each page shall bear the ballot number, and other appropriate provision may be made for identifying the related parts of the ballot. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and spaces for voting a straight party ticket, so that a voter may cast a straight ticket vote for all of a party's nominees on the ballot by making a single mark on the first page of the ballot. For a mark-sense optical scanner voting system to be in compliance with the requirement of the Texas Election Code, §1.005(20) and §122.001 (a)(10), it must provide for a single ballot card capable of containing all the candidates in an election in which candidates run by party, or alternatively, be programmed to

permit straight party voting by means of a single mark, regardless of the number of ballot cards utilized. A system providing for straight party voting by means of a single mark on each of two or more separate ballot cards is not in compliance with the Election Code.

§81.44. Punch-Card Ballots. Punch-card ballot cards may be divided into parts and a different ballot card used for each of the separate parts, but in all cases where more than one card is necessary to accommodate the entire ballot, the names of all candidates for any particular office shall be placed on the same part. A separate voting device shall be provided for each part at each polling place. Each ballot card shall bear the ballot number, and other appropriate provisions may be made for identifying the related ballot cards. In an election in which party columns appear on the ordinary paper ballot, the punch card ballots must be printed to enable a voter to cast a straight ticket vote for all of a party's nominees on the ballot by making a single punch on the first page of the ballot.

§81.45. Inspection of Voting System Equipment.

(a) Before voting machines are delivered to polling places for use in an election, they must be inspected, and a written record made of the inspection, pursuant to the Election Code, §125.031.

(b) Other voting or tabulating equipment to be delivered to polling places must be inspected by the authority responsible for delivering supplies for the election and put in proper working order prior to delivery. A punch-card device must be tested by such authority to ensure that the device permits the accurate recording of votes for each race and/or proposition on the ballot. Test ballot cards should be used for this purpose.

(c) Electronic tabulating equipment which is to be used at polling places must be tested by the authority to ensure that the equipment accurately counts ballots, distinguishes and separates ballots which require manual tabulation, and otherwise functions properly. Such test must be conducted in accordance with the provision of the Texas Election Code, §127.094(b) and (c).

§81.46. Delivery of Voting System Equipment. The authority responsible for distributing election supplies for an election shall arrange for the delivery of voting systems equipment to the polling places. Delivery of such equipment must be made by such authority, by the presiding judge of the polling place, by the sheriff or constable for an election ordered by the governor or a county authority, or by the sheriff or constable or a police officer having jurisdiction over the territory in which the polling place is located for an election ordered by other authority. Mechanical voting machines must be delivered in a locked and secured condition. The keys to such voting machines shall be

delivered to the presiding judge at least 30 minutes before the polls open, in a sealed envelope on which there is recorded the number on the protective counter, the seal number, and the serial number of the voting machine the key is for.

§81.47. Installation of Voting System Equipment. Voting systems equipment shall be installed at the polling place in accordance with the instructions of the authority responsible for distributing election supplies for the election. During the absence of election officers or the custodian of the premises, polling places to which voting systems equipment has been delivered must remain locked and secured.

§81.48. Write-in Record to be Sealed. Where mechanical voting machines are used, after the write-in record from the machine is entered on the returns, the write-in record shall be sealed in an envelope provided for that purpose, and returned to the custodian of election records.

§81.49. Irregularities in Seals or Serial Numbers. If irregularities are discovered in the seals or the serial numbers of containers of voted ballots received at the central counting station, pursuant to the Texas Election Code, §127.038(d) or §127.068(c), the presiding judge of the central counting station shall make and sign a memorandum in duplicate setting forth the nature of the irregularities. One copy of the memorandum shall be attached to the copy of the returns delivered in envelope number one for the presiding officer of the canvassing authority. The presiding judge shall deliver the other copy of the memorandum to the district attorney of the county in which the voted ballots placed in such box were voted. The district attorney shall investigate the irregularities and take further action as appropriate. If more than one container of voted ballots was delivered to the central counting station from the election precinct from which the container in which irregularities were discovered was delivered, the judge shall include in the memorandum a record of the total number of ballots in the container in which irregularities were discovered, and such container shall be returned to the custodian of election records after the ballots are counted containing only the ballots delivered to the central counting station in that container. In all cases, the ballots in a container in which irregularities are discovered shall be counted and returns made as for the other ballots received at the central counting station.

§81.50. Test Program. Where a program is prepared for the automatic tabulating equipment to be used for counting ballots at a central counting station, the program shall be used in the tests of such tabulating equipment provided for in the Texas Election Code, Chapter 127, Subchapter D. After the completion of the first test provided for in the Texas Election Code, §127.096, the program shall be sealed with the test materials

in the container provided for by the Texas Election Code, §127.099. After the completion of the second test, as provided for in the Texas Election Code, §127.097, the program shall be used for the count of ballots voted in the election. The program shall then be used in the third test, provided for in the Texas Election Code, §127.098, and then sealed with the test materials in the container provided for in the Texas Election Code, §127.099.

§81.51. Malfunction in Tabulating Equipment. After the discovery of a malfunction in the tabulating equipment at a central counting station, which malfunction caused the results to be incorrect as provided for in the Texas Election Code, §127.129, the presiding judge of the central counting station shall follow the procedures set out in §127.098(c) and (d). If the presiding judge determines that obtaining a valid automatic count is impracticable, the ballots shall be counted manually, and the presiding judge shall execute and attach a certificate to the returns stating that the ballots were counted manually and stating the nature of the equipment malfunction which led him to the determination that the ballots would be counted manually.

§81.52. Precinct Ballot Counters.

(a) Where an electronic voting system that does not entail the counting of ballots at central locations established under the Texas Election Code, Chapter 127, Subchapter A, is to be used at an election, the election results shall be processed in accordance with this section.

(b) If the tabulating equipment is capable of separating damaged ballots, irregularly marked ballots, and write-in ballots for manual processing, the equipment may be arranged so that voters deposit their marked ballots directly into the tabulator. The tabulator must be provided with a sealed container such that ballots deposited by voters are counted by the tabulator or separated for manual counting, as the case may be, and then placed by the device directly into the sealed container.

(c) If the tabulating equipment is not capable of separating damaged, irregularly marked, and write-in ballots for manual counting, a container meeting the specifications of the Election Code for ballots boxes number one and number two must be provided for the deposit of ballots by voters after the ballots have been marked. At the direction of the presiding judge, the election officials shall unlock the ballot container and process the ballots in accordance with the provisions of the Texas Election Code, §127.034 (b) and (c), and then pass the ballots to be counted electronically through the tabulator for counting.

(d) In either case, the damaged and irregularly marked ballots shall be counted manually or duplicated for automatic tabulation pursuant to the Texas Election Code, §127.126. Write-in ballots shall be counted

manually, and the results added to those for ballots counted by the tabulating equipment. The results entered on the returns shall reflect the totals obtained from the count of the ballots tabulated on the tabulating equipment and from the manual count of damaged, irregularly marked, and write-in ballots.

(e) In this section, damaged ballot means a ballot that is damaged such that it may not be accurately counted by the tabulating equipment.

(f) The returns, ballots, and other records of the election shall then be distributed in accordance with the provisions of the Texas Election Code, Chapter 66. Ballots must be returned to the appropriate authority in a container meeting the specifications of the Election Code for ballot box number three.

§81.53. Preservation of Punch-Card Ballot Label Assembly. The elements of the ballot label assembly to be preserved for the period for preserving precinct election records under the Texas Election Code, §127.182(b), consist of the punch-card ballot label and the ballot mask. The ballot mask is the plate which is attached to the voting device and under which the ballot card is inserted for voting, with holes corresponding to every position which may be punched on the ballot label. None of the other parts of the voting device, including the brackets which hold the ballot label and mask, are elements of the ballot label assembly which are required to be preserved under §127.182(b).

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 April 23, 1986.

TRD-8603873 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

★ ★ ★

Miscellaneous

★1 TAC §81.70

The new section is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to prepare detailed and comprehensive written directives and instructions based on the Election Code and the election laws. These new sections are proposed in conjunction with the proposed repeal of administrative rules promulgated under the former election code, which was repealed effective January 1, 1986.

§81.70. Approval of Voting Booths by Secretary of State.

(a) The secretary of state has determined that a voting booth designed to be

placed on a table top that meets or exceeds the following specifications may be used without individual approval by the secretary of state.

(1) The booth must be constructed of opaque material and have three sides.

(2) The top of the booth must reach at least 54 inches from the floor or 24 inches from the table top, whichever is less.

(3) The booth must be at least 22 inches wide and 19 inches deep at the writing surface.

(4) At the highest point, the booth may be no more than two inches shallower than the depth of the booth at the writing surface.

(5) The booth must be so constructed as to be reasonably sturdy and to withstand expected use.

(b) A booth designed for table top use that does not meet or exceed each of these specifications must be submitted for individual approval by the secretary of state.

(c) Variances from statutory standards for voting booths designed to be used by a standing voter will be considered on a case-by-case basis.

(d) All booths designed for use with punch-card voting systems that have been approved by the secretary of state for use in Texas may be used as voting booths for either punch-card or paper ballot voting without further approval by the secretary of state.

(e) Vendors wishing to sell voting booths which do not comply with the Texas Election Code, §51.032, or with subsection (a) of this section to political subdivisions for use in elections must obtain approval in writing for such booths pursuant to the Texas Election Code, §51.031, before offering the booths for sale.

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 April 23, 1986.

TRD-8603874 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.

★ ★ ★

Political Parties

★1 TAC §§81.100-81.123

The new sections are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to prepare detailed and comprehensive written directives and instructions based on the Election Code and the election laws. These new sections are proposed in conjunction with the proposed repeal of administrative rules pro-

mulgated under the former election code, which was repealed effective January 1, 1986.

§81.100. Primary Administrator. In counties with registered voters in excess of 100,000, the county chairman may employ a primary administrator for the period beginning on January 1 preceding the primary, and ending on the last day of the month in which the last primary is held (general or runoff primary). The maximum salary payable from the primary fund to a primary administrator shall be \$2,000 per month. No additional payment from the primary fund is allowable for transportation or other personal expenses incurred by primary administrators in performance of their duties.

§81.101. Other Salaried Personnel. Salaries or wages of personnel necessary to aid in the conduct of the primary elections are payable from the primary fund for the period beginning on January 1 preceding the primary and ending on the last day of the month in which the last primary is held (general or runoff primary). Such compensation for each salaried personnel must be less than \$2,000 per month. A list of necessary personnel shall be transmitted to the secretary of state, with each finance report, indicating the name and title of employee, job duties, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. A copy of all quarterly 941 returns filed with the IRS shall be transmitted to the secretary of state along with the final primary election cost report.

§81.102. Contracts for Labor. All contracts for labor necessary for the conduct of primary elections must be in writing. The contract shall include the name of the individual, the duties, job, or services to be performed, period of employment, and the rate or fee to be paid. The contract shall be signed by both the county chairman and the employee. Copies of all contracts of labor shall be transmitted to the secretary of state along with the final primary election cost report.

§81.103. Employee Fidelity Bond. The purchase of an employee fidelity bond for employees whose responsibilities include the receipt and/or expenditure of primary funds is required and payable from the primary fund.

§81.104. Office Rent. Office rent is payable from the primary fund for the period to begin on January 1 preceding the primary and ending on the last day of the month in which the last primary is held (general or runoff primary). A copy of the lease agreement or explanation of change in such agreement shall be transmitted to the secretary of state along with the general primary election cost estimate. Office rent shall not exceed the fair market rate for office space in the locale. Any change in a lease agreement and explanation of such change shall be transmitted to the secretary of state with the next required primary estimate or report.

§81.105. Office Equipment. Office equipment (including telephone equipment) necessary for the administration of the primary elections may be leased for the period beginning January 1 preceding the primary and ending on the last day of the month in which the last primary is held (general or runoff primary). Such rental costs are payable from the primary fund.

§81.106. Office Supplies and Copies of the Texas Election Code. Purchases of office supplies necessary for the administration of the primary elections are payable from the primary fund. The expenditure for purchase of two copies of a paperback version of the Texas Election Code is authorized from the primary fund.

§81.107. Telephone and Postage Charges. Telephone and postage charges which are incurred during the period from January 1 preceding the primary and ending on the last day of the month in which the last primary is held, and which are related to the administration of the primary elections, are payable from the primary fund. Any costs not directly attributable to the conduct of the primary are not chargeable to the primary fund.

§81.108. Competitive Quotations for Services or Products. Unless prior approval of the secretary of state is obtained, county chairmen must purchase all services and products using competitive quotations from two or more sources if more than one source is available in the state. Documentation of the lack of availability of competitive quotations must be submitted with the general or runoff primary election cost estimate, whichever is applicable. This section does not apply to petty cash expenditures of \$100 or less.

§81.109. Bank Account for Primary Fund Deposits and Expenditures. County chairman shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds. Primary funds shall not be commingled with any other fund or account.

§81.110. Deposit of Currency. All filing fees and contributions received in currency shall be deposited intact into the primary fund.

§81.111. List of Candidates and Filing Fees. A complete list of candidates, including the office sought and amount of filing fee received from each candidate, shall be transmitted to the secretary of state by February 14.

§81.112. Signature on Checks; Authorization of Primary Fund Expenditures. All checks written on the primary fund shall be personally signed by either the county chairman or a bonded agent for the county chairman, except that payroll checks and checks to sole source vendors must be signed by the county chairman. All primary fund expenditures shall be authorized by the county chairman.

§81.113. Payee of Checks Restricted to an Entity or Person. No check written on the primary fund shall be made payable to cash or bearer. All checks shall be made payable to an entity or person.

§81.114. Form of Payments; Petty Cash Fund; Documentation of Petty Cash Transactions. All payments from the primary fund shall be made by check, except that county chairmen may establish a petty cash fund not exceeding \$100 for minor purchases and payments. Complete documentation of all petty cash transactions shall be made.

§81.115. Documentation of Expenses. Copies of all bills, invoices, contracts, and petty cash receipts supporting primary election costs shall be transmitted to the secretary of state upon request.

§81.116. General Primary Election Cost Estimate Transmitted to the Secretary of State Prior to the Close of the Regular Filing Period. If the general primary election cost estimate is transmitted to the secretary of state prior to the close of the regular filing period, county chairmen shall estimate the amount of filing fees to be collected. The amount of estimated filing fees shall be reported as a financing source on the general primary election cost estimate. When the general primary election cost estimate is transmitted to the secretary of state after the close of the regular filing period, county chairmen shall report the actual amount of filing fees received as a financing source on the general primary election cost estimate.

§81.117. Returning Surplus Funds. Any surplus remaining in a county primary fund account after payment of approved expenses shall be remitted to the secretary of state, primary fund account, with the final cost report.

§81.118. County Election Officer Not to Receive Compensation under Election Services Contracts for 1986 Primary Election. An election services contract for the 1986 primary elections shall not provide for any additional salary or compensation of the county election officer for the performance of any primary election duty or service.

§81.119. Compensation For Services at the Polling Place. For the 1986 general and runoff primary elections, the hourly compensation for election officers shall not exceed \$4.00.

§81.120. Compensation for Delivering Election Records and Supplies. Compensation of the election judge or clerk for delivery of the election records, equipment, and unused supplies after the 1986 general and runoff primary elections may not exceed \$15 for each election.

§81.121. Number of Election Workers Per Voting Precinct. The following table must be used to determine the number of election workers allowable for each precinct.

Number of Election Workers
(Includes one judge and one alternate judge)

Estimated Voter Turnout Per Voting Precinct	Number of Election Workers	
	Paper Ballot	Punch Card, Optical tabulators and Voting Machine
100 or less	3	3
101 - 300	5	4
301 - 600	6	5
601 - 1,000	8	6
1,001 or more	12	8

§81.122. *Number of Voting Machines, Devices, and/or Precinct Ballot Counters Per Voting Precinct.* Except as expressly autho-

rized by the secretary of state, the following table must be used to determine the number of voting machines or optical tabulators

and punch card voting devices allowable for each precinct.

Number of Voting Machines, Devices and/or Precinct Ballot Counter

Estimated Voter Turnout per Voting Precinct	Number of Voting Machines, Devices and/or Precinct Ballot Counter		
	Voting Machines	Punch Card Devices	Precinct Ballot Counters (punch card or optical tabulators)
100 or less	1	1	1
101 - 300	1	2	1
301 - 600	2	4	1
601 - 900	3	6	1
From each additional 300 voters	1	N/A	N/A
350 voters	N/A	1	N/A

§81.123. *Estimating Voter Turnout.* County chairmen may use the precinct by precinct method as recommended by the secretary of state or any other reasonable method for estimating voter turnout for the primary elections. When using a method other than the precinct by precinct method, county chairmen shall submit an explanation and complete documentation of the method used to

the secretary of state along with the general runoff primary election cost estimates. Instructions for the precinct by precinct method are available from the Elections Division, Office of Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

and found to be within the agency's authority to adopt.

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

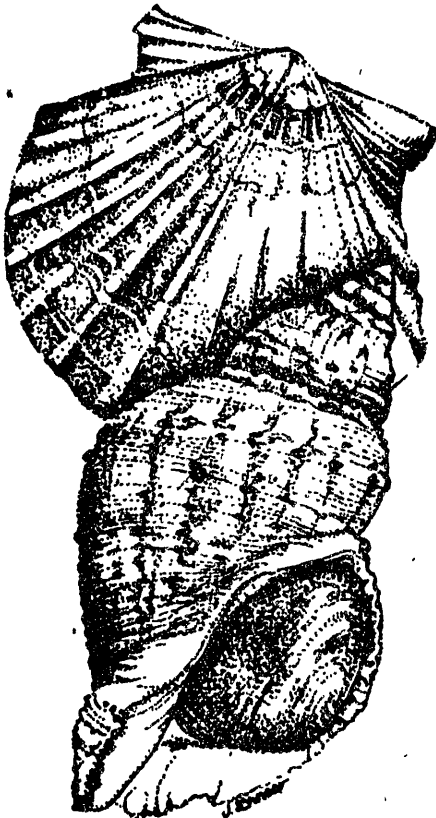
TRD-8603875

Myra A. McDaniel
Secretary of State

This agency hereby certifies that the proposal has been reviewed by legal counsel

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-5701.





TITLE 19. EDUCATION
Part II. Texas Education
Agency
Chapter 53. Regional Education
Service Centers
Subchapter D. Provision of
Computer Services to School
Districts

★ 19 TAC §§53.71-53.77

The Texas Education Agency proposes amendments to §§53.71-53.77, concerning the provision of computer services to school districts. The amendments define a new basis for funding educational service centers for the computer services they provide to school districts and the state. The amendments prescribe three specific categories of funding assistance—software development, maintenance, modification, and other services; communications; and research and development—instead of the five categories currently specified. These new categories reflect the current needs of the processing centers, districts, and the Texas Education Agency and address the need for equitable access to computer services by remote schools.

Lynn M. Moak, deputy commissioner for research and information, has determined

that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or small businesses as a result of enforcing or administering the sections. There will be some fiscal implications for local government. The sections redefine the categories under which funds will be distributed to educational service centers. Therefore, funds will be redistributed among the centers, but the total amount of funding assistance will remain the same.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, also have determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections are that funding will be based on services provided and not on a fixed dollar amount established 16 years ago. The educational service centers will have more flexibility in using and accounting for the funding assistance provided. The sections will help public schools meet the demands of the state legislature and the State Board of Education for ever-increasing amounts of data.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. Requests for a public hearing on proposed amendments submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposal is published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §11.33(b)(1), which authorizes the State Board of Education to make rules for the provision of computer services to school districts through regional education service centers.

§53.71. General Provisions. A planned statewide system of computer services and a program of financial assistance shall be implemented to provide for the equitable and economical delivery of computer services to school districts through the regional education service centers. Objectives for the statewide system of computer services shall include the following:

(1) to provide funding assistance to education service centers for the cost of various services and the continual development, modification, and maintenance of school administrative software systems to satisfy school district management requirements, and state and federal reporting requirements;

(2)(1) to reduce the burden of state and federal reporting;

(3)(2) to ensure the availability of current, accurate, nonduplicative information necessary for decision making by the legislature and the State Board of Education and for local and state-level administration of public education;

(4)(3) to identify, develop, and implement standard uses of computers for information, administration, and instruction; and

(5)(4) to ensure that necessary computer services are made available to all school districts as economically and effectively as possible.

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

Development—The process of creating costly new administrative software systems needed to satisfy school district, state, and federal requirements for management data and reports.

Maintenance—The continual process of making minor programming changes and corrections of program errors to existing administrative software systems needed to satisfy school district, state, and federal requirements for management data and reports.

Modification—The continual process of making costly major programming changes to existing administrative software systems needed to satisfy school district, state, and federal requirements for management data and reports.

§53.73. Multi-Regional Processing Center (MRPC) Management Committees. A management committee shall be established for each MRPC. The committee shall provide the users of computer services with a voice in the management of the computer processing center's operation. In this context, management includes the direction necessary to prepare and adopt an annual consolidated MRPC budget for the judicious use of resources to accomplish the objectives of the statewide system of computer services. Specific functions and composition of the committee shall be prescribed in the Central Education Agency Computer Services Procedure Manual.

§53.74. Texas Education Computer Cooperative.

(a) (No change.)

(b) Function. The TECC shall function to serve the following objectives of the statewide system of computer services:

(1) (No change.)

(2) to cooperatively plan, develop, implement, and maintain a system of hardware and software capable of providing compatible and economical services for school districts; [and]

(3) to encourage school district use of computer services available through the statewide system of computer services; and

(4) to conduct research and development projects to advance administrative and instructional uses of technology.

(c) Representation. TECC representatives shall include the following:

(1) the deputy commissioner for research and information, and a representative from the data services division and educa-

tional technology division shall provide the membership from the Central Education Agency;

(2)(1) the executive directors of member RPC's and MRPC's; and

(3)(2) other executive director representatives of regional education service centers participating in the statewide system of computer services.

§53.75. *Role of the Central [Texas] Education Agency in the Statewide System of Computer Services.* The Central [Texas] Education Agency shall participate in making cooperative computer services more accessible and economical to all school districts and in reducing the school districts' reporting burden. The Central [Texas] Education Agency shall:

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

(3) cooperatively work with [assist] the Texas Education Computer Cooperative [TECC], regional education service centers, and school districts to plan and conduct [with planning and conducting] mutually beneficial innovative research and development projects which are consistent with the long range plan of the State Board of Education.

§53.76. *Reporting.* Regional education service center shall submit reports as required by the Central [Texas] Education Agency to facilitate budgeting and the distribution [provision] of financial assistance for the statewide system of computer services.

§53.77. *Funding.*

(a) Revenue sources. Computer services and research and development shall be funded from school district, [local,] state, and federal revenue sources.

(1) School district [Local] revenue. Each participating school district shall be responsible for making payment toward the cost of the computer services which it receives through the regional education service centers.

(2) State revenue. The funds which become available under the provisions of Texas Education Code, §11.33(b), and any other appropriate state legislation shall be used to finance a portion of the costs of the statewide system of computer services and research and development provided for school districts through the regional education service centers.

(3) Federal or other revenue. A portion of the costs of the statewide system of computer services and research and development provided for school districts through the regional education service centers may be financed by federal funds or other funds which become available for this purpose.

(b) State funding of computer services. Funding assistance shall be made to the regional education service centers providing computer services to school districts in accordance with the following funding guidelines. These new fund categories shall be effective in fiscal year 1987-1988.

(1) The funds shall be provided to education service centers on the basis of the

amount of computer and interface services being provided to school districts. The three categories of funding assistance are:

(A) a variable amount of the total fund equitably distributed for school district administrative software development, modification, and maintenance, and other computer services. This portion of the funding assistance shall also reflect the variable amount of personal services provided by education service centers to those districts using state developed, or endorsed, microcomputer and minicomputer administrative software operated at the school district;

(B) a variable amount of the total fund distributed through education service centers to equalize computer access to remote school districts (i.e., districts requiring the use of long distance telephone lines to access the computer for administrative services); and

(C) a fixed amount of the total fund distributed to those education service centers with approved research and development projects which apply technology to school administration and instructional needs. The State Board of Education shall annually approve the list of projects recommended for funding by the commissioner of education.

(2) The State Board of Education shall approve each year the budget allocation for each of these funding categories.

(c)[(b)] State funding process [of computer services]. Funds [Grant awards] shall be distributed [made] to [the regional] education service centers by the Central Education Agency on the basis of the computer services provided to school districts and approved TECC research and development projects [in accordance with funding guidelines authorized by the commissioner of education].

(1) Regional education service centers shall apply yearly for funds on data report forms prescribed [approved] by the Central [Texas] Education Agency.

(2) Detail funding formulas shall be developed by the commissioner of education. Such formulas shall be designed to promote and encourage school district participation by distributing the greater amount of funding to those education service centers providing the most [in] commonly needed computer services. Data submitted by the education service centers shall be used as the basis of the formula computation [and to encourage equalization of school district access to available services].

(3) The commissioner shall also develop formulas to ensure equal on-line communications access to available computer services by remote school districts [of education may approve grant awards for special projects such as those designed to promote the development of services and enhance the usefulness of the statewide system of computer services].

(4) Research and development projects to be funded through the TECC shall be identified by the commissioner of education.

(5) Report forms, administrative processes, and funding formulas shall be prescribed in detail in the Central Education Agency Computer Services Procedure Manual.

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 April 18, 1986.

TRD-8603826

W. N. Kirby
Commissioner of
Education

Proposed date of adoption:

June 14, 1986

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

★ ★ ★

Chapter 69. Proprietary Schools and Veterans Education

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

★ 19 TAC §§69.122, 69.124, 69.127, 69.129

The Texas Education Agency proposes amendments to §§69.122, 69.124, and 69.127, and new §69.129, concerning guidelines and minimum standards for the operation of Texas proprietary schools. The amendments and new section specify distinctions between additional classroom facilities and separate campuses; require the maintenance of advertising records by schools cited repeatedly for violations of advertising rules; provide a new termination policy for students with excessive absences; outline minimum standards for a new associate of occupational studies degree; and consolidate in one section existing rules related to standards for degree-granting schools.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no fiscal implications for small businesses offering the associate of occupational studies degree. A proprietary school will be required to pay an initiation fee of \$500 if the occupational studies program is its first degree-granting program or \$250 if it is a subsequent degree program.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be assurance of consistent accountability on the part of the proprietary school industry and protection of the schools and their students from abuses due to vague statutory lan-

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

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9662. Requests for a public hearing on proposals submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposal is published in the *Texas Register*.

The amendments and new section are proposed under the Texas Education Code, §32.22, which authorizes the State Board of Education to make rules concerning the administration of proprietary schools.

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

[Associate of applied arts degree and associate of applied science degree—Technical certificates issued to students who complete an occupational curriculum of collegiate level and character consisting of at least 60 semester hours or 90 quarter hours of instruction.]

[Credit hour—A measurement of scholastic attainment earned on the following basis.

[(A) One semester credit hour is equal to:

[(i) one hour of classroom lecture per week for a semester or the equivalent number of hours; or

[(ii) two hours of laboratory experience per week for a semester or the equivalent number of hours.

[(B) One quarter credit hour is equal to:

[(i) one hour of classroom lecture per week for a quarter or the equivalent number of hours; or

[(ii) two hours of laboratory experience per week for a quarter or the equivalent number of hours.]

[Quarter—A period of instruction into which the academic year may be divided. A quarter must be at least 10 weeks in length.]

[Semester—A period of instruction into which the academic year may be divided. A semester must be at least 15 weeks in length.]

§69.124. General Provisions.

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

(c) A proprietary school must obtain a certificate of approval for each location where a course or courses of instruction will be offered, unless the school meets one of the following exceptions:

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

(4) schools which acquire additional classroom facilities if the additional classrooms are located within a 10 mile radius of

the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services [because of space limitations].

(d)-(h) (No change.)

[(i) Schools desiring approval for issuance of an associate of applied science degree or associate of applied arts degree shall be accredited by an accrediting agency or association recognized by the United States commissioner of education prior to requesting degree granting approval from the Central Education Agency. Any nonaccredited school currently granting a degree shall have a two year period from the effective date of this section in which to become accredited. If the school does not become accredited, the school's authority to grant associate degrees shall be removed.]

§69.127. Minimum Standards for Operation of Proprietary Schools.

(a) (No change.)

(b) Schools desiring issuance and renewal of certificates of approval shall adhere to the following standards.

(1) Personnel.

(A) Director and administrative staff members.

(i)-(ii) (No change.)

[(iii) Deans, directors, or supervisors of associate of applied arts or associate of applied science degree programs must have at least a master's degree, three years of experience in business or industry, and three years of teaching or administrative experience in vocational education or a comparable combination of education and experience acceptable to the director of the Division of Proprietary Schools and Veterans Education.]

[(iii)(iv)] The director or staff member must be a person of good reputation and character.

(B) Instructors.

(i) Instructors shall have specific qualifications as follows.

(I)-(VI) (No change.)

[(VII) Instructors employed in associate of applied arts or associate of applied science degree programs shall have a bachelor's degree and three years of work experience in the field in which they are to teach, or an associate of applied arts or associate of applied science degree and five years of work experience in the field in which they are to teach, or a comparable combination of education and experience acceptable to the director.]

[(VII)(VIII)] Instructors employed in seminars or workshops shall have professional qualifications in the area to be taught, preferably with a degree from an accredited college or university, with at least two years recent professional experience or a comparable amount of education and experience acceptable to the director.

(ii) (No change.)

(2) Admission requirements.

(A) (No change.)

[(B) Schools which offer an associate of applied arts or associate of applied science degree must require for admission into those programs a high school diploma or recognized equivalency certificate or evidence of successful completion of the equivalent of one full-time semester or quarter at an accredited college or university.]

[(B)(C)] The school must maintain a written record of the previous education and training of the applicant student which clearly indicates that appropriate credit has been given by the school for previous education and training. The new training period shall be shortened where warranted through use of appropriate skills or achievement tests and the student so notified. When the training period is shortened, the course cost shall be reduced accordingly. With the exception of seminars and workshops as defined in §69.122 of this title (relating to Definitions), and individual subjects within an established curriculum, schools shall use Form DPSVE-010 or the equivalent which will become a part of the student's permanent record at the school. The subject matter involved in seminars and workshops is such that credit for previous education and training may not be required.

[(C)(D)] Prior to enrollment, the school shall furnish each student a copy of the school bulletins and course outlines; schedule of tuition, fees, and other charges, and refund policy; enrollment contract; and regulations pertaining to absences, grading policy, and rules of operation and conduct. All schools shall use Form DPSVE-005, or its equivalent acceptable to the director.

(3)-(4) (No change.)

(5) Cancellation and refund policy.

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

[(E) Refund computations for students enrolled under the attendance criteria outlined in paragraph (8)(B)(iii)(i) of this subsection shall be based on scheduled hours of class attendance. Refund computations for students enrolled under the attendance criteria outlined in paragraph (8)(B)(iii)(ii) of this subsection shall be based on actual hours of class attendance, plus 10% of the scheduled class attendance. In all refund computations, leaves of absence, suspensions, [and] school holidays, days when classes are not offered, and summer vacations shall not be counted as part of the elapsed time for purposes [the purpose] of calculating a student's refund [in accordance with this paragraph].

(F)-(H) (No change.)

(6) Instructional programs.

(A) (No change.)

[(B) The teaching load in associate of applied arts or associate of applied science degree programs must be reasonable in number of subject preparations, number of class periods and hours of assigned instruction, and other additional duties.

[(C) Schools which offer associate of applied arts or associate of applied science degree programs shall use advisory commit-

tees in developing and evaluating curriculum content and equipment. There shall be an advisory committee for each occupational degree program consisting of at least five members knowledgeable about that occupation. The committees should include representatives of potential employers. Committees must meet at least once a year, and minutes of their activities must be recorded and maintained.]

(B)(D) Schools shall not publish in their bulletins or other promotional literature courses which have not been approved by the director.

(C)(E) When a school is approved to offer a course and enrolls students in the course, the school shall maintain sufficient and qualified faculty to teach all subjects for completing the course during the length of time stipulated in the school bulletin regardless of the size of the class.

(D)(F) The school shall schedule classes so that the students will be able to complete the course during the length of time stipulated in the school bulletin.

(E)(G) If an approved course is discontinued for any reason, the director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion by reason of the discontinuance of the course. Should the school fail to make arrangements satisfactory to the students and the director for the completion of their course(s), the full amount of all tuition and fees paid by the students are then due and refundable. If arrangements are not made satisfactory to the students and director, the refunds must be made no later than 30 days from the date the course was discontinued. Any course discontinued will be removed from the list of approved courses.

(F)(H) Upon successful completion of training, the student shall be given a certificate by the school indicating that the course or training or both was satisfactorily completed; however, in accordance with the Texas Education Code, §32.40, a proprietary school may withhold a student's certificate of completion of training if the student is in arrears or in default of obligations to the school incurred to finance the student's education.

(G)(I) No evening school class schedule shall extend beyond a reasonable time.

(7) Advertising.

(A)-(P) (No change.)

(Q) Schools which are cited by the Division of Proprietary Schools and Veterans Education three or more times during any 12-month period for violating any of the provisions of this subsection shall maintain for one year from the date of the third citation a complete record of all advertising, sales, or enrollment materials (and copies of each) used by or on behalf of the institution during the 12-month period. If the director views the violations to be of sufficient gravity, the school may be required to maintain

the record after the first or second violation. The materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature used by sales people, films, video and audio tapes disseminated through the broadcast media, materials disseminated through the print media, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel.

(R)(Q) Nothing in these guidelines shall prohibit release of information to students as required by a federal agency.

(8) Minimum progress and attendance standards.

(A) Progress. Appropriate standards must be implemented to ascertain the progress of the students enrolled.

(i) Progress standards must meet the following requirements.

(i)(I) The school must have a progress evaluation system on a maximum of six weeks or other intervals acceptable to the director.

(ii)(II) Correspondence schools shall maintain on forms approved by the director a progress evaluation system. This form shall include the date course materials are mailed to the student, the date the lesson assignment is received from the student, the grade on a lesson basis, the instructor's name, and the date graded assignments are mailed or returned to the student. The form must also include a final grade for the course with completion data indicated.

(iii)(III) The progress evaluation records must be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

(iv)(IV) Seminars and workshops as defined in §69.122 of this title (relating to Definitions) may use a letter or certificate of completion to serve as the record of satisfactory progress.

(v)(V) The progress evaluation policy shall stipulate what is considered unsatisfactory progress. A student who is making unsatisfactory progress shall be placed on probation for the next grading period with the date of the action clearly indicated on the appropriate permanent records and the student advised of this action. Students on probation who do not have satisfactory progress status at the end of the probationary period may be continued on probation at the discretion of the school director for another grading period, if the student has demonstrated improvement in comprehension and effort. Students who are continued on probation for two consecutive grading periods and who do not maintain satisfactory progress during or at the end of the second probationary period shall be suspended for a maximum of 30 school days during a 12-month period or terminated. The student's progress and other appropriate records shall clearly indicate the reason for suspension and that the student has been advised of this ac-

tion. If a student fails to return from suspension, the student shall be terminated and any refunds due shall be consummated within 30 calendar days after the student fails to return. A student who returns from suspension shall be placed on probation for the next grading period. The student shall be advised of this action, and the student's file shall be documented accordingly. Students on probation after having been suspended, who do not maintain satisfactory progress during or at the end of the probationary period, shall be terminated.

(ii) For schools offering associate of applied arts or associate of applied science degree programs, the progress standards must include:

(I) a progress evaluation system at least every semester or quarter;

(II) a requirement that the minimum grade point average (GPA) for graduation from all degree programs be a 2.0, based on a 4.0 scale,

(III) a probationary period of one semester, quarter, or grading period following the end of the semester or quarter in which the student's grades became unsatisfactory; and

(IV) conditions for suspension or termination at the end of the probationary period if the student's grades do not improve to a level specified by the school.]

(B) Attendance.

(i)-(ii) (No change.)

(iii) The attendance policy shall stipulate one of the following conditions for termination of students who accumulate excessive absences:

(I) prior to entering the fourth quarter, students who are absent more than 10 consecutive school days, more than 15% of the total clock hours in a course, or more than 25% of the total clock hours, if the course is 200 clock hours or less, shall be terminated; or

(II) students who are absent more than 10 consecutive days shall be terminated.

(iii) A student shall be terminated when the student is absent in excess of 10 consecutive school days or in excess of 15% of total clock hours in the course, whichever occurs first. Students enrolled in short courses of 200 hours or less shall be terminated when absent in excess of 25% of the total clock hours in the course, or 10 consecutive school days, whichever occurs first. A student enrolled in associate of applied arts or associate of applied science degree programs shall be terminated when the student is absent in excess of 15% of the scheduled clock hours during a semester, quarter, or other approved grading period.]

(iv)-(vi) (No change.)

(9)-(14) (No change.)

(15) Learning resources.

(A) Schools offering associate of applied arts or associate of applied science degree programs must provide an adequate learning resource center or centers. This re-

quirement may be met in any one or any combination of the following ways:

- (i) within the individual classrooms;
- (ii) within the individual laboratories;
- (iii) within individual shops;
- or
- (iv) in a schoolwide learning resource center.

[(B) Materials shall include such items as reference books; industrial and technical manuals; trade, technical, and professional periodicals; and audio visual aids and equipment appropriate to the nature of the program. Responsibility must be assigned for maintenance of the center or centers and for purchasing, recording, and distributing materials and equipment. A current inventory shall be maintained. The center or centers must be available for use by students during the school's regular hours of operation.]

§69.129. Minimum Standards for Operation of Proprietary Schools Which Grant Associate of Applied Arts, Associate of Applied Science, and Associate of Occupational Studies Degrees.

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

(1) Applied education courses—Language and mathematics courses such as technical writing, report writing, business mathematics, electronic mathematics, and/or any other courses approved by the director which provide the student with the foundation and skills appropriate for the objective of the degree.

(2) Associate of applied arts degree (AAA) and associate of applied science degree (AAS)—Technical certificates issued to students who complete an occupational curriculum of collegiate level and character consisting of at least 60 semester hours or 90 quarter hours, but not less than 1200 clock hours of instruction.

(3) Associate of occupational studies degree (AOS)—Technical certificates issued to students who complete an occupational curriculum which will assure adequate preparation for entry level employment in a particular occupational field. These programs shall consist of at least 60 semester hours or 90 quarter hours, but not less than 1400 clock hours of instruction.

(4) Block-time programs—Programs in which courses are not scheduled on a standard quarter or semester basis. Courses in these programs are normally scheduled serially.

(5) Branch campus—A certificated institution whose accreditation is based on another certificated institution, fully and separately accredited as a free standing institution in Texas and which is owned by the same person, persons, partnership, and/or corporation as the main campus.

(6) Classroom lecture—Presentation of theory by an instructor.

(7) Credit hour—A measurement of scholastic attainment earned on the following basis:

(A) schools which schedule their courses on a standard quarter or semester basis:

(i) one semester credit hour is equal to:

(I) one hour of classroom lecture per week for a semester or the equivalent number of hours; or

(II) two hours of laboratory experience per week for a semester or the equivalent number of hours; or

(III) 40 clock hours of internship;

(ii) one quarter credit hour is equal to:

(I) one hour of classroom lecture per week for a quarter or the equivalent number of hours; or

(II) two hours of laboratory experience per week for a quarter or the equivalent number of hours; or

(III) 27 clock hours of internship;

(B) schools in which courses are not scheduled on a standard quarter or semester basis:

(i) one semester credit hour is equal to:

(I) 15 clock hours of classroom lecture; or

(II) 30 clock hours of laboratory experience; or

(III) 40 clock hours of internship;

(ii) one quarter credit hour is equal to:

(I) 10 clock hours of classroom lecture; or

(II) 20 clock hours of laboratory experience; or

(III) 27 clock hours of internship.

(8) General education courses—Language, mathematics, history, economics, science, or behavioral science courses or any other courses approved by the director which meet the general education needs of students and which provide the student with foundation and developmental skills appropriate for the occupational objective of the degree.

(9) Internship—Practical off-campus industrial training under indirect instructor supervision.

(10) Laboratory experience—The practical application of theory in a school setting under instructor supervision and with appropriate laboratory equipment.

(11) Quarter—A period of instruction into which the academic year may be divided. A quarter must be at least 10 weeks in length.

(12) Semester—A period of instruction into which the academic year may be divided. A semester must be at least 15 weeks in length.

(13) Term—A period of instruction into which the academic year may be divided in programs offered on a block-time basis. A term must not be greater than 18 weeks in length.

(b) Minimum standards.

(1) In addition to compliance with all other appropriate minimum standards for operation of proprietary schools in this chapter and the Texas Education Code, Chapter 32, the standards and requirements in this section shall be applicable to proprietary schools which grant associate of applied arts (AAA), associate of applied science (AAS), or associate occupational studies (AOS) degrees.

(2) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program by providing graduates of these programs with marketable skills. At least 95% of the courses required for each AAA, AAS, and/or AOS degree must be offered in organized classes by the institution. A minimum of 14 quarter credit hours or nine semester hours of the courses required for each AAA and/or AAS degree shall be general education courses. A minimum of nine quarter credit hours or six semester hours of the courses required for each AOS degree shall be applied education courses.

(3) Deans, directors, or supervisors of AAA or AAS degree programs shall have at least a master's degree, three years of experience in business or industry, and three years of teaching or administrative experience in vocational education or a comparable combination of education and experience acceptable to the director.

(4) Instructors employed in AAA or AAS programs shall have a bachelor's degree and three years of work experience in the field in which they are to teach, or an AAA, AAS, or AOS degree and five years of work experience in the field in which they are to teach, or a comparable combination of education and experience acceptable to the director.

(5) Directors or supervisors of AOS degree programs shall have at least a master's degree or five years of experience in the field in which they are to supervise or a comparable combination of education and experience acceptable to the director.

(6) Instructors employed in AOS degree programs shall have a bachelor's degree or four years experience in the field in which they are to teach, or a comparable combination of education and experience acceptable to the director.

(7) There are sufficient number of permanent teaching faculty to ensure the following:

(A) continuity and stability of the education programs;

(B) opportunities for student consultations and inservice training for the faculty members; and

(C) a teaching load that is reasonable in the number of subject preparations, numbers of class periods and hours of assigned instruction, and other additional duties

(8) Schools which offer AAA, AAS, or AOS degree programs shall use advisory committees in developing and evaluating curriculum content and equipment. There shall be an advisory committee for each occupational degree program consisting of at least five members knowledgeable about that occupation. Schools which offer more than one degree program with similar objectives may have a maximum of two of the five members from one of the degree programs serve on the advisory committee for another program. The committees must meet at least once a year, and minutes of their activities must be recorded and maintained.

(9) For schools offering AAA, AAS, or AOS degree programs, the progress and attendance standards shall include the following:

(A) a progress evaluation system at least every semester, quarter, or approved grading period in block-time programs;

(B) a requirement that the minimum grade point average for graduation from all degree programs be a 2.0 based on a 4.0 scale and that students achieve a passing grade in all required subjects;

(C) a probationary period of one semester, quarter, or approved grading period following the end of the semester, quarter, or approved grading period in which the student's grades become unsatisfactory;

(D) conditions for suspension or termination at the end of not more than two consecutive probationary periods if the student's cumulative grade point average does not improve to the level required for graduation;

(E) provisions for termination or probation during the next quarter, semester, or approved term when a student is absent for more than 15% of the scheduled clock hours during a quarter, semester, or approved term;

(F) provisions for termination when a student is absent for more than 15% of the scheduled clock hours during the probationary quarter, semester, or approved term; and

(G) provisions for termination prior to the last quarter when a student is absent in excess of 10 consecutive school days or 15% of the total clock hours in the course, whichever occurs first.

(10) The requirements for leaves of absence are as follows.

(A) Schools which offer AAA, AAS, or AOS degree programs that schedule their courses on a quarter or semester basis may include in their attendance policies provisions for the following types of leaves of absence:

(i) leaves of absence, including military leaves, which shall not exceed the lesser of 30 school days or 60 calendar days in any six-month period and which shall be for specific and acceptable purposes; and

(ii) summer leaves of absence which shall not exceed the lesser of 120 days or the interval between the end of the spring quarter or semester and the start of the fall quarter or semester.

(B) For any of the types of leave described in this paragraph, the school attendance records shall clearly show that a leave of absence was granted. A written request for the leave of absence properly dated and signed by both the student and an authorized school official must be placed in the individual student file. If the student fails to return from leave, the student shall be automatically terminated, and a refund shall be totally consummated within 30 days.

(11) The requirements for learning resources are as follows.

(A) Schools offering AAA, AAS, or AOS degree programs must provide an adequate learning resource center or centers. This requirement may be met in any one or any combination of the following ways:

(i) within the individual classrooms;

(ii) within the individual laboratories;

(iii) within individual shops; or

(iv) in a schoolwide learning resource center.

(B) Materials shall include such items as reference books; industrial and technical manuals; trace, technical, and professional periodicals; and audiovisual aids and equipment appropriate to the nature of the program. Responsibility must be assigned for maintenance of the center or centers and for purchasing, recording, and distributing materials and equipment. A current inventory shall be maintained. The center or centers must be available for use by students during the school's regular hours of operation.

(12) Residency requirements for schools offering AAA, AAS, or AOS degree programs are as follows.

(A) Transfer students. Students who transfer from other post-secondary institutions shall complete at least 20 semester hours or 30 quarter hours in residency at the school which will grant the degree. This does not apply to transfers within the same school system.

(B) Current students. Students attending at the time a school becomes a degree-granting school may be awarded a degree provided that they have met all the prerequisites for acceptance into the degree program and satisfactorily complete all courses and/or equivalent courses in the approved curriculum of the degree program.

(C) Former students. To qualify for a degree, former students shall meet all the prerequisites for acceptance into the degree program and must satisfactorily com-

plete all courses and/or equivalent courses in the approved degree program.

(13) The institution shall provide prospective students, prior to enrollment, with a catalog or brochure containing information describing the purpose, length, and objectives of the programs offered by the institution; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; and such other facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by this chapter.

(14) Upon satisfactory completion of training, the student shall be given appropriate educational credentials by the institution indicating that the course or courses of instruction or study undertaken have been satisfactorily completed by the student.

(15) Adequate records shall be securely maintained by the institution to show attendance, progress, or grades. The institution shall maintain student academic transcripts permanently and shall make these transcripts available to students and prospective employers at a reasonable charge so long as the student is not in arrears or in default of obligations to the school incurred to finance the student's education.

(16) The institution shall require for admission into its degree programs a high school diploma or recognized equivalency certificate or evidence of successful completion of the equivalent of one full-time semester (12 semester hours) or quarter (18 quarter hours) at an accredited college or university or post-secondary institution.

(17) The institution shall be maintained and operated in compliance with all ordinances, laws, and rules pertaining to the safety and health of all persons upon the premises.

(c) Eligibility requirements.

(1) Schools desiring approval for issuance of an AAA, AAS, or AOS degree shall be accredited by an agency or association recognized by the United States commissioner of education. Any nonaccredited school currently granting a degree must become accredited by May 9, 1987, or relinquish degree-granting authority.

(2) Institutions which have been in operation in Texas and have complied with the Texas Education Code as nondegree-granting institutions for a minimum of two years may make application to the Central Education Agency for approval to grant AAA, AAS, or AOS degrees. As a minimum, in operation means that classes have been conducted for two years.

(3) The institution and its programs of study submitted for approval shall be fully operational on the dates of the on-site evaluations; i.e., there must be on hand or under contract all the human, physical, administrative, and financial resources necessary to

demonstrate the capability to meet the minimum standards.

(4) A certificated and accredited branch campus of a fully and separately accredited institution that has been approved to grant AAA, AAS, or AOS degrees in Texas may apply to grant AAA, AAS, or AOS degrees provided that the branch campus is also in compliance with all other minimum standards except paragraph (2) of this subsection.

(5) Correspondence schools and schools which are not located in Texas are not eligible to apply for approval to grant AAA, AAS, or AOS degrees under the provisions of this section.

(d) Application for approval to grant AAA, AAS, or AOS degrees. An institution may apply to the Central Education Agency for approval to grant AAA, AAS, or AOS degrees in specified programs of study on the application forms provided by the agency.

(e) Issuance of approval to grant AAA, AAS, or AOS degrees.

(1) The administrator may issue approvals to grant AAA, AAS, or AOS degrees if the administrator finds that the applicant institution meets the standards for approval.

(2) The approval to grant degrees shall be valid for a period of five years from the date of issuance. Certificates of approval to grant AAA, AAS, or AOS degrees issued prior to the effective date of this minimum standard will expire five years from the original effective date of approval or reapproval.

(3) The institution approved to grant AAA, AAS, or AOS degrees shall not use terms to interpret the significance of the approval which specify or connote greater approval. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the Central Education Agency or the Texas Education Agency.

(f) Amendments to current approvals.

(1) When an amendment to an existing approval to award a new or different degree is sought within the period covered by an existing approval, the institution shall forward to the Central Education Agency a detailed description of the proposed change. This shall include, but need not be limited to, an outline of the curriculum to be offered, the qualifications of the faculty involved, textbooks to be used, learning resource center materials to be provided, and advisory committee membership changes, if appropriate.

(2) The review procedure shall correspond to that outlined for an initial application.

(3) If the proposed changes meet the required standards, the institution's approval will be amended.

(g) Renewal of approvals to grant AAA, AAS, or AOS degrees.

(1) At least 90 days prior to the expiration of the approval to grant AAA, AAS,

or AOS degrees, an institution which desires to renew its approval shall make application to the administrator on the forms provided by the agency.

(2) When the appropriate forms are received, the Central Education Agency will proceed in a similar manner as prescribed for the evaluation of an initial application, including an on-site visit.

(3) The administrator shall renew the approval to grant AAA, AAS, or AOS degrees if the administrator finds that the institution has maintained all requisite standards and has complied with the provisions of the Texas Education Code and this chapter.

(h) Denial of approval to grant AAA, AAS, or AOS degrees. If, upon review and consideration of an original, renewal, or amended application for approval to grant AAA, AAS, or AOS degrees, the administrator determines that the applicant fails to meet the requirements in the Texas Education Code or this chapter, the administrator shall notify the applicant, setting forth the reasons for denial in writing.

(i) Revocation of approval to grant AAA, AAS, or AOS degrees. The administrator may revoke an institution's approval to grant AAA, AAS, or AOS degrees at any time if the administrator finds that:

(1) any statement contained in the application for the degree-granting authority is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, and programs of study on the basis of which degree-granting authority was issued;

(3) advertising and/or representations made on behalf of and sanctioned by the institution are deceptive or misleading; or

(4) the institution has violated any applicable provision of the Texas Education Code or this chapter.

(j) Appeals. An applicant whose authority to grant AAA, AAS, or AOS degrees is denied or revoked shall have the right to appeal under Chapter 157 of this title (relating to Hearings and Appeals). Should the applicant fail to furnish additional evidence or exercise the right of appeal within 15 days after receipt of notice that the application is unacceptable, the notice shall become final.

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 April 24, 1986.

TRD-8603859 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:

June 14, 1986
For further information, please call
(512) 463-9212.

★ ★ ★

Chapter 141. Teacher Certification

Subchapter A. Certification of Teachers in General

★ 19 TAC §141.2

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

The Texas Education Agency proposes an amendment to §141.2, concerning classes of teacher certificates. The amendment removes that portion of the section scheduled to become effective May 1, 1986, that is no longer consistent with legislative mandates, and leaves the current certification system in effect until September 1, 1987.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, also have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the teacher certification sections will not include provisions in conflict with the Texas Education Code, §13.305, Classes of Teaching Certificates. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. Requests for a public hearing on the proposed amendments, submitted in accordance with the Administrative Procedure and Texas Register Act, must be received by the commissioner of education not more than 15 calendar days after notice of a proposal is published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §13.032(a) and (d)(1), which authorizes the State Board of Education to make rules concerning classes of teaching certificates to be issued.

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 April 18, 1986.

TRD-8603827 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:

June 14, 1986
For further information, please call
(512) 463-9212.

**TITLE 22. EXAMINING
BOARDS
Part XXII. Texas State Board
of Public Accountancy
Chapter 501. Professional
Conduct**

Definitions

★22 TAC §501.2

The Texas State Board of Public Accountancy proposes the repeal of §501.2, concerning definitions. The repeal deletes old definitions used in the rules of professional conduct.

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

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the repeal will allow for the adoption of new definitions, which conform to the prevailing practice in the public accounting profession. 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 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 of professional conduct relating to the practice of public accountancy.

§501.2. Definitions.

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 April 28, 1986.

TRD-8604000

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

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 451-0241.

★ ★ ★

The Texas State Board of Public Accountancy proposes new §501.2, concerning definitions. The new section provides for the establishment of definitions of particular terms that will be used in the rules of professional conduct.

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 the adoption of new definitions which conform to the prevailing practice in the public accounting profession. 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 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 of professional conduct relating to the practice of public accountancy.

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

Advertisement—A public communication by a licensee having reference to the availability of the licensee or the licensee's firm to perform professional services.

Board—The Texas State Board of Public Accountancy.

Client—The person or entity which retains a licensee for the performance of professional services.

Competitive bid—A public communication or private communication by a licensee which is a proposal, other than an advertisement or a fee estimate as herein defined, to a prospective client to perform professional services when:

(A) such proposal refers to the compensation to be charged or received, whether referred to as a lump sum, a maximum or minimum amount, or any form of unit price, including per diem or per hour rates with or without a maximum, minimum, or average sum; and

(B) the proposal is given with the knowledge that similar proposals are being sought concurrently from one or more other licensees. The fact that a licensee is invited to make a proposal by a person not already a client is indicative that similar proposals are being invited from other licensees and it shall be incumbent upon the licensee to ascertain by direct inquiry whether other proposals have been or will be invited. For the purposes of this chapter, a fee estimate shall not be deemed to be a competitive bid. A fee estimate is defined as a written public communication or a written private communication by way of which a licensee or firm of licensees provides to a prospective client,

at his or its request, an estimate of the charges proposed by the licensee or his firm for specific services and which clearly states:

(i) that the amount quoted is an estimate and that the licensee will not be bound to provide the subject services for the estimated amount;

(ii) the estimated number of people by classification to be involved in performing the work and the range of education and experience in each classification; and

(iii) the estimated time to be required for the engagement by personnel classification and the anticipated completion date.

Enterprise—Any person or entity, whether organized for profit or not, for which a licensee performs professional services.

Financial statements—Statements and footnotes related thereto that purport to show financial position which relates to a point in time or changes in financial position which relate to a period of time, on the basis of generally accepted accounting principles or another comprehensive basis of accounting.

(A) For purposes of this definition, another comprehensive basis of accounting is a basis to which at least one of the following descriptions applies:

(i) a basis of accounting that the reporting entity uses to comply with the requirements or financial reporting provisions of a government regulatory agency to whose jurisdiction the entity is subject;

(ii) a basis of accounting that the reporting entity uses or expects to use to file its income tax return for the period covered by the financial statements;

(iii) the cash receipts and disbursements basis of accounting, and modifications of the cash basis having substantial support, such as recording depreciation on fixed assets or accruing income taxes;

(iv) a definite set of criteria having substantial support that is applied to all material items appearing in financial statements, such as the price-level basis of accounting.

(B) The term "financial statements" does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting schedules.

Firm—A proprietorship, partnership, or professional corporation engaged in the practice of public accountancy.

He, his, him—Masculine pronouns when used in this chapter also include the feminine and the neuter.

Holding out—As that term is used in the definition of practice of (or practicing) public accountancy in these sections, any representation of the fact that a licensee holds a certificate or registration made in connection with an offer to perform services for the public. Any such representation is presumed to invite the public to rely upon

the professional skills implied by the certificate or registration in connection with the services offered to be performed by the licensee. For purposes of this section, a representation shall be deemed to include any oral or written communication conveying the fact that the licensee holds a certificate or registration, including, without limitation, the use of titles or legends on letterheads, professional cards, office doors, advertisements, and listings. Holding out does not include:

(A) the display of the original (but not a copy) of a currently valid certificate or registration;

(B) any representation by a faculty member in an educational institution that such faculty member holds a certificate or registration when the purpose of such representation reasonably relates to his functioning in the capacity of faculty member;

(C) any representation in a book, article, or other publication or in any promotional advertising for such book, article, or other publication that the author holds a certificate or registration, provided that such book, article, or other publication does not offer the performance of services or the sale of any products (other than the book, article, or publication itself) of any kind.

Licensee—An individual, partnership, or corporation holding a license issued by the board, pursuant to the Public Accountancy Act of 1979, as amended, Texas Civil Statutes, Article 41a-1, 1981. The term includes each firm of which a licensee is a partner, officer, or shareholder, and each partner, officer, or shareholder of a firm which is a licensee.

Other compensation—Compensation received by a licensee who is engaged in the practice of public accountancy for other than the performance of professional services, including compensation for the sale of products (other than work product of the licensee) or for referral of products or services of others.

Person—An individual, sole proprietorship, partnership, corporation, or other entity.

Practice of (or practicing) public accountancy—The performance or offering to perform by a person holding himself out to the public as a licensee, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

Private communications—All communications which are not public communications.

Professional services—Any services performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

Public communications—A message transmitted orally or by any written or elec-

tronic medium to multiple persons which is recorded, transcribed, or otherwise preserved for later review. The message must be in identical form. In the case of transmissions in written form, if a salutation of the recipient is used inside the communication, the salutation is considered a part of the message and must be worded in identical form. For example, a salutation may read: Dear Doctor, Dear School Board President, Fellow Business Owner, or Dear New Business Owner. The mailing address of the recipient which is affixed to the communication solely for the purpose of mailing is not considered part of the message. Insertion of the recipient's address into the text or format of the message is not permitted in a public communication.

Report—When used with reference to financial statements, an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

Solicitation—A private communication by a licensee which has reference to the performance of professional services by the licensee or the licensee's firm for the persons to whom the message is transmitted.

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 April 28, 1986.

TRD-8604001 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:

June 6, 1986
For further information, please call
(512) 451-0241.

★ ★ ★



Chapter 511. Certification as CPA

Certification by Examination

★22 TAC §511.26

The Texas State Board of Public Accountancy proposes the repeal of §511.26, concerning experience and educational requirements of prior applicants to take the uniform CPA examination. The repeal deletes an ambiguous section.

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

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be deletion of an ambiguous section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to 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 of professional conduct deemed necessary or advisable to insure high standards of professional competence and learning.

§511.26. Prior Applications.

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 April 25, 1986.

TRD-8603976 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:

June 6, 1986
For further information, please call
(512) 451-0241.

★ ★ ★

★22 TAC §511.27

The Texas State Board of Public Accountancy proposes the repeal of §511.27, concerning the continuing of qualification requirements at the first taking of the CPA exam by the applicant. The section is repealed to allow for a new section with proper wording.

Bob E. Bradley, executive director, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or

local government or small businesses as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the repeal will allow for the proper wording to provide for qualification requirements for education and experience, both as to sitting the examination and to receiving a certificate as a CPA. 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 of professional conduct deemed necessary or advisable to insure high standards of professional competence and learning.

§511.27. *Continuing Qualifications.*

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 April 25, 1986.

TRD-8603977 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 451-0241.

★ ★ ★

★ 22 TAC §511.27

The Texas State Board of Public Accountancy proposes new §511.27, concerning education and experience requirements: qualifications to sit for examination vs. qualifications for certification. The new section provides the application requirements for candidates seeking to sit for the CPA examination and for receipt of a certificate as a CPA as to education and experience.

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 clear establishment of the applic-

able education and experience requirements to be met by applicants for the uniform CPA examination and for the awarding of a certificate as a CPA. 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 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 of professional conduct deemed necessary or advisable to insure high standards of professional competence and learning.

§511.27. *Education and Experience Requirements: Qualifications to Sit for Examination vs. Qualifications for Certification.* A candidate qualifies, and continues to qualify, to sit for the uniform certified public accountancy examination based upon the education requirements in effect when the candidate files his/her initial application for examination; however, to receive a certificate as a certified public accountant, a candidate, among other things, must meet the educational and related experience requirements in effect on the date of the candidate's application for examination or re-examination by which the candidate successfully completes the examination.

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 April 25, 1986.

TRD-8603978 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 451-0241.

★ ★ ★

TITLE 25. HEALTH SERVICES

Part IV. Anatomical Board of the State of Texas Chapter 471. Officers

★ 25 TAC §§471.1-471.3

The Anatomical Board of the State of Texas proposes amendments to §§471.1-471.3, concerning the chairman, vice chairman, and secretary/treasurer of the board. The amendments change the title of officers and their terms of office; and requires that the executive committee re-

port its actions to the full board as directed in amended statutes, 69th Legislature, 1985.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Dr. Payer also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The amendments are proposed under Texas Civil Statutes, Article 4583, §§1(a) and (f), 2(b), and 3(b) which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government, provide for the size of the board, and identify the title of "Chairman".

§471.1. *Chairman [President] of the Board.*

(a) Term of office. The chairman [president] shall be elected from among the members of the board at the [an] annual meeting in odd-numbered years for a term of two [three] years.

(b) Duties. The chairman [president] of the board shall be the chief executive officer of the board, call its meetings, preside over all meetings of the board and of its executive committee. He shall represent the board before legislative bodies, official boards, and in the business of the board concerning public relations. Expenditures other than those related to the ordinary conduct of the business of the board shall require the approval of the chairman [president].

(c) Vacancy. In the event that the chairmanship [presidency] is vacated, the vice chairman [president] shall succeed to that office for the remainder of the unexpired term, and if required, a new vice chairman [president] will be elected by mail ballot to fill the unexpired term [at the next meeting of the board for a term of three years].

§471.2. *Vice Chairman [President] of the Board.*

(a) Term of office. The vice chairman [president] shall be elected from among the members of the board at the [an] annual meeting in odd-numbered years for a term of two [three] years.

(b) Vacancy. In the event that the vice chairmanship [presidency] is vacated, [for reasons other than the succession of the vice president to the presidency (see §471.1(c) of this title (relating to the President of the Board)),] a new vice chairman [president]

shall [will] be elected by mail ballot to fill the unexpired term [at the next meeting of the board to serve for the remainder of the unexpired term].

[(c) Limitation. The vice president should not be from the same institution as is the president or the secretary-treasurer.]

(c)(d) Duties. The vice chairman [president] shall have such duties as are assigned to him by the chairman [president].

§471.3. Secretary-Treasurer of the Board.

(a) Term of office. The secretary-treasurer shall be elected from among the members of the board at the [an] annual meeting in odd-numbered years for a term of two [three] years.

(b) Duties as secretary. As secretary, he shall keep minutes of all meetings of the board and a record [all records] of other actions of the board and of its executive committee. He shall give notice of meetings and conduct the correspondence of the board. He shall prepare annually a report of the number of cadavers procured and used and of the number of students in courses [each course] in anatomy that required use of cadavers. He shall perform such other duties as may be directed by statute, the board, or its executive committee.

(c) (No change.)

(d) Duties as treasurer. As treasurer, he shall receive and disburse all monies belonging to the board. The treasurer shall maintain both a checking and a savings account in an insured bank in the name of the Anatomical Board of the State of Texas. Withdrawals of monies committed to savings shall only be withdrawn with the approval of the board as attested by the signature of the chairman [president]. The treasurer shall prepare an annual financial report and send copies to all members of the board. He shall perform such other duties as may be directed by the board or its executive committee.

(e) Bonding and audit. As treasurer, he shall be bonded as an individual in an amount not less than \$10,000 [\$1,000], costs of said bond to be paid by the board. If so directed by the board or its executive committee, the accounts of the board shall be audited by an expert accountant employed by the board.

(f) Vacancy. In the event that the office of the secretary-treasurer is vacated, the executive committee shall appoint an individual to perform the duties of the secretary-treasurer for the remainder of the unexpired term [until the next meeting of the board at which a new secretary-treasurer shall be elected to serve for a term of three years].

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 Galveston, Texas, on April 23, 1986.

TRD-8603933

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

★25 TAC §471.4

The Anatomical Board of the State of Texas proposes new §471.4, concerning eligibility for re-election to office. The section defines the eligibility for re-election of incumbent officers of the board.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The new section is proposed under Texas Civil Statutes, Article 4583, §2(b), which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government.

§471.4. Eligibility for Re-Election. Officers of the board are eligible for re-election to the office without limitations other than as provided by Texas Civil Statutes, Article 4583.

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 Galveston, Texas, on April 24, 1986.

TRD-8603932

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

Chapter 473. Executive Committee

★25 TAC §473.1

The Anatomical Board of the State of Texas proposes an amendment to §473.1, concerning executive committees. The amendment requires that the executive committee report its actions to the full board as directed in amended statutes, 69th Legislature, 1985.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The amendment is proposed under Texas Civil Statutes, Article 4583, which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government and provide for the size of the board.

§473.1. Executive Committee. The executive committee shall be composed of the chairman [president], vice chairman [president], and the secretary-treasurer. It shall be authorized to transact all necessary business in the name of the board between meetings of the board. Actions taken by the executive committee shall be reported to the full board at its next meeting.

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 Galveston, Texas, on April 23, 1986.

TRD-8603925

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(409) 761-1166.

★ ★ ★



Chapter 475. Meetings

★25 TAC §475.2, §475.3

The Anatomical Board of the State of Texas proposes amendments to §475.2 and §475.3, concerning the requirement that the executive committee report its actions to the full board as directed in amended statutes, 69th Legislature, 1985. The board will now be able to meet by conference call.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Dr. Payer also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The amendments are proposed under Texas Civil Statutes, Article 4583, which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government

§475.2. Special Meetings. Special meetings may be called from time to time by the chairman [president], the executive secretary, the executive committee, or upon the written request of the representatives of four member institutions. In such situations, the executive secretary shall set a time and a place for such a special meeting, and shall give each member of the board 10 days written notice. Special meetings may be held by mail ballot or conference call.

§475.3. Meetings of the Executive Committee. The executive committee shall meet from time to time at the pleasure of the chairman [president] or the executive secretary. Such meetings may be held by conference call.

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 Galveston, Texas, on April 23, 1986.

TRD-8603929 Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:
June 6, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

Chapter 477. Distribution of Bodies

★25 TAC §477.2

The Anatomical Board of the State of Texas proposes an amendment to §477.2, concerning institutional requirements. The amendment deletes subsection (d), which concerns bond posted.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer 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 unaltered, in that other means have been put in place to substitute for the heretofore required surety bond. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166

The amendment is proposed under the repeal of Texas Civil Statutes, Article 4583, by the 69th Legislature, 1985, which provide the Anatomical Board of the State of Texas with the authority to repeal this section.

§477.2. Institutional Requirements.

(a)-(c) (No change.)

[(d) Bond posted. Institutions authorized to receive, hold, and dispose of bodies must post bond as required by statute and must so advise the board.]

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 Galveston, Texas, on April 18, 1986.

TRD-8603992 Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:
June 6, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

★25 TAC §477.4

The Anatomical Board of the State of Texas proposes an amendment to §477.4, concerning transport of bodies or body parts to destinations outside of the State of Texas. The amendment outlines hear-

ing procedures for violations of any rule dealing with the transport of a body or body part.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer 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 enable Texas, through its anatomical board, to make excess bodies or body parts collected in Texas available to other appropriate and approved institutions elsewhere in the nation where serious shortages may exist. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166

The amendment is proposed under Texas Civil Statutes, Article 4585(c) and 4583, §2(b), which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government, and provide statutory authority to export bodies or body parts from Texas under certain circumstances and conditions.

§477.4. Transportation of Bodies.

(a) Transport of bodies [in the state].

The transfer and transport of cadavers [within the state] from one institution to another, or for export from the state, shall be done in an appropriate, secured vehicle operated by a licensed mortician or ambulance service or by an authorized institution. Violations may result in revocation of authorization to receive and hold bodies.

(b) (No change.)

(c) Exportation. No body or body part under the jurisdiction of the board shall be shipped out of the State of Texas unless special permission for such shipment has been granted by the board [except for the special preparation or study of materials].

(1) The board may grant approval of exportation of a body or a body part provided:

(A) a written request has been received from an institution that would be an approved institution were it located in Texas which describes the need for the body or body part, and describing the facilities available for holding the body or body part;

(B) the body or body part has been declared in excess of the need of the holding institution by the identified individual of the holding institution, and in excess of the needs of other institutions in the State

of Texas by the executive secretary of the board; and

(C) the board has found that the proposed receiving state has a reciprocal policy concerning such matters.

(2) The executive secretary may issue the necessary transit documents when full payment of all costs and expenses, including an appropriate transfer fee related to an approved export of a body or body part, has been received.

(3) If, in the opinion of the identified individual of the holding institution or the executive secretary, a site visit to the requesting institution is desirable or necessary, such a visit shall be made and a report made to the executive secretary before transit documents are issued. The expenses incurred by such a site visit shall be reimbursed by the potential receiving institution, and shall have been paid before transit documents are issued.

(d) (No change.)

(e) Violation of this rule. Should it appear that an organization, institution, or individual may be in violation of any section regarding the transportation of a body or a body part, the board shall precede as required by §438.1 of this title (relating to Hearing Procedures).

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 Galveston, Texas, on April 18, 1986.

TRD-8803926

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call

(409) 761-1166.

★ ★ ★

★ 25 TAC §477.6

The Anatomical Board of the State of Texas proposes an amendment to §477.6, concerning assessment fees. The amendment concerns hearing procedures related to possible disciplinary actions that might be taken by the board relating to nonpayment of assessment fees.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer 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 provision of a proper avenue for hearings when actions by the board require review and possible redress. There

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

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The amendment is proposed under Texas Civil Statutes, Article 4583, §3(b), which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government.

§477.6. Assessment Fees.

(a) (No change.)

(b) Penalty for failure to remit fees.

The authority to receive and hold [privilege of receiving] bodies shall [will] be forfeited upon failure to transmit such assessments. Forfeiture shall be automatic after the determination by the treasurer that no assessment fee has been received within 30 days after final warning to the delinquent organization, institution, or individual. No appeal to the board of this automatic forfeiture may be made. Fees may be paid under protest and then contested by a hearing, (See §483.1 of this title (relating to Hearing Procedures)).

(c) (No change.)

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

Issued in Galveston, Texas, on April 23, 1986.

TRD-8803923

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call

(409) 761-1166.

★ ★ ★

★ 25 TAC §477.8

The Anatomical Board of the State of Texas proposes new §477.8, concerning a requirement for forms related to the willed and donated body programs. The new section includes certain mandatory statements such as directing complaints and inquiries, and authorization of out of state transport of the body.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer also has determined that for each year of the first five years the sec-

tion is in effect the public benefit anticipated as a result of enforcing the section will be that the public will be better informed as to the functions and procedures of this board, and will be aware of the way in which it may file complaints with the board, and the manner in which complaints are dealt with by the board. Further, a requirement established by statute dealing with possible export of bodies from Texas is dealt with. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The new section is proposed under Texas Civil Statutes, Article 4583, §2(b) and §3, which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government.

§477.8. Forms for Recording of Willed and Donated Bodies.

(a) Member institutions operating a willed body program, and institutions or individuals receiving donated bodies shall prepare suitable forms which record the intent to will or donate a body. A copy of such forms shall be deposited, as a sample, with the secretary of the board.

(b) Forms for recording of all bodies involved in the willed body program (see Chapter 481 of this title (relating to Willed Body Program)), and for recording the donation of a body under the Anatomical Gift Act (see Texas Civil Statutes, Article 4590-2) shall incorporate the following:

(1) "Complaints or inquiries regarding a willed or donated body should be directed to the executive secretary of the Anatomical Board of the State of Texas. The name and address of this individual may be obtained from the institution to which the body was delivered and is listed in the Texas State Telephone Director."

(2) "I authorize the Anatomical Board of the State to transport the willed/donated body hereon described out of the State of Texas in the event that the holding institution and the executive secretary of the board have determined that an excess of bodies currently exists in the state of Texas."

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 Galveston, Texas, on April 24, 1986.

TRD-8803931

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call

(409) 761-1166.

Chapter 479. Facilities: Standards and Inspections

★ 25 TAC §479.1, §479.2

The Anatomical Board of the State of Texas proposes amendments to §479.1 and §479.2, concerning institutions authorized to receive and hold bodies; and application and inspection of facilities. The amendments concern hearing procedures related to possible disciplinary actions that might be taken by the board relating to refusal to authorize an organization, institution, or individual to receive and hold bodies; and possible withdrawal of approval of facilities and suspension of the authority to receive and hold bodies.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Dr. Payer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide a proper avenue for hearings when actions by the board require review and possible redress. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The amendments are proposed under Texas Civil Statutes, Article 4583, §3(b), which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government.

§479.1. Institutions Authorized to Receive and Hold Bodies.

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

(c) **Hearing request.** Shall an organization, institution, or individual object to a determination by the board that it has been improperly categorized under this section, it may request a hearing pursuant to §483.1 of this title (relating to Hearing Procedures).

§479.2. Application and Inspection of Facilities.

(a) (No change.)

(b) **Inspection.**

(1) (No change.)

(2) **Reports of inspection and re-inspection.**

(A) (No change.)

(B) **Disapproved facilities.**

(i)-(ii) (No change.)

(iii) **Suspension of authorization.** Unnecessary delay in making required correction(s) of deficiencies uncovered by inspection or re-inspection may, by majority

vote of the board, result in denial or withdrawal of approval of the facility and withholding or suspension of authorization to receive and hold bodies. Shall an organization, institution, or individual object to such determination by the board, it may request a hearing pursuant to §483.1 of this title (relating to Hearing Procedures).

(3) (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 Galveston, Texas, on April 23, 1986.

TRD-8603930

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

★ 25 TAC §479.5

The Anatomical Board of the State of Texas proposes an amendment to §479.5, concerning abuse of a corpse. The amendment further clarifies what the board considers to be dissection in an unauthorized institution by authorized persons.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, 610 Professional Building, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

The amendment is proposed under Texas Civil Statutes, Article 4587, §(d), which provide the Anatomical Board of the State of Texas with the authority to adopt rules clearly stating what activities related to the dissection of human bodies are authorized by the board.

§479.5. Abuse of a Corpse.

(a) **Definition.** Abuse of a corpse is defined in Texas Penal Code, 42.10. In the code [whereas] dissection in an authorized institution by authorized persons is specifically exempted from this provision [of the Penal Code.]. The board has determined: [that this exemption does not apply to an un-

authorized or improper handling, relocation of, or removal of all, or a part or parts, of a human body.]

(1) **dissection of human cadaveric materials in health science, and related education and research, and activities found by the board to be related to dissection (see paragraph (2) of this subsection) are a special privilege and are legally authorized for members and students of the health, and related, professions for the purpose of the advancement of knowledge in these fields. Exercise of this authority is accompanied by solemn obligations to conduct all activities related to such dissection with respect and dignity. Authorized dissection shall take place under supervision of trained and qualified persons, and only in specified locations that have been approved by the board and which meet the standards set forth in §479.3 of this title (relating to Standards for Facilities). Bodies, or parts of a body, shall not be removed from the specified locations without permission of the board or of an authorized representative of the board;**

(2) **the following activities are integrally related to dissection:**

(A) **procurement of bodies:**

(i) **removal from the place of death, hospital, morgue, medical examiner's office, or mortuary; and transfer to a proper site for embalming;**

(ii) **transfer to storage site or dissecting facility approved by the board;**

(B) **distribution of bodies: removal from one storage site and transfer to another approved facility designated by the board;**

(C) **handling of bodies:**

(i) **embalming;**

(ii) **placement in storage;**

(iii) **removal from storage;**

(iv) **placement on dissecting table in a facility designated approved by the board;**

(D) **dissection: cutting or otherwise separating body components for the purpose of demonstrating or investigating structural relationships of tissues, organs, or systems;**

(E) **use of bodies in biomedical research: removal of body parts or constituents and subsection thereof to further manipulation for the purpose of advancing scientific knowledge;**

(F) **disposal of remains:**

(i) **removal from the dissecting table;**

(ii) **transfer to crematory or burial site;**

(iii) **cremation or burial;**

(iv) **final disposition of remains.**

(b)-(d) (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 Galveston, Texas, on April 18, 1986.

TRD-8603927

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:
June 8, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

Chapter 483. Hearing Procedures

★ 25 TAC §483.1

The Anatomical Board of the State of Texas proposes new §483.1, concerning hearing procedures. The new section concerns hearing procedures related to non-payment of assessment fees, nonapproval of an institution to receive and hold bodies, nonapproval of an institution's facilities, or violations on the transport of bodies.

Andrew F. Payer, executive secretary of the board, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Dr. Payer also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Andrew F. Payer, Department of Anatomy and Neurosciences, University of Texas Medical Branch, 610 Professional Building, Galveston, Texas 77550, (409) 761-1166.

The new section is proposed under Texas Civil Statutes, Article 4583, which provide the Anatomical Board of the State of Texas with the authority to adopt rules for its government.

§483.1. Hearing Procedures.

(a) A hearing may be required pursuant to the provisions of §§477.4(e), 477.6(b), 479.1(c), or 479.2(b)(2)(B)(iii), of this title (relating to Transportation of Bodies; Assessment Fees; Institutions Authorized to Receive and Hold Bodies; and Application and Inspection of Facilities).

(b) Prior to the determination by the board that an organization, institution, or individual is not authorized to receive and hold bodies, the board shall issue its order requesting that cause be shown as to why such authorization should not be refused or suspended. The organization, institution, or individual may request a hearing before the full board. Upon request for such a hearing, the executive secretary shall give public notice of a meeting of the board for the pur-

pose of conducting a contested hearing. At the hearing the board shall consider offers of evidence from the appropriate board officer or committee and from the party. Cross-examination of witnesses shall be permitted. Final arguments, if requested, shall be allowed. Any member of the public who appears shall be given reasonable opportunity to speak. The board shall draw its conclusions of law. The board's final decision shall be in writing, shall include its findings of fact, its reasoned account thereof, its conclusions, and the board's resulting order.

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 Galveston, Texas, on April 23, 1986.

TRD-8603928

Andrew F. Payer, Ph.D.
Secretary/Treasurer
Anatomical Board of the
State of Texas

Earliest possible date of adoption:
June 8, 1986

For further information, please call
(409) 761-1166.

★ ★ ★

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter C. Texas Medical Liability Insurance Underwriting Association

★ 28 TAC §5.2003, §5.2004

The State Board of Insurance proposes amendments to §5.2003 and §5.2004, concerning the plan of operation of the Texas Medical Liability Insurance Underwriting Association, policyholder's stabilization reserve fund charges and the disposition of said charges, and special provisions of the medical liability insurance policy and eligibility for coverage in the association. These amendments were previously adopted on an emergency basis and became effective on January 1, 1986. The emergency amendments appeared in the January 7, 1986, issue of the *Texas Register* (17 Tex-Reg 86).

The amendments to §5.2003(c)(2) and §5.2004(c)(1)(G) and (2) provide the insured with a refund of the unearned part of the stabilization reserve fund charge if the policy of insurance is canceled within the 90th day of coverage by the association.

The amendment to §5.2003(c)(2) eliminates the provision that the policyholder's stabilization reserve fund charges shall not be refundable if any portion of the coverage premium is earned or the asso-

ciation is exposed to any liability under the policies that are the basis for the charge and substitutes language which provides that the policyholder's stabilization reserve fund charges shall not be refundable if the policy is canceled after the 90th day of the coverage and that, if the policy is canceled within the 90th day of coverage, the earned charge will be based on the same earned percentage charged for the insurance premium.

The amendment to §5.2004(c)(1)(G) and (2) sets out the manner in which the policyholder's stabilization reserve fund charges will be refunded if the policy is canceled within the 90th day of coverage either by the association or by the insured.

These amendments are necessary to correct the inequity to medical providers when their policy of insurance is canceled in the first few weeks of coverage and they do not receive a refund of the unearned stabilization reserve fund charge that is based on the annual premium for the policy. In addition, these amendments are necessary for fair and efficient operations of the Joint Underwriting Association. The association provides a residual market for medical professional liability insurance in this state, and the insurance companies and policyholders of the association, as well as the general public, require a fiscally sound and well administered association. The immediate adoption of amendments to §5.2003(c)(2) and §5.2004(c)(1)(G) and (2) are required to that end. The danger to the financial resources of the policyholder participants in the association without the immediate adoption of these amendments creates an imminent peril to the public welfare and requires that the sections be adopted on an emergency basis.

The amendment to §5.2004(a)(4) increases the net retention at risk limits of primary coverage; establishes new underwriting standards that cause the excess policy to terminate if the underlying primary policy of medical liability insurance is not maintained for any reason, except exhaustion by payment of loss or losses; provides that policies of excess medical liability insurance written by the association will not be accepted for a hospital or other institutional health care provider if the applicant does not provide evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors with staff privileges are insured for their individual medical liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum; provides that policies of excess medical liability insurance written by the association will not be accepted for physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors who employ other such health care providers if the applicant does not provide evidence that all employed physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors who are eligible to obtain coverage from the asso-

ciation are insured for their individual medical liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum; and makes ineligible for coverage in the Joint Underwriting Association any hospitals or other institutional health care providers or physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors who employ other such health care providers without evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors with staff privileges or employed by the applicant are insured for their individual medical liability with limits of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

The amendment to §5.2004(a)(4)(C)(iii) raises the limits of primary coverage from \$25,000 per occurrence and \$75,000 aggregate per annum to \$100,000 per occurrence and \$300,000 aggregate per annum and prevents abuses arising from the writing of excess policies over limits lower than \$100,000/\$300,000. Additionally, the State Board of Insurance is of the opinion that most of the excess policies issued by the association are now in excess of policies with underlying limits of at least \$100,000/\$300,000 so the amendment causes the section to conform with current practice and market demands. The amendment to §5.2004(a)(4)(C)(v) causes the excess policy to terminate in the event the underlying primary policy of medical liability insurance is not maintained for any reason except exhaustion by payment of a loss or losses. Previously, excess coverage would cease if the primary policy's limits were exhausted. Under the amendments, if the aggregate underlying primary medical liability insurance is exhausted by payment of a loss or losses occurring during the policy period, the insurance provided by the excess policy shall continue to provide excess coverage in the same manner as if the underlying primary insurance was in full force and effect. The addition of clauses (vi) and (vii) avoids liability under a policy of insurance issued to a hospital or physician's employer for acts of hospital staff physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors or of physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors employed by the insured physician who do not provide coverage for their own individual liability. The addition of §5.2004(a)(4)(D) avoids liability under the hospital or institutional health care provider's primary policy of insurance or the employing physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors' primary policy for liability created by the individuals listed above who have staff privileges in a hospital or who are employed by an insured physician and who are not financially able to respond to claims arising from their own negligence.

The amendment to §5.2004(a)(4)(C) is necessary for the fair and efficient conduct of the operations of the Joint Underwriting

Association. The association provides a residual market for medical professional liability insurance in this state, and the institutional and individual health care providers who are members of the association, as well as the general public, require a fiscally sound and well administered association.

Charles Sobek, director, Professional Liability Division, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Sobek also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the retention of a viable medical professional liability market for health care providers. The possible economic cost to persons required to comply with the amendments as proposed pertaining to policy provisions and eligibility for coverage in the Association will depend annually upon the rates for such coverage approved by the State Board of Insurance which will apply to the health care providers subject to these rules. No possible economic cost is expected to persons who are required to comply with the amendments as proposed pertaining to policyholder's stabilization reserve fund charges and the disposition of said charges.

Comments on the proposal may be submitted to Charles Sobek, Director, Professional Liability Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendments are proposed under the Insurance Code, Article 21.49-3, §3(c), which provides for the promulgation of the plan of operation for the Texas Medical Liability Insurance Underwriting Association and for amendments thereto under the approval of, or at the direction of, the State Board of Insurance.

§5.2003. Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association.

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

(c) Policyholder's stabilization reserve fund. The Act, §4A, creates the policyholder's stabilization reserve fund and provides that this fund shall be administered as provided in the Act and these sections and that the advisory directors shall be chosen as provided in these sections.

(1) (No change.)

(2) Policyholder's stabilization reserve fund charge. The proportionate policyholder's stabilization reserve fund charge shall be based on the total annual written premium for all coverages provided by the association to the policyholder. The policyholder's stabilization reserve fund charges shall not be refundable if the policy is canceled after the 90th day of the coverage. It

cancelled within the 90th day of coverage, the earned charge will be based on the same earned percentage charged for the insurance premium [any portion of the coverage premium is earned or the association is exposed to any liability under the policies that are the basis for the charge]. The policyholder's stabilization reserve fund charge shall apply to all new and renewal policies effective on and after January 1, 1978.

(3) (No change.)

(d)-(j) (No change.)

§5.2004. Medical Liability Insurance.

(a) The policy.

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

(4) Special provisions.

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

(C) Policies of excess medical liability insurance written by the association shall:

(i)-(ii) (No change.)

(iii) not be issued in those cases where the net retention at risk by the primary carrier is less than \$100,000 [\$25,000] per occurrence or less than \$300,000 [\$75,000] aggregate per annum;

(iv) (No change.)

(v) terminate automatically in the event [if] the underlying primary policy of medical liability insurance is not maintained for any reason, except exhaustion by payment of a loss or losses. If the aggregate underlying primary medical liability insurance is exhausted by payment of a loss or losses occurring during the policy period, the insurance provided by the excess policy shall apply in the same manner as if the underlying primary insurance was in full force and effect; [over which it is written, is cancelled, expires, limits are exhausted, or otherwise terminates.]

(vi) not be accepted for a hospital or other institutional health care provider if the applicant does not provide evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors with staff privileges are insured for their individual medical (professional) liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum; and

(vii) not be accepted for physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors who employ other physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors if the applicant does not provide evidence that all employed physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors who are eligible to obtain coverage from the association are insured for their individual medical (professional) liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

(D) No hospital or other institutional health care provider or physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors that have employed physicians, surgeons, podiatrists, dentists, phar-

macists, or chiropractors can be accepted for coverage in the association without evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, or chiropractors with staff privileges or employed by the applicant are insured for their individual medical (professional) liability with limits of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

(5) (No change.)

(b) (No change.)

(c) Cancellation, nonrenewal, and notice.

(1) Cancellation by the association. The association may not cancel a policy of insurance issued under these sections except for:

(A)-(F) (No change.)

(G) noncompliance with reasonable loss control or risk management engineering recommendation in accordance with subsection (b)(4)(A)(iv) of this section. Upon cancellation of a policy of insurance by the association, the association shall refund to the insured the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid policyholder's stabilization reserve fund charge on a pro rata basis provided all assessments and policyholder's stabilization reserve fund charges earned have been fully paid; otherwise, only that portion of unearned premium over any unpaid assessment and policyholder's stabilization reserve fund charge [charges] will be refunded. Policyholder assessments and policyholder's stabilization reserve fund charges are fully earned upon payment; therefore, except as provided in the Act, or §5.2003(c)(2) of this title (relating to Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association), no portion is refundable.

(2) Cancellation by the insured. A policy of insurance may be cancelled at any time:

(A) by the insured upon written request for cancellation of the policy;

(B) by an insurance premium finance company in accordance with the provisions contained in the Insurance Code, Article 24.17, in which case the association shall refund the unearned portion of any paid premium, and if canceled within the 90th day of coverage, the unearned portion of the paid policyholder's stabilization reserve fund charge according to the approved short rate table, provided all assessments and policyholder's stabilization reserve fund charges earned have been fully paid; otherwise, only that portion of the unearned premium over any unpaid assessment and policyholder's stabilization reserve fund charge will be refunded. Policyholder assessments and policyholder's stabilization reserve fund charges are fully earned upon payment; therefore, except as provided in the Act, or §5.2003(c)(2) of this title (relating to Members and Policyholders Participation in the Texas

Medical Liability Insurance underwriting association), no portion is refundable.

(3)-(4) (No change.)

(d)-(e) (No change.)

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

Issued in Austin, Texas, on April 28, 1986

TRD-8603951

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 463-6327.

★ ★ ★

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

★28 TAC §7.54

The State Board of Insurance proposes new §7.54, concerning forms and instructions for the preparation and filing of tax returns for insurers and other entities required to file tax returns with the State Board of Insurance for the 1985 calendar year or required to file quarterly premium tax returns with the board during the 1986 calendar year. This section was previously adopted on an emergency basis and became effective on December 19, 1985. Notice of the emergency adoption of this section appeared in the December 27, 1985, issue of the *Texas Register* (10 TexReg 4970). This section is necessary to provide forms and instructions which will facilitate compliance with statutory requirements for reporting and payment of taxes to the State Board of Insurance. The annual gross premium tax return is required by statute to be filed either on or before March 1, 1986, or the date the annual statement for the carrier is required to be filed with the board. Quarterly tax returns are required to be filed four times per year: the first quarter is due and payable March 1, 1986 (or the date the annual statement for such carrier is required to be filed with the State Board of Insurance); the second quarter is due and payable May 15, 1986; the third quarter is due and payable August 15, 1986; and the fourth quarter is due and payable November 15, 1986. The forms and instructions include requirements for information respecting gross premium, maintenance, and other taxes, and certain incidental fees, and provide a form to be used in reporting and determining the amount owed.

J. W. Arendall, Jr., director, corporate custodian and tax division, has determined that for the first five-year period the proposed section will be in effect there will

be no fiscal implications for state or local government as a result of enforcing or administering the section. The cost of compliance for small businesses will be the administrative cost in completing the form and following the instructions. This will be at least partially offset because tax returns are statutorily required in some form in any case. There is no expected difference in cost of compliance between small and large businesses on a cost per hour of labor basis.

Mr. Arendall 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 adoption of appropriate forms and instructions to facilitate proper tax returns by insurers and other entities required to report and pay taxes to the State Board of Insurance. The anticipated economic cost to individuals who are required to comply with the proposed section will be the administrative costs in completing the forms and following the instructions. This will be at least partially offset because tax returns are statutorily required in some form in any case. The cost will depend on each company's record keeping practices and type of operation.

Comments on the proposal may be submitted to J. W. Arendall, Jr., Director, Corporate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1993.

The new section is proposed under the Insurance Code, Articles 1.04, 1.10 §9, 4.07, 4.10, 4.11, 5.12, 5.24, 5.49, 5.68, 9.46, and 23.08; the Texas Health Maintenance Organization Act, §22 and §33; and Texas Civil Statutes, Articles 6252-13a, §4, and 8306, §28. The Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the board. Article 1.10, §9, requires the board to furnish to companies required to report to the board, statement blanks for the statements required. Article 4.07 specifies the charges for certain fees. The Insurance Code, Articles 4.10 and 4.11; Texas Civil Statutes, Article 8306, §28, and the Texas Health Maintenance Organization Act, §33, require the payment of taxes on gross premiums by entities regulated by the board or on gross amounts of similar revenue by health maintenance organizations. The Insurance Code, Articles 5.12, 5.24, 5.49, 5.68, 9.46, and 23.08, requires the payment of maintenance taxes by certain entities regulated by the board. The Insurance Code, Articles 4.10 and 4.11, gives the board rulemaking authority. The Texas Health Maintenance Organization Act, §22, gives the board rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4, require and authorize the board to adopt rules of practice setting forth the nature and requirements of all procedures available.

§7.54. Preparation of 1985 Tax Returns. Forms and instructions for the preparation of tax returns and certain fees for insurance

companies and other principals for the 1985 calendar year are adopted by reference. These instructions and forms are published by the State Board of Insurance and may be obtained from the Corporate Custodian and Tax Division of the State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998. Each insurer or other entity shall follow such instructions and use and report on such forms as appropriate to its operation. The instructions and forms are more particularly identified as follows:

- (1) a form identified as 1985 instructions for preparing Texas annual tax return for domestic, foreign, and alien life, health, and accident companies transacting business in Texas;
- (2) a form identified as the 1985 Texas annual tax return for domestic, foreign, and alien life, health, and accident companies;
- (3) a form identified as 1985 special instructions, Texas annual tax return for domestic, foreign, and alien companies, Lloyds, reciprocals, and miscellaneous organizations transacting the business of fire and casualty insurance in the State of Texas;
- (4) a form identified as the 1985 instructions for preparing the Texas annual tax return for domestic, foreign, and alien companies, Lloyds, reciprocals, and miscellaneous organizations transacting fire and casualty business in Texas;
- (5) a form identified as the 1985 Texas annual tax return for domestic, foreign, and alien companies, Lloyds, reciprocals, and miscellaneous organizations transacting fire and casualty business in Texas;
- (6) a form identified as instructions for preparing the 1985 Texas annual tax return for health maintenance organizations;
- (7) a form identified as the 1985 Texas annual tax return for health maintenance organizations;
- (8) a form identified as the Texas annual tax return, including instructions for preparing the 1985 tax return for nonprofit prepaid legal services corporations;
- (9) a form identified as the 1986 quarterly premium tax return for domestic, foreign, and alien life, health, and accident insurance companies;
- (10) a form identified as the 1986 quarterly premium tax returns for domestic, foreign, and alien companies, Lloyds, reciprocals, and miscellaneous organizations transacting fire and casualty business in the State of Texas; and
- (11) a form identified as the Texas Tax Return for companies paying taxes under provisions of the Texas Insurance Code, Article 3.25, as amended.

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 April 25, 1986.

TRD-8603954

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 483-8327.

★ ★ ★

★28 TAC §7.64

The State Board of Insurance proposes new §7.64, concerning annual statement blanks, instructions, and other reporting forms to be used by insurers and certain other entities regulated by the board in reporting their operations in the 1985 calendar year. Detailed information is required by these forms from such insurers and entities to show their activities during 1985. The information required relates to the financial condition and business operations of such insurers. This section was previously adopted on an emergency basis and became effective on December 19, 1985. Notice of the emergency adoption of this section appeared in the December 27, 1985, issue of the *Texas Register* (10 TexReg 4970). This section is necessary to provide forms and instructions that facilitate compliance with statutory requirements for insurance carriers to report annually information concerning their operations and financial condition.

J. W. Arendall, Jr., director, Corporate Custodian and Tax Division, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The cost of compliance with the section for small businesses will be the administrative cost in completing the forms and following the instructions. This will be at least partially offset because an annual statement in some form is required in any case. There is no expected difference in cost of compliance between small and large businesses on a cost per hour of labor basis.

Mr. Arendall 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 adoption of forms and instructions to facilitate appropriate reporting to the board by entities it regulates. The anticipated economic cost to individuals who are required to comply with the proposed section is the administrative costs in completing the forms and following the instructions. This will be at least partially offset by the fact that insurers are required by statute to complete some form of annual statement in any case. The cost will depend on each company's record-keeping practices and type of operation.

Comments on the proposal may be submitted to J. W. Arendall, Jr., Director, Cor-

porate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Articles 1.04, 1.10 §9, 1.11, 1.24, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 21.21, 21.43, 22.06, 22.18, and 23.26; the Texas Health Maintenance Organization Act, §10 and §22; and Texas Civil Statutes, Article 6252-13a §4.

The Insurance Code, Article 1.04, places original rulemaking jurisdiction in the board. The Insurance Code, Article 1.10, §9, requires the board to furnish the blank forms for companies to complete necessary statements. The Insurance Code, Article 1.11, authorizes the board to change the forms of annual statements. The Insurance Code, Article 1.24, authorizes the board to address inquiries to insurance companies and requires the companies to promptly answer. Texas Civil Statutes, Article 6252-13a, §4, authorize and require the State Board of Insurance to adopt rules of practice setting forth the nature and requirements of available procedures. The Insurance Code, Article 21.21, requires that all statements made by persons in the business of insurance be truthful and not misleading. The Insurance Code, Article 21.43, requires foreign insurers to comply with provisions of the Insurance Code. The Insurance Code, Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 22.06, 22.18, and 23.26, and the Texas Health Maintenance Organization Act, §10 and §22, require the filing of annual reports and other information by certain specific entities regulated by the board, applying particular statutory law respecting reports to those entities, and specifying particular rulemaking authority relating to those specific entities.

§7.64. Annual Statement Blanks, Instructions, and Other Forms, 1985 Operations. The annual statement blanks, instructions, and other forms for reporting operations of the 1985 calendar year and specified in this rule are adopted by reference. They are published by the State Board of Insurance, and may be obtained from the Corporate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998. The insurer or other entity specified on each form or instruction shall properly report to the State Board of Insurance using such blanks or forms and following such instruction as are appropriate to it. The adopted blanks or forms and instructions are as follows:

(1) a 1985 Texas annual statement blank (association edition) to be used by life and accident and health insurance companies (Form 1), including instruction letters (L/FR/NP/85) and (STIPPREM/85);

(2) a book of instructions available through the NAIC entitled "Annual Statement

Instructions, Life, Accident, and Health;"

(3) a 1985 Texas annual statement blank (association edition) for life and accident and health insurance company separate accounts, excluding variable life insurance (Form 1-S);

(4) a 1985 Texas annual statement blank (association edition) to be used by fire and casualty companies (Form 2), including instruction letter (F&C/T/LI/R/CM/85);

(5) a book of instructions available through the NAIC entitled "Annual Statement Instructions, Property and Casualty;"

(6) a 1985 Texas annual statement blank (association edition) to be used by fraternal orders (Form 4);

(7) an instruction letter (L/FR/NP/85) and a form entitled 1985 instructions to fraternal orders for completing annual statement blanks;

(8) a 1985 Texas annual statement blank (association edition) to be used by title insurance companies (Form 9);

(9) an instruction letter (F&C/T/LI/R/CM/85) and a form entitled 1985 instructions for completing title insurance annual statement blank;

(10) a 1985 annual statement blank (association edition) for health maintenance organizations;

(11) an instruction letter (HMO/85) and a form entitled general information, definitions and instructions for filing health maintenance organization financial report of affairs and conditions;

(12) a form identified as supplement pages 19, 20, 21, 22, 23, 24, 25, and 26 to the annual statement for health maintenance organizations;

(13) a form entitled supplement A to schedule T, exhibit of medical malpractice premiums written allocated by states and territories, and revised in 1982;

(14) a form entitled fraternal benefit societies—supplement to valuation report, and revised in 1978;

(15) a form entitled products liability insurance supplement 1985;

(16) a form entitled schedule SIS, stockholder information supplement, and revised in 1985;

(17) a form entitled insurance expense exhibit—1985;

(18) an instruction letter (TexSpec 46) and attachment identified as supplemental and balance sheet data from 1985 annual statement;

(19) a form designated as Texas page 14 and further identified as the standard (NAIC) page 14 of Form 2;

(20) a form designated as Texas page 41 and further identified as the standard (NAIC) page 41 of Form 9;

(21) a form entitled medical malpractice business in the State of Texas schedule P for the year ended December 31, 1985;

(22) a form identified as the 1985 Texas annual statement blank to be used by statewide mutual assessment associations,

local mutual aid associations, burial associations, and exempt associations;

(23) an instruction letter (MA/85) and a form entitled instructions for the 1985 mutual assessment annual statement;

(24) a 1985 Texas annual statement blank to be used by farm mutual insurance companies;

(25) an instruction letter (FM/85) and a form entitled instructions for the 1985 farm mutual annual statement;

(26) a 1985 annual statement blank to be used by prepaid legal services corporations;

(27) an instruction letter (PPL/85) and a form entitled instructions to prepaid legal services corporations for completing annual statement blank;

(28) a form identified as biographical affidavit as authorized in the Insurance Code, Article 1.14, §3, and in board Order 00582, dated October 24, 1957;

(29) forms identified as analysis of surplus for use as supplement to NAIC Form 1, Form 2, Form 4, and Form 9;

(30) a form entitled Texas overhead assessment form (for Texas domestic companies only);

(31) a form entitled release of contributions to be mailed to certain insurers and other entities; and

(32) a form entitled affidavit being a resident agent's affidavit to be mailed to certain insurers and other entities.

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

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

TRD-8603953 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 483-8327.

★ ★ ★

Subchapter J. Examination Expenses and Assessments

★28 TAC §7.1004

The State Board of Insurance proposes new §7.1004, concerning rates of assessments and charges to meet the expenses of examining insurance companies. The board previously adopted this section on an emergency basis effective on December 18, 1985. The emergency section appeared in the December 27, 1985, issue of the *Texas Register* (10 TexReg 4972). This section is necessary to provide rates of assessment and charges sufficient to meet the expenses of performing the board's statutory responsibilities for examining insurance companies. Under the proposal, the board levies rates of assessment and collects from each domestic insurance

company on the basis of admitted assets and gross premium receipts for the 1985 calendar year, and from each foreign insurance company under examination during the 1986 calendar year on the basis of a percentage of the gross salary which the board paid to an examiner for each month or part of a month during the examination. The expenses and charges assessed under authority of this section are additional to and not in lieu of any other charge which may be made under law, including the Insurance Code, Article 1.16. The commissioner of insurance has certified the rates of assessment and charges set out in this section to be just and reasonable.

Carroll Fuchs, chief of staff services, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. For small businesses there is no anticipated cost of compliance with the section as proposed other than what is specified in this notice for all persons required to comply with this section as proposed. There will be no difference in rates of assessments or other costs of compliance between small and large businesses except for the \$10 minimum charge specified in the section as proposed.

Mr. Fuchs 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 adoption of a rate of assessment to meet the expenses of examinations and administering the laws relating to examinations. The anticipated economic cost to individuals who are required to comply with the proposed section is dependent on the amount of assessment against each company. In the case of domestic companies, this is dependent on rates as applied to the admitted assets and gross premium receipts in 1985. In the case of foreign insurers, it will depend on whether the company is examined by Texas examiners, on the salary and expenses of the examiners, and on the time necessary for the examination.

Comments on the proposal may be submitted to Carroll Fuchs, Chief of Staff Services, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.16, which authorizes and requires the State Board of Insurance to make assessments and charges to meet all the expenses and disbursement necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and necessary to comply with the provisions of the Insurance Code, Articles 1.16-1.18.

§7.1004. *Domestic and Foreign Insurance Company Examination Expenses and Assessments, 1986.*

(a) Foreign insurance companies shall pay according to the following rules and rates of assessment for examination expenses as provided in the Insurance Code, Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed that part of the annual salary attributable to each working day the examiner is examining the company. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) Each foreign insurance company examined shall pay 36% of the gross salary paid to the examiner for each month or partial month of the examination in order to cover the examiner's longevity pay, state contributions to retirement and social security matching expenses, and the state paid portion of insurance premiums and vacation and sick leave accrual. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to the following rules and rates of assessment for examination expenses as provided in the Insurance Code, Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed that part of the annual salary attributable to each working day the examiner is examining the company. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead charge to cover the cost of administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) 0.00865 of 1.0% of the admitted assets of the company as of December 31, 1985;

(B) 0.02374 of 1.0% of the gross premium receipts of the company for the year 1985.

(3) If the overhead charge, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than \$10, a minimum overhead assessment of \$10 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

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 April 30, 1986.

TRD-8604019 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-6327.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION Part IX. Texas Water Commission Chapter 319. General Regulations Incorporated Into Permits

The Texas Water Commission proposes new §§319.1-319.11, and 319.21-319.29, concerning general regulations incorporated into permits. Although these are new sections, most of these regulations have been in effect in Chapter 329 under the jurisdiction of the Texas Department of Water Resources, the predecessor agency to the Texas Water Commission. Senate Bill 249, 69th Texas Legislature, 1985, effective September 1, 1985, abolished the Texas Department of Water Resources and transferred jurisdiction under the Texas Water Code to the Texas Water Commission. The regulations of the former Texas Department of Water Resources relating to general regulations incorporated into permits will cease to be effective when these new sections are adopted by the Texas Water Commission.

Chapter 319 is divided into two subchapters. Subchapter A is primarily a recodification of the regulations formerly found in §§329.1-329.12. In addition to a number of stylistic and organizational changes, the regulations were changed so as to increase the frequency with which dischargers of certain quantities of treated domestic effluent are required to sample. Dischargers of up to less than 10 million gallons per day are now required to sample a minimum of once per week. These changes are contained in Table 1, which is implemented by §319.5. In addition, composite samples are now to be proportioned according to flow and need not be conducted for laboratory testing of pH and chlorine residual. Section 319.6 is changed to place permittees on notice that false statements included in monthly effluent reports and monitoring records may result in the imposition of criminal and/or civil penalties as provided by law.

Subchapter B is a continuation of the regulations formerly found in §§329.41-329.49. These new sections establish the allowable concentrations of various hazardous metals for discharge into inland and tidal

waters. No substantive changes have been made to these sections.

Previous §§329.21-329.30 are deleted from these proposed new sections. The issuance of emergency orders and temporary orders relating to the discharge of waste or pollutants into or adjacent to water in the state is now covered by §§305.21-305.30.

Bobbie Barker, chief fiscal officer, Fiscal Services Division, has determined that for the first five-year period the proposed sections will be in effect; there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Barker also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced environmental protection through increased monitoring of the quantity and quality of waste discharged into or adjacent to water in the state, and continued control over the concentrations of hazardous metals discharged into or adjacent to water in the state. The anticipated economic cost to individuals who are required to comply with the proposed sections will be the costs associated with increased sampling frequency (assuming permittees do not conduct their own laboratory testing and have been sampling only once per month) of \$143,430 in 1986, \$156,450 in 1987, \$168,000 in 1988, \$179,550 in 1989, and \$208,950 in 1990.

Comments on the proposal may be submitted to John J. Vay, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069, within 30 days following publication in the *Texas Register*.

Subchapter A. Monitoring and Reporting System

★ 31 TAC §§319.1-319.11

The new sections are proposed 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 of the commission.

§319.1. *Monitoring and Reporting Requirements.* All holders of waste discharge permits are required to periodically report the status of their compliance with the terms and conditions of their permits and with other relevant statutes in a manner approved by the executive director. The report shall contain results of flow measurements and results of analyses of samples taken, or the equivalent information determined by methods approved by the executive director. The status of all requirements of the permit shall be reported. The report may contain such other information concerning the discharges covered

by the permit as the executive director may reasonably prescribe in order to establish a system for monitoring the quantity and quality of waste discharged into or adjacent to any water in the state and for monitoring the quality of any water in the state.

§319.2. *Exclusions.* Only those permits found by the executive director not to directly or indirectly affect the quality of water in the state shall be excluded from the reporting procedure. Such an exclusion shall be set forth in the permit. An exclusion from the reporting procedure, however, does not relieve a permittee from any monitoring requirements.

§319.3. *Prior Permit Reporting Requirements.* The holders of permits issued prior to December 19, 1969, which require or establish a specific reporting procedure, shall continue to report in accordance with that procedure until receipt of reporting forms developed by the executive director or until otherwise notified by the executive director.

§319.4. *Parameters to be Monitored.* Each permittee will be required to monitor, on a regular basis, each parameter included in its permit which is also included on its commission monthly effluent report form. Each permittee may also be required to monitor any other parameter(s) the executive director may reasonably deem necessary to adequately monitor the quality or quantity of any discharge. Should the analysis of additional parameters be required, the permittee will still be provided written notification prior to the initiation of the requirement.

§319.5. *Required Sampling Location and Frequency of Analysis or Measurement.* Necessary samples shall be taken of the effluent from the sampling point described in the permit. Should the permit not specify a sampling point, samples shall be collected immediately following the last treatment unit. These procedures shall be followed unless an alternate sampling and measuring

point is agreed upon in advance in writing by the executive director or his designee. Samples shall be taken and measurements shall be made at the minimum frequencies specified in the permit for each parameter. Should any permit not specify a sampling frequency, the discharger shall follow the frequencies set forth in Tables 1 and 2 in §319.8 of this title (relating to Self-Monitoring Schedules), basing the frequency of analysis on the currently applicable permitted average daily flow. Table 1 shall be applicable to treated domestic sewage effluent, while Table 2 shall be applicable to all other wastewater effluents. Should a parameter included in a permit not be listed in the applicable table, the permittee will be instructed in writing as to what frequency of analysis shall be followed. For no-discharge facilities, the monitoring requirements shall be specified in special provisions of the permit.

§319.6. *Documentation of Effluent Reports.*

(a) The monthly effluent report consists of summarized data concerning the quality and quantity of the final effluent and contains no information regarding the records and laboratory control tests which should be performed in the interest of treatment plant process control. For each measurement or sample taken pursuant to the requirements of this report, the permittee shall maintain records of the following information:

- (1) the exact place, date, and time of sample collection or measurement;
- (2) the dates the analyses were performed;
- (3) the person(s) who collected the samples or made the measurements and the person(s) who performed the analyses;
- (4) the results of all required analyses or measurements; and
- (5) the results of adequate verifications of analytical precision and/or accuracy verified by means of the recommended guidelines in the Environmental Protection Agency manual, *Handbook for Analytical Quality Control in Water and Wastewater Labora-*

ories, to be determined on the day the analyses are performed.

(b) The permittee shall be subject to routine inspection of its compliance with subsection (a) of this section.

(c) All records and information resulting from the required monitoring activities, including all records concerning measurements and analyses performed, and concerning calibration and maintenance of flow measurement and other instrumentation, shall be retained for a minimum of three years, or for a longer period if requested by the executive director or his designee.

(d) The monitoring and reporting requirements set out in this subchapter are minimum requirements. Additional measurements, samples, analyses, and recordations are encouraged in order to facilitate more effective management and control of facility operations.

(e) Knowingly making any false statement on any report may result in the imposition of criminal and/or civil penalties as provided by state law.

§319.7. *Required Signatures.* Each effluent report shall contain two signatures. One signature must be that of the superintendent of wastewater treatment facility or other appointed person associated with the operation of the treatment facility. The other signature shall be one from the following.

- (1) If submitted by a public entity, a state or federal agency, or a corporation, the report should be signed by a principal executive officer, ranking elected official, commanding officer, or other employee duly authorized by the principal executive officer.
- (2) If submitted by a partnership, the report should be signed by a general partner.
- (3) If submitted by a sole proprietor, the report should be signed by the proprietor.

§319.8. *Self-Monitoring Schedules.*

(a) The following table sets forth the self-monitoring schedules applicable to treated domestic sewage effluent.

Metal	NOT TO EXCEED		
	Average	Daily Composite	Grab Sample
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

(b) The following table sets forth the self-monitoring schedules applicable to non-domestic wastewater effluent.

Metal	Average	NOT TO EXCEED	
		Daily Composite	Grab Sample
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

§319.9. *Fecal Coliform Requirements.* The commission may impose disinfection, fecal coliform concentration, or total coliform concentration requirements for domestic wastewater discharges on a case-by-case basis in order to maintain and enhance water quality and associated public health needs.

§319.10. *Sampling and Laboratory Testing Methods.*

(a) All sample collection, preservation, holding time, and testing shall be conducted according to recommendations found in the latest edition of *Standard Methods for the Examination of Water and Wastewater*, (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or *Environmental Protection Agency Methods for Chemical Analysis of Water and Wastes* (1979), or *Environmental Protection Agency Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents* (1973).

(b) The physical, chemical, and microbiological analyses of effluents shall be conducted by the use of analytical methods as specified in guidelines published in the *Federal Register*, December 1, 1976, pursuant to the Federal Water Pollution Control Act, §304(g), or revised guidelines as they may be published in the *Federal Register*.

(c) Flow measurements, equipment, installation, and procedures shall conform to those prescribed in the *Water Measurement Manual*, U.S. Department of the Interior, Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the Texas Water Commission.

(d) Laboratories shall routinely use and document intralaboratory quality control practices as recommended in the *Environmental Protection Agency manual, Hand-*

book for Analytical Quality Control in Water and Wastewater Laboratories. These practices will include the use of internal quality control check samples.

(e) The sampling and laboratory facilities, data, and records of quality control are subject to periodic inspection by commission personnel. Should the procedures specified in this section not be suitable to any particular situation, nonstandard sampling and testing techniques may be employed in accordance with the procedures outlined in §319.11 of this title (relating to Alternate Sampling and Laboratory Testing Methods).

§319.11. *Alternate Sampling and Laboratory Testing Methods.*

(a) Should a permittee determine that the required standard sampling and testing techniques are not suited to their particular situation, the permittee shall make a written request for authorization to use alternate test procedures.

(1) Applications for alternate testing procedures will be made to the executive director.

(2) Items that shall be included with an application for alternate testing procedures are:

- (A) name and address of the firm making the discharge;
- (B) Texas Water Commission permit number;
- (C) list of parameters for which alternate procedures are being requested;
- (D) copy of the method of the alternate procedures; and
- (E) the justification for the alternate test procedures.

(3) Additional information such as the comparability of data may also be requested by the executive director or his designee.

(b) In no instance shall a permittee use procedures not included in the references cited in §319.10 of this title (relating to Sampling and Laboratory Testing Methods) until written approval to do so has been received from the executive director or his designee.

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 April 23, 1986.

TRD-8603839 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
June 6, 1986

For further information, please call
(512) 463-8087.

★ ★ ★

Subchapter B. Hazardous Metals

★ 31 TAC §§319.21-319.29

The new sections are proposed 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 of the commission.

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

Average quality—The arithmetic average (weighted by flow value) of all the daily determinations of concentrations made during a calendar month. Daily determinations

of concentrations made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during the calendar day.

Daily composite quality—The concentration of a sample consisting of a minimum of three grab samples of effluent collected at regular intervals over a normal operating day and combined proportional to flow, or a sample continuously collected pro-

portional to flow over a normal operating day.

Grab sample quality—The concentration of an individual sample of effluent collected in less than 15 minutes.

Hazardous metal—Includes each of the following metals in its elemental state and any of its compounds expressed as that metal: arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver, and zinc.

Inland waters—All surface waters in the state other than tidal waters, defined in

this section.

Tidal waters—Those waters of the Gulf of Mexico within the jurisdiction of the State of Texas, bays and estuaries thereto, and those portions of the river systems which are subject to the ebb and flow of the tides, and to the intrusion of marine waters.

§319.22. *Quality Levels - Inland Waters.* The allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharge to inland waters are as follows:

Table 1

FREQUENCY OF MEASUREMENT

Capacity	Flow	BOD ₅	Total Suspended Solids	Chlorine Residual	pH	Collecting of Samples and Taking Measurements
less than 0.10	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples (d)
to less than 0.50	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples (d)
to less than 1.00	The daily flow measured by a totalizing meter	One each week	One each week	One each day of the week	Two each month	The laboratory test excepting the pH and chlorine residual test shall be made on a composite sample proportioned according to flow, made up of three portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
to less than 5.00	The daily flow measured by a totalizing meter	Two each week	Two each week	One each day of the week	One each week	The laboratory test excepting the pH and chlorine residual test shall be made on a composite sample proportioned according to flow, made up of six portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
to less than 10.00	The daily flow measured by a totalizing meter	One each weekday (a)	One each weekday (a)	One each day of the week	One each weekday (a)	The laboratory test excepting the pH and chlorine residual test shall be made on 24-hr. composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.
10 or greater	The daily flow measured by totalizing meter	One each day	One each day	One each day of the week	One each day	The laboratory test excepting the pH and chlorine residual test shall be made on 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.

Weekday - Monday thru Friday

Where a totalizing meter is provided, the actual volume of water which has been processed each day should be reported and noted as such.

Working Day - A day when the plant is visited for routine work.

Peak loading period - That time during the calendar day when the maximum flow rate is experienced within the facility.

The sampling frequency should not be anything less than that routinely practiced at the facility if that frequency is greater than the minimum shown above. See 31 TAC §329.7(d)

Table 2

Frequency of Measurement					
Volume of MGD					
Parameter	0 to less than 0.05	0.05 to less than 0.50	0.50 to less than 2.00	2.00 to less than 10.00	10.00 or greater
Flow	One instantaneous measurement per operating day except on sample days when 3 instantaneous measurements made concurrently with the collection of sample portions are required.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion or the reading from a totalizing flow meter.	Six instantaneous measurements per day spaced at equal intervals during the operating period or the reading from a totalizing flow meter.	Instantaneous measurements made each operating hour or the reading from a totalizing flow meter.
pH (a)	1 per day	1 per day	1 per day	1 per day	1 per day
Temperature (b)	1 per day	3 per day	3 per day	6 per day	12 per day
BOD	1 per week	2 each week	2 each week	3 each week	1 per day
COD	1 per week	2 each week	2 each week	3 each week	1 per day
TOC	1 per week	2 each week	2 each week	3 each week	1 per day
Oil & Grease (a)	1 per week	2 each week	2 each week	3 each week	1 per day
Ammonia	1 per week	2 each week	2 each week	3 each week	1 per day
Nitrogen	1 per week	2 each week	2 each week	3 each week	1 per day
Arsenic	1 per week	2 each week	2 each week	3 each week	1 per day
Barium	1 per week	2 each week	2 each week	3 each week	1 per day
Boron	1 per week	2 each week	2 each week	3 each week	1 per day
Cadmium	1 per week	2 each week	2 each week	3 each week	1 per day
Chromium	1 per week	2 each week	2 each week	3 each week	1 per day
Copper	1 per week	2 each week	2 each week	3 each week	1 per day
Lead	1 per week	2 each week	2 each week	3 each week	1 per day
Manganese	1 per week	2 each week	2 each week	3 each week	1 per day
Mercury	1 per week	2 each week	2 each week	3 each week	1 per day
Nickel	1 per week	2 each week	2 each week	3 each week	1 per day
Selenium	1 per week	2 each week	2 each week	3 each week	1 per day
Silver	1 per week	2 each week	2 each week	3 each week	1 per day
Zinc	1 per week	2 each week	2 each week	3 each week	1 per day
TSS	1 per week	2 each week	2 each week	3 each week	1 per day
TDS	1 per week	2 each week	2 each week	3 each week	1 per day
Chloride	1 per week	2 each week	2 each week	3 each week	1 per day
Sulphate	1 per week	2 each week	2 each week	3 each week	1 per day
Nitrate	1 per week	2 each week	2 each week	3 each week	1 per day
Sulfide (a)	1 per week	2 each week	2 each week	3 each week	1 per day
Phenol (a)	1 per week	2 each week	2 each week	3 each week	1 per day
Collection of samples	Samples shall be composite samples made up of three portions, sized proportional to flow, collected no closer together than one hour and over a span of time not exceeding 24 hours.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of six portions, sized proportional to flow, collected concurrently with the instantaneous flow measurements made during a 24 hour time span.	Samples shall be 24 hour composite samples collected in 12 or more individual portions, sized proportional to flow, equally spaced throughout the operating day.

(a) The required laboratory tests shall be made on grab samples.
 (b) The temperature shall be measured in situ on the water at the permit sampling point.

§319.24. Dilution Prohibited. The attainment of the specified levels simply by dilution, in the absence of any treatment (that is, by use of extraneous or other wastewater intermixed to dilute a particular discharge) is specifically prohibited. The mercury level in the effluent stream from the facility in which a waste containing mercury originates shall be measured after treatment and before any extraneous water or wastewater from any other sources has been added.

§319.25. Sampling and Analysis. Test procedures for the analyses of hazardous metals shall comply with any procedures specified in the regulations of the commission and shall conform to regulations published pursuant to the Federal Water Pollution Control Act Amendments of 1972, §304(g). In the event a question arises concerning sampling and analysis, the executive director shall authorize or approve the method or methods of sampling and analysis to be used in measuring or calculating the quantity of a hazardous metal in an effluent.

§319.26. Toxic Pollutant. The commission may require more stringent quality levels than those specified in §319.22 of this title (relating to Quality Levels - Inland Waters) and §319.23 of this title (relating to Quality Levels - Tidal Waters) where necessary to insure protection of water in the state. The commission may authorize less stringent quality levels than those set forth in §319.22 of this title (relating to Quality Levels - Inland Waters) and §319.23 of this title (relating to Quality Levels Tidal Waters) only where the applicant demonstrates that there will be no significant adverse impact on water quality and that the less stringent quality levels are necessary based on considerations consistent with the provisions of the Texas Water Code.

§319.27. Groundwater Protection. Although this subchapter is directed towards discharges into surface waters in the state, it is the intention of the commission to apply the terms of this subchapter where practicable and necessary, in order to protect the quality of groundwater resources in the state.

§319.28. Waste Discharge Amendment. Every waste discharge permit which does not currently specify effluent limitations for any of the hazardous metals covered by this subchapter is hereby amended to incorporate the terms of this subchapter. In all waste discharge permits which the commission may issue, renew, or amend, the quality levels specified in this subchapter shall apply where the commission does not establish specific effluent limitations regarding a particular hazardous metal.

§319.29. Limitations in Waste Discharge Permits Controlling. Where waste discharge permits specify effluent limitations for any of the hazardous metals covered by this subchapter, the limitations contained in the permit shall be controlling.

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 April 23, 1986.

TRD-8603841

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

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 463-8087.



Chapter 321. Control of Certain Activities by Rule

The Texas Water Commission proposes new §§321.1-321.18, 321.31-321.38, 321.51-321.57, 321.61-321.66, and 321.71-321.81, concerning control of certain activities by rule. Although these sections are proposed as new, most of these regulations have been in effect in Chapter 337 and Chapter 339, under the jurisdiction of the Texas Department of Water Resources, the predecessor agency to the Texas Water Commission. Senate Bill 249, 69th Legislature, 1985, effective September 1, 1985, abolished the Texas Department of Water Resources and transferred jurisdiction under the Texas Water Code to the Texas Water Commission. The regulations of the former Texas Department of Water Resources relating to boat sewage disposal and control of certain discharges by rule will cease to be effective when these new sections are adopted by the Texas Water Commission.

Chapter 321 is divided into five subchapters. Subchapter A is primarily a recodification of the regulations formerly found in §§337.1-337.20. Changes are made, however, to reflect statutory increases in the fees for certification of pump-out facilities and certification of marine sanitation devices which resulted from House Bill 1593, 69th Legislature, 1985.

Subchapters B-E are a continuation of the regulations formerly found in §§339.1-339.71. No substantive changes are made to these sections.

Bobble Barker, chief fiscal officer, Fiscal Services Division, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government will be an estimated increase in revenue of \$3,918 in 1986, \$838 in 1987, \$3,918 in 1988, \$838 in 1989, and \$3,918 in 1990. There will be no effect on local government and small businesses.

Ms. Barker also has determined that for each year of the first five years the sections are in effect the public benefit anti-

cipated as a result of enforcing the sections will be enhanced quality of the inland freshwaters of the state, greater environmental protection from discharges from marine sanitation devices, and continued control over certain other types of discharges into or adjacent to waters in the state. The anticipated economic cost to individuals who are required to comply with the proposed sections will be the cost of fees for certification of pump-out facilities and certification of marine sanitation devices of \$3,918 in 1986, \$838 in 1987, \$3,918 in 1988, \$838 in 1989, and \$3,918 in 1990.

Comments on the proposal may be submitted to John J. Vay, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069, within 30 days following publication in the *Texas Register*.

Subchapter A. Boat Sewage Disposal

★ 31 TAC §§321.1-321.18.

The new sections are proposed 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 of the commission.

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

Boat—Any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on public fresh water in this state, whether or not capable of self-locomotion, including, but not limited to, cabin cruisers, houseboats, barges, marinas, and similar floating objects.

Designated lake—Any of the inland fresh waters listed in §321.2(a) of this title (relating to Discharge Prohibited).

Fresh water—As geographically applied, all of the surface lakes, streams, and reservoirs of the state, exclusive of the extent of ordinary tidal action on this water.

Holding tank—Any tank or receptacle used for retaining sewage.

Houseboat—Any flat-bottomed boat fitted for use as a dwelling or for leisurely cruising, including any barge.

Marine sanitation device—Any sanitation device for use on any boat to receive, retain, or dispose of human body wastes.

Pump-out facilities—Any pump and hose combination used for the transfer of sewage from boats to a tank or receptacle.

Sewage—Human body wastes and the wastes from marine sanitation devices and pump-out facilities.

§321.2. Discharge Prohibited.

(a) The commission hereby finds and declares that the protection and enhancement of the quality of the following inland fresh waters in the state require greater environmental protection than is provided by federal standards applicable to discharges from marine sanitation devices:

- (1) Lake Austin;
- (2) Lake Bridgeport;
- (3) Lake Brownwood;
- (4) Lake Cedar Creek;
- (5) Lake Conroe;
- (6) Eagle Mountain Lake;
- (7) Lake Granbury;
- (8) Lake Grapevine;
- (9) Lake Houston;
- (10) Lake Lewisville;
- (11) Lake Livingston;
- (12) Lake Lyndon B. Johnson;
- (13) Lake Meredith;
- (14) Lake Palestine;
- (15) Lake Possum Kingdom;
- (16) Lake Ray Hubbard;
- (17) Lake Sam Rayburn;
- (18) Lake Somerville;
- (19) Lake Tawakoni;
- (20) Lake Texoma;
- (21) Lake Toledo Bend;
- (22) Lake Travis;
- (23) Lake Waco;
- (24) Lake Whitney.

(b) No person may discharge sewage, treated or untreated, from a boat into or adjacent to any designated lake.

§321.3. Marine Sanitation Device Required.

(a) When operated on any lake designated in §321.2 of this title (relating to Discharge Prohibited), the following boats shall be equipped with an approved marine sanitation device certified under §321.5 of this title (relating to Certification of Marine Sanitation Devices):

(1) any boat less than 26 feet in length which has a permanently installed marine sanitation device;

(2) any boat 26 feet in length or longer which has permanent sleeping quarters or a permanently installed marine sanitation device; and

(3) any houseboat, regardless of length.

(b) Permanent sleeping quarters as used in these sections means bunking facilities which are contained within an enclosed cabin or a cabin subject to being enclosed.

§321.4. Specifications for Approved Marine Sanitation Devices. The specifications for sewage disposal devices and equipment adopted by the Texas Department of Health on June 13, 1966, form the framework for the following criteria.

(1) Any marine sanitation device permanently installed on or within any boat on any designated lake shall have an attached holding tank which meets the following specifications.

(A) The holding tank shall be located inboard on the boat.

(B) The holding tank shall be constructed so as to prevent the discharge of sewage except by pumping. Pumping shall be in accordance with approved and authorized methods as referred to §321.8(a) of this title (relating to Disposal of Boat Sewage).

(C) The holding tank shall be installed so that it may be completely and efficiently emptied by pumping.

(D) The holding tank shall be constructed of corrosion-resistant material.

(E) The holding tank shall be so located and constructed as to minimize the possibility of rupture.

(F) Any overboard vents shall be located to minimize the inboard return of odors and shall be provided with means to prevent the intake of waters or spray. Vents shall be connected to the tank so as to prevent pressure buildup in the tank and clogging from the contents of the tank.

(G) Fittings intended for use in emptying holding tanks shall be designed to make a spill-proof connection with the pump-out facility. Such fittings shall assure a liquid-tight closure during normal operation of the boat, shall afford no obstruction to the flow of sewage, and shall be cleanable. They shall be constructed of corrosion-resistant material.

(H) Conformance with coast guard regulations applicable to no discharge devices shall be deemed to constitute compliance with this subsection

(C) A portable marine sanitation device that is designed to facilitate the carry-off of sewage for onshore disposal is acceptable on any boat (other than a houseboat) less than 26 feet in length and as an additional marine sanitation device on any boat.

(3) The executive director is authorized to allow the use of portable marine sanitation devices in certain cases where permanent facilities are now required by these sections.

§321.5. Certification of Marine Sanitation Devices.

(a) The executive director is authorized to certify marine sanitation devices as meeting the requirements of these sections. The executive director may delegate this authority to any local government or state agency wishing to perform certification functions. The commissioners court of a county so delegated may designate any agency of the county to perform such certification.

(b) Application forms and certification decals will be furnished by the executive director.

(c) The owner of any boat referred to in §321.3 of this title (relating to Marine Sanitation Device Required) is required to obtain certification of facilities for that boat.

(d) All boats certified must have displayed evidence of certification in accordance with §321.6 of this title (relating to Evidence of Certification of Marine Sanitation Devices) when operated on any designated lake.

(e) Certification decals issued on or after December 31, 1981, will be valid for a period not to exceed two years. Decals will expire as provided in §321.15 of this title (relating to Renewal of Certification).

§321.6. Evidence of Certification of Marine Sanitation Devices. The executive director shall design and issue decals which will be evidence of certification of marine sanitation devices. On a boat registered by the Texas Parks and Wildlife Department under the Water Safety Act, the certification decal shall be prominently displayed three inches following the registration validation decal. On boats unregistered by the Texas Parks and Wildlife Department, the certification decal shall be prominently displayed on the exterior of the forward half of the boat.

§321.7. Certification Fees for Marine Sanitation Devices. A fee of \$15 is hereby levied for certification of marine sanitation devices. No charge is levied for certification of marine sanitation devices owned by a federal, state, or local government agency. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).

§321.8. Disposal of Boat Sewage. Contents of a holding tank, whether permanently installed or portable may be disposed of only by the following methods:

(1) discharge into a sewage system operated under authority of a valid permit issued by the commission;

(2) discharge into a pump-out facility approved and certified under these sections;

(3) discharge into a private sewerage facility licensed in accordance with the Texas Water Code, §26.031, and the Texas Water Code, §26.032, where applicable, or constructed in accordance with Texas Department of Health regulations; or

(4) discharge into a liquid-tight vacuum truck or other conveyance for disposal by any of the methods listed in paragraphs (1)-(3) of this section.

§321.9. Specifications for Pump-Out Facilities. Pump-out facilities will be designed to provide spill-proof connection with shipboard holding tanks; will be provided with suction controls or vacuum breaker to limit suction to such levels as will avoid collapse of rigid holding tanks; will provide fresh water facilities for tank flushing; will be equipped with check valve and positive cut-off or other device to preclude spillage when breaking connection with vessel being serviced; and will provide adequate interim storage, if required, prior to transfer to approved treatment facilities. Any connection to a drinking water system must be provided with vacuum breakers or other device designed to insure against backflow or siphonage of sewage or contaminated water into the drinking water system. In addition to the foregoing, movable floating pump-out facilities will be provided with adequate and spill-

proof facilities for transfer to shore-based treatment plants or intermediate transfer of facilities.

§321.10. Certification of Pump-Out Facilities.

(a) The commission hereby delegates to the executive director the authority to certify pump-out facilities as meeting the requirements of these sections.

(b) Owners of pump-out facilities operated on or adjacent to fresh water in this state will be required to obtain certification of those facilities.

(c) Application forms and certification decals for this purpose will be prescribed and furnished by the executive director.

(d) Inspections are required of pump-out facilities prior to certification.

(e) Certification decals issued under this section will be valid for a period not to exceed one year. Decals will expire as provided in §321.15 of this title (relating to Renewal of Certification).

§321.11. Evidence of Certification of Pump-Out Facilities. Each pump-out facility must have affixed thereon a certification decal which shall clearly indicate the date of expiration.

§321.12. Fees for Certification of Pump-Out Facilities. A fee of \$35 for initial certification of each pump-out facility is hereby levied, payable to the entity performing the inspection. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).

§321.13. Disposal of Sewage From Pump-Out Facility. Sewage from a pump-out facility may be disposed of only by the following methods:

(1) discharge to a sewage treatment plant operated under a valid permit issued by the commission;

(2) discharge to a private sewage facility licensed in accordance with the Texas Water Code, §26.031, or the Texas Water Code, §26.032, where applicable, or constructed in accordance with Texas Department of Health regulations; or

(3) discharge to a liquid-tight vacuum truck or other conveyance for disposal by any of the methods listed in this section.

§321.14. Exclusions.

(a) Certain local governments in this state have the authority to issue local regulations for the control of sewage discharges from boats. Compliance with such local regulations is deemed to be in compliance with applicable provisions of these sections if local regulations are as restrictive in prohibiting the discharge of sewage from boats as these sections. On furnishing proof of local certification and a \$2.00 fee payable to the commission for issuance of decals, the boat owner will obtain a certification decal from the executive director in order to operate on designated lakes outside the jurisdiction of the local regulation.

(b) Any local government which has been delegated licensing authority pursuant to the Texas Water Code, §26.031, is hereby authorized to inspect pump-out facilities in its designated area. The local government shall collect and keep for its use in this program the inspection fees provided for in §321.12 of this title (relating to Fees for Certification of Pump-Out Facilities).

§321.15. Renewal of Certification.

(a) Any certification of marine sanitation devices or renewal thereof issued on or after December 31, 1980, will expire December 31, 1983, and every two years thereafter. Any certification of pump-out facilities or renewal thereof issued on or after December 31, 1980, will expire December 31, 1982, and every year thereafter.

(b) Inspections of pump-out facilities are required prior to renewal of certification.

(c) The renewal certification decal shall clearly indicate time of expiration.

(d) A fee of \$15 is hereby levied for renewing a certification of a marine sanitation device. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).

(e) A renewal fee of \$25 is hereby levied for renewing certification on all pump-out facilities. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).

§321.16. Disposition of Fees. All fees collected by the executive director or any state agency under the provisions of this subchapter shall be deposited in a special fund for use in administering and performing the certification functions provided for under this subchapter. All funds deposited in the fund will be subject to audit annually by the commission. Any fees collected by a designated local government may be retained by the local government.

§321.17. Cancellation of Certification, Replacement, or Transfer.

(a) A certification issued under the provisions of this subchapter is subject to cancellation by the executive director prior to the date of expiration if information supplied by an applicant for certification is false or fraudulent.

(b) A certification decal issued under this subchapter remains valid for the life of the decal whether the boat is traded or sold.

(c) If a certification decal becomes illegible or is destroyed, a replacement decal can be obtained from the executive director for \$2.00.

§321.18. Criminal Penalties. Any person who violates or fails to comply with the provisions of these sections concerning the disposal of sewage from boats is subject to criminal penalties pursuant to the Texas Parks and Wildlife Code, §31.129.

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 April 23, 1986.

TRD-8603842

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

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 463-8087.

★ ★ ★

Subchapter B. Commercial Swine Production Operations

★31 TAC §§321.31-321.38

The new sections are proposed 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 of the commission.

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

Animal unit—One feeder animal or one breeder animal or 10 piglets.

Breeder animal—Any swine weighing 50 pounds or more which is intended for breeding purposes.

Commercial swine production operation—Any confined area or enclosure used for the production or feeding of swine.

Feeder animal—Any swine weighing 50 pounds or more which is fed for market.

Flowing stream—All streams that carry water at least 10 months of the calendar year.

Permit—A waste discharge permit as defined in §305.2 of this title (relating to Definitions).

Piglet—Any swine weighing less than 50 pounds.

Surface water supply—All ponded waters which are not on property owned or controlled by the applicant (e.g., private lakes and stock tanks).

§321.32. Application of Subchapter.

(a) This subchapter applies to all commercial swine production operations with 50 or more animal units when the pen area allotted per animal unit is 2,000 square feet or less. This subchapter also applies to those commercial swine production operations which are located less than 5.0 linear feet per animal unit from a flowing stream or surface water supply when the number of animal units present equals 20 or more and the pen area allotted per animal unit is 4,000 square feet or less.

(b) The executive director may require any commercial swine production operation to comply with this subchapter in order to achieve the policy and purposes enumerated in the Texas Water Code, §26.003, and the

Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §1.

§321.33. *Permit Alternative.* Any person whose commercial swine production operation is subject to this subchapter may apply for a permit in accordance with Chapter 305 of this title (relating to Consolidated Permits). This subchapter shall continue to apply except where the provisions of the permit supersede provisions of this subchapter.

§321.34. *Surface Water Protection.* Waste control facilities shall be designed to contain all feedlot runoff from the maximum probable 24-hour rainfall which will be expected to occur once in 25 years at the location of the commercial swine production operation.

(1) Off-site drainage diversion. To prevent pollution of rainfall runoff originating outside the feeding area, feedlot wastes must be isolated from outside surface drainage by ditches, dikes, or other suitable structures. These diversion structures shall be designed to carry peak flows expected at times when maximum rainfall, as described in this section, may occur.

(2) Waste retention facilities. This provision applies to dikes, lagoons, playa lakes, or other structures relied on to hold waste materials and rainfall runoff contaminated by waste materials from the commercial swine production operation area. The capacity of the retention facilities shall be sufficient to retain all runoff from uncovered commercial swine production operations resulting from the maximum probable 24-hour rainfall which will be expected to occur once in 25 years and shall be sufficient to retain all wastewater produced within covered swine production facilities for a 30-day period. All rainfall values used for design purposes shall be in accordance with values published by Hershfield, *Rainfall Frequency Atlas of the United States*, U.S. Weather Bureau, Technical Paper No. 40, 1961, or the latest revision thereof. Runoff is considered to be at least 75% of the volume of the rainfall. Retention facilities should be equipped with equipment capable of dewatering the retention facilities within 14 days after the rainfall. If the dewatering equipment is not capable of dewatering the retention facilities within 14 days, additional storage capacity shall be provided in lieu of dewatering capabilities.

§321.35. *Groundwater Protection.*

(a) Seepage control. Wastewater retention facilities shall be constructed in clay soils or lined with a minimum of one foot of compacted clay or lined with other suitable lining materials approved by the executive director to adequately control seepage of contaminated wastewater into groundwaters which are acceptable for use as a domestic or livestock water supply.

(b) Permeability data. Permeability tests may be required to show that pond liners are adequately impermeable to prevent excessive seepage. The seepage rate from the ponds

shall be less than 0.1 acre-foot of wastewater per surface acre of pond per year.

(c) Existing wastewater retention facilities. Wastewater retention facilities in existence on August 28, 1970, are exempt from the requirements of this section related to the lining of wastewater retention facilities. This exemption will not bar any action by the executive director to prevent and control the discharge of wastes into or adjacent to the waters in the state.

§321.36. *Waste Disposal by Land Spreading.* If the applicant elects to dispose of waste materials through a land spreading program, he shall comply with the following requirements.

(1) Disposal methods. Liquid and solid waste materials shall be distributed on farm or pasture lands so that neither the waste nor rainfall contaminated by the waste will eventually enter the water in the state in a quantity which may adversely affect the quality of the receiving waters.

(2) Application rates. The waste shall be applied in concentrations and applications shall be made at intervals which will not inhibit growth of surface vegetation.

(3) Management of wastes. Collection, storage, and disposal of liquid and solid waste shall be managed so as to prevent nuisance conditions, objectionable odors, and insect problems. All solid waste materials stockpiled outside the swine producing area, whether for final disposition or while awaiting transfer to a land spreading area, shall be isolated by the use of dikes from all outside drainage waters and shall be so diked to retain all rainfall which comes in contact with the stockpiled solid waste material.

§321.37. *Other Waste Disposal Methods.* If the applicant proposes to use methods of disposal other than land spreading, he must first obtain approval of the proposed disposal method from the executive director.

§321.38. *Pesticide Use.* The swine producer is encouraged to minimize the use of pesticides which can cause degradation of the water in the state and is encouraged to follow the manufacturer's recommendations for the use of the pesticide precisely. The swine producer shall prevent the discharge of waters which have been contaminated by pesticides and shall notify the executive director immediately if such discharge occurs.

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 April 23, 1986.

TRD-8603843

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

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 463-8087.

Subchapter C. Meat Processing

★ 31 TAC §§321.51-321.57

The new sections are proposed 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 of the commission.

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

Meat processing operation—A plant, facility, establishment, or enterprise in the business of slaughtering cattle, sheep, swine, goats, horses, mules, equines, poultry, domesticated rabbits, or domesticated game birds or in the business of canning, salting, packing, or rendering carcasses or parts of carcasses of these species for sale as human or animal food.

Wastewater—Water that is routed to drains or sewers associated with a meat processing operation, including, but not limited to, process water, wash water, and drainage from livestock unloading areas and holding pens and/or poultry unloading areas; provided, however, that nothing in the definition shall be interpreted as requiring the construction of drainage systems for essentially uncontaminated areas, such as areas used solely as parking lot areas where trucks transporting such livestock and/or poultry may be parked prior to entering unloading areas.

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

§321.52. *Application of Subchapter.* This subchapter applies to the disposal of wastes from meat processing operations.

§321.53. *Permit Alternative.* A person whose meat processing operation is subject to this subchapter may submit an application to the executive director for a permit. This subchapter shall continue to apply to any permittee except where the provisions of a permit supersede provisions of this subchapter.

§321.54. *Protection of Surface Water.* The degree of protection of surface waters is sufficient if waste control facilities are designed and operated in accordance with the following subsections.

(1) Wastewater holding facilities. If a meat processing operation utilizes holding facilities, any holding facility shall be designed and operated to retain all wastewater produced by the meat processing operation for a 30-day period, plus all rainwater which would enter the holding facilities as a result of a 25-year, 24-hour rainfall as defined by Hershfield, *Rainfall Frequency Atlas of the United States*, U.S. Weather Bureau, Technical Paper No. 40, 1961, or the latest revision thereof. Wastewater holding facilities shall be dewatered within 14 days after any one of the following events occur:

(A) collection of a quantity of rainwater in excess of 20% of the quantity of rainfall which would enter the holding facility as a result of the 25-year, 24-hour rainfall defined in this section;

(B) collection of more than 50% of the volume of wastewater which the pond was designed to retain, such that sufficient capacity is no longer available to retain an addition of all rainwater that would enter the holding facilities as a result of a 25-year, 24-hour rainfall, plus all wastewater produced by the meat processing operation for a 15-day period.

(2) Evaporation facility. If a meat processing operation utilizes an evaporation facility, it shall be designed to retain wastewater with no overflow during a 10-year period of above-normal rainfall. Local weather bureau rainfall data may be used in designing these facilities.

(3) Irrigation facility. If a meat processing operation utilizes an irrigation facility, it shall be of adequate capacity to dewater all wastewater holding facilities within a 14-day period. If farmland or pastureland is irrigated with wastewater from the meat processing operation or its waste control facilities, the annual application rate (including rainfall) shall not exceed 200% of the expected consumptive use for the particular crop as defined by McDaniels, *Consumptive Use of Water by Major Crops in Texas*, Texas Board of Water Engineers, Bulletin No. 6010, 1960.

(4) Isolation of wastewater. Wastewater must be isolated from outside surface drainage by ditches, diking, or other suitable structures where necessary to provide adequate environmental protection. Such diversion structures shall be designed to be effective during peak flows expected at times when a 25-year, 24-hour rainfall, as described in this section may occur

§321.55. *Protection of Groundwater.* Any wastewater holding facility shall conform to the requirements for seepage control enumerated in paragraphs (1) and (2) of this section. Any such facility in an area underlain by clean sands, fractured limestone, or other strata with exceptionally high permeability may be subjected to additional seepage control requirements.

(1) Seepage control. A wastewater retention facility shall be constructed in clay

soils or lined with a suitable lining material to prevent contaminated wastewater from reaching groundwaters of better chemical quality.

(2) Permeability data. Permeability tests may be required to show that pond liners are adequately impermeable to prevent excessive seepage. The acceptable seepage rate from ponds shall be less than 0.1 acre-foot of wastewater per surface acre of pond per year. The acceptable permeability coefficient shall be 1.0×10^{-7} cm/sec at one foot of head and with one foot of permeable material or the equivalent thereof. The permeability coefficient shall be determined by constant head laboratory permeameter tests.

§321.56. *Disposal of Solid Wastes.* Disposal of solid wastes (hoof, hair, hide, bone, paunch manure, sludge, salt, etc.) shall comply with the applicable portions of the Texas Department of Health regulations. The executive director may request evidence of an acceptable method of disposal of all solid process waste not covered specifically by Texas Department of Health regulations.

§321.57. *Prohibition of Unauthorized Discharge.* Any person owning or operating a meat processing operation who makes, or proposes to make, any discharge into or adjacent to any water in the state shall submit to the executive director an application for a discharge permit. No person shall make such discharge without authorization from the commission.

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

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

TRD-8603844 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-8087.

★ ★ ★

Subchapter D. Sand and Gravel Washing

★ 31 TAC §§321.61-321.66

The new sections are proposed 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 of the commission.

§321.61. *Application of Subchapter.* This subchapter applies to all sand and gravel washing operations. For the purposes of this subchapter, sand and gravel washing operations means any person, operation, facility,

establishment, or enterprise which washes sand and gravel in such a manner as to separate the sand and gravel from other materials present in the mixture in which the sand and gravel were originally taken from the ground. This definition specifically includes any operation which introduces into wash-water any material other than material resulting from such washing of sand and gravel.

§321.62. *Exception to Application of Subchapter.* Any person to whom this subchapter applies who does not wish to be regulated by it shall submit to the executive director an application for a permit pursuant to the Texas Water Code, Chapter 26. This subchapter shall continue to apply to any person, except where provisions of a permit supersede provisions of this subchapter.

§321.63. *Treatment and Retention Facilities.* Any person who conducts a sand and gravel washing operation and who does not have a permit shall provide necessary retention ponds, dikes, ditches, dams, and berms for retaining the process wastewater so that it does not enter any water in the state.

§321.64. *Diversion of Runoff.* All uncontaminated runoff shall be diverted around process wastewater treatment and retention facilities.

§321.65. *Available Capacity.* The treatment and retention facilities shall at all times provide enough available capacity to retain all process wastewater.

§321.66. *Prohibition of Unauthorized Discharge.* Any person owning or operating a sand and gravel washing operation who makes or proposes to make any discharge into or adjacent to any water in the state shall submit to the executive director an application for a discharge permit. No person shall make any such discharge without authorization from the commission.

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

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

TRD-8603845 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-8087.

★ ★ ★



Subchapter E. Surface Coal Mining, Preparation and Reclamation Activities

★31 TAC §§321.71-321.81

The new sections are proposed 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 of the commission.

§321.71. Introduction and Purpose. The purpose of this subchapter is to promulgate a set of minimum effluent quality standards applicable to point source discharges from any surface coal mining, preparation, and reclamation activity (SCMPRA) without a waste discharge permit. If the surface coal mining, preparation, and reclamation operator (SCMPRO) elects to obtain a waste discharge permit, the requirements of such permit shall supersede the effluent quality standards of this subchapter, except as provided by §321.74 of this title (relating to Permit Required).

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

Acid or ferruginous mine drainage—Mine drainage that, before any treatment, either has a pH of less than 6.0 standard units or a total iron concentration equal to or more than 10 mg/l.

Active mining area—The areas, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas, and reclamation areas.

Alkaline mine drainage—Mine drainage that, before any treatment, has a pH equal to more than 6.0 standard units and a total iron concentration of less than 10 mg/l.

Bond release—The time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work has been satisfactorily completed.

Coal preparation plant—A facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities, and then is loaded for transit to a consuming facility.

Coal preparation plant associated area—The coal preparation plant yards, immediate access road, coal refuse piles, and coal storage piles and facilities.

Coal preparation plant water circuit—All pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is

used in coal preparation processes within a coal preparation plant.

Coal spoil—Discarded or accumulated coal or overburden containing coal, including, but not limited to, coal storage piles, waste piles, and significant quantities of coal spilled near haul roads, loading areas, and equipment wash-down areas.

Commission—The Texas Water Commission.

Grab sample—A sample of effluent collected in less than 15 minutes.

mg/l—Milligrams per liter.

Mine drainage—Any drainage and any water pumped or siphoned from an active mining area or a reclamation area.

ml/l—Milliliters per liter.

Reclamation area—The surface area of a coal mine that has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

SCMPRA—Surface coal mining, preparation, or reclamation activity; all activities necessary and incident to those activities, defined as surface coal mining operations by the Surface Coal Mining and Reclamation Act, Texas Civil Statutes, Article 5920-11, §3(16) and (17).

SCMPRO—Surface coal mining, preparation, or reclamation operator.

Settleable solids—That matter measured by the method specified in the most current edition of *Standard Methods for the Examination of Water and Wastewater* for the determination of settleable matter.

Significant quantities of coal—That amount of coal that, when exposed to water, causes pollution, or degrades water quality, or makes the water unsuitable for its designated uses.

10-year, 24-hour precipitation event—The maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years, as defined by the National Weather Service and Technical Paper No. 40, *Rainfall Frequency Atlas of the United States*, May 1961, or equivalent regional or rainfall probability information developed therefrom.

Treatment facility or treatment system—All structures that contain, convey, and chemically, biologically, or physically treat coal mine drainage, coal preparation plant process wastewater, drainage from coal preparation plant associated areas, or domestic wastewater, and that remove pollutants from such waters. This definition includes all pipes, channels, ponds, basins, tanks, and all other equipment serving such structures.

§321.73. Discharges Authorized by Rule. The effluent limitations of this subchapter are statewide standards. Pursuant to this subchapter, discharges from a SCMPRA are authorized provided:

(1) the SCMPRO has a valid license from the Railroad Commission of Texas for the SCMPRA; that requires compliance with

§§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities);

(2) there is no feasible alternative for wastewater treatment, disposal, or use, other than discharge;

(3) the SCMPRO is not under an injunction prohibiting discharge;

(4) the SCMPRA is not the subject of enforcement action by this or any other state or federal agency for acts or omissions which may require regulation by permit because of noncompliance; and

(5) the SCMPRA is not required to have a permit pursuant to §321.74(a) of this title (relating to Permit Required).

§321.74. Permit Required.

(a) A waste discharge permit may be required for a SCMPRA if:

(1) the executive director of the commission has determined that the SCMPRA cannot be adequately regulated by §§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities);

(2) the SCMPRA discharge is for any reason inconsistent with the federal Clean Water Act requirements; or

(3) information is received by the executive director that raises material issues regarding the ability of the effluent limits of §§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities), to protect water quality, the environment, and human health.

(b) A waste discharge permit shall be required for a discharge from sewage treatment facilities in SCMPRA's.

(c) If the executive director of the commission has determined that a permit is required, the commission will notify the Railroad Commission of Texas of its intent to require a permit 45 days after receipt of the mining application.

(d) For the purpose of this section, receipt of the mining application is the date of publication of notice that an application has been received.

(e) An operator of a SCMPRA may determine that his operation is better regulated by a permit, and apply for a permit at any time.

(f) Permits issued by the commission may, upon a showing of cause, specify effluent limitations more or less stringent than standard limitations in this subchapter, provided, however, that the permits issued may not authorize discharges less stringent than the minimum standard limitation promulgated as a rule by the Railroad Commission of Texas.

§321.75. Term, Modifications.

(a) Waste discharge permits regulating SCMPRA's shall be issued for a term not to exceed five years.

(b) Waste discharge permits regulating SCMPRA's may be renewed, revised, or amended pursuant to §§305.61-305.68 of this

title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension).

(c) Waste discharge permits regulating SCMPRA's may be involuntarily revoked, amended, or suspended for good cause pursuant to Chapter 305 of this title (relating to Consolidated Permits), or because of:

(1) any change in circumstances that indicates a temporary or permanent reduction or elimination of any discharge authorized by permit;

(2) material alterations or additions to the SCMPRA that are not authorized by commission rule and valid license of the Railroad Commission of Texas; or

(3) cessation of SCMPRA operations pursuant to its Railroad Commission surface mining permit.

§321.76. *Hearing.* Hearings held on permits for SCMPRA's will be held pursuant to Texas Water Commission procedures. Notice will be given to the Railroad Commission of Texas of any hearing held under this section.

§321.77. *Enforcement.*

(a) Waste discharges authorized by rule. Although the Railroad Commission of Texas is the primary enforcer of its licenses, which include the requirements of this chapter, the commission retains jurisdiction to enforce compliance with the Texas Water Code and the statewide standards of §§321.78-321.80 of this title (relating to Effluent Limitations; Additional Effluent Limitations; and Associated Facilities).

(b) Waste discharges authorized by permit. Any waste discharge permit issued by the commission to SCMPRA's will be enforced by the executive director.

(c) Notice. Notice of the commission's enforcement actions involving SCMPRA's will be given to the Railroad Commission of Texas.

§321.78. *Effluent Limitations.*

(a) Active mining areas. These limitations apply to all SCMPRA discharges from active mining areas, unless otherwise specified by commission permit. However, ponds which receive waters which have not been in contact with coal deposits, coal spoil, or acid-forming or toxic-forming spoil shall be regulated by the effluent limitations shown under subsection (b) of this section. For every treatment system, the permittee shall submit to the executive director the necessary data that demonstrates that the treatment system will be designed, constructed, and operated so as to comply with the discharge limitations provided in the tables in paragraphs (1) and (2) of this subsection.

(1) Acid or ferruginous mine drainage. The provisions of this paragraph are applicable to acid or ferruginous mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

Grab Sample Limits
(Concentration in mg/l)

Pollutant or Pollutant Property	Maximum for Any One Day	Average of Daily Values for 30 Consecutive Days
Iron, Total	6.0	3.0
Manganese, Total	2.0	1.0
Total Suspended Solids	70.0	35.0
pH	*	*

*Within the range 6.0 to 9.0 standard units at all times.

(2) Alkaline mine drainage. The provisions of this paragraph are applicable to alkaline mine drainage from an active

mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

Grab Sample Limits
(Concentration in mg/l)

Pollutant or Pollutant Property	Maximum for Any One Day	Average of Daily Values for 30 Consecutive Days
Iron, Total	6.0	3.0
Total Suspended Solids	70.0	35.0
pH	*	*

*Within the range 6.0 to 9.0 standard units at all times.

(b) Reclamation areas.

(1) The provisions of this paragraph and the following table are applicable to discharges from reclamation areas until the performance bond issued to the facility by

the appropriate authority has been released. Any retention pond or series of ponds shall be designed to treat at least the volume of water caused by a 10-year 24-hour precipitation event, based upon the appropriate pond drainage area.

Grab Sample Limits
(Concentration in ml/l)

Pollutant or Pollutant Property	Maximum for Any One Day	Average of Daily Values for 30 Consecutive Days
Settleable Solids	0.5	N/A
pH	*	N/A

*Within the range 6.0 to 9.0 standard units at all times.

(2) Any discharge or increase in volume of a discharge caused by precipitation of greater than the 10-year, 24-hour precipitation event or series of events shall, at a minimum, comply with the following limitations instead of the otherwise applicable limitations: pH within the range of 6.0 to 9.0 standard units at all times.

covered by another section, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.

(3) The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in paragraph (2) of this subsection.

§321.79. *Additional Effluent Limitations.* In addition to the effluent limitations set forth in §321.78 of this subchapter (relating to Effluent Limitations), all discharges from SCMPRA's shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters), and §319.23 of this title (relating to Quality Levels-Tidal Waters), that regulate hazardous metals. Additionally, if mining operations include sewage treatment facilities, the discharge from such sewage treatment plant

(c) Combined waste streams. Where waste streams from any facility covered by a section in this subchapter are combined for treatment or discharge with waste streams

shall comply with the limitations in the commission discharge permit.

§321.80. *Associated Facilities.* The provisions of this section are applicable to discharges from a coal preparation plant and coal preparation plant associated areas.

(1) Except as provided pursuant to a waste discharge permit, there shall be no discharge of process wastewater from a coal preparation plant water circuit to waters in the state.

(2) The provisions of this section and the following table apply to discharges from coal preparation plants and coal preparation plant associated areas other than process wastewater.

(3) In order to prevent immediate harm to human health or the environment which is not otherwise avoidable, or to allow necessary maintenance and repair work, the commission may, pursuant to §305.21 of this title (relating to Emergency Orders and Temporary Orders Authorized) grant a temporary or emergency order authorizing the discharge of process or other wastewater regulated by this subchapter.

(4) Discharges from associated facilities may be allowed by a discharge permit pursuant to the applicable regulations of the commission.

§321.81. *Monitoring and Reporting of Data.*

(a) Discharges authorized by rule.

(1) All discharges from active mining areas authorized by rule shall be monitored for the listed pollutants in the appropriate category at least once per week, and on the first day of and third day after beginning discharge;

(2) All discharges from reclamation areas authorized by rule shall be monitored

Grab Sample Units
(Concentration in mg/l)

Pollutant or Pollutant Property	Maximum for Any One Day	Average of Daily Values Within 30 Consecutive Days
Iron, Total	6.0	3.0
Manganese, Total	2.0	1.0
Total Suspended Solids	70.0	35.0
pH		

*Within the range 6.0 to 9.0 standard units at all times.

for the listed pollutants in the appropriate category at least once per week when discharge occurs.

(3) Monitoring shall consist of:

(A) samples and analyses of the discharge for limited constituents; and
(B) flow measurements.

(4) Samples from each source discharging into the same drainage area shall be combined into a single-flow, weighted grab sample for analysis and reporting.

(5) Monitoring results shall be compiled on the Texas Water Commission monthly effluent report. The report for a particular month shall be submitted to the Railroad Commission of Texas so that the report will be received no later than the 25th day of the following month.

(6) All discharges from active mining areas shall be monitored at least twice per year for all metals referenced in §321.79 of this section (relating to Additional Effluent Limitations).

(7) All monitoring data shall be recorded and kept available on site for inspection by commission personnel for a minimum period of three years.

(b) Discharges authorized by permit. All such discharges shall comply with the monitoring and reporting requirements specified in the permit.

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 April 23, 1986.

TRD-8603846

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

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-8087.



TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 1. Central Administration
Practice and Procedure

★34 TAC §1.42

(Editor's note: The Comptroller of Public Accounts 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 Comptroller of Public Accounts proposes an amendment to §1.42, concerning definitions. The amendment specifies that requests for settlement of penalty and interest assessments are not within the definition of the term "contested case." These requests are not within the jurisdiction of the agency's administrative law judges and will not be handled through the agency hearings process. Under the applicable provisions of the Tax Code, these settlements are discretionary with the comptroller and are not required to be disposed of as a part of a redetermination order. This amendment is adopted on an emergency basis in this issue of the *Texas Register*.

Dale Craymer, director of revenue estimating for the comptroller, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Craymer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a streamlined process of handling these issues and a speedier hearings process. 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 Willis Whatley, Associate Deputy Comptroller for Legal Affairs, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 April 28, 1986.

TRD-8603949 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-4606.

★ ★ ★

Chapter 3. Tax Administration
Subchapter V. Bingo Regulation and Tax

★34 TAC §3.548

The Comptroller of Public Accounts proposes an amendment to §3.548, concerning general restrictions on the conduct of bingo. The amendment prohibits the involvement of distributors and manufacturers in the conduct of bingo. The amendment specifically prohibits payments by a commercial lessor, distributor, or manufacturer of any of the expenses of a licensed organization.

Dale Craymer, director of revenue estimating for the comptroller, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Craymer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be assurance that bingo operators are operating independently from any other phase of bingo activities. 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 Bill Clemmer, Manager, Miscellaneous Services, P.O. Box 13528, Austin, Texas 78711.

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

§3.548. General Restrictions on the Conduct of Bingo.

(a) Who may conduct bingo.

(1) (No change.)

(2) All callers, cashiers, ushers, bookkeepers, and accountants who assist in conducting, promoting, or administering bingo games must be members of the authorized organization or hired by and acting under the supervision of the authorized organization.

(A) Except as provided hereafter, neither a commercial lessor, distributor, or

manufacturer, nor any person having an interest in a commercial lessor, distributor, or manufacturer, nor any employee or agent of any of them (a commercial lessor) shall operate, manage, conduct, advise, or assist in the operating, managing, conducting, promoting, or administering of bingo. The term "assist" as used in this section includes, but is not limited to, the payment of any expense of a licensed bingo organization by a commercial lessor, distributor, or manufacturer, whether such payment be by loan or otherwise. This prohibition does not apply to a person whose employment by or business relationship with a commercial lessor, distributor, or manufacturer is unrelated to the leasing of bingo premises and who is not acting in the capacity of operator.

(B) (No change.)

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

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

Issued in Austin, Texas, on April 28, 1986.

TRD-8603950 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-4606.

★ ★ ★

Chapter 5. Funds Management
(Fiscal Affairs)
Claims Processing—Purchase Vouchers

★34 TAC §5.54

The Comptroller of Public Accounts proposes the repeal of §5.54, concerning special requirements for consultant contracts. This section is repealed so that a substantially revised new section dealing with the same subject matter may be adopted.

Dayle Craymer, director of revenue estimating for the comptroller, 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. Craymer also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be better documentation of contracts for services as proposed in the new section. 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 Martin Cherry, Rules Coordinator, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

§5.54. Special Requirements for Consultant Contracts.

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 April 30, 1986.

TRD-8604027 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

June 8, 1986

For further information, please call
(512) 463-4806.

★ ★ ★

The Comptroller of Public Accounts proposes new §5.54, concerning special requirements for consultant and professional services contracts, to replace existing §5.54, which is proposed for repeal due to substantial revision of the provisions on this subject. This new section adds professional services contracts to the title and the text of the section. Certain amendments to the applicable statutes have been determined by attorney general's opinion to be invalid, and the new section revises statutory references to reflect the Senate Bill citation of the original provisions, and where necessary, changes the text of the rule to reflect the statute without the invalid amendments.

Dale Craymer, director of revenue estimating for the comptroller, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Craymer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better documentation of contracts for services. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Martin Cherry, Rules Coordinator, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

§5.54. Special Requirements for Consultant and Professional Services Contracts.

(a) The following words and terms, when used in this section, shall have the fol-

lowing meanings, unless the context clearly indicates otherwise.

(1) **Consulting service**—The practice of studying an existing or a proposed operation or project of an agency and advising the agency with regard to the operation or project.

(2) **Private consultant**—An entity that performs consulting services.

(3) **Professional services**—Those services within the scope of the practice of accounting, architecture, optometry, medicine, or professional engineering as defined by the laws of the State of Texas or those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, or professional engineer in connection with his professional employment or practice.

(b) Publication requirements are as follows.

(1) Contracts involving the following services are exempt from the publication requirement:

- (A) medical services;
- (B) architectural services;
- (C) engineering services (including surveying); and
- (D) services of private legal counsel.

(2) Contract payments may not exceed \$10,000 per fiscal year or per contract to any individual consultant, unless the proper notices have been published in the *Texas Register*.

(3) At least 40 days before contracting with a private consultant, a state agency shall file the necessary information with the Secretary of State for publication in the *Texas Register*.

(4) A consultant contract must comply with the publication requirements in Senate Bill 737, §6, 65th Legislature, 1977, when it becomes reasonably foreseeable that a proposed use of a private consultant may involve a contract or contracts with a value in excess of \$10,000.

(5) Within 10 days after contracting with the private consultant, the agency shall file the necessary information with the Secretary of State for publication in the *Texas Register*.

(6) A notice of amendment or modification to a contract or contracts previously advertised in the *Texas Register* with a total anticipated fee in excess of \$10,000 must be published in the *Texas Register* at least 10 days prior to amending the contract, if the amendment or modification increases the original anticipated fee by 15% or more.

(7) A contract with a total anticipated fee of less than \$10,000 shall be published in the *Texas Register* at the time it becomes reasonably foreseeable that the contract will be amended to allow payments in excess of \$10,000. Only a notice of the amendment must be published.

(c) A state agency shall notify the Legislative Budget Board and the Governor's Budget and Planning Office at least 30 days before contracting to use a private consul-

tant whose total anticipated fee exceeds \$10,000.

(d) Upon request, a state agency who has contracted to use a private consultant shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all study design and reports resulting from the study by the private consultant to be filed with the Texas State Library.

(e) Vouchers submitted must comply with the following requirements.

(1) A state agency must assign a contract number to all consultant or professional services contracts. The agency contract number must be included in Box W, the vendor invoice number block, on the purchase voucher when requesting a payment.

(2) Each voucher paying for consultant or professional services must contain the following information:

- (A) agency contract number;
- (B) total dollar amount of the contract;
- (C) cumulative total of prior payments under the contract; and
- (D) the volume and page number of the *Texas Register* where the contract award notice was published.

(3) Vouchers for payments to a full-time state employee, except teaching personnel of institutions of higher education, for the provision of consulting services for an agency other than the agency regularly employing the person, must have attached a letter from the agency regularly employing the person stating that the consultant services do not constitute a conflict of interest with the employee's regular job duties.

(f) A letter from the attorney general authorizing the requesting agency or department of the State of Texas to retain outside counsel for services the attorney general cannot provide must be attached to the respective voucher filed with the Comptroller's Claims Division.

(g) A copy of each contract, agreement, or arrangement for consultant services or professional services must be filed with the Comptroller's Claims Division immediately upon execution:

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 April 30, 1986.

TRD-8604028 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

June 8, 1986

For further information, please call
(512) 463-4806.

★ ★ ★

★34 TAC §5.55

The Comptroller of Public Accounts proposes new §5.55, concerning prompt payment act rules. This new section implements the provisions of House Bill 275, 69th Legislature, 1985, codified as Texas Civil Statutes, Article 601f. The section provides guidelines and procedures for agency compliance with the requirement of prompt payment for goods and services contracted for by the state. It also specifies the documentation which must be submitted if interest accrues on the amount in question.

Dale Craymer, director of revenue estimating for the Comptroller, has determined that since only a very small percentage of agency payments now fall outside the guidelines set out in this new section, any fiscal implications for units of state or local government or small businesses would be negligible.

Mr. Craymer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be reimbursement for late payments on the infrequent occasions when such situations occur. 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 Martin Cherry, Rules Coordinator, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

§5.55. Prompt Payment Act Rules.

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

(1) State agency—

(A) a board, commission, department, office, or other agency in the executive branch of state government that was created under the constitution or a statute of the state, including an institution of higher education as defined by the Texas Education Code, §61.003, and a river authority;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

(2) Governmental entity—A state agency or a political subdivision of this state.

(3) Payment—Money owed to a vendor from whom a government entity acquires property or services.

(4) Vendor—A person, corporation, association, partnership, or other legal entity that supplies goods and/or services to a governmental entity.

(5) Subcontractor—A person who contracts with a vendor to work, or has contracted with a vendor to contribute toward the completion of work done, for a governmental entity.

(b) Texas Civil Statutes, Article 601f, requires prompt payment for goods and services contracted for by the state.

(c) A payment owed by a state agency for goods and services based on a contract executed on or after July 1, 1986, is due not later than 45 days after the day of receipt of such goods and services, or the day on which performance was completed, or the day on which the state agency received the invoice for such goods and services, whichever is later.

(d) A payment owed by a state agency for goods and services based on a contract executed on or after September 1, 1987, is due not later than the 30th day after receipt of such goods and services, or the day on which performance was completed, or the day on which the state agency received the invoice for such goods and services, whichever is later.

(e) To do business with the State of Texas, a vendor must obtain a valid vendor identification number from the Comptroller of Public Accounts.

(f) A payment not made within the specified period is overdue and subject to interest.

(1) Beginning on the day after the payment is due, interest accrues on the unpaid balance at the rate of 1.0% per month. The interest ceases to accrue on the date payment is mailed by the vendor or the governmental entity.

(2) A vendor must submit to the originating state agency, no later than six months after the payment is received by the vendor, any claim for interest owed by the agency.

(3) All claims submitted by the vendor for interest owed by a state agency must include the following:

(A) original letter or other document from the vendor claiming interest;

(B) envelope or other proof of mail date or transmitted date;

(C) State of Texas purchase voucher, reflecting:

(i) correct vendor identification number;

(ii) use of Expenditure Code 7806;

(iii) computation of interest due on face of voucher; and

(iv) authorized signature from signature cards on file at comptroller's office.

(g) No later than the 21st day after the date on which an invoice is received, a governmental entity which believes there is an error in the invoice submitted for payment must notify the vendor who submitted the invoice of the alleged error.

(h) When a dispute is resolved in favor of the vendor, a vendor shall receive interest on all invoices for which payment has not

been received within the period specified from the date on which the payment first becomes overdue.

(i) When a dispute is resolved in favor of the governmental entity, the vendor who submitted the original invoice must submit a corrected invoice. Interest will accrue if the corrected invoice is not paid by the appropriate date.

(j) In the instance of disputes, an explanation of the resolution of the dispute must be attached with the claim for interest.

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 April 30, 1986.

TRD-8804025

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
June 6, 1986
For further information, please call
(512) 463-4806.

★ ★ ★

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Fees for Copies of Records

★37 TAC §§1.122-1.125

The Texas Department of Public Safety proposes amendments to §§1.122-1.125, concerning fees for copies of records. Subsections (a)-(d) of §1.122, (b) of §1.124, and (a)-(c) of §1.125, are deleted because the fees are statutory and are not set by the department. The remaining subsections of these sections are renumbered. Subsection (b) is added to reformatted §1.122, which provides for purchase of a copy of the complete driver's license basic record back-up tape and provision for a weekly update of the tape. Section 1.123 is amended by changing the fee from \$1.00 to \$5.00 for copies of a duplicate lease acknowledgment.

Melvin C. Peebles, chief accountant III, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the sections. The effect on state government is an estimated increase of \$30,424 in 1986, \$35,736 in 1987, \$41,056 in 1988, \$46,376 in 1989, and \$51,704 in 1990. The effect on small businesses is the cost for copies of the records which is the same

as the cost to large businesses. There is no effect on local government.

Maurice Bechkam, chief of inspection and planning, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be public clarification of fee changes, and a savings in the cost of maintaining administrative rules that contain statutory fees established by the legislature. The possible economic cost to individuals who are required to comply with the sections as proposed will be \$4.00 each year in 1986-1990 for each duplicate lease acknowledgement, \$23.00 each year in 1986-1990 for a copy of the complete basic back-up tape, and \$5,200 each year in 1986-1990 for a basic record weekly update tape.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 4413, which provide the director of the Texas Department of Public Safety with the authority to make such rules and regulations, subject to the approval of the commission, as are deemed necessary for the control of the department. Also, the department may adopt sections that it determines are necessary to effectively administer the Act relating to drivers licenses.

§1.122. License Issuance and Driver Records Bureau Fees.

[(a) Copies of driver's name, address, date of birth, license number, and current status will be furnished for a fee of \$.25 each, provided that the following information is furnished by the requestor:

- [(1) full name and date of birth; or
- [(2) drivers license number.

[(b) Copies of driver's name, address, date of birth, license number, current status, and a listing of the sum total of accidents and violations from the licensing records itemized by date and location within the immediate past three-year period will be furnished for a fee of \$.75 each, or for a fee of \$.50 each when a request is for 100 or more at one time on data processing cards, provided that the following information is furnished by the requestor:

- [(1) full name and date of birth; or
- [(2) drivers license number.

[(c) Copies of driver's name, address, date of birth, license number, current status, and an itemized listing by date and location of all traffic law violation convictions and motor vehicle traffic accident involvements will be furnished for a fee of \$1.00 each, or for a fee of \$.75 each when a request is for 100 or more at one time on data processing cards, provided that the following information is furnished by the requestor:

- [(1) full name and date of birth; or
- [(2) drivers license number).

[(d) A certified abstract of complete licensing and operating record will be furnished for a fee of \$10 each, provided that the following information is furnished by the requestor:

- [(1) full name and date of birth; or
- [(2) drivers license number.]

[(a) [(e)] Requests for class type listings of names, addresses, and date of birth from Texas drivers license records requiring special programming and search of more than 11 million files will be furnished for a minimum fee of \$1,000. An additional fee of \$.05 per listing on computer printout or \$.03 per listing on magnetic tape will be required for each item in excess of 5,000 provided that the requestor must specify exact type information desired.

[(b) A copy of the complete basic record back-up tape will be furnished for \$2.25 per 1,000 names. This is raw data with no programming by the department. Record layout will be furnished in order that the data may be interpreted. Updates will be furnished for \$100 per week.

§1.123. Motor Carrier Lease Fees. Copies of duplicate lease acknowledgement will be furnished for a fee of \$5.00 [\$1.00] each, provided that the following information is furnished by the requestor:

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

§1.124. Safety Responsibility Bureau Fees.

[(a)] Copies of liability insurance status, method of compliance, or suspension status will be furnished for a fee of \$1.00 each, provided that the following information is furnished by the requestor:

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

[(b) Certified abstract of case status will be furnished for a fee of \$3.00 each, provided that the following information is furnished by the requestor:

- [(1) name of driver and date and location of accident; or
- [(2) safety responsibility case number.]

§1.125. Statistical Services Bureau Fees.

[(a) Available copies of officer's accident report will be furnished upon request and payment of a \$4.00 fee. The copy may be certified for an additional fee of \$2.00. The following information must be furnished by the requestor:

- [(1) location—city or county;
- [(2) date of accident; and
- [(3) name or drivers license number of at least one driver.

[(b) Liability insurance status will be furnished for a fee of \$1.00 each, provided that the following information is furnished by the requestor:

- [(1) location—city or county;
- [(2) date of accident; and
- [(3) name or drivers license number of at least one driver.

[(c) Identity of involved driver will be furnished for a fee of \$1.00, provided that

the following information is furnished by the requestor:

- [(1) location—city or county;
- [(2) date of accident; and
- [(3) name or drivers license number of at least one driver.]

[(a) [(d)] Special searches for possible accidents at particular locations where names of drivers or accident dates are unknown will require a minimum fee of \$30 which includes up to one hour of search time and up to three copies of officer's accident report. Additional search time will be \$15 for each additional half hour, with a minimum fee of \$30. Additional copies of officer's accident reports will be furnished at the prescribed statutory fee. The following information must be furnished by the requestor:

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

[(b) [(e)] Published data such as accident summaries, motor vehicle traffic accident booklet, urban traffic enforcement, and similar public information type data will be furnished without charge for a single copy. Multiple copies are not furnished.

[(c) [(f)] Exact copies of existing magnetic tapes containing motor vehicle accident data will be furnished for a fee of \$350 per accident year. Requestor must indicate period of time to be copied. In addition to the tapes, the department will supply mailing carton, postage cost, copy of tape layout, and copy of the accident code manual. A request for anything other than an exact copy will be considered separately and a price established based on the estimated cost involved.

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 April 22, 1986.

TRD-8803810 James E. Adams
Director
Texas Department of
Public Safety

Earliest possible date of adoption:
June 8, 1986
For further information, please call
(512) 465-2000.

Fees for Copies of Records

★37 TAC §1.128

The Texas Department of Public Safety proposes new §1.128, concerning statutory fees for copies of records. The proposed new section establishes policy that unless a fee has been established by the Legislature as state law, such fee as may be charged will be established and specified by administrative rule.

Melvin C. Peoples, chief accountant III, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

The cost to small businesses for copies of the records will be the same as the cost to large businesses.

Maurice Beckham, chief of inspection and planning, 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 notice to the public that certain fees for copies of records are statutory, and non-statutory fees are established by administrative rule. The department finds that the administrative cost to maintain administrative rules for fees that are statutory is not cost effective. The anticipated economic cost to individuals who are required to comply with the proposed section will be \$1-\$20, as specified by the specific statute. Such incurred costs are not a result of the enactment of this section.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (512) 465-2000.

The new section is proposed under Texas Civil Statutes, Article 4413, §46(2), which provides the director of the Texas Department of Public Safety with the authority to make such rules and regulations, subject to the approval of the commission, as are deemed necessary for the control of the department.

§1.128. Statutory Fees. It is the policy of the Texas Department of Public Safety that where a fee is not set by administrative rule, then such fee as may be charged has been established by the Legislature, as a matter of state law.

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 April 22, 1986.

TRD-8803800

James B. Adams
Director
Texas Department of
Public Safety

Earliest possible date of adoption:

June 6, 1986

For further information, please call
(512) 465-2000.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facility for the Mentally Retarded (ICF-MR)

Subchapter WW. Residents' Personal Funds and Property

★ 49 TAC §27.4803

The Texas Department of Human Services proposes an amendment to §27.4803, concerning protection of funds. The amendment makes explicit the designation of ICF-MR patient trust-fund accounts to protect recipient-patient monies from attachment for any liability claims against the facility.

Clifton Martin, associate commissioner for programs, 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. Martin 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 recipient-patient monies placed in ICF-MR trust fund accounts will be protected from attachment for any liability claims against facilities. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-188, Texas Department of Human Services 153-E, P.O. Box 2980, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§27.4803. Protection of Funds.

(s)-(e) (No change.)

(f) The ICF-MR must keep any funds received from a resident for holding, safeguarding, and accounting separate from the ICF-MR's funds. This separate account must be identified "Trustee, (Name of Facility), Patients' Trust Fund Account." An ICF-MR may commingle the trust funds of Medicaid recipient-residents and private-pay residents. If the funds are commingled, the ICF-MR must provide, upon request, the following information. This information must be provided to DHS, the Texas Department of Health, the Texas attorney general's Med-

icaid Fraud Control Unit, and the U.S. Department of Health and Human Services.

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

(g)-(k) (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 April 30, 1986.

TRD-8804020

Martin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:

June 6, 1986

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

★ ★ ★

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 155. Community Services

★ 49 TAC §§155.41-155.45

The Texas Commission on Alcohol and Drug Abuse proposes new §§155.41-155.45, concerning authority; objective; application; minimum guidelines; and recommendation. The new sections provide for the establishment of guidelines for review of funding applications by regional alcohol and drug abuse advisory committees established by the commission in response to the passage of Senate Bill 620, 69th Legislature, 1985.

Larry Goodman, director, Fiscal-Administrative Services Division, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Goodman also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be assurance, through the utilization of established regional alcohol and drug abuse advisory committees, of knowledgeable local input to elected officials regarding use of revenue generated from DWI fines for local alcoholism services in the review and priority ranking of funding applications. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

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

The new sections are proposed under Texas Civil Statutes, Article 2372ae, Chapter 287

69th Legislature, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to provide written rules for regional alcohol and drug abuse advisory committees reflecting minimum guidelines for the review of applications for DWI fine-generated county funds for alcoholism services.

§155.41. Authority. Authority was granted to the Texas Commission on Alcohol and Drug Abuse under Texas Civil Statutes, Article 2372c, Chapter 287, Acts of the 69th Legislature, 1985 (Senate Bill 620), to establish guidelines for review of funding applications by the regional alcohol and drug abuse advisory committees established by the commission.

§155.42. Objective. The intent of the commission is to provide written rules for regional alcohol and drug abuse advisory committees reflecting minimum guidelines for the review of applications for DWI fine-generated county funds for alcoholism services.

§155.43 Application. All programs or centers seeking funds under the provisions of Texas Civil Statutes, Article 2372c, must submit an application for funding to the established regional alcohol and drug abuse advisory committee serving the state planning region in which the program or center is located or in which the program will provide services. All applications must be reviewed by the regional alcohol and drug abuse advisory committee in accordance with its bylaws. Additionally, all applications must be ranked in priority order by the regional alcohol and drug abuse advisory committee.

§155.44. Minimum Guidelines. Applications for funding received from public or private alcoholism prevention, intervention, or treatment programs or centers seeking to contract with counties must satisfy the following minimum guidelines.

(1) Requirement. The program or center must be a public entity or a corporation in good standing with the Office of Secretary of State. If not a public entity or a corporation, the program or center must furnish a copy of its Assumed Name Certificate, Articles of Partnership, or other organizational documents which demonstrate compliance with applicable law.

(2) Requirement. Nonprofit programs or centers must have obtained recognition of tax exempt status from the Internal Revenue Service, U.S. Department of Treasury.

(3) Requirement. Public or private treatment or rehabilitation programs or centers must be licensed by or have obtained a permit to operate from the Texas Commission on Alcohol and Drug Abuse.

§155.45. Recommendation. The regional alcohol and drug abuse advisory committee should provide a rationale for the priority ranking of each application to the county or counties from which funds are requested.

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 April 24, 1986.

TRD-8803885

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption:

June 6, 1986
For further information, please call
(512) 463-8510.

★ ★ ★

Part VI. Texas Commission for the Deaf Chapter 181. General Rules of Practice and Procedures Operations

★40 TAC §181.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission for the Deaf, 510 Congress, Suite 300, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission for the Deaf proposes the repeal of §181.21, concerning the technical advisory council for planning and operations. The repeal is necessary to conform the commission's sections with a recent amendment to the Texas Human Resources Code, §81.010, which abolished the technical advisory council. The commission is no longer empowered to conduct the technical advisory council for planning and operations.

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

Mr. Evans also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the commission's section regarding the technical advisory council for planning and operations. 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 William F. Eckstein, Coordinator of Administrative Procedures/Services, P.O. Box 12904, Austin, Texas 78711.

The repeal is proposed under the Texas Human Resources Code, §81.006(b)(3),

which provides the Texas Commission for the Deaf with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§181.21. Technical Advisory Council for Planning and Operations.

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 April 23, 1986.

TRD-8803897

Larry D. Evans
Executive Director
Texas Commission for
the Deaf

Earliest possible date of adoption:

June 6, 1986
For further information, please call
(512) 469-8891.

★ ★ ★

Part IX. Texas Department on Aging Chapter 283. Legal Assistance Service Standards Statutes and Regulations

★40 TAC §283.1-283.6

The Texas Department on Aging proposes new §§283.1-283.6, concerning legal assistance standards. The new sections will establish standards for legal services to be implemented by service providers to older Texans throughout the state, and upgrade current services to a higher level of quality.

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

Tim Shank, deputy director, Texas Department on Aging, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the improvement and standardization of legal assistance programs for the elderly of Texas authorized under Title III of the Older Americans Act, and an increase in such assistance to meet the needs of senior Texans in communities throughout the State. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Edwin R. Floyd, Chief of Administrative Services, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new sections are proposed under the Texas Human Resources Code, Chapter 101, which provides the Texas Department on

Aging with the authority to develop rules governing the function of the department.

§283.1. Title III Legal Assistance Standards.

(a) This chapter gives the policies, procedures, and standards that govern the provision of legal assistance authorized under Title III of the Older Americans Act, as amended. It will be used by the Texas Department on Aging, Area Agencies on Aging, and service providers to establish new services, review current services, and upgrade existing services to the level of quality expected by the department.

(b) It is the intent of the Texas Department on Aging that the provisions of this chapter will be fully implemented by service providers not later than May 31, 1989.

§283.2. Definition of Legal Assistance. The term "legal assistance," when used in this chapter, means legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a nonlawyer where permitted by law, to older individuals with economic or social needs.

§283.3. Goals of the Legal Assistance Services Program. The goals of the legal assistance program for the elderly are as follows:

- (1) assure the availability of legal assistance to the elderly;
- (2) provide counseling, representation, and training on legal problems confronting the elderly;
- (3) disseminate information on legal issues which may be of concern to older persons;
- (4) encourage area wide advocacy efforts on behalf of the elderly;
- (5) identify and utilize (if feasible) existing resources offered by local bar associations and law schools to enhance legal assistance for the elderly;

(6) promote coordination and cooperation among all legal services resources, including legal service providers who may receive Title III, Older Americans Act funds; and

(7) assist the elderly in securing benefits and rights to which they are entitled.

§283.4. Standards for Legal Assistance. Each Area Agency on Aging will develop a legal assistance program which shall comply with the following standards.

(1) Legal assistant programs shall be dedicated to providing legal advocacy and representation for the elderly.

(2) To the extent possible, each area agency shall encourage and expand *pro bono* involvement.

(3) Legal assistance programs will facilitate the provision of other planning and service area programs and will complement these programs by colocation whenever practicable.

§283.5. Demonstration of Adequacy in Legal Assistance Programs. In order to comply with the requirements of the Older Americans Act, §306(a)(2), as amended, the following minimum standards will be met.

(1) Area agencies will attempt, and document such attempt, to establish a program of regular *pro bono* legal advice and representation within each county of the planning and service area. At the minimum, this will consist of an annual written request for *pro bono* assistance from the officers of the local bar associations and the Legal Services Corporation serving each county.

(2) Area agencies will annually budget and expend not less than 2% of Title IIIB funds for the provision of legal assistance, or document that an amount equivalent to that level of expenditure has been obtained from other sources, provided however, that such amount shall not be less than the amount expended by the area agency in the previous fiscal year, adjusted by any increases or decreases in Title IIIB funding received.

§283.6. Waiver of the Legal Assistance Program Requirement. Any Area Agency on Aging may, subject to the procedural requirements of the Older Americans Act, §306(b), request a waiver of the 2% funding requirement upon demonstration that:

(1) an attempt has been made, and documented, to provide access to legal assistance in each county served by the area agency; and

(2) facilitation of other area priorities with a legal assistance program is inappropriate or impractical; and

(3) the area agency is able to document that the legal assistance needs are being met without the 2% funding budget requirement. That demonstration may be made by documenting that at least 5% of the area agency manhours are devoted to legal assistance or that fewer than 10% of those requesting legal assistance are turned away; or

(4) all legal assistance needs are provided for without reliance on Title IIIB funds;

(5) a public hearing was held which addressed this issue and that the consensus of this hearing supported the waiver of the services in question.

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 April 23, 1988.

TRD-0803032

O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Earliest possible date of adoption:
June 6, 1988

For further information, please call
(512) 444-2727.

★ ★ ★

Withdrawn

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 336. Industrial Solid Waste Management and Municipal Hazardous Waste Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

★ 31 TAC §336.227

The Texas Water Commission has withdrawn from consideration the emergency effectiveness of §336.227, concerning industrial solid waste management and municipal hazardous waste. The text of the new section appeared in the March 14, 1986, issue of the *Texas Register* (11 Tex-Reg 1334). The effective date of this new section is April 28, 1986.

Issued in Austin, Texas, on April 28, 1986.

TRD-8803880

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

Filed: April 28, 1986

For further information, please call
(512) 483-8070.

★ ★ ★



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 10. COMMUNITY DEVELOPMENT

Part II. Texas Economic Development Commission

Chapter 102. Allocation of Private Activity Bonds

★ 10 TAC §§102.1-102.9

The Texas Economic Development Commission (TEDC) adopts new §§102.1-102.9. Sections 102.2 and 102.4-102.6 are adopted with changes to the proposed text published in the October 28, 1985, issue of the *Texas Register* (10 TexReg 4212). The other sections are adopted without changes and will not be republished.

The new sections establish procedures relating to requests for reservation for a portion of the state's volume cap on private activity bonds filed with the TEDC pursuant to Texas Civil Statutes, Article 5190.9.

Changes include the addition of the terms "bond, code, issue, private activity bond, and project" to the definitions in §102.2, and clarification of the terms "governing body" and "reservation date." Language is added in §102.4(d)(1)(B) for clarification. A new subsection (d) is added to §102.5 to clarify the commission's position on the acceptance of filing of documents, and existing subsection (d) is replaced with subsection (e), to reflect the certification of the reservation. Section 102.6(c) is changed for clarification purposes.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 5190.9, which provide Texas Economic Development Commission with the authority to establish rules and procedures for the allocation of the state's limit on certain private activity bonds.

§102.2. Definitions. Each word, term, or phrase not otherwise defined in this section shall have the same meaning as it has in the Act. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act—House Bill 690, 69th Legislature, 1985, Texas Civil Statutes, Article 5190.9.

Application for carryforward—Application for carryforward form prescribed by the commission and signed by a member of the governing body or an officer of the entity developing the project, and any required documentation.

Application for reservation—Application for reservation form prescribed by the commission and signed by a member of the governing body or an officer of the issuer, and any required documentation.

Bond—Any obligation of an issuer which is a private activity bond.

Code—The Internal Revenue Code of 1954.

Commission—The Texas Economic Development Commission.

Executive director—The executive director of the Texas Economic Development Commission.

Governing body—The governing body of the governmental unit that issues bonds or on whose behalf bonds are issued.

Issue—A bond issue.

Issuer—Any department, board, authority, agency, subdivision, municipal corporation, district, public corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever, and any nonprofit corporation acting for or on behalf of any of the foregoing.

Private activity bond—A private activity bond within the meaning given that term by the Code, §103.

Project—Any facility or purpose for which a bond issue may be used by an issuer pursuant to the Code and the state statute relied upon and as represented by the issuer as its authority to issue the bonds.

Reservation date—The earliest date on which an application for reservation is accepted for filing with the commission pursuant to the Act and this chapter and a portion of the state's limit is or becomes available to the issue.

Rules—Any commission's statement of general applicability that implements, interprets, or prescribes law or policy, or describes the commission procedures or practices.

Significant expenditures—Expenditures which equal or exceed the lesser of \$1 million or 15% of the estimated cost of the project.

§102.4. Carryforward.

(a) The amount of the state's limit that has not been reserved prior to December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation may be designated as carryforward for projects for which industrial development bonds may be issued under the federal Tax Code, §103(b)(4) and (5), and student loan bonds through submission of the prescribed application for carryforward and required documentation to the commission.

(b) An application for carryforward must:

- (1) state the amount of the carryforward sought;
- (2) describe the project; and
- (3) contain other information as requested on the form prescribed by the commission.

(c) An issuer may submit an application for carryforward at any time during the year up to the last working day in December. Requests for carryforward shall be approved by applicable priority classification, in the order of each request's receipt, to the extent that the state's limit for the given calendar year is not exceeded, provided that the following requirements are met with respect to any such request:

(1) the election to carryforward has been made by the appropriate governing body and assigned to the issuer for said project according to Internal Revenue Service (IRS) regulations, with the statement of carryforward election under the federal Tax Code, §103(n), containing such information as required by the IRS, including, where applicable under IRS regulations:

(A) a description of the project, including its address and the general type of facility;

(B) the name, address, and taxpayer identification number (TIN) of the initial owner, operator, or manager; and

(C) the amount to be carried forward for the project; or in the case of a carryforward election for the purpose of issuing student loan bonds, the amount to be carried forward for said purpose;

(2) the commission has been notified as to whether the said issue has received a reservation date from the commission; and

(3) the application for carryforward includes designation of the priority classifica-

tion in which the project is to be placed.

(c) Priority classifications for the carryforward are as follows.

(1) Priority classification 1. Projects which are:

- (A) student loan bonds; or
- (B) projects for which:

(i) there was an inducement resolution prior to December 31, and construction began prior to December 31, and the authorized representative of the issuer certifies that bonds for such project will be issued and delivered during the following calendar year; or

(ii) there was an inducement resolution prior to December 31 and the substantial user was under a binding contract by such time to incur significant expenditures with respect to such project, and the authorized representative of the issuer certifies that bonds for such project will be issued and delivered during the following calendar year.

(2) Priority classification 2. Projects for which:

(A) there was an inducement resolution prior to December 31 and construction began prior to December 31; or

(B) there was an inducement resolution prior to December 31 and the substantial user was under a binding contract by such time to incur significant expenditures with respect to such project.

(3) Priority classification 3. Projects for which:

(A) there was an inducement resolution prior to December 31 of the calendar year; and

(B) there is ownership by a governmental unit (per the federal Tax Code, §103(n), as amended by Public Law 98-369, §621).

(4) Priority classification 4. Projects for which there was an inducement resolution prior to December 31 of the calendar year.

(e) In the case of a project which has received a reservation date, an application for carryforward will be considered to have been filed with the commission on the date and at the time the commission receives written notification that the issuer will not issue the bonds for which the reservation date was received within that calendar year.

§102.5. Filings, Submissions.

(a) All letters, documents, or other papers relating to private activity bond reservations will be received only between the hours of 8 a.m.-5 p.m., and papers will not be received on Saturdays, Sundays, or holidays established by law for state employees.

(b) Duplicate originals of each document presented to the commission for filing shall be mailed to the following address: Texas Economic Development Commission, Finance Department, P.O. Box 12728, Austin, Texas 78711, or delivered by hand to the office of the Texas Economic Development Commission, Finance Department, Ancon

Jones Building, Third Floor, 410 East Fifth Street, Austin.

(c) When a document is received for filing, it will be dated and time stamped in the office of the Texas Economic Development Commission.

(d) Pursuant to the requirements contained in the Act and this chapter, the commission may refuse to accept for filing any document that does not conform to such requirements. Should any document not be accepted for filing, the commission shall issue and shall set forth the reason(s) why the document was not accepted for filing.

(e) Once the document is accepted for filing, the executive director of the commission or his designee shall certify the reservation date and shall certify under penalty of perjury that the allocation was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

§102.6. Withdrawals, Amendments, and Cancellations.

(a) An application for carryforward may be withdrawn or amended prior to the issuance of bonds by submitting to the commission a notice of the withdrawal or amendment. If an application for carryforward is amended, the application's place in the order of eligibility for a carryforward designation within a classification is determined by the date of amendment rather than the date that the application was originally submitted.

(b) The amount designated in the application for carryforward may not be amended and that amount designated shall be the amount which is issued or the carryforward will be cancelled.

(c) If an issuer does not submit documents in a timely manner as required by the sections and the Act, the issuer's request for reservation will be cancelled.

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 April 29, 1986.

TRD-8804016

David V. Brandon
Executive Director
Texas Economic
Development
Commission

Effective date: May 20, 1986
Proposal publication date: October 28, 1985
For further information, please call
(512) 472-8838.

★ ★ ★



TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 233. Education

The Board of Vocational Nurse Examiners adopts amendments to §233.11 and §233.43, without changes to the proposed text published in the March 28, 1986, issue of the *Texas Register* (11 TexReg 1554). The adoption provides for compliance with changes in laws affecting approval of educational programs. Furthermore, it clarifies and delineates the process whereby a program's approval status can be changed.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4529c, §5(a), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

Operation of a Vocational Nursing Program

★22 TAC §233.11

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 April 29, 1986.

TRD-8803989

Joyce A. Hammer
Executive Director
Board of Vocational
Nurse Examiners

Effective date: May 20, 1986
Proposal publication date: March 28, 1986
For further information, please call
(512) 835-2871.

★ ★ ★

Approval of Programs

★22 TAC §233.43

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 April 29, 1986.

TRD-8804055

Joyce A. Hammer
Executive Director
Board of Vocational
Nurse Examiners

Effective date: May 20, 1986
Proposal publication date: March 28, 1986
For further information, please call
(512) 835-2871.

★ ★ ★

**Part XXIII. Texas Real Estate Commission
Chapter 533. Practice and Procedure**

★ 22 TAC §533.18

The Texas Real Estate Commission adopts an amendment to §533.18, without changes to the proposed text published in the March 7, 1986, issue of the *Texas Register* (11 TexReg 1140).

The amendment clarifies the authority of the agency's chairman either to preside over contested cases or to designate another member of the commission to preside or to rule on the admissibility of evidence or upon amendment to pleadings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(e), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 April 25, 1986.

TRD-8803837 Mark A. Moseley
Legal Counsel
Texas Real Estate
Commission

Effective date: May 15, 1986
Proposal publication date: March 7, 1986
For further information, please call
(512) 465-3888.

★ ★ ★

**Chapter 535. Provisions of the
Real Estate License Act
Registration and Certification:
Fees**

★ 22 TAC §535.201

The Texas Real Estate Commission adopts the repeal of §535.201, without changes to the proposed text published in the March 7, 1986, issue of the *Texas Register* (11 TexReg 1140).

The repeal conforms the agency's sections with current law providing for licensing of real estate inspectors.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6573a, §5(e), which authorizes the Texas Real Estate Commission to make and enforce all rules and regula-

tions necessary for the performance of its duties.

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 April 25, 1986.

TRD-8803835 Mark A. Moseley
Legal Counsel
Texas Real Estate
Commission

Effective date: May 15, 1986
Proposal publication date: March 7, 1986
For further information, please call
(512) 465-3888.

★ ★ ★

**Chapter 537. Professional
Agreements and Standard
Contracts**

Standard Contract Forms

★ 22 TAC §537.11

The Texas Real Estate Commission adopts an amendment to §537.11, with changes in the proposed text published in the March 7, 1986, issue of the *Texas Register* (11 TexReg 1140).

The amendment clarifies the obligation of real estate licensees to use contract form addenda or other forms promulgated by the Texas Real Estate Commission and prohibits licensees from adding to standard contract forms business details which are the subject of other mandatory forms. As adopted, the section is amended to be applicable to any lease form promulgated by the agency for mandatory use, although the current mandatory lease forms are intended only for temporary leases.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules and regulations requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

§537.11. Use of Standard Contract Forms.

- (a) (No change.)
- (b) When negotiating contract binding the sale, exchange, lease, or rental of any interest in real property, a real estate licensee 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 trans-

action. In negotiating real estate transactions, the licensee may fill in forms for such transactions, using exclusively forms which have been approved and promulgated by the Texas Real Estate Commission 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, 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 the 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.

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

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

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

TRD-8803844 Mark A. Moseley
Legal Counsel
Texas Real Estate
Commission

Effective date: May 15, 1986
Proposal publication date: March 7, 1986
For further information, please call
(512) 465-3888.

★ ★ ★

**TITLE 25. HEALTH
SERVICES**

**Part I. Texas Department of
Health
Chapter 139. Abortion
Facilities**

The Texas Department of Health adopts the repeal of §139.1 and new §§139.1-139.12. New §§139.1, 139.2, and 139.4-139.12 are adopted with changes to the proposed text published in the November 28, 1985, issue of the *Texas Register* (10 TexReg 4803). New

§139.3 and the repeal of §139.1 are adopted without changes, and will not be republished.

The justification for the new sections and repeal is to establish minimum standards for the annual reporting and licensing of abortion facilities in the State of Texas as required by the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8.

The new sections and repeal cover purposes, definitions, fees, standards for operation of an abortion facility, unlicensed facilities, exemptions, initial applicants, inspections, renewal of annual licenses, annual reporting requirements, conditions of annual licenses, and license denial, suspension, and revocation.

Many comments were received with voluminous specific recommendations for changes to the new sections. The agency has not repeated verbatim each of the specific recommendations, but has summarized them as required by the Texas Register, 1 TAC §91.27. In addition, all references in this summary to the word "act" mean the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8. No comments were received concerning the repeal.

Concerning §139.1, a commenter said the section should emphasize the confidentiality of the abortion records maintained by the agency. The agency agrees and has appropriately changed the section.

The following comments pertain to §139.2. A commenter said that it is unnecessary to define "health assessment" because the term is not used in either the Act or the proposed section. The agency agrees and has deleted the term.

A commenter recommended that, in the definition of "administrator," the agency change "should" to "shall" and add "in a health care setting" after "one year of administrative experience." The agency disagrees because the language is appropriate and allows individuals with suitable experience to qualify as administrators.

Commenters said that the definition of "governing body," which is used in the text of §139.4(1), should include a physician in his/her practice. The agency disagrees because §139.4(1) clearly implies that "governing body" includes a physician in his/her practice.

A commenter recommended that the agency add the definition "immediately available" to clarify the term, since it is used in the sections. The agency agrees and defines the term in accordance with federal Medicare regulations.

A commenter recommended that the agency clarify the definition of "nonprofessional personnel" to show that professional persons include physicians or registered nurses. The agency agrees and has done so.

A commenter said that the definition of "primarily" is inconsistent with the criteria in §139.6(c) for meeting the definition. The agency agrees and has modified §139.6(c) to be consistent with the definition.

Commenters said that, in the definition of "primarily," the words "actually treated" should be replaced with the words "having surgery." The agency disagrees because the proposed language meets the intent of the Act and is relevant.

A commenter said that there is no need to define "primarily." The agency disagrees because the definition is necessary to determine exemption status under the Act and the sections.

A commenter said that the definition of "supervision" should be retitled "general supervision" because the latter title is more appropriate.

Another commenter recommended that the definition of "supervision" be retitled "direct medical supervision" to comport with the definition adopted by the Texas State Board of Medical Examiners. The agency disagrees with each recommendation because the title is appropriate for supervision in an abortion facility.

A commenter recommended that the agency clarify the definition of "technician" to show that a nurse is a registered nurse. The agency agrees and has done so.

Concerning §139.3, commenters said that the fee of \$1,000 is excessive and is subject to increases in future years. The advisory committee to the agency agrees but believes that the fee should remain unchanged at the present time. The agency disagrees that the fee is excessive because it is a reasonable amount to administer the program.

The following comments concern §139.4. A commenter said that the section title should be changed to "Standards for Licensing of an Abortion Facility" because only licensed facilities have to meet the standards. The agency agrees and has appropriately changed the title.

Commenters said that the section should contain minimum health and safety standards. The agency agrees but no change is required because the section as proposed contains such standards.

Commenters said that the section contains no minimum standards for clinic personnel. The agency disagrees because paragraphs (9) and (11) contain minimum standards covering qualifications of personnel working in abortion facilities.

A commenter said that the section should contain standards for care of infants who survive abortions. The agency disagrees because other state laws cover this subject.

A commenter said that the section should cover the method of providing abortion services. The agency disagrees because such a requirement would exceed statu-

tory intent and the Act does not authorize restrictions on the methods of performing abortions.

A commenter said that the section should require counseling by Christian or Jewish clergy. The agency disagrees because the Act does not require such a rule.

A commenter said that the section should require funerals for all unborn babies. The agency disagrees because the Act does not require such a rule.

A commenter said the section should require documentation regarding prescriptions. The agency disagrees because other state laws regulate medications.

Commenters stated that the section does not provide meaningful minimum standards for qualification and training of facility personnel other than physicians and nurses whose qualifications are already determined under other laws. The commenters say that the definitions in §139.2 define "technician," "administrator," "counselor," and "nonprofessional personnel," but the standards in §139.4 establish no independent training or educational criteria. The agency disagrees concerning "technician" because the Medicare regulations do not set standards for technician education or training and the language is consistent with terminology used for other health care practitioners. The agency agrees in part concerning "administrator" and has made changes concerning the administrator's role and qualifications. The agency disagrees concerning "counselor" because the definition and standard for counselor cover minimum subjects for training and topics to be discussed for each counseling session. The agency also disagrees concerning "nonprofessional personnel" because the language is consistent with the regulatory terminology of other health care facilities.

Commenters said that the section should prohibit the use of deceptive advertising and false and misleading statements and misrepresentations. The agency disagrees because the Act does not require standards in these areas and other laws address them.

Commenters said that the section should cover solicitations and kickbacks and/or referral fees. The agency disagrees because the Act does not require standards covering these subjects and other state laws cover them.

A commenter said that paragraph (2) should require the facility administrator to arrange for necessary training and education programs for professional and non-professional staff. The agency disagrees because paragraphs (9) and (11) cover this requirement.

A commenter said that paragraph (4) should specifically allow photocopies of current licenses for purposes of verification. The agency disagrees because state licensing board prohibit photocopies of individuals' professional licenses.

A commenter said that paragraph (7) should require the patient consent form to be signed and that post-discharge instructions be part of the clinical record. The agency agrees and has added the word "signed," and has modified the section to cover the requirements for post-discharged instructions, results of medical exams, or written referrals.

commenters said that paragraph (7) should include the following additional items on each patient's clinical record: signed patient-informed consent form; patient post-discharge instructions; and names of referral agencies and/or physicians. The agency has added the requirement for a signed patient consent form, language to include patient information for post-abortion care instructions, and information regarding possible complications and provisions for referral.

Commenters opposed the provision in paragraph (9)(A) allowing a licensed vocational nurse to be responsible for patient care services. The commenters recommended that only a registered nurse have this responsibility. The agency agrees and has made the appropriate wording change.

Commenters said that paragraph (9)(A) should require that all unlicensed persons in abortion clinics must function under the delegated authority of a physician or a registered nurse who assumes responsibility for the conduct of unlicensed persons. The agency agrees and has modified the subparagraph accordingly.

A commenter said that paragraph (9) should not require having a nurse present in the operating room. The recovery room, or providing patient services because these requirements are not in the Act. The agency disagrees because the Act requires standards for medical treatment and services and the supervision of professional and nonprofessional personnel.

A commenter said that paragraph (9) should require that patient care services be provided by or under the direct supervision of a physician. The agency agrees and has modified paragraph (9) to require that patient services are provided under the direction of a physician or registered nurse.

A commenter said that paragraphs (9) and (11) should not contain specific qualifications and requirements for facility personnel. The agency disagrees because the Act requires minimum standards for personnel.

A commenter said that the section should require documentation covering pregnancy testing. The agency's position is that this requirement is inherent in the Act, but the agency has added language in paragraph (10) requiring verification by the physician of pregnancy.

A commenter said that paragraph (10) should require the physician to conduct the patient examination in accordance with currently acceptable medical stan-

dards and that the section specify the exam procedure. The agency disagrees because the physician in his/her medical judgement determines the examination procedure.

Commenters said that paragraph (10) should contain standards for laboratory staff, preoperative procedures, surgical procedures including anesthesia, operative recovery, fetal tissue examinations, medical records, and physical facilities. The agency disagrees because the Act does not require laboratory services and there is no accepted standard of care for ordering specific preoperative tests. Also, the attending physician is the one to determine whether to order tests and to conduct appropriate procedures.

Commenters said that paragraph (10) should allow laboratory exams on the facility premises under the direction of a qualified laboratory supervisor who does not have to be a physician. The agency disagrees because the Act does not require a laboratory, and laboratory services in a facility are minimal.

Commenters said that paragraph (10) should list the specific standards or procedures covering adequate preoperative history, physical exam, and appropriate laboratory studies. The agency disagrees because the physician is responsible for making the medical judgement involved in these procedures. Any additional laboratory studies will be made based on the physician's medical judgement. However, the agency has added language to paragraph (7) covering results of prior medical examination and/or written referral in the clinical record. The agency also has added language on verification of pregnancy.

Commenters said that paragraphs (10) and (11) should require written informed consent and that the patient should be informed of the risks and hazards, and not merely the nature and consequences, of surgical and treatment procedures. The agency agrees in part by modifying the language of paragraph (11) to require written informed consent. However, the agency believes that it is unnecessary to include language on risks and hazards because they are included as one of the consequences to be discussed with the patient during counseling sessions for informed consent.

Commenters said that paragraph (11) should not contain requirements covering counseling sessions between clients and counselors. The agency disagrees because certain items should be addressed in every patient counseling session.

A commenter said that counseling under paragraph (11) for the types of birth control should not be limited to natural methods. The agency agrees, but the paragraph requires no change because it allows for a patient's choice of birth control and is not limited to natural methods.

A commenter said that counseling under

paragraph (11) should not include inappropriate visuals (photos) or inaccurate information. The agency agrees, but the paragraph only covers minimum counseling topics and it is unnecessary to explicitly prohibit the use of inappropriate visuals or the dissemination of inaccurate information.

Commenters said that paragraph (11) should include provisions covering the advising of clients of alternatives and risks of abortions and the providing of informed consent to avoid legal liability. The agency agrees and has appropriately changed paragraph (11).

A commenter said that paragraph (11) should specify the training criteria for counselors. The agency disagrees because the listing of specific criteria would unreasonably restrict counseling sessions and the language provides for appropriate latitude.

Commenters said that paragraph (12) should cover general anesthesia procedures. The agency agrees that the section should cover this subject, but since such procedures were not mentioned at all in the proposed section, any language added to the adopted section concerning anesthesia would be a substantive change. Therefore, the agency will propose for public comment a separate section on general anesthesia.

Commenters said that paragraph (13) should require that the recovery room be supervised by a physician or a registered nurse. A licensed vocational nurse should not be an authorized supervisor. The agency agrees and has modified paragraph (13) accordingly.

Commenters said that paragraph (14) should require that a physician be present at all times on the premises during the operative and postoperative period. The agency disagrees because the agency believes that it is sufficient if the physician is immediately available to the facility while the patient is in recovery.

Commenters said that paragraph (15) should require a written order from the attending physician to be discharged. The agency agrees and has changed paragraph (15) accordingly.

A commenter said that new paragraphs should be added after paragraph (15) to require that, prior to discharge, the patient receive adequate post-abortion care instructions, information about abnormal conditions, appropriate referrals, and post-operative examination times. The new paragraphs also should cover procedures for post-abortion care, postoperative examinations, and referrals. The agency agrees and has added appropriate language.

Commenters said that paragraphs (16)-(18) should provide that the fetal tissue be examined grossly at the time of the procedure only by the attending physician

and that this task not be delegated to an assistant.

In addition, in the absence of visible fetal parts or placenta, the tissue should be sent directly to a pathology laboratory for examination regardless of the results of a low power microscope examination, if any. The agency disagrees because the current language is within accepted medical practice.

Commenters said that paragraph (19) should contain provisions covering written protocols for medical emergencies, transfer of patients to hospitals, and admitting privileges to facility physicians to hospitals. The agency agrees and has added appropriate language to paragraph (21).

Commenters said that paragraphs (19) and (22) mention emergency equipment but contain no provisions on how emergency care will be implemented. The agency agrees and has included requirements in paragraph (21) that the facility have a readily accessible written protocol for managing medical emergencies and patient transfers to hospitals. The agency also has included language in paragraph (21) covering admitting privileges and working arrangements with doctors.

Commenters said that paragraph (22) should specifically list additional emergency equipment and not leave the selection to the physician's discretion. The agency disagrees because there is no standardized list for emergency equipment and the physician should be able to exercise his/her medical judgment in this area.

A commenter said that the section should require specific emergency equipment such as defibrillators. The agency's position is that a defibrillator is not necessary because the risk is minimal. However, the agency considers the emergency equipment and gases in paragraphs (23) and (24) to be necessary and appropriate for operative procedures in an abortion facility.

Commenters said that paragraph (23) should require that written procedures be maintained for processing, sterilizing, storing, and dispensing clean and sterile supplies and equipment. The agency agrees and has added appropriate language to paragraph (25).

Commenters said that paragraph (25) should specifically require that the physical plant be maintained according to the public health requirements of the city and/or county where the facility is located and/or state public health laws. The agency disagrees because the language is consistent with regulatory terminology used for other health care providers and already says that the facility must comply with all state and local laws.

Commenters said that paragraph (25) should require that the facility post the written protocol for emergency evacua-

tions and should contain a requirement that emergency exits be clearly marked. The agency has not added this language because the language in paragraph (27) adequately covers the recommendations.

Commenters said that paragraph (25) should require facilities to provide for scrub facilities. The agency disagrees because scrub facilities are not used in abortion facilities.

Commenters said that paragraph (25) should contain provisions covering a plan or protocol for emergencies, including identifying emergencies, handling emergencies, maintaining proper medical supplies, transportation to a hospital, adequate emergency staff and equipment in the receiving hospital, and admitting privileges for facility physicians in the receiving hospital. The agency agrees and has added appropriate language to paragraphs (21), (24), and (25).

Commenters said that paragraph (25) should be more specific concerning sanitary and hygienic requirements. The agency agrees that more specificity is required in some areas and has added language concerning sterile supplies, waste disposal, and the labelling and storage of hazardous cleaning solutions, compounds, and substances, including drugs and controlled substances.

Commenters said that paragraph (25) should contain more specific requirements concerning the design and equipment of treatment rooms, waiting rooms and recovery rooms. The agency disagrees because specific requirements would be more stringent than current terminology used for other health care providers. Also, the Act does not provide for this extent of specific requirements.

Concerning §139.5, commenters said that the section should not permit unlicensed facilities to continue operations for over three months after the department determines its need for licensing. During this period, serious injuries or even death of patients could occur. If the department suspects that an unlicensed facility is operating in Texas, the department should act immediately to close the facility until a license is obtained for exemption proven. The agency agrees that 90 or more days is excessive. However, the agency believes that the provisions for an unlicensed facility to become licensed are reasonable and the language has been changed in subsections (b)-(d) to specifically address the procedures and deadlines for a facility to obtain a license or claim exemption status. The addition to the language in subsection (a)(3) requires documentation to include a notarized statement attesting to the fact that abortion services are not provided.

Concerning §139.6, commenters said that it is an invasion of patient and physician privacy and confidentiality to show proof that a physician conducts less than 51%

of his practice as abortion service. The agency disagrees as the section requires a notarized statement from a physician attesting that the number of patients having abortions represents less than 51% of the patients actually treated within the previous calendar year.

A commenter suggested that the wording of §139.6(f) should be changed. When this section is read in conjunction with subsection (d), the proposed decision to deny a claim for exemption would have already been made by the director of the Health Facility Licensure and Certification Division. The commenter suggested that the right to appeal should be made to another decision maker i.e., the board of health. The agency disagrees because subsection (f) also allows one to submit additional reasons supporting the exemption. The fact that the same decision maker is involved should be irrelevant. The language adequately affords opportunities to prove exemption status including attesting to an exemption in an affidavit.

Concerning §139.7, commenters objected to the lack of requirements for the application and issuance of licenses for initial applicants. There should be requirements on eligibility of persons with criminal backgrounds for certain licenses, the applicant's financial ability, moral character, age, etc. The agency disagrees with adding more language because the current language in §139.12(f) references the Texas law on applicants with a criminal background. Licenses issued under the Act and these sections will be issued to a facility and not to an individual, and the agency has included provisions that allow the department to issue a temporary license to initial applicants. The temporary license is issued so a facility may provide abortion services in accordance with the standards. To adequately determine if a facility meets standards, the facility shall be in operation. The language requires all initial applicants including those which have undergone a change of ownership, to submit an application, attend a pre-survey conference, and comply with standards at the time of the initial or follow-up inspection. The issuance of the annual license occurs upon the facility's compliance at the time of the on-site inspection.

The following comments concern §139.8. Commenters said that the department should only accept complaints from consumers who are not anti-choice or from political groups. The agency disagrees because only those allegations determined to be relevant to the Act and the sections will be authorized for investigation and only written and signed complaints will be accepted.

A commenter questioned the provision in subsection (e)(3)(D) that allows the department to interview any recipient of abortion services, even in the recipient's home if written permission is given. The agen-

cy agrees that there does not appear to be such authority and this has been deleted from the section.

A commenter stated that the department should develop and implement a system by which complaints are verified prior to an investigation. The agency disagrees because verification cannot be substantiated until an investigation is done.

Commenters stated that the department should not investigate complaints that are anonymous or fictitious. The agency agrees that anonymous complaints will not be accepted and language has been included in the section to clarify this provision.

Commenters stated that there was no provision for complaints or reporting of incidents. The agency disagrees because provisions are in the section for registering and investigating complaints. Section 139.4 also requires facilities to report to the department patient complications that result in death.

A commenter stated that department personnel should not make on-site visits for the purpose of harassment. The agency agrees. The purpose of on-site visits is for compliance for licensure.

A commenter stated that the department should require department personnel to show identification when conducting inspections. The agency agrees; this procedure is a standard departmental policy.

Commenters recommended that all licensed abortion facilities be required to provide to the patient at the time of admission a written statement identifying the Texas Department of Health as being the state agency responsible for abortion facility investigation. The agency disagrees because this is not required in the Act.

Commenters stated that the section should require the facility to post this consumer information (and the facility license) in the area where patients are admitted. The consumer should be informed of her rights to file complaints with the Texas Department of Health and of the fact that copies of the Act and sections are available upon request. The agency disagrees because this is not required in the Act.

A commenter suggested that the wording of § 139.6(f) should be changed. When this section is read in conjunction with subsection (d), the proposed decision to deny a claim for exemption would have already been made by the director of the Health Facility Licensure and Certification Division and that the right to appeal should be made to another decision maker, i.e., the Board of Health. The agency disagrees because subsection (f) also allows one to submit additional reasons supporting the exemption. The fact that the same decision maker is involved should be irrelevant. The language ade-

quately affords opportunities to prove exemption status including attesting to an exemption in an affidavit.

Concerning § 139.7, commenters objected to the lack of requirements for the application and issuance of licenses for initial applicants. There should be requirements on eligibility of persons with criminal backgrounds for certain licenses, the applicant's financial ability, moral character, age, etc. The agency disagrees with adding more language because the current language in § 139.12(f) references the Texas law on applicants with a criminal background. Licenses issued under the Act and these rules will be issued to a facility and not to an individual, and the agency has included provisions that allow the department to issue a temporary license to initial applicants. The temporary license is issued so a facility may provide abortion services in accordance with the standards. To adequately determine if a facility meets standards, the facility shall be in operation. The language requires all initial applicants including those which have undergone a change of ownership to submit an application, attend a pre-survey conference and comply with standards at the time of the initial or follow-up inspection. The issuance of the annual license occurs upon the facility's compliance at the time of the on-site inspection.

The following comments concern § 139.8. Commenters said that the department should only accept complaints from consumers who are not anti-choice or from political groups. The agency disagrees because only those allegations determined to be relevant to the Act and the rules will be authorized for investigation and only written and signed complaints will be accepted.

A commenter questioned the provision in subsection (a)(3)(D) that allows the department to interview any recipient of abortion services, even in the recipient's home if written permission is given. The agency agrees that there does not appear to be such authority and this has been deleted from the section.

A commenter stated that the department should develop and implement a system by which complaints are verified prior to an investigation. The agency disagrees because verification cannot be substantiated until an investigation is done.

Commenters stated that the department should not investigate complaints that are anonymous or fictitious. The agency agrees that anonymous complaints will not be accepted and language has been included in the section to clarify this provision.

Commenters stated that there was no provision for complaints or reporting of incidents. The agency disagrees because provisions are in the section for registering and investigating complaints. Section

139.4 also requires facilities to report to the department patient complications that result in death.

A commenter stated that department personnel should not make on-site visits for the purpose of harassment. The agency agrees. The purpose of on-site visits is for compliance for licensure.

A commenter stated that the department should require department personnel to show identification when conducting inspections. The agency agrees; this procedure is a standard departmental policy.

Commenters recommended that all licensed abortion facilities be required to provide to the patient at the time of admission a written statement identifying the Department of Health as being the state agency responsible for abortion facility investigation. The agency disagrees because this is not required in the Act.

Commenters stated that the section should require the facility to post this consumer information (and the facility license) in the area where patients are admitted. The consumer should be informed of her rights to file complaints with the Texas Department of Health and the fact that copies of the Act and rules are available upon request. The agency disagrees because this is not required in the Act.

A commenter suggested that the section should require the reporting of certain incidents to the director by immediate phone contact, such as a patient's death, incidents that result in hospitalization, any attempted robbery, etc., and report of any fire or other damage. This immediate telephone reporting of significant incidents is essential to the department's enforcement ability. The agency disagrees because this is not required by the Act. The reporting of death is addressed in § 139.4.

A commenter said that § 139.4 requires only the reporting of deaths and the term "immediately" is not defined. The agency disagrees because these provisions are currently addressed in the section.

A commenter said that the section should allow an on-site inspection if a change of ownership of a licensed facility has occurred. The department agrees and has made the change.

Commenters objected to the provisions in the section that allow inspections of facilities (including private physicians' offices). One commenter suggested that more specific standards are needed pertaining to on-site inspections. The agency disagrees because the department is charged with the duty of ensuring compliance with the Act. To carry out this duty, the department is specifically given the authority to inspect facilities. The agency has included language to clarify that an on-site inspection will be conducted before the first annual license is issued

and may be conducted for license renewal, a change of ownership, complaints, or if the facility has not demonstrated compliance. The specific procedures and deadlines the department and facilities must follow to determine correction of deficiencies for compliance with minimum standards and licensure has been expanded.

Concerning §139.9, the deadlines for submitting annual license renewal documents and the annual report have been changed to allow the department time to review the material and respond accordingly. Due to the confidentiality of the renewal documents, the requirement to submit all renewal documents by certified mail and marked confidential has been added.

The following comments concern §139.10. A commenter wanted to eliminate any statistical reporting other than for medical complications. The agency disagrees because such reporting is required in the Act.

A commenter suggested that physician reporting be done through a physician-approved primary data collection entity and not through the agency. The entity should be bound to the state for compilation of all individual physician reports. The agency disagrees because the Texas Department of Health is the designated agency to collect data according to the Act.

A commenter said that specific state agencies to which information and records are released should be designated. The agency disagrees because the agency is unable at this time to determine what other state agencies may request information.

A commenter recommended that all abortion reports be verified. The commenter also recommended that the agency develop and implement a system to eliminate fictitious reporting. The agency agrees but the ability to verify reporting is limited, due to confidentiality.

Commenters opposed reporting by an unlicensed facility, i.e., by a physician's office for the following reasons: It would be a breach of confidentiality between patient and physician; reporting by physicians is arbitrary and has no value for quality assurance, health planning, or public health; it would allow invasion of physicians' privacy by inspecting their office practices; and the board of health does not have jurisdiction over physician's standards of practice in their own offices. The agency disagrees, as the intent of the Act requires reporting by licensed and nonlicensed facilities. Nonlicensed facilities include private physicians' offices.

A commenter recommended that the department should develop a system for data access control and include this in the section. They suggested that the sys-

tem should strictly limit the number of personnel having access to the data to limit potential abuse. The agency agrees with the commenter; however, this recommendation is more appropriate as an agency internal administrative policy.

A commenter protested the requirement that facilities report whether the patient survived the abortion. The agency disagrees because this is required in the Act. The agency has expanded the language to include the procedures and deadlines for submitting the annual report for licensed and unlicensed facilities. The licensed facilities' annual reports are submitted in conjunction with the facilities' license as required by the Act. This includes temporary licenses issued to new applicants, change of ownerships, and renewal licenses.

The agency has changed the reporting period for unlicensed facilities from the agency's fiscal year to the calendar year to accommodate the facilities that will be gathering the data. The agency also has added language to clarify that failure to submit the annual report is a Class A misdemeanor under the Act.

Concerning §139.11, the agency has changed some language to provide consistency with the definition of change of ownership as it relates to the annual license.

The following comments related to §139.12. A commenter stated that views of the inspector could jeopardize a facility's license. The agency disagrees because documentation of deficiencies would serve as a basis to determine if an objective review of the facility was conducted.

A commenter requested a requirement for a simple appeal process and process for a second opinion of an evaluation. The agency disagrees because the current appeal process is considered fair and appropriate.

The agency has included additional language regarding revocation of a facility's license based upon a facility's non-complaint status after the issuance of the first license or a renewal license. The agency has expanded the language in subsections (a)-(c) to be consistent with the provisions in the regulations regarding compliance with minimum standards for licensure.

Numerous commenters submitted general recommendations to the department with no specific comments that required no response by the agency. A number of other editorial changes have been made to assure consistent terminology to clarify the meaning without substantial change and to improve grammar and style.

Those commenters specifically in support of the regulations included: Texas National Organization for Women, Planned Parenthood of Houston and Southeast

Texas, Inc., League of Women Voters of Texas, Planned Parenthood of San Antonio, Planned Parenthood of El Paso, and Texas Women's Political Caucus.

Other commenters included: Representative Richard A. Smith, Representative Ben Campbell, Representative Gene Haney, Representative M. A. Taylor, Senator Ted Lyons, Representative John Smithee, Senator Gene Green, Texas Medical Association, Texas Nursing Association, South Street Women's Clinic, Nova Health Systems, Inc., Greater Dallas Right to Life Committee, Inc. None of the commenters in the second group were against the sections in their entirety. However, all the commenters raised questions, expressed concerns, and made recommendations concerning specific provisions in the sections.

Numerous individuals submitted written comments in support of the proposed sections. Numerous individuals submitted written comments in support of the questions, concerns and recommendations submitted by the Greater Dallas Right to Life Committee, Inc.

★25 TAC §139.1

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

This agency hereby certifies that the 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 April 24, 1986.

TRD-8603865

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

Effective date: May 15, 1986

Proposal publication date: November 29, 1985

For further information, please call.

(512) 458-7245.

Abortion Facility Reporting and Licensing

★25 TAC §§139.1-139.12

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

§139.1. Purpose and Scope.

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

(b) These sections provide minimum standards concerning abortion facility licenses; procedures for granting, denying,

suspending, and revoking a license; fees; requirements for reporting abortions performed; complaints; and reporting incidents.

(c) All information and records held by the department under the provisions of this article shall be strictly confidential and not considered open records for the purposes of the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a. Such information shall not be released or made public upon subpoena or otherwise, except the release may be made under the following circumstances.

(1) Release is made for statistical purposes only, so that no person, patient, or facility may be identified.

(2) Release is made with the consent of each person, patient, and facility identified in the information released.

(3) Release is made to medical personnel, appropriate state agencies, or county and district courts to enforce the provisions of this article.

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

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

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

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

Board—The Texas Board of Health.

Change of ownership—A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; or a corporation that transfers all or part of the corporate stock representing the facility's ownership to another person or persons.

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

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

Department—The Texas Department of Health.

Director—The director of the Health Facility Licensure and Certification Division

of the Texas Department of Health or his or her designee.

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

Facility—A place where abortions are performed.

Immediately available—Physician(s) on staff at the abortion facility are on duty or on call at all times and available within 15 or 20 minutes.

Licensed vocational nurse (LVN)—A person who is currently licensed under the laws of this State as a licensed vocational nurse.

Non-professional personnel—Personnel of the abortion facility who are not licensed or certified under the laws of this state to provide a service and must function under the delegated authority of a physician or registered nurse who assumes responsibility for their performance in the abortion facility.

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

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

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

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

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

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

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

Standards—Minimum requirements under the Act and these sections.

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

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

§139.4. Standards for Licensure of an Abortion Facility. In addition to complying with all applicable federal, state, and local laws and regulations, a licensed abor-

tion facility and its staff shall meet the following standards.

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

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

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

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

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

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

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

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

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

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

(7) The clinical record shall contain: patient identifying information; name of physician; diagnosis; history and physical; laboratory reports; tissue reports; allergies/drug reactions; physician's orders; clinical notes; counseling notes; signed patient consent form; medication administration records; and discharge summary. If the results of a medical examination and/or written referral is obtained, the document(s) will be incorporated in the clinical record. All pharmaceutical agents administered shall be timed, dated, and signed by the person making the entry.

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

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

(A) The patient care service of the abortion facility must be provided under the direction of a physician or registered nurse who assume responsibility for employees' performance in the abortion facility. A registered nurse or licensed vocational nurse must be in the abortion facility whenever there is a patient in the operating room or recovery room.

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

(10) The attending physician shall be responsible for obtaining and documenting an adequate preoperative history, physical exam, and appropriate laboratory studies, including verification of pregnancy.

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

(A) establish that the patient understands the nature and consequences of the procedure and recognizes alternatives to abortion. If the patient consents to the procedure, a consent form shall be signed by the patient;

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

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

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

(13) The recovery room(s) at the facility must be supervised by a physician or registered nurse.

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

(15) A patient must be fully reactive and her vital signs must be stable before she can be discharged from the facility by written order of the attending physician.

(16) Prior to discharge, a patient shall receive adequate post-abortion care instructions and information regarding possible complications.

(17) The facility shall make provision for a post-abortion examination or referral.

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

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

pathology lab.

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

(21) The facility must have a readily accessible written protocol for managing medical emergencies and/or the transfer of patients requiring further emergency care to a licensed hospital. The abortion facility shall ensure that the physicians who practice at the facility have admitting privileges or have a working arrangement with a physician(s) who has admitting privileges at a local hospital in order to ensure the necessary back-up for medical complications.

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

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

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

(A) oxygen;

(B) airways and manual breathing bag; and

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

(25) Surgical instruments must be sufficient in number to permit individual sterilization of the instruments used for each procedure and adequate to perform conventional cervical dilatation and curettage. Written procedures shall be maintained for current acceptable practices regarding processing, sterilizing, storing, and distribution of clean and sterile supplies and equipment.

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

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

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

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

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

(D) store hazardous cleaning solutions and compounds in a secure manner; substances shall be labeled.

(28) Complications that result in the death of a patient must be reported immediately by phone to the director, but not later than two business days after the incident.

§139.5. Unlicensed Facility.

(a) If the director has reason to believe that a person or facility may be providing abortion services without a license as required by the Act, the person or facility shall be so notified in writing by certified mail, return receipt requested, and shall submit to

the department the following information within 10 days of receipt of the notice:

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

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

(3) any and all documentation necessary to establish that abortion services are not being provided. Documentation shall include a notarized statement attesting to the fact that abortion services are not provided and a statement of the type(s) of service(s) that are provided.

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

(c) If the person or facility submits a claim for exemption, the exemption claim will be processed in accordance with §139.6 of this title (relating to Exemptions).

(d) If the person or facility submits sufficient documentation to establish that abortion services are not provided, the director shall so notify the person or facility in writing within 30 days that no license is required. If the documentation submitted is determined to be insufficient by the director, the person or facility shall be so notified in writing and shall have 10 days to respond. Following receipt of the response, the director shall then notify the person or facility in writing within 10 days of the determination.

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

§139.6. Exemptions.

(a) If a facility is licensed under the Texas Hospital Licensing Law, Texas Civil Statutes, Article 4437f, the facility shall be exempt from the licensing requirements of the Act, but not from the reporting requirements.

(b) If the office of a physician who is licensed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, is not utilized primarily for the purpose of performing abortions, the physician's office shall be exempt from the licensing requirements of the Act, but not from the reporting requirements.

(c) If a person or facility is uncertain about whether or not licensing under the Act is required, a written claim for exemption, including all documentation supporting the exemption claim, may be submitted to the department. This documentation shall be a notarized affidavit attesting to the fact that the number of patients having abortions represents less than 51% of the patients actually treated within the previous calendar year. The affidavit document will be provided by the department.

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

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

(f) If the claim for exemption is proposed to be denied, the person or facility so affected shall have the right to appeal the determination to the director by a written letter with the reasons for exemption within 10 days following receipt of the proposed denial.

(g) If the person or facility does not request an appeal as provided in subsection (f) of this section, the right to appeal is deemed to be waived and the denial of the exemption becomes final 30 days following the person or facility's receipt of the proposed denial.

(h) The person or facility must submit a completed application and licensing fee to the department within 10 days following the final denial of exemption.

(i) In the event that a person or facility does not comply as required by subsection (h) of this section, the provisions of §139.12 (e) and (g) of this title (relating to License Denial, Suspension, or Revocation) will govern.

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

(a) All first-time applications for licensing, including those from unlicensed operating facilities and licensed facilities for which a change of ownership is anticipated, are applications for a temporary license. The application for a temporary license is also an application for the first annual license.

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

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

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

(3) If the director determines that the application for an unlicensed facility is complete and correct, a representative of the department shall schedule a presurvey conference with the applicant in order to inform the applicant of the standards for the operation of the facility. A presurvey conference may at the department's discretion be waived for an applicant of a licensed facility for which a change of ownership is anticipated.

(4) After a presurvey conference has been held or waived, at the department's

discretion, the department may issue a temporary license to a facility to provide abortion services in accordance with these sections. The temporary license is valid for six months from the date of issuance unless revoked by the department and is not renewable. The director shall send the temporary license to the licensee with a cover letter which includes:

(A) a statement that compliance with minimum standards and these sections for the license applied for is required during the temporary licensing period in order for an annual license to be issued;

(B) a statement that a surveyor from the department will inspect the facility prior to the issuance of the first annual license.

(C) a statement that the facility shall comply with §139.11 of this title (relating to Conditions of Annual License).

(5) A department surveyor shall inspect the facility within 90 days after the issuance of the temporary license. An on-site inspection may, at the department's discretion be waived for previously licensed facilities for which a change of ownership has occurred.

(6) The first annual license shall be issued to a facility which meets the minimum standards for a license as determined after an inspection.

(7) If the department determines that an on-site inspection of a licensed facility which has undergone a change of ownership is not required, the first annual license shall be issued within 90 days after the issuance of the temporary license.

(8) The first annual license supersedes the temporary license and shall expire one year from the date of issuance of the temporary license.

(9) If a facility is determined not to be in compliance with minimum standards for a license after an inspection, the facility shall come into compliance no later than 30 days prior to the expiration of the temporary license. If the facility is determined not to be in compliance with minimum standards for licensure following a second on-site inspection or mail investigation, 30 days prior to the expiration date of the temporary license, the facility shall be notified of the proposed denial of the first annual license in accordance with §139.12 of this title (relating to License Denial, Suspension, or Revocation).

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

§139.8. Inspections.

(a) The department shall conduct on-site inspections to determine if standards for

licensing are being met. Prior to the inspection, the surveyor shall notify the applicant in writing of the date and time of the inspection. The department will evaluate the facility on a standard-by-standard basis before the first annual license is issued, unless waived in accordance with §139.7(b)(7) of this title (relating to Application and Issuance of License for Initial Applicants). An on-site inspection may be conducted for license renewal, if a change of ownership of a licensed facility has occurred, if the facility has not demonstrated compliance with standards, or if complaints have been received by the department.

(b) If an on-site inspection is conducted and there are deficiencies, the surveyor shall request the applicant or person in charge to sign the statement of deficiencies as an acknowledgement of receipt of a copy of the statement of deficiencies. Signing the statement of deficiencies does not indicate agreement with any deficiencies. If the applicant or person in charge declines to sign the form, the surveyor shall note the declination on the statement of deficiencies and the name of the person so declining. The surveyor shall leave a copy of the statement of deficiencies at the facility and, if the person in charge is not the applicant, mail a copy of the statement of deficiencies to the applicant.

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

(1) a completed survey report form;

(2) a statement of which standards were evaluated;

(3) a statement of deficiencies, if any, and the signature of the applicant or person in charge;

(4) a plan of correction which has been provided by the facility and the date(s) by which correction(s) will be made;

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

(d) The survey report form shall be submitted as follows.

(1) The surveyor shall submit the survey report to the director for evaluation and decision.

(2) A license shall be issued to a facility that is in compliance with minimum standards at the time of the on-site inspection.

(3) If deficiencies are cited and the plan of correction is acceptable, written notice will be sent to the applicant acknowledging same.

(4) If deficiencies are cited and the plan of correction is not acceptable, the director will notify the applicant in writing and request that the plan of correction be resubmitted. Upon resubmission of the acceptable plan of correction, written notice will be sent to the applicant acknowledging same.

(5) The facility shall come into compliance at least 30 days prior to the expiration date of the temporary or annual

license.

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

(7) If the facility does not timely come into compliance, the department may propose to deny, suspend, or revoke the existing license in accordance with §139.12 of this title (relating to License Denial, Suspension or Revocation).

(e) Complaints will be evaluated as follows.

(1) The department will evaluate all complaints against all licensed abortion facilities. All complaints submitted to the department must be in writing and signed by the complainant. Only those allegations determined to be relevant to the Act will be authorized for investigation. All information pertaining to a complaint is strictly confidential.

(2) The department or its authorized representative may enter the premises of an applicant's facility or a licensed facility during normal business hours as necessary to assure compliance with the statute and these sections. The investigation may be conducted on-site, unannounced or announced, or may be investigated by phone or mail.

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

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

(B) an inspection of the facility;

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

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

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

(F) identification by the department's representative of any facility documents that have been reproduced.

(4) Following the on-site inspection, the provisions of subsections (b), (c), (d)(1), (d)(3), (d)(4), (d)(6), and (d)(7) of this section will apply.

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

§139.9. *Renewal of Annual License.*

(a) The department will send written notice of expiration of an annual license to an applicant at least 90 days before the expiration date. If the applicant has not received notice, it is the duty of the applicant to notify the department and request a renewal application.

(b) The applicant shall submit to the department a renewal application form, self survey, and the nonrefundable license fee.

These documents shall be submitted by certified mail, marked confidential and postmarked no later than 60 days prior to the expiration date of the license.

(c) The applicant shall submit to the department an annual abortion report on a form provided by the department by certified mail marked confidential, which is due no later than 30 days prior to the expiration date of the license.

(d) The department shall issue a renewal license to a facility which meets the standards for a license. If an applicant fails to timely submit an application, fee, self survey, and annual abortion report in accordance with subsections (b) and (c) of this section, the department shall notify the applicant that the facility must cease providing abortion services on the expiration date of the license and immediately thereafter return the license, by certified or registered mail, to the department. If the applicant wishes the facility to provide abortion services after the expiration date of its license, the applicant must reapply for an annual license under §139.7 of this title (relating to Application and Issuance of License for Initial Applicants).

§139.10. *Annual Reporting Requirements.*

(a) The reporting period for the first annual report for a licensed facility commences on the day the temporary license is issued. The report must contain at least 10 full months of data, unless the first annual license is not issued, in which case the report must contain data from the date the temporary license was issued through the date the temporary license expired, was revoked, or was withdrawn. The annual report for each licensed facility is due 30 days prior to the expiration date of the annual license or 30 days following the expiration, revocation, or withdrawal of the temporary license. The annual reporting period for renewal licenses shall commence from the date of the previous annual report, and must contain at least 12 months of data and shall be submitted 30 days prior to the expiration date of the existing license.

(b) The annual abortion report must be submitted to the department by all facilities, including hospitals and physician offices whether they are licensed under this Act or not, on each abortion that is performed. The reporting period for each unlicensed facility will be January 1-December 31 of each year, commencing on January 1, 1986. Each unlicensed facility must submit the annual report to the department no later than January 31 of each year. The annual report shall be submitted by certified mail and marked confidential.

(c) If a change of ownership has occurred, the previous owner shall submit an annual report commencing from the date of the previous annual report and ending on the date the ownership of the facility changed. The annual report is due 30 days after the date of acquisition. The annual reporting

period for the newly acquired facility commences on the day the temporary license was issued and the report must contain at least 10 full months of data, unless the first annual license is not issued, in which case the report must contain data from the date the temporary license was issued through the date the temporary license expired, was revoked, or was withdrawn.

(d) The report shall not identify, by any means, the physician performing the abortion or the patient on whom the abortion was performed. The report must be submitted on a form provided by the department and shall include the following information:

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

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

(3) type of abortion procedure;

(4) the date the abortion was performed;

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

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

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

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

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

(e) All annual abortion reports are strictly confidential under the Act, §4, and may not be released except as authorized under §4.

(f) Failure to submit an annual report in accordance with this section is punishable as a Class A misdemeanor in accordance with the Act, §4.

§139.11. *Conditions of Annual License.*

(a) No license may be transferred or assigned from one person to another person. If a change of ownership of a licensed facility is anticipated, in order to ensure continuity of patient services, the department shall be informed in writing and the applicant shall submit a license application and nonrefundable fee at least 90 days prior to the change of ownership of each facility. The procedure shall be handled in accordance with §139.7 of this title (relating to Application and Issuance of License for Initial Applicants), with the exception of the presurvey conference and the on-site inspection, unless deemed necessary by the department. A temporary license will be issued for the newly acquired facility effective on the date the ownership changed. The previous license will be void on the date of acquisition.

(b) No license may be transferred from one facility location to another without prior written approval from the department. If a facility is relocating, the facility shall

complete and submit a form provided by the department at least 30 days prior to the intended relocation. The department will provide written notification to the facility amending the current facility license to reflect the new location.

(c) Written notice to the department of any change in telephone number must be received within 30 days after the number has changed.

(d) If the name of a facility is changed, the department must be notified in writing within 30 days after the effective date of the name change.

§139.12. License Denial, Suspension, or Revocation.

(a) The department may refuse to issue or renew a license for a facility if the facility:

(1) fails to comply with any provisions of the Act or these sections; or

(2) is not in compliance with minimum standards for licensure at least 30 days prior to the expiration date of the temporary or annual license.

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

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

(2) materially altering any license issued by the department;

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

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

(2) if a facility has been cited for deficiencies and fails to submit an acceptable plan of correction in accordance with the sections; or

(3) if a facility has been cited for deficiencies and fails to timely comply with minimum standards for licensure within the dates designated in the plan of correction.

(d) If the director proposes to deny, suspend, or revoke a license, the director shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 30 days after the date the applicant receives notice. The request must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.32 of this title (relating to Formal Hearing Procedures). If the applicant does not request a hearing in writing within 30 days after receiving notice of the proposed action, the applicant is deemed

to have waived the opportunity for a hearing and the proposed action shall be taken.

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

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

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

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 April 24, 1986.

TRD-8603888

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

Effective date: May 15, 1986

Proposed publication date: November 28, 1985

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

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

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

Newspaper, Magazines, Publishers, Sacred Writings and Broadcasters

★ 34 TAC §3.299

The Comptroller of Public Accounts adopts an amendment to §3.299, with changes to the proposed text published in the December 13, 1985, issue of the Texas Register (10 TexReg 4786).

The amendment states the comptroller's position, for sales tax purposes, on magazines which are given away to readers. It is the comptroller's position, based on a decision of the Court of Civil Appeals in *Bullock v. Cordovan Corporation* that these magazines are purchased by the persons who advertise therein. The sales tax should be due on the total charge by

the publisher for the advertising, unless the sales price of the publication is separately stated from the sales price of the advertising.

The changes were made in subsection (b)(3)(A), and were the result of industry comment. The changes require a reasonable sales price for the publication, but allows the sales price to be less than the publisher's cost.

No comments were received for the adoption of the amendments. Three comments were received against adoption. Comments against adoption came from the executive director of the Texas Magazines Publisher's Association, Inc., an attorney on behalf of the Texas Weekly Publishing Company, and a law firm representing the Texas Magazine Publishers Association.

The Texas Magazine Publisher's Association did not feel that such a transaction qualified as a sale or purchase, was not a personal service, or a taxable service. They felt that the transaction was a sale for resale and as such, no tax was due.

In addition to reiterating the position taken by the Texas Magazine Publisher's Association, the attorneys raised several additional points. The attorneys felt that the amendment discriminates against controlled circulation magazines by requiring them to collect sales tax from advertisers while other magazine publishers do not. The attorneys felt the amendment treated magazines distributed by airlines differently from other controlled circulation magazines. They felt the amendment created unlawful governmental price controls on these magazines and that the "or other consumption" language was ambiguous and overbroad.

The comptroller responded by referring to the court decision in *Bullock v. Cordovan Corporation*. In *Cordovan*, it was specifically held that the publisher transferred title or possession, and that there was consideration for this transfer, so that the definition of sale was met. The court pointed out that the advertisers pay an amount for the publishing of their advertisements, as well as an amount the court referred to as additional consideration to ensure that the magazine will be distributed to a certain group.

The publishers are entitled to make tax-free purchases of their printing and photography needs under a resale theory only if there exists a subsequent resale, and the court concluded that the transaction between the publisher and the advertisers was that resale transaction. No one else pays consideration for these magazines, so there is no further resale of them. Thus, the proper transaction on which to levy the sales tax is the one involving publishers and advertisers. This section does precisely that.

Neither did the comptroller agree that the amendment was arbitrary or discriminatory. The amendment merely implements

the Cordovan decision, and whatever discrimination there may be in comparison to airline magazines is required by the statute, the Texas Tax Code, §151.319(f).

The amendment does not constitute price control in any form. The comptroller makes no effort to regulate the amount charged by publishers. The comptroller is only trying to collect sales tax on the consideration paid for the sale of these magazines in conformity with the court decision.

It was further suggested that the exemption for newspapers given away be extended to magazines and that there was no statutory reason for not doing so. It was conceded that there was probably no basis for treating free newspapers differently from free magazines. The question is being discussed with the newspaper industry now and will be covered in an amendment at a later date.

As for the "or other consumption" language, the source of the problem is again the statute rather than the amendment. This language is used numerous times in the Sales Tax Act.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

§3.299. Newspapers, Magazines, Publishers, Secret Writings, Broadcasters.

(a) (No change.)

(b) Magazines.

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

(3) For the purposes of this section, controlled circulation magazines means magazines paid for by advertisers rather than by recipients of the magazines.

(A) The publishers of controlled circulation magazines must collect sales tax from persons who advertise in their magazines based upon the sales price of the magazines. The sales price of the magazine must be separately stated from the charge for advertising and must be a reasonable amount for such publication. The sales price will be considered reasonable if the publication meets the requirements for second class postal rates as set forth in the postal regulations.

(B) Controlled circulation magazines do not include those magazines provided to members of an organization as part of their membership if:

(i) either a part of their membership dues are identified as the sales price of the magazine plus tax; or

(ii) the membership dues do not identify the sales price of the magazine, but sales tax was paid by the organization on the cost of publication.

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

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

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

TRD-6804024

Bob Bullock
Comptroller of Public
Accounts

Effective date: May 21, 1985

Proposal publication date: December 12, 1985

For further information, please call
(512) 463-4888.

★ ★ ★

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 16. ICF/SNF

Medical Review and Re-Evaluation

★ 40 TAC §16.7183

The Texas Department of Human Services adopts an amendment to §16.7183, with changes to the proposed text published in the November 8, 1985, issue of the *Texas Register* (10 TexReg 4327).

The amendment ensures that Title XIX recipient-patients who leave a Medicaid nursing facility for more than 30 days have, upon readmission, legitimate medical/nursing needs and a physician's certification that their medical/nursing needs require nursing-facility services.

The amendment identifies conditions, in addition to conditions addressed in the current section, that require a new level-of-care (LOC) assessment, including a physician's certification, for admission to the Medicaid nursing-home program. The amendment also emphasizes that because a valid level of care is an eligibility requirement, the department does not make vendor payment after the level of care expires; and payment made during periods of expired level of care are subject to recoupment.

Section 16.7183(g)(10) is changed to clarify that the required LOC assessment for admission includes current certification by a physician.

The department received two written comments on the proposed amendment. The Texas Association of Private ICF-MR Providers opposed the inclusion of two new conditions relating to facility contract status. The association contends that conditions relating to contract status do not relate to recipient-patient status and are therefore insufficient grounds for new LOC assessments, and that initiating an LOC assessment for admission for a recipient-patient who remains more than 30 days in a noncontracted facility is a costly and time-consuming endeavor that could further delay the resumption of vendor payments. The association considers this requirement punitive, because it provides no added protection for recipient-patients.

The department disagrees with the premise that a facility's contract status bears no relation to a recipient-patient's needs. A recipient-patient's residence has direct bearing on his Medicaid eligibility and on his safety, health, security, and well being. To be eligible for Medicaid payment, a recipient-patient must live in a facility that is contracted with the department to provide Medicaid services. If a recipient lives more than 30 days in any residence other than a contracted, certified Medicaid facility, his level of care automatically expires.

Also, the requirement to initiate readmission LOC assessments is necessary to comply with federal regulations that require admission (or readmission) applications to include signed and dated physicians' certifications of medical need. These certifications must be dated no more than 30 days before the date of admission or payment authorization.

To save time and expense, facility staff may use the LOC assessment turnaround form for readmission of a recipient-patient who remains more than 30 days in a facility with a cancelled contract. The form must include updated information, an admission purpose code, and the physician's signature as previously described.

The association also recommended that the effective date of the level of care be the date entered by the person completing the form, and that procedures for LOC-form submittals (including time frames) be made clearer and more uniform. Both these issues are addressed in a policy clarification, Clarification of TDH/LTCU Procedures to Reduce Gaps in Levels of Care.

The Texas Association of Homes for the Aging requested clarification of subsection (g)(E), which assumes that the admitting facility is aware of the discharging facility's contract status.

This concern is addressed in the Medicaid Provider Manual, Items 3122, Admission, and 3440, Monitoring Discharges and Therapeutic Home Visits. These items state that the admitting facility must communicate with the recipient-patient's discharging facility or with the local Texas Department of Health Long-Term Care Unit to determine the status of an admitting recipient-patient's level of care. The admitting facility's administrator is responsible for ensuring that the Medicaid recipient has a valid level of care. If a recipient-patient has been out of a Medicaid-contracted facility for more than 30 days, the level of care automatically expires. Whenever a facility administrator is in doubt about the status of a recipient-patient's LOC, the administrator may submit a new LOC assessment for admission to ensure that the recipient-patient has a current level-of-care determination. The association also questioned: the language in the ICF/SNF Standards for Participation, relating to the frequency of continued-stay

reviews for skilled levels of care; the time frame required for an admission LOC assessment to generate a turnaround (continued-stay review) form; and the mechanism used to inform providers when recipient-patients are discharged from facilities because of expired levels of care. These issues are addressed in the policy clarification previously specified.

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.

§16.7103. Utilization Review Plan.

(a)-(f) (No change.)

(g) Requirements of the review process. A continued-stay review is the determination of the need for continuing nursing facility care and a re-evaluation of the established level of care.

(1)-(9) (No change.)

(10) If the recipient-patient is discharged or transferred to another section of the facility, the administrator of the facility must submit, within 72 hours, a patient transaction notice showing the change to the long-term care unit. The administrator must include the recipient-patient's post-discharge address, if known, on the patient transaction notice. If the recipient-patient moves to another Title XIX facility or is readmitted to the same Title XIX facility (ICF II, ICF, SNF, or ICF-MR), the administrator of the admitting facility must initiate a level-of-care assessment for admission (which includes current certification by a physician) when:

(A) more than 30 days have elapsed between discharge from one facility and admission to the new facility;

(B) more than 30 days have elapsed between discharge and readmission to the same facility because of hospital stays, extended therapeutic home visits, or stays in the Medicare reimbursement section;

(C) the recipient-patient's current level of care has expired;

(D) the admitting facility is contracted to provide a lower level of care than the recipient-patient's current level of care; or

(E) the recipient-patient has remained for more than 30 days in another facility that has had its contract cancelled and no new contract issued within that time period.

(11) The Texas Department of Human Services (DHS) does not make vendor payment when a level of care expires. A provider is not entitled to payment for services rendered from the expiration date to the new effective date of a recipient-patient's level of care. Vendor payment made by DHS for that period is subject to recoupment.

(12) If more than 30 days elapse between the effective dates of a facility's contract cancellation and new contract, the facility must initiate a level-of-care assessment for admission for recipient-patients who have remained in the facility during the non-contracted period.

(h)-(i) (No change.)

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8804023

Martin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: June 13, 1986

Proposal publication date: November 8, 1985

For further information, please call

(512) 450-3788.

★ ★ ★

**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 ac-

tion taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

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

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

The State Board of Insurance has approved amendments to the Texas Property Statistical Plan for Residential and Commercial Risks. Major areas of this revision include: coding to facilitate collection of data on General Liability Premiums and Losses.

The Insurance Code, Article 5.05(a), authorizes the State Board of Insurance to collect data with the respect to the recording of its loss experience and such other data as may be required. The Insurance Code, Article 5.96, authorizes the State Board of Insurance to adopt amendments to the statistical plan under the procedure specified in that article.

This amended Texas Property Statistical Plan for Residential and Commercial Risks will be effective at 12:01 a.m., July 1, 1986, and is applicable to all property insurance companies reporting data under this plan.

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

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

TRD-8803884

Nicholas Murphy
Chief Clerk
State Board of
Insurance

Effective date: July 1, 1986

For further information, please call

(512) 483-6327.

★ ★ ★

Open Meetings

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

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

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

Texas Department of Agriculture

The Texas Department of Agriculture will meet in the District Office, 4302 Englewood Avenue, Lubbock. Days, times, and agendas follow.

Tuesday, May 13, 1986, 1 p.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Calvin Barrett.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:54 a.m.
TRD-8604045

Tuesday, May 13, 1986, 2 p.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Connie R. Bowman.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:55 a.m.
TRD-8604044

Tuesday, May 13, 1986, 4 p.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Clifford Hamilton.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:55 a.m.
TRD-8604043

Wednesday, May 14, 1986, 9 a.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Jimmy Kelly, Jr.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:56 a.m.
TRD-8604042

Wednesday, May 14, 1986, 11 a.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Jimmy Kelly, Sr.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:56 a.m.
TRD-8604041

Wednesday, May 14, 1986, 2 p.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Keith Jones.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:56 a.m.
TRD-8604040

Wednesday, May 14, 1986, 4 p.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Roger Mahagan.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:57 a.m.
TRD-8604039

Thursday, May 15, 1986, 9 a.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by Stanley Horsford.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:57 a.m.
TRD-8604038

Thursday, May 15, 1986, 11 a.m. The department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §101.013, by Richard Ruiz, doing business as Ruiz Produce as petitioned by W. H. Simpson, Jr.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 30, 1986, 8:58 a.m.
TRD-8604037

Friday, May 23, 1986, 11:30 a.m. The Texas Department of Agriculture will meet in Suite C, Texas Department of Agriculture district office, 5501 West I 40, Amarillo. According to the agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, §103.001, by New Airline Produce Company, Inc., as petitioned by Griffin & Brand Sales Agency, Inc.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas, 78711 (512) 463-7583.

Filed: April 28, 1986, 8:56 a.m.
TRD-8603941

Friday, May 23, 1986, noon. The Texas Department of Agriculture will meet in Suite C, Texas Department of Agriculture district office, 5501 West I 40, Amarillo. According to the agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code §103.001, by Chino's Produce Company, Inc., as petitioned by Griffin & Brand Sales Agency, Inc.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas, 78711 (512) 463-7583.

Filed: April 28, 1986, 8:56 a.m.
TRD-8603942

Friday, May 23, 1986, 1:30 p.m. The Texas Department of Agriculture will meet in Suite C, Texas Department of Agriculture district office, 5501 West I 40, Amarillo. According to the agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code,

§103.001, by Triple S Distributing Company, as petitioned by R. D. Angeley.

Contact: Margo P. Wilson, P.O. Box 12847, Austin, Texas, 78711 (512) 463-7583.

Filed: April 28, 1986, 8:56 a.m.
TRD-8603943

★ ★ ★

Texas Air Control Board

Friday, May 9, 1986, 10 a.m. The Clean Air Study Committee of the Texas Air Control Board will meet in the Lieutenant Governor's Committee Room, State Capitol, Austin. Items on the agenda include opening remarks; establishment of subcommittee; the presentation of background information regarding grandfathered facility permitting; presentation of testimony; question and discussion, the establishment of future meeting dates; and new business.

Contact: Paul M. Shinkawa, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: April 30, 1986, 8:54 a.m.
TRD-8604046

★ ★ ★

Texas Animal Health Commission

Friday, May 2, 1986, 9 a.m. The Texas Animal Health Commission (TAHC) made an addition to the agenda for a meeting held in the TAHC Conference Room, 210 Barton Springs Road, Austin. The addition concerned a report on fever ticks.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78704, (512) 479-6697.

Filed: April 24, 1986, 1:01 p.m.
TRD-8603853

Friday, May 2, 1986, 9 a.m. The Texas Animal Health Commission made an emergency revision to the agenda for a meeting held in the TAHC Conference Room, 210 Barton Springs Road, Austin. The revision concerned consideration in proposing amendments to Chapter 35, Texas Bovine Brucellosis Regulations for identifying heifers over 12 months of age. The emergency status was necessary because at a recent meeting with representatives of the livestock marketing industry and staff of the commission, problems associated with "S" branding nonvaccinated heifers over 12 months of age prior to sale in the Class "C" markets was discussed. There is an immediate need to have these problems heard by the commissioners at the meeting set for May 2, 1986.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78704, (512) 479-6697.

Filed: April 24, 1986, 1:01 p.m.
TRD-8603853

Texas Commission for the Blind

Friday, May 9, 1986, 10 a.m. The Board of the Texas Commission for the Blind will meet in the Criss Cole Rehabilitation Center, 4000 North Lamar Boulevard, Austin. Items on the agenda include approval of January 10, 1986, minutes and correction of minutes of the October 17, 1985 meeting; communications and discussion of the letter from Olivia Bhandell and Executive Order MW-36; committee reports of the Access Committee and the Council on Disabilities; discussion and action on committee recommendations; discussion and approval of board travel; discussion of the mid-year report; approval of capital purchases; adoption of rules governing requests to appear before the board as published in the *Texas Register* on January 24, 1986; adoption of rules governing the Consumer Advisory Committee as published in the *Texas Register* on January 24, 1986; and action on resolution to authorize cash advances to members of the Consumer Advisory Committee members for the purpose of attending advisory meetings. The board also will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g) and §2(e) to discuss personnel and pending legal matters.

Contact: Pat D. Westbrook, P.O. Box 12866, Austin, Texas 78711, (512) 475-6810.

Filed: April 30, 1986, 3:30 p.m.
TRD-8604060

★ ★ ★

Texas Department of Community Affairs

Friday, May 16, 1986, 10 a.m. The Advisory Council of the Texas Department of Community Affairs (TDCA) will meet at 8317 Cross Park Drive, Austin. According to the agenda, the council will adopt minutes; consider the state budget reduction plan; discuss the anticipated reduction in federal funds; hear the personnel report; the report on major TDCA programs; consider prospective legislative issues; and other business.

Contact: Michael Allen, P.O. Box 13166, Austin, Texas 78711, (512) 834-6010.

Filed: April 25, 1986, 10:49 a.m.
TRD-8603892

★ ★ ★

Texas Department of Corrections

Monday, April 28, 1986, 10 a.m. The Board of Corrections of the Texas Department of Corrections (TDC) met in emergency session in the TDC Administration Building Conference Room, Huntsville. According to the agenda, the board discussed the award of a construction contract for the new unit construction; and the naming of the new unit. The board also met in executive session to discuss bids submitted for the new unit con-

struction. The emergency status was necessary because the agenda items required resolution developed within the seven day posting period.

Contact: O. L. McCotter, P.O. Box 99, Huntsville, Texas 77340, (409) 295-6371, ext. 161.

Filed: April 25, 1986, 4:11 p.m.
TRD-8603935

Monday, May 12, 1986, 10 a.m. The Board of the Texas Department of Corrections will meet in the Hazel D. Kerper Courtroom, Criminal Justice Center, 815 16th Street at Avenue I, Huntsville. According to the agenda summary, the board will discuss operations; inmate affairs; medical matters; finance; agriculture; business; construction; industries; the director's items; and the Windham School System. The board also will meet in executive session.

Contact: O. L. McCotter, P.O. Box 99, Huntsville, Texas 77340, (409) 295-6371, ext. 1160.

Filed: April 29, 1986, 3:04 p.m.
TRD-8604002

★ ★ ★

Texas Commission for the Deaf

Wednesday, April 30, 1986, 10 a.m. The Texas Commission for the Deaf met in emergency session via conference call from 510 South Congress Avenue, Austin. According to the agenda, the commission reconsidered a decision made at the April 19, 1986, meeting regarding the budget. The emergency status was necessary due to board members conflicting schedules.

Contact: Larry D. Evans, Suite 300, 510 South Congress Avenue, Austin, Texas 78704, (512) 469-9891.

Filed: April 29, 1986, 2:51 p.m.
TRD-8603999

Saturday, May 10, 1986, 10 a.m. The Deaf Advisory Board and Technical Advisory Board of the Texas School for the Deaf will meet jointly in the South Campus Board Room, Texas School for the Deaf, 1102 South Congress Avenue, Austin. According to the agenda, the board will introduce members; consider status reports; the final program report; the master plan schemes; the schedule review; and comments by members.

Contact: Susan R. Nixon, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: April 29, 1986, 12:46 p.m.
TRD-8603995

★ ★ ★

Council on Disabilities

Friday, May 16, 1986, 10 a.m. The Council on Disabilities will meet in the auditorium, Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. Items on the agenda include the chairman's report; report of the executive director of Texas Human Rights Commission; report of the executive director of the Texas Cancer Council; report of the executive director of Texas Planning Council on Developmental Disabilities; report on the demographic survey; task force meetings; task force reports; and a discussion of the Council on Disabilities procedures in cooperation with the Health and Human Service Coordinating Council.

Contact: Terry Reed Goodman, Room 207C, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701.

Filed: May 1, 1986, 9:17 a.m.
TRD-8604076

★ ★ ★

Texas Commission on Economy and Efficiency in State Government

Monday, May 5, 1986, 3 p.m. The Budget and Finance Task Force to Implement HJR 72 of the Texas Commission on Economy and Efficiency in State Government, met in Room 102, John H. Reagan Building, Austin. According to the agenda, the task force heard from the legislative sponsors of HJR 72; and from the commission of the Department of Human Services.

Contact: Jess Irwin, P.O. Box 12128, Austin, Texas 78711-2128, (512) 463-1159.

Filed: April 24, 1986, 3:37 p.m.
TRD-8603969

★ ★ ★

Texas Education Agency

Committees of the State Board of Education of the Texas Education Agency will meet in the William B. Travis Building, 1701 North Congress Avenue, Austin. Days, times, rooms, committees, and agendas follow.

Thursday, May 8, 1986, 9 a.m. In Room 1-109, the Committee for Finance and Programs and the Investment Advisory Committee for the State Permanent School Fund will consider the investment of the permanent school fund; and the presentation of the Public Education Information Management System Preliminary Report.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4:08 p.m.
TRD-8604066

Thursday, May 8, 1986, 2 p.m. In Room 1-104, the Committee of the Whole will con-

sider the preliminary report on the Texas Educational Assessment of Minimum Skills results for Grades 3, 5, 7, and 9; review the Texas Examination of Current Administrators and Teachers (TECAT) on March 10, 1986; set the standards for the examination for the certification of educators in Texas (ExCET); approve the draft long-range plan for distribution and response; and discuss the use of a consent calendar for certain state board of education items. The committee also will meet in executive session to discuss pending litigation concerning the Pre-Professional Skills Test, the Texas Examination of Current Administrators and Teachers, and review the grievance appeal from a decision of the commissioner of education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4:07 p.m.
TRD-8604065

Friday, May 9, 1986, 8 a.m. In Room 1-104, the Committee for Finance and Programs will consider the permanent school fund; conduct a public hearing; consider the Governor's Chapter 2 Advisory Committee recommendations on the Education Consolidation and Improvement Act (ECIA) of 1981 funds; textbooks; school bonds; the Texas Future Problem Solving Program; proprietary schools and veterans education; the secondary school vocational education; budgeting, accounting, and auditing; the trustees for Lackland Independent School District; school transportation; the community education; program budgets for federal funds for 1987; Chapter 2 ECIA funds; the Transition Program for Refugee Children; mathematics and science teacher excellence; adult education projects; the computer services to schools; the school district performance report; technical-vocational education; the telecommunications network; fiscal year 1987 and fiscal biennium 1988-1989 budgets; the public education information management system; and Chapter 2 Discretionary Programs.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4:06 p.m.
TRD-8604072

Friday, May 9, 1986, 8:30 a.m. In Room 1-111, the Committee for Students will consider assessment; the promotion and alternatives to social promotion; the driver education; suspension of incorrigible pupils; advanced placement examinations; the individual intelligence tests approved by the State Board of Education; the 1987 state plan for Part B, Education of the Handicapped Act; curriculum; the Texas Educational Assessment of Minimum Skills; gifted/talented education; extracurricular activities; and the student course selection for alternative transcript programs.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4 p.m.
TRD-8604069

Friday, May 9, 1986, 8:30 a.m. In Room 1-109, the Committee for Personnel will consider the testing program; public school finance-personnel; the Texas certificate based on certificates and college credentials from other states; the alternative teacher certification; the classes of certificates; general requirements for inservice education; the commission on standards for the teaching profession; advanced academic training; the appraisal of certified personnel; the Texas teacher appraisal system scoring standards; the standards for counselor preparation; the training of administrators in general management skills; the implementation of Houston Independent School District alternative teacher certification plan; and preparation and planning time.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4:01 p.m.
TRD-8604070

Friday, May 9, 1986, 4 p.m. In Room 1-110, the Committee for Long-Range Planning will consider the state plan for regional education service centers; the analysis of the waiver request for pre-kindergarten and maximum class size of 22; the status report on the accreditation of school districts; and accreditation monitoring and reporting procedures.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4:01 p.m.
TRD-8604071

Friday, May 9, 1986, 6:30 p.m. The State Board of Education of the Texas Education Agency will meet in the Palmwood Room, Embassy Suites, 300 South Congress Avenue, Austin. According to the agenda, the board will have a dinner meeting to receive reports from the chairmen of the State Board of Education committees including the Committee for Finance and Programs, the Committee for Students, the Committee for Personnel, the Committee for Long-Range Planning, and the Committee of the Whole, concerning items discussed in the committee meetings on Thursday, May 8, 1986, and Friday, May 9, 1986.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 3:59 p.m.
TRD-8604068

Saturday, May 10, 1986, 8:30 a.m. The State Board of Education of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will consider the Texas teacher of the year; the academic decathlon; the National History Fair; the examination for certification of educators in Texas; the

permanent school fund; textbooks; the school district bonds; the Texas Future Problem Solving Program; proprietary schools and veterans education; the vocational education; budgeting, accounting, and auditing; the trustees for Lackland Independent School District; school transportation; community education; program budgets for federal funds for 1987; the Education Consolidation and Improvement Act, Chapter 2 funds; the Transition Program for refugee children; math and science teacher excellence; adult education; computer services to schools; school district performance; technical-vocational education; the telecommunications network; assessment; promotion and alternatives to social promotion; driver education; advanced placement examinations; education for the handicapped; teacher testing; teacher certification; alternative teacher certification; and standards for the teaching profession.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-8985.

Filed: April 30, 1986, 4:07 p.m.
TRD-8604073

★ ★ ★

Texas Employment Commission

Thursday, May 1, 1986, 10 a.m. The Texas Employment Commission (TEC) met in emergency session in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission met in executive session to discuss Fidel B. Ibarra, Jr., *et al. v. TEC, et al.*; Jose Huerta v. TEC, *et al.*; Francisco Donacia, *et al. v. TEC, et al.*; Martha Dominguez, *et al. v. Nolan Ward, et al.*; and Francisco Martinez, *et al. v. TEC, et al.*; and actions, if any, resulting from the executive session. The emergency status was necessary to discuss recent developments in these lawsuits which require immediate response.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: April 30, 1986, 1:04 p.m.
TRD-8604056

Tuesday, May 6, 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; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 18; and set the date of the next meeting.

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

Filed: April 28, 1986, 1:16 p.m.
TRD-8603959

★ ★ ★

Finance Commission of Texas

Wednesday, May 8, 1986, 10 a.m. The Banking Section of the Finance Commission of Texas will meet in emergency session at the State Banking Department, Austin. According to the agenda, the commission will review and approve minutes; discuss proposed rules relating to LPO's and remote facilities; the Capital Forbearance Program and FASB 15; statutory provisions relating to financial institutions; departmental operations including budget and personnel; and the legislative update. The emergency status is necessary to discuss the recent Capital Forbearance Program being implemented by Federal Banking Regulators. The meeting was rescheduled from April 29, 1986, (11 TexReg 1991).

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Filed: April 30, 1986, 9:15 a.m.
TRD-8604017

★ ★ ★

Texas Department of Health

Friday, May 2, 1986, 10 a.m. The Lay Midwifery Board of the Texas Department of Health met in Room T-709, 1100 West 49th Street, Austin. According to the agenda summary, the board read minutes of the last board meeting; reviewed the Spanish manual; the instructors manual; identification; the sale of lay midwifery manuals; requests for examinations and courses; the follow-up letter; the plan for courses and examinations; and legal issues.

Contact: Dr. Walter Peter, Jr., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: April 24, 1986, 4:01 p.m.
TRD-8603868

Tuesday, May 13, 1986, 9:30 a.m. The Maternal and Infant Health Improvement Act Advisory Committee of the Texas Department of Health will meet in Room G-107, Commissioner's Conference Room, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda, the committee will review proposals submitted for services under the Maternal and Infant Health Improvement Act.

Contact: Walter P. Peter, Jr., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: April 30, 1986, 9:01 a.m.
TRD-8604035

Thursday, May 22, 1986, 10 a.m. The Tuberculosis Advisory Committee of the Texas Department of Health will meet in Room T-803, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda, the committee will consider policy decisions regarding treatment and preven-

tive therapy regimens used for tuberculosis with special reference to drug resistance and quarantine.

Contact: John Bybee, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7447.

Filed: April 30, 1986, 9:01 a.m.
TRD-8604036

★ ★ ★

Texas Health and Human Services Coordinating Council

Friday, May 2, 1986, 10 a.m. The Texas Health and Human Services Coordinating Council met in Room 106, 105 West 15th Street, Austin. According to the agenda, the council reviewed agency budget plans including possible impact on services; presentations by the Council on Disabilities and the Long-term Care Coordinating Council for the Elderly; discussed committee membership; development of recommendations for the Governor; new business; and the next meeting date.

Contact: Beck Runte, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 24, 1986, 4:17 p.m.
TRD-8603867

★ ★ ★

State Department of Highways and Public Transportation

Tuesday, April 29, 1986, 4 p.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation met in emergency session in Room 101-A, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. According to the agenda, the commission discussed authorization of MoPac South Transportation Corporation to develop project(s) through advance planning and right of way acquisition and to establish construction assurances on certain usable segments of SH 45 and the extension of Loop 1 in Travis County. The emergency status was necessary in order to provide for timely development of the project(s).

Contact: Lois Jean Turner, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: April 29, 1986, 11:36 a.m.
TRD-8603994

Tuesday and Wednesday, April 29 and 30, 1986, 10 a.m. daily. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation made an emergency revision to the agenda for a meeting held in Room 101-A, 11th and Brazos Streets, Austin. The revision concerned discussion of transportation corporations including the appointment of directors of transportation corporations

(MOs); including the Grand Parkway Association and the Mogan Corridor Association, Inc.; withdrawing the appointment of the initial board of directors of Plateau Region Outer Parkway Corporation; and a discussion to rescind previous Minute Order 84307—creation of MoPac South Transportation Corporation and appointment of directors. The emergency status was necessary because commission action is necessary this month.

Contact: Lois Jean Turner, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: April 28, 1986, 10:13 a.m.
TRD-8603956

★ ★ ★

Texas Department of Human Services

Monday, May 5, 1986, 9:30 a.m. The Program Design and Implementation Subcommittee of the Council on Child Abuse and Neglect Prevention of the Texas Department of Human Services met in Room 4E, 701 West 51st Street, Austin. According to the agenda summary, the subcommittee discussed in-kind match requirements; ways to disseminate program information throughout the state; and initial development of evaluation criteria and documents.

Contact: Susan Watkins, P.O. Box 2960, Austin, Texas 78769, (512) 450-3306.

Filed: April 25, 1986, 1:46 p.m.
TRD-8603913

Tuesday, May 6, 1986, 9 a.m. The Advisory Committee on Child Care Facilities of the Texas Department of Human Services (DHS) will meet in the DHS Public Hearing Room, 701 West 51st Street, Austin. According to the agenda summary, the committee jointly with the Advisory Council on Child Care Administration, will consider the assistant commissioner's report; subcommittee meetings; approval of the minutes of the March 4-5 meeting; subcommittee reports; rules, education and training, day care, residential child care, registered family homes; and the proposed new day care licensing handbook of rules and procedures.

Contact: Doug Sanders, P.O. Box 2960, Austin, Texas 78769, (512) 450-3253.

Filed: April 25, 1986, 1:46 p.m.
TRD-8603912

★ ★ ★

State Board of Insurance

Wednesday, April 30, 1986, 2 p.m. The State Board of Insurance made an emergency addition to the agenda for the meeting held in Room 414, 1110 San Jacinto Street, Austin. The addition concerned consideration of the BSPX project to identify and more efficient-

ly manage all data collected by the State Board of Insurance. The emergency status was necessary because of the need for a decision as soon as possible.

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

Filed: April 28, 1986, 10:27 a.m.
TRD-8603957

Wednesday, April 30, 1986, 2 p.m. The State Board of Insurance made an emergency revision to the agenda for a meeting to be held in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will discuss and determine 1987 appropriations for State Board of Insurance activities and programs pursuant to MW 36. The emergency status was necessary so that work can begin on 1988-1989 appropriations requests to meet Legislative Budget Board deadlines.

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

Filed: April 30, 1986, 9:32 a.m.
TRD-8604018

Tuesday, May 6, 1986, 9 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider personnel matters of the Fire Marshal; the National Association of Insurance Commissioners public service announcement on Medicare supplements; a meeting with the staff concerning legislation; and the commissioner's report on personnel matters; pending and contemplated litigation; an amendment to the personnel manual; and discuss and determine budget requests for fiscal year 1988-1989 State Board of Insurance activities and programs.

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

Filed: April 28, 1986, 11:08 a.m.
TRD-8603958

Tuesday, May 6, 1986, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 8069—whether United International Life Insurance Company, Fort Worth, has complied with the Commissioner's Order 85-1377 dated April 25, 1985.

Contact: James Norman, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6525.

Filed: April 28, 1986, 1:22 p.m.
TRD-8603960

Tuesday, May 6, 1986, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 343, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9241—application of Robert Carl Bisanz, Arlington, for a Group I, legal reserve life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6524.

Filed: April 28, 1986, 1:22 p.m.
TRD-8603963

Wednesday, May 7, 1986, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9251—whether disciplinary action should be taken against Jose Luis Velez, San Antonio, who holds a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6498.

Filed: April 28, 1986, 1:22 p.m.
TRD-8603961

Wednesday, May 7, 1986, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9260—whether the application of Forrest Andrew Jenkins, Houston, for a temporary property and casualty local recording agent's license, multiple line, should be issued by the State Board of Insurance.

Contact: J. C. Thomas, III, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6524.

Filed: April 28, 1986, 1:21 p.m.
TRD-8603962

Wednesday, May 7, 1986, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9240—whether disciplinary action should be taken against Vernard Winford Parr, Stephenville, who holds a Group I, Group II, and local recording agent's license issued by the State Board of Insurance.

Contact: James Norman, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6525.

Filed: April 28, 1986, 1:22 p.m.
TRD-8603964

Friday, May 9, 1986, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9255—whether disciplinary action should be taken against Roberto Martinez, Jr., San Antonio, who holds a Group I, legal reserve life insurance agent's license and Group II, insurance agent's license issued by the State Board of Insurance.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6498.

Filed: April 28, 1986, 1:21 p.m.
TRD-8603965

Monday, May 12, 1986, 10 a.m. The State Board of Insurance will meet in Room 414,

1110 San Jacinto Street, Austin. According to the agenda, the board will consider final action on proposed 28 TAC 3.3601, Orthodontic Coverages, published 10 TexReg 4357.

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

Filed: April 30, 1986, 9:03 a.m.
TRD-8604033

★ ★ ★

Texas Department of Labor and Standards

Thursday, May 1, 1986, 9 a.m. The Labor, Licensing, and Enforcement Division of the Texas Department of Labor and Standards met in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division considered license and registration; and suspensions and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas, 78711 (512) 463-3127.

Filed: April 24, 1986, 3:54 p.m.
TRD-8603861

Monday, May 5, 1986, 10 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards met in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division considered license and registration; and suspensions and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas, 78711 (512) 463-3127.

Filed: April 24, 1986, 3:54 p.m.
TRD-8603864

Thursday, May 8, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider license and registration; and suspensions and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas, 78711 (512) 463-3127.

Filed: April 24, 1986, 3:54 p.m.
TRD-8603860

Thursday, May 8, 1986, 10 a.m. The Texas Industrialized Building Code Council of the Texas Department of Labor and Standards will meet in Room 105, J. H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the council will review minutes of the last meeting; old business including portable structures; inspection of building constructed prior to January 1,

1986; an alternate council stamp; a committee report on redlining procedure; a code amendment for the City of Lubbock; an opinion from Mr. Morris on licensing laws for plumbers and electricians; and new business including a presentation of applications to DRA's/TPIA's; and public comments.

Contact: Jimmy G. Martin, 920 Colorado Street, Austin, Texas 78701, (512) 463-7352.

Filed: April 25, 1986, 4:46 p.m.
TRD-8603937

Friday, May 9, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider license and registration; and suspensions and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas, 78711 (512) 463-3127.

Filed: April 24, 1986, 3:53 p.m.
TRD-8603862

Tuesday, May 13, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 103, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider license and registration; and suspensions and alleged violations of various rules and regulations of the department regarding the contested hearing of Austin Housing Corporation.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas, 78711 (512) 463-3127.

Filed: April 24, 1986, 3:53 p.m.
TRD-8603863

Wednesday, June 11, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 4005, 321 Center Street, San Antonio. According to the agenda, the division will conduct informal hearings of various consumer complaints in regards to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon S. Choate, P.O. Box 12157, Austin, Texas 78711, (512) 463-5520.

Filed: April 28, 1986, 2:38 p.m.
TRD-8603966

Thursday, June 12, 1986, 8:30 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet at 3014 Sandage, Fort Worth. According to the agenda, the division will conduct informal hearings of various complaints in regards to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon S. Choate, P.O. Box 12157, Austin, Texas 78711, (512) 463-5520.

Filed: April 28, 1986, 2:37 p.m.
TRD-8603968

Tuesday, June 24, 1986, 9:30 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 209, 4615 North Freeway, Houston. According to the agenda, the division will conduct informal hearings of various consumer complaints in regards to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon S. Choate, P.O. Box 12157, Austin, Texas 78711, (512) 463-5520.

Filed: April 28, 1986, 2:37 p.m.
TRD-8603967

★ ★ ★

Texas State Library and Archives Commission

Thursday and Friday, May 15 and 16, 1986, 10 a.m. daily. The Library Services and Construction Act (LSCA) Advisory Council will meet in Room 314, 1201 Brazos Street, Austin. According to the agenda, the council will review and approve the fiscal year 1987 LSCA annual program; the fiscal year 1987-1989 LSCA Long Range Plan; the fiscal year 1987 basic state plan; elect officers; and review the LSCA Title III grant applications.

Contact: Patricia Smith, P.O. Box 12927, Austin, Texas 78711, (512) 463-5534.

Filed: April 30, 1986, 9:02 a.m.
TRD-8604034

★ ★ ★

Texas Low-Level Radioactive Waste Disposal Authority

Wednesday, May 7, 1986, 5:30 p.m. The Budget Committee of the Texas Low-Level Radioactive Waste Disposal Authority will meet via teleconference on a two-way speaker phone in Suite 300, 7703 North Lamar Boulevard, Austin. According to the agenda, the committee will consider the 1986 operating budget reductions; 1987 operating budget reductions; and the preliminary 1988-1989 appropriations request.

Contact: L. R. Jacobi, Jr., Suite 300, 7703 North Lamar Boulevard, Austin, Texas 78752, (512) 451-5295.

Filed: April 24, 1986, 3:36 p.m.
TRD-8603870

Monday, May 12, 1986, 2:30 p.m. The Texas Low-Level Radioactive Waste Disposal Authority will meet in Suite 300, 7703 North Lamar Boulevard, Austin. Items on the agenda summary include approval of minutes; the general manager's report and communications; old business; new business; and public comments.

Contact: L. R. Jacobi, Jr., Suite 300, 7703 North Lamar Boulevard, Austin, Texas 78752, (512) 451-5295.

Filed: May 1, 1986, 9:03 a.m.
TRD-8604074

★ ★ ★

Texas Music Commission

Friday, May 2, 1986, 10:30 a.m. The Texas Music Commission met in the Lieutenant Governor's Committee Room, State Capitol Building, Austin. According to the agenda summary, the commission accepted the minutes of the previous meeting; discussed an update on the formation of the proposed Dallas chapter of NARAS; information regarding the Capital Preservation Committee Concern and financial planning; a briefing by the attorneys from the Texas Legislative Council; the Public Relations Committee report; the Administrative Committee report; old business; and new business. The CBS affiliate in Dallas will be recording on-camera interviews of members for a three-part series on the music industry in Texas.

Contact: Susan Walton, 1950 Stemmons Freeway, Suite 6034, Dallas, Texas 75207, (214) 746-3507.

Filed: April 25, 1986, 10:02 a.m.
TRD-8603891

★ ★ ★

Board of Nurse Examiners

Tuesday-Thursday, May 6-8, 1986, 8 a.m. daily. The Board of Nurse Examiners will meet at the Sunrise Motor Hotel, 7622 IH 35 North, Austin. According to the agenda summary, the board will consider disciplinary cases, consent to board orders, and other action taken by the hearing officer; a report from the executive secretary, including the proposed adoption of §§213.7, 213.13, 217.6, 218.1-218.10, and 223; education reports which include survey visits, annual reports, and progress reports; examination information; and a summary of various committee reports. The board also will meet in executive session for the purpose of reviewing future test draft questions. A public hearing is scheduled for 10 a.m., Thursday, May 8, 1986, to receive testimony regarding the proposed rule §§218.1-218.10, Delegation of Selected Nursing Tasks by Registered Nurses to Unlicensed Personnel.

Contact: Margaret Rowland, Room C-225, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-4880.

Filed: April 25, 1986, 8:52 a.m.
TRD-8603883

★ ★ ★

Texas Optometry Board

Thursday and Friday, May 8 and 9, 1986, 5 p.m. and 8:30 a.m. respectively. The Texas Optometry Board will meet at the Hilton Hotel, 6000 Middle Fiskville Road, Austin. Committee meetings will be held on May 8, and the board will meet on May 9. According to the agenda summary, the board will conduct an administrative hearing of a licensee; reports from the secretary-treasurer; committee reports; a report from the legal counsel and the executive director; old business including a review of the Attorney General Opinion JM-382 and JM 454; new business including the election of officers; a proposed rule amendment to the National Board Examination rule; duplicate license requests; correspondence received; attendance at the IAB regional meeting; and the investigational process. The board also will meet in executive session under Texas Civil Statutes, Article 6252-17, Subsection (2)(e).

Contact: Lois Ewald, Suite C-240, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-1938.

Filed: April 29, 1986, 3:45 p.m.
TRD-8604012

★ ★ ★

Board of Pardons and Paroles

Monday-Friday, May 5-9, 1986, 1:30 p.m. daily except 11 a.m. on Friday. A Board Panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review, and consider information and reports concerning prisoner/inmates and administrative releaseses subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: April 25, 1986, 10:57 a.m.
TRD-8603893

Tuesday, May 6, 1986, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will approve minutes; consider the rules update; the Sunset update; the Computer Services update; the Alternative Sanctions of Release Conditions Committee Report; the internal investigations manual adoption; protests; the out of country conditional pardon legal memorandum; the NIC project participation; personnel manual changes; the executive director's report; and the budget.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: April 28, 1986, 4:24 p.m.
TRD-8603982

Tuesday, May 6, 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 action (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: April 25, 1986, 10:56 a.m.
TRD-8603894

★ ★ ★

Texas Parks and Wildlife Department

Thursday, May 1, 1986, noon. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department made an emergency revision to the agenda for a meeting held in Complex Building B, Parks and Wildlife Headquarters, 4200 Smith School Road, Austin. The revision concerned an executive session including land acquisition in Calhoun County and the Trans Pecos; potential natural area acquisition in Jeff Davis and Presidio Counties; land acquisitions in Val Verde, Kerr, Montgomery, and Matagorda Counties. The emergency status was necessary for clarification of the previously posted executive session agenda items.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: April 30, 1986, 2:41 p.m.
TRD-8604061

★ ★ ★

Proprietary School Advisory Commission

Tuesday, May 13, 1986, 10 a.m. The Proprietary School Advisory Commission will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda include discussion of state board items presented at the April State Board meeting; discussion of the proposed procedures for presentation of changes in rules; information on the paperwork reduction planning by the Division of Proprietary Schools and Veterans Education; discussion of school sponsored housing; and the financial records as open records.

Contact: Joe L. Price, 1701 North Congress Avenue, Austin, Texas 78704, (512) 463-9475.

Filed: April 30, 1986, 3:59 p.m.
TRD-8604067

★ ★ ★

Public Utility Commission of Texas

Wednesday, April 30, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas made an emergency revision to the agenda held in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The revisions concerned Dockets 6477, 6525, and 6660—an inquiry of the Public Utility Commission of Texas concerning the fixed fuel factor of Gulf States Utilities Company; application of Gulf States Utilities Company for authority to change rates; appeals of Gulf States Utilities Company from rate proceedings of the Cities of Port Neches, *et al.*; and appeals of Gulf States Utilities Company from the rate proceeding of the City of Orange *et al.*, by the commission on its own motion—consideration of procedures concerning summer rates. The emergency status was necessary because of the rate case with statutory deadlines.

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

Filed: April 29, 1986, 3:11 p.m.
TRD-8604013

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, May 8, 1986, 10 a.m. A prehearing conference in Docket 6835—petition of Decker Energy International for an order requiring Houston Lighting and Power Company to provide back-up service.

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

Filed: April 24, 1986, 2:42 p.m.
TRD-8603858

Thursday, May 8, 1986, 10 a.m. A prehearing conference in Docket 6501—application of Valley View Telephone Company for an amendment to its certificate of convenience and necessity.

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

Filed: April 29, 1986, 3:10 p.m.
TRD-8604015

Tuesday, May 13, 1986, 10 a.m. A prehearing conference in Docket 6836—petition of Lea County Electric Cooperative, Inc., for approval of refund.

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

Filed: April 29, 1986, 3:11 p.m.
TRD-8604014

Tuesday, May 13, 1986, 10 a.m. A joint prehearing conference in Docket 6668— inquiry of the Public Utility Commission of Texas into the prudence and efficiency of the planning and management of the construction of the South Texas Nuclear Project; Docket 6765—petition of Houston Lighting and Power Company for authority to change rates; and Docket 6766—petition of Houston Lighting and Power Company for approval of proposed interim accounting treatment for Limestone Unit I.

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

Filed: April 30, 1986, 3:35 p.m.
TRD-8604064

Wednesday, June 18, 1986, 10 a.m. A hearing on the merits in Docket 6761—application of AT&T Communications of the Southwest, Inc., to remove the tariff restriction on its Reach Out Texas offering.

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

Filed: April 28, 1986, 3:23 p.m.
TRD-8603985

Thursday, June 26, 1986, 10 a.m. A prehearing conference in Docket 6765—petition of Houston Lighting and Power Company for authority to change rates, and Docket 6766—petition of Houston Lighting and Power Company for approval of proposed interim accounting treatment for Limestone Unit I.

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

Filed: April 28, 1986, 3:23 p.m.
TRD-8603987

Monday, June 30, 1986, 10 a.m. A hearing on the merits in Docket 6765—petition of Houston Lighting and Power Company for authority to change rates, and Docket 6766—petition of Houston Lighting and Power Company for approval of proposed interim accounting treatment for Limestone Unit I.

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

Filed: April 28, 1986, 3:23 p.m.
TRD-8603986

Monday, July 14, 1986, 10 a.m. A hearing on the merits in Docket 6796—application of Swisher Electric Cooperative, Inc. for authority to change rates.

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

Filed: April 24, 1986, 2:43 p.m.
TRD-8603857

Monday-Friday, September 22-26, 1986, 10 a.m. daily. A settlement conference in Docket 6449—application of Lower Colorado River Authority for approval of Standard avoided cost calculations.

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

Filed: April 28, 1986, 3:24 p.m.
TRD-8603984

Tuesday, October 14, 1986, 10 a.m. A hearing on the merits in Docket 6449—application of Lower Colorado River Authority for approval of standard avoided cost calculations.

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

Filed: April 28, 1986, 3:24 p.m.
TRD-8603981

★ ★ ★

State Purchasing and General Services Commission

Thursday, May 1, 1986, 10 a.m. The State Purchasing and General Services Commission made an emergency addition to the agenda for a meeting held in Room 916, LBJ Building, 111 East 17th Street, Austin. The addition concerned an executive session and the Telecommunications Division. The emergency status was necessary because immediate consideration of certain procedures of the commission's Telecommunications Division was necessary to avoid potential, significant increased costs to the state.

Contact: John R. Neel, P.O. Box 13047, Austin, Texas 78711, (512) 463-3446.

Filed: April 30, 1986, 11:04 a.m.
TRD-8604047

★ ★ ★

Railroad Commission of Texas

Monday, May 5, 1986, 9 a.m. The Railroad Commission of Texas met in the 12th Floor Conference Room auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission considered and acted on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: April 25, 1986, 11:11 a.m.
TRD-8603902

The Automatic Data Processing Division director's report on division administration,

budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: April 25, 1986, 11:24 a.m.
TRD-8603904

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: April 25, 1986, 11:26 a.m.
TRD-8603905

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: April 25, 1986, 11:50 a.m.
TRD-8603914

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: April 25, 1986, 11:50 a.m.
TRD-8603915

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: April 25, 1986, 11:27 a.m.
TRD-8603907

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: April 25, 1986, 11:30 a.m.
TRD-8603910

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: April 25, 1986, 11:11 a.m.
TRD-8603901

Consideration of All American Pipeline Company for a pipeline permit across various counties in Texas.

Contact: Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6922.

Filed: April 25, 1986, 11:30 a.m.
TRD-8603911

Consideration of Docket 20-86,874—whether to initiate rulemaking proceedings for pipelines, including Statewide Rule 70 (16 TAC §3.65).

Contact: Lisa Anderson, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6887.

Filed: April 25, 1986, 11:09 a.m.
TRD-8603898

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) 463-6881.

Filed: April 25, 1986, 11:27 a.m.
TRD-8603908

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: April 25, 1986, 11:26 a.m.
TRD-8603903

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, including but not limited to litigation in the All American Pipeline Case, Cause MO-86-CA-026 and 389,752; state and federal legislation; and other budget, administrative, and personnel matters.

Contact: Walter Earl Lije, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: April 25, 1986, 11:27 a.m.
TRD-8603906

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: April 25, 1986, 11:28 a.m.
TRD-8603909

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: April 25, 1986, 11:10 a.m.
TRD-8603899

Addition to the previous agenda:

Consideration of Pasadena Transit, Docket 02879BA3A, for emergency interim authority.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: April 25, 1986, 1:21 p.m.
TRD-8603900

Tuesday, May 20, 1986, 1:30 p.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the division will conduct a statewide oil and gas hearing.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: April 25, 1986, 11:58 a.m.
TRD-8603916

★ ★ ★

Texas Real Estate Commission

Monday, May 5, 1986, 9:30 a.m. The Texas Real Estate Commission (TREC) met in the Conference Room, TREC Headquarters, 1101 Camino La Costa, Austin. Items on the agenda include approval of minutes of the April 14, 1986, meeting; staff reports for the month of March, 1986; real estate inspector matters; consideration of the proposed amendment to §535.92 (relating to Applications for Certification of Licensure Status); education matters; consideration of motions for rehearing and/or probation; the date and place of the next meeting; a rehearing in the matter of Nina H. Ludington's application to license David J. Ludington as a salesman; and a rehearing in the matter of Lynian David Rogers' application to license Ronald Keith Hall as a salesman. The commission also met in executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6525-17, §2(c).

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: April 25, 1986, 1:35 p.m.
TRD-8603918

★ ★ ★

School Land Board

Tuesday, May 6, 1986, 10 a.m. The School Land Board will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of the previous board meeting; open bids received for the May 6, 1986, special oil, gas, and other minerals lease sale; consider pooling applications; excess acreage applications; good faith claimant applications; an application for a right-of-way easement across Leander Rehabilitation Facility, Texas Department of Mental Health and Mental Retardation, Williamson County; the final approval of land trades; land trades; coastal public lands including commercial lease applications; easement applications; cabin permit assignment requests; the suspension report; and the proposed deposit of land sale proceeds in the permanent school fund escrow account.

Contact: Linda K. Fisher, Room 836, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

Filed: April 28, 1986, 4:45 p.m.
TRD-8603983

★ ★ ★

Texas Sesquicentennial Commission

Thursday, May 1, 1986, 10 a.m. The Executive Committee of the Texas Sesquicentennial Commission met in emergency session in the Commission for the Deaf Conference Room, 510 South Congress Avenue, Austin. Items on the agenda included approval of minutes from the March 25, 1986, commission meeting; applications for sanctioning of communities and counties, associations, and private sectors (if any); the director's report; and other business. The committee also will meet in executive session if needed. The emergency status was necessary due to lack of quorum.

Contact: Patrick Terry, P.O. Box 1986, Austin, Texas 78767, (512) 463-1986.

Filed: April 30, 1986, 3:37 p.m.
TRD-8604062

★ ★ ★

Teacher Retirement System of Texas

Tuesday, May 13, 1986, noon. The Medical Board of the Teacher Retirement System of Texas will meet in the boardroom, 1001 Trinity Street, Austin. According to the agenda, the board will discuss the members' files that are due a re-examination report.

Contact: Don Cadenhead, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: April 25, 1986, 9:41 a.m.
TRD-8603889

★ ★ ★

Texas Southern University

Friday, May 2, 1986, 9:30 a.m. The Building and Grounds Committee of the Board of Regents of Texas Southern University made a revised agenda to the meeting held in Room 203, Sterling Student Life Center, 3100 Cleburne Avenue, Texas Southern University, Houston. The revised agenda includes consideration of payments on architects and contractors; improvement of land; construction change orders; purchase of real estate; and bids on construction projects, including a report on on-going construction projects, plans, and projections for new construction; and fiscal matters involving new construction.

Contact: Everett O. Bell, 3201 Taft Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: April 25, 1986, 11:05 a.m.
TRD-8603897

★ ★ ★

Texas Woman's University

Wednesday, April 30, 1986, 10 a.m. The Board of Regents of Texas Woman's University met in the Fourth Floor Executive Conference Room, One Dallas Center, 350 North St. Paul, Dallas. According to the agenda, the board met in executive session to discuss personnel matters under Texas Civil Statutes, Article 6252-17, §2(g).

Contact: Dr. Mary Evelyn Blagg-Huey, Texas Woman's University, Denton, Texas 76204, (817) 898-3201.

Filed: April 25, 1986, 1:36 p.m.
TRD-8603917

★ ★ ★

University of Texas at Austin

Sunday, May 4, 1986, 10 a.m. The Council for Intercollegiate Athletics for Women of the University of Texas at Austin met at the Frank C. Erwin Special Events Center, 1701 Red River Street, Austin. According to the agenda summary, the council approved minutes of the previous meetings; made announcements; discussed old business; and new business. The council also met in executive session.

Contact: Rhonda Lands, Belmont Hall 606, University of Texas, Austin, Texas 78712, (512) 471-7693.

Filed: April 29, 1986, 8:53 a.m.
TRD-8603991

★ ★ ★

Texas Water Commission

Wednesday, April 30, 1986, 3:30 p.m. The Texas Water Commission met in emergency session in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission considered a request of the executive director of the Texas Water Commission for an emergency order ordering, MGL, Inc., Certificate of Convenience 11047, to serve every consumer within its certified area and to render continuous and adequate service. The emergency status was necessary in order to avoid interruption of water and sewer services to the customers.

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

Filed: April 30, 1986, 12:01 p.m.
TRD-8604053

Tuesday, May 6, 1986, 10 a.m. In Room 118, the commission will consider water district bond issues, use of surplus funds, proposed water quality permits, amendments and renewals, water rights applications, certification of water rights, consider water rate rules, and the petition for adoption of rules for Lakes LBJ and Marble Falls and their watersheds.

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

Filed: April 25, 1986, 2 p.m.
TRD-8603919

Tuesday, May 6, 1986, 2 p.m. In Room 118, the commission will consider the emergency order on Bluestem Development Corporation to breach the Bluestem Estates Lake Dam due to the unsafe nature of the structure.

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

Filed: April 24, 1986, 11:17 a.m.
TRD-8603851

Thursday, May 8, 1986, 9:30 a.m. In Room 118, the Texas Water Well Drillers Board will consider approval of the minutes of its March 18, 1986, meeting; certification of applicants for registration; applications for driller-trainee registration; whether to set the following complaints for formal public hearing before the board or for other appropriate legal action: Richard M. Allred, Tommy Bussell, Michael D. Campbell, Jimmy Davis, Jack P. Devany, Lester Duffer, Bobby Finch, William Finch, William Kelton, Willie Prazak, Oscar Romero, Frank Rosenkranz, Stang Hydronics, Inc., Texas Riverside Moretrench American, Billie Watkins, and Jack Whittenburg; the proposed rule changes; and proposed fiscal year 1988-1989 budget requests. The board also will meet in executive session.

Contact: Roger Schultz, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8095.

Filed: April 28, 1986, 9:03 a.m.
TRD-8603938

Thursday, May 8, 1986, 1 p.m. In Room 118, the Texas Water Well Drillers Board will consider whether to suspend or revoke the following licenses: WWDB-86-001, George R. Littrel (WWDB-798W); WWDB-86-002, Nicky Wayne Siegert (WWDB-2249W); WWDB-86-003, Eddie Lynn Calicut (WWDB-1274W); WWDB-86-004, Roy Carlisle (WWDB-1791W); WWDB-86-005, William Langston (WWDB-365W); and WWDB-86-006, Doyle Garrett (no WWDB license).

Contact: Roger Schultz, P.O. Box 13087, Austin, Texas 78711 (512) 463-8072.

Filed: April 28, 1986, 3:30 p.m.
TRD-8603979

Monday, May 12, 1986, 10 a.m. In Room 119, the Office of Hearings Examiners will

consider Docket 6721—application for a rate increase by Treat Water Works.

Contact: Steve Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 29, 1986, 3:13 p.m.
TRD-8604010

Tuesday, May 13, 1986, 2 p.m. In Room 118, the commission will consider the order assessing administrative penalties and requiring certain actions of Robert Kacz, doing business as Aztec Mercury Company.

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

Filed: April 30, 1986, 12 p.m.
TRD-8604054

Wednesday, May 21, 1986, 10 a.m. In Room 215, the Office of Hearings Examiners will consider Docket 6672—application for a rate increase by Thompson Utility Service.

Contact: Cynthia G. Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 25, 1986, 1:59 p.m.
TRD-8603920

Thursday, May 22, 1986, 10 a.m. In Room 215, the Office of Hearings Examiners will conduct a show cause hearing requiring Clifford H. Jewett and V. M. Jewett to appear and show cause why certification of adjudication 08-3350 should not be cancelled.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 29, 1986, 3:13 p.m.
TRD-8604011

Tuesday, May 27, 1986, 2 p.m. In Room 118, the commission will consider application by James M. Poore, Donald G. Poore, Tim D. Kennedy, Robert J. Rod, and Conrad Ward, doing business as Big Five Partnership for Proposed Permit 02816, Brazos River Basin; application by Highway 71 Joint Venture for Proposed Permit 13178-01, Colorado River Basin; and Docket 6637—application by Carrington Associates, Inc., for a rate increase.

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

Filed: April 30, 1986, 12 p.m.
TRD-8604055

Wednesday, June 4, 1986, 2 p.m. In Room 118, the commission will consider adoption of permanent rules relating to operation of the Rio Grande.

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

Filed: April 24, 1986, 11:16 a.m.
TRD-8603852

Tuesday, June 10, 1986, 9 a.m. In Room 512, the Office of Hearings Examiners will consider the application of City Public Service of San Antonio, Texas, P.O. Box 1771, San Antonio, Texas 78296 for an amend-

ment to Permit 01514 which currently authorizes a discharge of condenser cooling water (Outfall 001) at a volume not to exceed an average flow of 1,400,000 gallons per day plus various, intermittent, discharges of other treated wastewater effluent from a steam electric power station known as the O. W. Sommer/J. T. Deely Power Plant into Calaveras Lake. The proposed amendment would authorize the changes as follows: new chlorine limits for Outfall 001 (condenser cooling water); copper and iron limits added to outfall 002 to regulate the periodic discharge of metal cleaning waste; and the addition of demineralized waste regulated by Outfall 101.

Contact: Marcella Sellers, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 29, 1986, 3:15 p.m.
TRD-8604009

Thursday, June 12, 1986, 9 a.m. The Office of Hearings Examiners will meet in the study room, Southwest Center, 3222 West Seventh Street, Highway 67, Texarkana. According to the agenda summary, the office will consider the application of the City of Texarkana, P.O. Box 2008, Texarkana, Texas 77504 for a Proposed Permit 10374-08 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day from the proposed Rollingwood Plant, which the applicant proposes to construct to replace the existing plant. The relocation will better enable the plant to serve new development in the area.

Contact: Steven Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 29, 1986 3:16 p.m.
TRD-8604008

Thursday, June 12, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the Municipal Auditorium, City Hall, 1829 Sam Houston, Liberty. According to the agenda summary, the office will consider the application of Lebanon Properties, Inc., P.O. 1274, Cleveland, Texas 77327 for a Proposed Permit 13158-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day from the proposed Cypress Lake No. 1 Wastewater Treatment Plant which is to serve a proposed residential development.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 30, 1986, 12:01 p.m.
TRD-8604051

Committees of the Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, rooms, committees, and agendas follow.

Tuesday, June 17, 1986, 9 a.m. In Room 512, the Office of Hearings Examiners will

consider the application of One Hundred Sixty-Eight Acre North Georgetown Joint Venture, in care of R. G. Greening Company Inc., 706 MBank Tower, Austin, Texas 78701 for a Proposed Permit 13261-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day. The applicant proposes to provide services to a proposed development of approximately 163 acres.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 30, 1986, 12:01 p.m.
TRD-8604050

Tuesday, June 17, 1986, 10 a.m. In Room 118, the commission will consider Application 12-2917A, City of Lampasas. Applicant seeks to amend Certificate of Adjudication 12-2971 to authorize a transbasin diversion, from the Brazos River Basin, to the Colorado River Basin, Lampasas County.

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

Filed: April 24, 1986, 11:17 a.m.
TRD-8603850

Tuesday, June 17, 1986, 10 a.m. In Room 118, the commission will consider Application 5045 of Art E. Beckwith, who seeks a permit to maintain a dam in the Nueces-Rio Grande Coastal Basin, Hidalgo County.

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

Filed: April 24, 1986, 11:18 a.m.
TRD-8603849

Tuesday, June 17, 1986, 10 a.m. In Room 118, the commission will consider Application 12-3470A of Eastland County Water Supply District who seeks to amend Certificate of Adjudication 12-3470 to increase the annual usage of water, to use for irrigation purposes and to use for industrial use, Brazos River Basin, Eastland County.

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

Filed: April 24 1986, 11:19 a.m.
TRD-8603848

Tuesday, June 17, 1986, 10 a.m. In Room 118, the commission will consider Application 12-1668A of Howard Keith Coburn, who seeks to amend Certification of Adjudication 14-1668 to extend the expiration date, Colorado River Basin, Callahan County. The meeting was rescheduled from May 20, 1986.

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

Filed: April 24, 1986, 11:19 a.m.
TRD-8603847

Wednesday, June 18, 1986, 9 a.m. In Room 512, the commission will consider application of the City of Blanco, P.O. Box 750,

Blanco, Texas 78606, for renewal of Permit 10549-01 which authorizes a discharge of settled filtered backwash at a volume not to exceed an average flow of 50,000 gallons per day from the water treatment plant which is located northeast of the City of Blanco and 100 feet north of the Blanco River in Blanco County. The effluent is discharged into the Blanco River in Segment 1813 of the Guadalupe River Basin.

Contact: Kevin McCalla, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 29, 1986, 3:16 p.m.
TRD-8604007

Wednesday, June 18, 1986, 10 a.m. In Room 118, the commission will consider the application of Dean Thomas for a Proposed Permit 13110-01, to authorize the discharge of 100,000 gallons per day of treated domestic sewage from the South Fork Mobile Home Park Wastewater Treatment Plant, Brazoria County.

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

Filed: April 30, 1986, 12 p.m.
TRD-8604052

Tuesday, June 24, 1986, 10 a.m. In Room 118, the commission will consider Application 5052 of Robert Lawrence Hancock and Wife Norma Jean Hancock who seek a permit to divert water from the Bosque River, tributary of the Brazos River, Brazos River Basin, Erath County, to irrigate.

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

Filed: April 29, 1986, 3:18 p.m.
TRD-8604004

Tuesday, June 24, 1986, 10 a.m. In Room 118, the commission will consider Application 5051 of Haden Company Inc., and Dennis R. Haden, P.O. Box 29869 who seeks a permit to impound water to create a reservoir on Gilmore Creek, tributary of North Bosque River, tributary of Bosque River, tributary of Brazos River Basin, Erath County, for irrigation.

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

Filed: April 29, 1986, 3:17 p.m.
TRD-8604005

Tuesday, June 24, 1986, 10 a.m. In Room 118, the commission will consider Application 5050 of Hambrick Wholesale Nursery, 209 West Plant Road, Ennis, Texas 75119, who seeks a permit to authorize the diversion and use of water from the Oak Grove Wastewater Treatment Facility for irrigation, Ennis, Ellis County, Texas Trinity River Basin.

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

Filed: April 29, 1986, 3:17 p.m.
TRD-8604006

Wednesday, July 2, 1986, 10 a.m. In Room 1149, the commission will discuss the draft Federal Fiscal Year 1987 Water Quality Management Annual Work Program. The program is a key management document which sets forth the commission's resource allocation and project commitments for programs funded by a federal grant under the Clean Water Act, §106.

Contact: John W. Janak, P.O. Box 10337, Austin, Texas 78711-3087, (512) 463-8412.

Filed: April 28, 1986, 8:58 a.m.
TRD-8603939

Regional Agencies Meetings Filed April 24

The Burnet County Appraisal District, will meet at 215 South Pierce Street, Burnet, on May 8, 1986, at 6:30 p.m. Information may be obtained from Alvin C. Williams, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Comal Appraisal District, Board of Directors, met at 644 North Loop 337, New Braunfels, on April 28, 1986, at 5:00 p.m. Information may be obtained from Glenn L. Brucks, Chief Appraiser, 644 North Loop 337, New Braunfels, Texas 78130.

The Education Service Center, Region XX, Board of Directors, will meet at 1314 Hines Avenue, San Antonio, on May 7, 1986, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, Executive Director, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 271-7611.

The Gonzales County Appraisal District, Appraisal Review Board, met at 928 St. Paul Street, Gonzales, on April 10, 1986, at 6:00 p.m. Information may be obtained from Glenda Strackbein, Chief Appraiser, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Lamar County Appraisal District, Board of Directors, met at Lamar County Appraisal District Office, 1523 Lamar Avenue, Paris, on April 28, 1986, at 5:00 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The Leon County Central Appraisal District, Board of Directors, met at Leon County Central Appraisal District Office, Centerville, on April 28, 1986, at 7:30 p.m. Information may be obtained from Tom G. Holmes, Chief Appraiser, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The Lower Colorado River Authority, Board of Directors, met at 3700 Lake Austin Boulevard, Austin, on April 28, 1986, at 10:00 a.m. Information may be obtained

from S. David Freeman, General Manager, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

TRD-8603855

Meetings Filed April 25

The Brown County Appraisal District, Board of Directors, met at 403 Fisk Avenue, Brownwood, on May 5, 1986, at 7:00 p.m. Information may be obtained from Alvis Sewalt, Chief Appraiser, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Cass County Appraisal District, Appraisal Review Board, met at Cass County Appraisal District, 208 West Houston Street, Linden, on May 1, 1986, at 9:00 a.m. Information may be obtained from Janelle Clements, Chief Appraiser, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Dallas Area Rapid Transit, Mobility Impaired Task Force, met at DART Office, 601 Pacific Avenue, Dallas, on April 28, 1986, at 3:00 p.m. The Finance Committee also met at the same location on the same date at 4:00 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Heart of Texas Region Mental Health and Mental Retardation, Board of Trustees, met at 110 South 12th Street, Waco, on April 29, 1986, at 11:30 a.m. Information may be obtained from Jan Baty, Administrative Secretary, 110 South 12th Street, Waco, Texas 76703, (817) 752-3451.

The Tyler County Tax Appraisal District, Board of Review, met at 103 Pecan, Woodville, on April 28, 1986, at 3:00 p.m. Information may be obtained from Mary Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8603882

Meetings Filed April 28

The Bexar-Medina-Atascosa Counties Water Control & Improvement District #1, Board of Directors, met at District Office, Natalia, on May 5, 1986, at 10:00 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Carson County Appraisal District, Board of Directors, will meet at 102 Main Street, Panhandle, on May 14, 1986, at 9:00 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569.

The Comal Appraisal District, Board of Directors, met in the boardroom of Comal Independent School District Administration Office, 1421 Highway 81 East, New Braunfels, on April 30, 1986, at 7:30 p.m. Information may be obtained from Glenn L. Brucks, Chief Appraiser, P.O. Box 1222, New Braunfels, Texas 78131.

The East Texas Council of Governments, Executive Committee, met at ETCOG Offices, 3800 Stone, Kilgore, on May 1, 1986, at 2:00 p.m. Information may be obtained from Glynis J. Knight, Executive Director, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Mental Health and Mental Retardation Regional Center of East Texas, Board of Trustees, met in the boardroom, 2323 West Front Street, Tyler, on May 1, 1986, at 4:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Golden Crescent Regional Planning Commission, Board of Directors, met at the Americana Room, Interfirst Bank, 1908 North Laurent, Victoria, on April 30, 1986, at 5:00 p.m. Information may be obtained from Patrick J. Kennedy, Executive Director, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Golden Crescent Service Delivery Area, Private Industry Council Inc., met at Town Hall, First Victoria National Bank, 101 South Main, Victoria, on April 30, 1986, at 6:30 p.m. Information may be obtained from Patrick J. Kennedy, PIC Planner, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Lamb County Appraisal District, Board of Directors, will meet at 330 Phelps Avenue, Littlefield, on May 15, 1986, at 8:30 a.m. Information may be obtained from Murlene J. Bilbrey, 330 Phelps Avenue, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The West Central Texas Council of Governments, Regional Health Planning Advisory Committee, will meet at 4358 Sayles Boulevard, Abilene, on May 6, 1986, at 10:00 a.m. Information may be obtained from Brad Helbert, Executive Director, 1025 East North 10th Street, Abilene, Texas 79601, (915) 672-8544.

TRD-8603940

★ ★ ★

Meetings Filed April 29

The Bexar-Medina-Atascosa Counties Water Control & Improvement, Board of Directors, met at the District Office, Highway 81, Natalia, on May 5, 1986, at

9:30 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Brazos Valley Development Council, Executive Committee Meeting, will meet at Walden on Memorial, 2410 Memorial Drive, Bryan, on May 8, 1986, at 1:30 p.m. Information may be obtained from Glenn J. Cook, Executive Director, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277.

The Comal Appraisal District, Board of Directors, met at Holiday Inn, 1051 IH 35 East, New Braunfels, on May 1, 1986, at noon. Information may be obtained from Glenn L. Brucks, Chief Appraiser, P.O. Box 1222, New Braunfels, Texas 78131, (512) 625-8597.

The Deep East Texas Council of Governments-Area Agency on Aging, Regional Aging Advisory Council, will meet at Angelina County Senior Center, 2801 Valley Avenue, Lufkin, on May 9, 1986, at 1:30 p.m. Information may be obtained from Martha Jones, AAA Director, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704.

The Education Service Center Region XII, Board of Directors, will meet at 401 IH 35, Waco, on May 8, 1986, at 7:30 p.m. Information may be obtained from Weldon O. Mills, Executive Director, ESC Region XII, P.O. Box 1249, Waco, Texas 76703, (817) 756-7494.

The Fisher County Appraisal District, Board of Directors, will meet at Fisher County Appraisal/Tax Office, Roby, on May 13, 1986, at 7:30 p.m. Information may be obtained from Teddy Kral, Chief Appraiser, P.O. Box 516, Roby, Texas 79543, (915) 776-2733.

The Garza County Appraisal District, Board of Directors, will meet in the Appraisal Office, Courthouse, Post, on May 8, 1986, at 9:00 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The High Plains Underground Water Conservation District No. 1, Board of Directors, met in the Conference Room, 2930 Avenue Q, Lubbock, on May 5, 1986, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, Manager, High Plains Underground Water Conservation District No. 1, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Hockley County Appraisal District, Board of Directors, will meet at 1103-C Houston Street, Levelland, on May 12, 1986, at 7:00 p.m. The Appraisal Review Board will meet at the same location, on May 14, 1986, at 10:30 a.m. Information

may be obtained from Keith Toomire, Chief Appraiser, P.O. Box 109, Levelland, Texas 79336, (806) 894-9654.

The Lavaca County Central Appraisal District, Board of Directors, will meet at Lavaca County Central Appraisal District, 113 North Main, Hallettsville, on May 12, 1986, at 4:00 p.m. Information may be obtained from Diane Munson, Acting Chief Appraiser, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

TRD-8603990

★ ★ ★

Meetings Filed April 30

The Colorado River Municipal Water District, Board of Directors, will meet at 400 East 24th Street, Big Spring, on May 8, 1986, at 2:00 p.m. Information may be obtained from O. H. Ivie, General Manager, P.O. Box 869, Big Spring, Texas 79720, (915) 267-6341.

The Comal Appraisal District, Board of Directors Budget Workshop, will meet at Oma' Sausage Haus, 541 Highway 46 South, New Braunfels, on May 6, 1986, at noon. Information may be obtained from Glenn L. Brucks, Chief Appraiser, P.O. Box 1222, New Braunfels, Texas 78131.

TRD-8604057

★ ★ ★

Meetings Filed May 1

The Blanco County Appraisal District, Board of Directors, will meet at Blanco County Courthouse Annex, Johnson City, on May 13, 1986, at 6:00 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas, (512) 868-4624.

The Dawson County Central Appraisal District, Board of Directors, will meet at 611 North Dallas Avenue, Lamesa, on May 7, 1986, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Lamb County Appraisal District, Appraisal Review Board, will meet in the boardroom, 330 Phelps Avenue, Littlefield, on May 8, 1986, at 8:00 p.m. Information may be obtained from Murlene J. Bilbrey, Chief Appraiser, P.O. Box 552, 330 Phelps Avenue, Littlefield, Texas 79339, (806) 385-6474.

TRD-8604075

★ ★ ★

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 Agriculture Notice of Texas Pork Producers Board Biennial Election

The Texas Pork Producers Board (TPPB) will hold a biennial election on June 16, 1986. The current terms of five board members from five TPPB districts will expire June 30, 1986. Any person living within the following counties who is engaged in the business of producing, or causing to be produced, slaughter hogs for commercial purposes is eligible to vote, including owners of farms and their tenants and sharecroppers, if such person is required to pay the assessment on market hogs.

District 1: Castro, Dallam, Deaf Smith, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, and Sherman.

District 2: Armstrong, Briscoe, Carson, Collingsworth, Donley, Floyd, Gray, Hale, Hall, Swisher, and Wheeler.

District 4: Childress, Cottle, Crosby, Dickens, Fisher, Foard, Garza, Hardeman, Haskell, Jones, Kent, King, Knox, Motley, Stonewall, and Wilbarger.

District 6: Bowie, Camp, Cass, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Limestone, Marion, Morris, Navarro, Raines, Red River, Rockwall, Smith, Tarrant, Titus, Upshur, Van Zandt, and Wood.

District 9: Blanco, Burnet, Llano, Mason, McCulloch, and San Saba.

Any person qualifying to vote in the election may place his or her name in nomination for membership on the Texas Pork Producers Board by application to the board at P.O. Box 10168, Austin, Texas 78766. The application should be signed by himself or herself and at least 10 other persons qualified to vote in the election. Such application must be filed at least 30 days prior to the election date to have the name placed on the ballot.

The election will be held by mail ballot, which will be provided to eligible voters not later than 15 days prior to the election. Ballots must be mailed to the polling place at P.O. Box 10168, Austin, Texas 78766, before midnight on the date of the election.

Any person qualified to vote who does not receive a ballot 15 days prior to the election may obtain one at a county agricultural extension office.

Issued in Austin, Texas, on April 28, 1986.

TRD-8803855 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: April 28, 1986
For further information, please call (512) 463-7583.

Texas Air Control Board Contested Case Hearing

Pursuant to the Texas Clean Air Act (the Act), §§3.15-3.17, 3.27, and 3.271, Texas Civil Statutes, Article 4477-5, and §§103.31, 103.41, and 103.81 of the procedural rules of the Texas Air Control Board (TACB), an examiner for the TACB will conduct a hearing on the application by Eubank Ready Mix, Inc., for a standard exemption, (Number 71) to construct a concrete batch plant to be located near Cedar Hill, Dallas County, Texas.

Said company is directed to appear at the time and place shown following and demonstrate by a preponderance of evidence that the facility will comply with all requirements of TACB Regulation IV, §116.6.

The record of this hearing will be used by the TACB in determining whether or not to approve the issuance of Standard Exemption Number 71 to the company.

Information regarding the application for the exemption and copies of the board's rules and regulations are available for public inspection at the central office of this agency located at 6330 Highway 290 East, Austin, Texas 78723, the regional office of this agency located at 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, and the Cedar Hill City Hall, 502 Cedar, Cedar Hill, Texas 76104.

The examiner has set the hearing to begin at 9 a.m., May 19, 1986, at the central office of the TACB, Auditorium, located at 6330 Highway 290 East, Austin, Texas 78723. Prospective parties to the hearing will be the TACB staff and the company. Any other persons desiring to be made a party to the hearing must specifically apply in writing for party status to Examiner Paul M. Shinkawa, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. No other persons will be admitted as parties unless the request is actually received at the previously mentioned address by 5 p.m., May 8, 1986. Previous correspondence with the TACB is not effective for this purpose. At the hearing on the merits, only those persons admitted as parties will be permitted to present evidence and argument and to cross-examine witnesses. Any person who desires to give testimony at the hearing, but who does not desire to be a party, may call the Legal Division of the TACB at (512) 451-5711, ext. 350, to determine the names and addresses of all admitted parties. The parties may then be contacted about the possibility of presenting testimony.

Members of the general public to plan to attend the hearing are encouraged to telephone the central office of the TACB in Austin, Texas, at (512) 451-5711, ext. 350, a day or two prior to the hearing date in order to confirm the setting, since continuances are granted from time to time.

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

TRD-8804032

Allen EH Bell
Executive Director
Texas Air Control Board

Filed: April 30, 1986

For further information, please call (512) 461-5711, ext. 354.

★ ★ ★

Public Hearing

Wichita Falls Energy Investments JV (the company), whose mailing address is P.O. Box 9349, Fort Worth, Texas 76107, has requested authority to construct a combined cycle gas turbine cogeneration plant to be located at CertainTeed Corporation's Fiberglass Reinforcement Plant at 4515 Allendale Road in Wichita Falls, Wichita County, Texas. The company has submitted an application to the Texas Air Control Board (TACB) pursuant to the requirements for prevention of significant deterioration (PSD) of air quality in the Federal Clean Air Act (FCAA), 41 United States Code 7470, and regulations promulgated by the Environmental Protection Agency (EPA) in the *Federal Register* on June 19, 1978, and amended August 7, 1980.

The company has previously published public notice in the *Wichita Falls Record News* on January 7, 1986, and January 8, 1986, requesting public comment on the TACB's preliminary determination to issue a PSD permit to the company. As a result of the notices, the TACB received requests for a public hearing. Pursuant to that request, the TACB has scheduled a public hearing on May 20, 1986, at 4 p.m., at the Wichita County Courthouse, Room 200, Wichita Falls, Texas 76301.

The purpose of this hearing will be to receive comments on the proposed construction of the cogeneration plant.

The proposed facility will emit the following air contaminants in amounts significant enough to require PSD review: nitrogen oxides and carbon monoxide.

A copy of all materials submitted by the applicant, the TACB's preliminary determination summary, and the proposed draft permit will be part of the record, and are available for inspection at the regional office of the TACB located at Commerce Plaza Office Building, 1290 South Willis, Suite 205, Abilene, Texas 79605; the Wichita County Courthouse, Wichita Falls, Texas 76301; and the TACB central office at 6330 Highway 290 East, Austin, Texas 78723.

The public hearing will primarily address the pollution control technology and the ambient air quality and visibility impacts of the proposed projects. Effects on human health or welfare, animal life, property, and vegetation may be addressed as they are related to the air quality impacts of this project. Other matters such as noise, potential impact on property values, and zoning are outside the scope of the PSD regulations and therefore cannot be addressed. The hearing is structured for the receipt of narrative comments. Interrogation or cross-examination is not permitted, although a TACB staff member will be available to answer questions immediately before and after the hearing. Accordingly, persons desiring to participate in the hearing should examine the materials on file beforehand and prepare their responses for presentation at the hearing.

Written comments on the proposed project must be received at the TACB, 6330 Highway 290 East, Austin, Texas 78723, no later than May 30, 1986. It is requested that comments specify Permit PSD-TX-685, and that such com-

ments be based on the requirements as set out in the FCAA and in the PSD regulations published June 19, 1978, and amended August 7, 1980. Comments received at the public hearing and all timely received written comments will be part of the record and considered by the TACB prior to making the final determination on the proposed project.

The TACB will notify the applicant, commenters, and anyone requesting notice of its final determination. A copy of the record, including the public comments, the TACB's response to comments, and the final determination will be available for public inspection in the offices at the addresses previously listed. The TACB's final determination and responses will be forwarded to EPA, Region 6, Interfirst Two Building, 1201 Elm Street, Dallas, Texas 75270, for final action pursuant to 40 Code of Federal Regulations 52.21(r)(2)(vii) and (viii) (June 19, 1978).

Issued in Austin, Texas, on April 18, 1986.

TRD-8803945

Allen EH Bell
Executive Director
Texas Air Control Board

Filed: April 28, 1986

For further information, please call (512) 461-5711, ext. 354.

★ ★ ★

Automated Information and Telecommunications Council Notice of Modification of Request for Proposal

The request for proposal from private consultants which appeared in the March 21, 1986, issue of the *Texas Register* (11 TexReg 1471) is modified as follows.

Work under the contract (the analysis phase) should begin upon award (on or after June 16, 1986). The closing date for the submission of bids is extended to May 14, 1986, at 5 p.m.

Issued in Austin, Texas, on May 6, 1986.

TRD-8803856

Robert B. Jordan
Executive Director
Automated Information and
Telecommunications Council

Filed: April 24, 1986

For further information, please call (512) 463-5530.

★ ★ ★

State Banking Board Notice of Hearing

The hearing office of the State Banking Board will conduct a hearing on Thursday, June 26, 1986, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the charter application for Bridgepoint State Bank, Austin, Travis County.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, State Banking Department, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

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

TRD-8803822

William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: April 25, 1986
For further information, please call (512) 478-1200.

★ ★ ★

Texas Department of Community Affairs

Notice of Contract Award

Contractor. The Texas Department of Community Affairs (TDCA) announces that the adult performance level project, College of Education, University of Texas at Austin, has been awarded a contract for the period April 1, 1986-July 30, 1987. As provided by Texas Civil Statutes, Article 6252-11c, §3(a)(2), TDCA has determined that the services required can be adequately performed through a contract with another state agency. The contract is for the purpose of performing a study of illiteracy and to design instruments to evaluate functional literacy in Texas. The request for proposals was published in the February 28, 1986, issue of the *Texas Register* (11 TexReg 1060).

Description of Services. The adult performance level project shall perform the following services: assess the scope of the illiteracy problem in Texas; assess and evaluate the knowledge areas and skills essential to functional literacy; develop an evaluation instrument for the measurement of functional literacy; and produce a report to be submitted to the 70th Legislature, 1987, on the scope of the illiteracy problem and strategies for addressing the problem.

Business Address. The business address of the contractor is Adult Performance Level Project, College of Education, University of Texas at Austin, EDAS21, Austin, Texas 78712.

Contract Amount. The total cost of services to be performed under the contract with the adult performance level project is presently estimated to be \$290,000.

Project Reports. Reports shall be submitted to the TDCA upon completion.

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

TRD-8803936 Douglas C. Brown
General Counsel
Texas Department of Community Affairs

Filed: April 25, 1986
For further information, please call (512) 834-8088.

★ ★ ★

Comptroller of Public Accounts

Edited Decision 12,863

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 12,863 (Franchise Tax)—Claimant argues for a refund declaring it overpaid from 1973-1976, including an interest charge until refunding date.

Held, refund due for franchise tax reporting years 1975-76, but no refund for tax reporting years 1973-74. The comptroller has no authority to grant a claim for refund beyond

the seven-year limitation period from the date of filing the claim. The claims for the 1973 and 1974 franchise tax reports due June 15, 1973, and 1974, are barred by statute of limitations. Those claims for refund were not part of any previous administrative and court proceedings; thus there was not suspension of time. The 1975 and 1976 claims for refund of amount overpaid are sustained on the basis that the statute of limitations is no bar and the administrative judge's denial of the tax divisions *res judicata* argument that the issue had been determined by the district court in petitioner's previous law suit. The administrative judge denied the claim for interest on the refund stating the comptroller had no authority to compute and pay interest on amounts erroneously paid prior to January 1, 1982.

Issued in Austin, Texas, on April 18, 1986.

TRD-8804031 Bob Bullock
Comptroller of Public Accounts

Filed: April 30, 1986
For further information, please call (512) 463-4808.

★ ★ ★

Edited Decision 16,385

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 16,385—Taxpayer, an agricultural cooperative engaged in the production of cottonseed oil, contended that tarps used for the temporary storage and drying of cottonseed were exempt from sales tax as articles used and consumed in manufacturing.

Held: Tarps were part of an apparatus that removed field heat and moisture from cottonseed, which was an essential step in the production of cottonseed oil, and because these tarps had a useful life of less than six months, they are exempt from sales tax under the Texas Tax Code, §151.318.

Issued in Austin, Texas, on April 18, 1986.

TRD-8804029 Bob Bullock
Comptroller of Public Accounts

Filed: April 30, 1986
For further information, please call (512) 463-4908.

★ ★ ★

Edited Decision 16,769

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 16,769 (Franchise Tax)—Petitioner contends amounts included in its taxable capital were erroneously characterized as accounts receivable when they were dividend paid.

Held, tax due. For Texas franchise purposes, each corporation has to stand alone in computing and paying tax. Petitioner's books and records show that an amount is due from its parent, constituting an asset and therefore a part of petitioner's tax base. Petitioner contends that the treat-

ment of dividends paid as accounts receivable should be viewed as an error, and petitioner should be allowed to adjust its books to receive a refund for an overpayment.

Held, tax due. The changes in its books that taxpayer wants cannot be considered to be based on actual corrections of errors.

Issued in Austin, Texas, on April 18, 1986.

TRD-8804030 Bob Bullock
Comptroller of Public Accounts

Filed: April 30, 1986
For further information, please call (512) 463-4808.



Edited Decision 17,151

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.

Comptrollers Administrative Decision 17,151 (Sales Tax)—Petitioner, who manufactures, sells, and installs thermal industrial insulation at a refinery, contends he operated as a lump-sum contractor making improvements to realty.

Held, no tax due. A refinery is a permanent improvement to realty, and the thermal insulation covering machinery and equipment which were improvements to realty, despite the fact that it is removable for repair purposes.

Issued in Austin, Texas, on April 18, 1986.

TRD-8804028 Bob Bullock
Comptroller of Public Accounts

Filed: April 30, 1986
For further information, please call (512) 463-4808.



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 3337). Also, the notice of amended awards was published in the March 7, 1986, issue of the *Texas Register* (11 TexReg 1158).

Value of Amended Contract. The following names and addresses of the amended contract awards in which the reallocations for the interpreter services for Texas Employment Commission offices have been adjusted for fiscal year 1986 are: Central Texas Council for the Deaf/Hearing Impaired, P.O. Box 8792, Waco, Texas 76714, \$6,163—increased to \$6,613; and Travis County Council for the Deaf, 2201 Post Road, Room 100, Austin, Texas 78704, \$49,239—increased to \$51,039.

All other information remains the same.

Issued in Austin, Texas, on April 28, 1986.

TRD-8803998 Larry D. Evans
Executive Director
Texas Commission for the Deaf

Filed: April 28, 1986
For further information, please call (512) 463-8891.



Texas Department of Health Intent to Revoke a Certificate of Registration

The Bureau of Radiation Control, Texas Department of Health, filed a complaint against Crestwood Animal Clinic, pursuant to *Texas Regulations for Control of Radiation (TRCR)* 13.8. The agency intends to revoke the certificates of registration, order the registrant to cease and desist use of radiation machine(s), and order the registrant to divest itself of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with the order and the provisions of Texas Civil Statutes, Article 4590f. The complaint is as shown following this notice.

This notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas, from 8 a.m.-5 p.m. Monday-Friday (except holidays).

COMPLAINT

Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Crestwood Animal Clinic, Star Route, Box 17, Highway 180 West, Mineral Wells, Texas 76067, (the registrant), holder of Certificate of Registration 5-01161.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the month of issuance of the certificate of registration. On May 13, 1985, Crestwood Animal Clinic was billed \$77 for fees due on Certificate of Registration 5-01161 covering the period from April 1984-March 1986. On February 19, 1986, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of fees has not been received.

On February 14, 1986, Crestwood Animal Clinic was billed \$40 for fees due on Certificate of Registration 5-01161, covering the period from March, 1986-February, 1987. Payment of fees has not been received.

Texas Regulations for Control of Radiation (TRCR) 32.10(3) requires 2.0 millimeters aluminum filtration in the useful beam for veterinary x-ray units capable of operation at 70 kVp or above. During an inspection conducted by an agency representative on December 17, 1985, the

Universal x-ray machine was determined to have 1.5 millimeters aluminum equivalent filtration present. On January 27, 1986, the agency issued a notice of violation, indicating that the finding was a health-related violation and should be corrected immediately. The registrant was required to submit a written reply to the agency, including statements and explanations of steps taken to correct the violation, steps taken to avoid repeating the violation, and the date of achievement of full compliance. A written reply has not been received.

Therefore, the agency as provided in *Texas Regulations for Control of Radiation* 13.8(c), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with *Texas Regulations for Control of Radiation* 13.8(a), either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If the fee is paid within 30 days of the date of this complaint, no order will be issued.

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

TRD-8603946 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: April 28, 1986
For further information, please call (512) 458-7236.

★ ★ ★

The Bureau of Radiation Control, Texas Department of Health, filed complaints against the following registrants, pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8. The agency intends to revoke the certificates of registration, order the registrants to cease and desist use of such radiation machine(s), and order the registrants to divest themselves of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that they have complied with the order and the provisions of Texas Civil Statutes, Article 4590f. If the fee is paid within 30 days of the date of each complaint, no order will be issued. The complaints are as shown following this notice.

This notice affords the opportunity for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas from 8 a.m.-5 p.m. Monday-Friday (except holidays).

COMPLAINT

Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Park Place Hospital, 3050 39th Street, P.O. Box 1648, Port Arthur, Texas 77640, (the registrant), holder of Certificate of Registration 10-01380.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the month of issuance of the certificate of registration. On May 8, 1985, Park Place Hospital was billed \$440 for fees due on Certificate of Registration 10-01380 covering the period from April, 1984-February, 1986. On February 24, 1986, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of fees has not been received.

Therefore, the agency as provided in *Texas Regulations for Control of Radiation* 13.8(c), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with *Texas Regulations for Control of Radiation* 13.8(a), either disable the machine(s) or divest himself of it, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If the fee is paid within 30 days of the date of this complaint, no order will be issued.

COMPLAINT

Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Raymond Royace Hughes, D.C., 1060 N.A.S. Drive, Corpus Christi, Texas 78418, (the registrant), holder of Certificate of Registration 8-01115.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the month of issuance of the certificate of registration. On May 3, 1985, Raymond Royace Hughes, D.C. was billed \$105 for fees due on Certificate of Registration 8-01115 covering the period from April, 1984-January, 1986. On February 21, 1986, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of fees has not been received.

On December 18, 1985, Raymond Royace Hughes, D.C. was billed \$60 for fees due on Certificate of Registration 8-01115, covering the period from January, 1986-December, 1986. Payment of fees has not been received.

Therefore, the agency as provided in *Texas Regulations for Control of Radiation* 13.8(c), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with *Texas Regulations for Control of Radiation* 13.8(a), either disable the machine(s) or divest himself of it, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If the fee is paid within 30 days of the date of this complaint, no order will be issued.

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

TRD-8603947

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

Filed: April 28, 1986

For further information, please call (512) 458-7236.

★ ★ ★

Proposed Radioactive Material License Issuance

Notice is hereby given by the Texas Department of Health that it proposes to issue the following radioactive material license.

Radioactive Material License 11-3919, to be issued to Nuclear Pharmacy, Inc. (mailing address: Nuclear Pharmacy, Inc., 6101 Southwest Freeway, Suite 137, Houston, Texas 77057).

The license is summarized as follows.

Authorizes Nuclear Pharmacy, Inc., of Houston to receive radioactive waste from other persons and to store indoors, process, and transfer radioactive waste to an authorized disposal site.

Limits the total radioactive waste from other persons that may be stored and processed to 250 cubic feet/year and the following activity limits:

Group I—10 mCi; Group II—100 mCi; Group III—1 Ci; Group IV—10 Ci.

Exempts the licensee from the major requirements of TRCR Part 44, licensing of radioactive waste processing and storage facilities, under *Texas Regulations for Control of Radiation* (TRCR) 44.6(b)(2), and further exempts them from the TRCR 44.6(b)(2) 50 cubic feet/year storage and processing limit.

Imposes certain procedures for the processing and storing of radioactive waste and establishes radiation safety procedures.

The Division of Licensing, Registration, and Standards has determined that: the proposed issuance has no significant impact on the human environment; the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety, and the environment; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety, and the environment; the issuance of the license will not be inimical to public health and safety, or have a detrimental impact on the environment; and the licensee satisfies any applicable special requirements in the TRCR, Parts 41 and 44.

This notice affords the opportunity for a public hearing upon written request with 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(a), and as set out in TRCR 13.5(a). A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county or adjacent county, and any local government in the county; and who

can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the license will be issued 14 days following the end of the 30-day period of notice.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas. Information relative to the issuance of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on April 28, 1986

TRD-8603988

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

Filed: April 29, 1986

For further information, please call (512) 458-7236.

★ ★ ★

Public Hearings

In compliance with the National Health Planning and Resources Development Act of 1974 (Public Law 93-641), public hearings on the Statewide Health Coordinating Council's Proposed State Health Plan for Texas will be conducted as listed here:

May 8, 1986—Coastal Bend Council of Governments, 2910 Leopard Street, conference room, Corpus Christi, 1:30 p.m.; May 14, 1986—South Texas Development Council, 600 South Sandman Street, Wing Conference Room, Laredo, 2 p.m.; May 15, 1986—Alamo Area Council of Governments, 118 Broadway, Conference Room 420, San Antonio, 3 p.m.; May 15, 1986—South East Texas Regional Planning Commission, Beaumont City Hall, 801 Main Street, Beaumont City Council Chambers, Beaumont, 2 p.m.; May 16, 1986—South Plains Association of Governments, 3424 Avenue H, Family Park Shopping Center, conference room, Lubbock, 2 p.m.; May 19, 1986—Panhandle Regional Planning Commission, Southwest Savings Building, 8th and Jackson Streets, first floor conference room, Amarillo, 7 p.m.; May 20, 1986—Brazos Valley Development Council, 3006 East 29th Street, conference room, Bryan, 5 p.m.; May 21, 1986—North Central Texas Council of Governments, 616 Six Flags Drive, second floor board room, Arlington, 3 p.m.; May 22, 1986—West Texas Council of Governments, City Hall, Two Civic Center Plaza, 10th floor conference room, El Paso, 1:30 p.m.; May 28, 1986—Houston-Galveston Area Council, 3555 Timmons Lane, fourth floor conference room, Houston, 2 p.m.; May 28, 1986—Texas Department of Health, auditorium, 1100 West 49th Street, Austin, 10 a.m.; May 30, 1986—Ark-Tex Council of Governments, Titus County Memorial Hospital, 2001 North Jefferson, Education Annex, Mt. Pleasant, 1:30 p.m.; June 3, 1986—West Central Texas Council of Governments,

1025 East North 10th Street, Abilene, 2 p.m.; June 4, 1986—Lower Rio Grande Development Council, Wealaco Chamber of Commerce, FM Road 1015, Expressway 83, Wealaco, 1:30 p.m.

The proposed plan presents statewide health concerns and proposes means to begin solving statewide health problems. Beginning May 8, copies of the proposed plan will be available for public review during working hours as listed here:

Coastal Bend Council of Governments, 2910 Leopard Street, Corpus Christi; South Texas Development Council, 600 South Sandman Street, Laredo; Alamo Area Council of Governments, 118 Broadway, Suite 400, San Antonio; South East Texas Regional Planning Commission, 3800 Highway 365, Port Arthur; South Plains Association of Governments, 3424 Avenue H, Family Park Shopping Center, Lubbock; Panhandle Regional Planning Commission, 801 South Jackson, Amarillo; Brazos Valley Development Council, 3006 East 29th Street, Bryan; North Central Texas Council of Governments, 616 Six Flags Drive, Arlington; West Texas Council of Governments, Two Civic Center Plaza, fifth floor, El Paso; Houston-Galveston Area Council, 3555 Timmons Lane, Houston; Ark-Tex Council of Governments, Loop 151, Center West Building A, Texarkana; West Central Texas Council of Governments, 1025 East North 10th Street, Abilene; Lower Rio Grande Valley Development Council, 1701 West Business Highway 83, McAllen; Texas Department of Health, Room T-511, 1100 West 49th Street, Austin.

Oral and written comments pertaining to the proposed state health plan are invited and encouraged from the public. Written comments may be submitted at hearings or received by mail not later than June 6, 1986, by the Chairman, Statewide Health Coordinating Council, 1100 West 49th Street, Austin, Texas 78756-3199.

Issued in Austin, Texas, on April 29, 1986.

TRD-9804022 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: April 30, 1986
For further information, please call (512) 458-7261.

★ ★ ★

State Department of Highways and Public Transportation Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the State Department of Highways and Public Transportation publishes this notice of consultant contract award. The consultant proposal request appeared in the December 17, 1985, issue of the *Texas Register* (10 TexReg 4865). The contract effort consists of consulting services to conduct a risk analysis study regarding the department's automation resources.

The contractor selected to perform this service is Price Waterhouse, One American Center, Suite 2000, Austin, Texas, 78701. The total value of the contract is \$88,086. The contract began April 15, 1986, and has an ending date of August 5, 1986. Final reports under this contract are not required.

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

TRD-8603912

Diane L. Northam
Administrative Technician
State Department of Highways and
Public Transportation

Filed: April 23, 1986
For further information, please call (512) 463-8630.

★ ★ ★

Texas A&M University System Request for Proposals

The Texas Engineering Extension Service, a part of the Texas A&M University System, in conjunction with the Public Utility Commission of Texas, requests proposals for program evaluation-validation work.

Program Evaluation Validation Work. Program being evaluated is 375 energy surveys to local governments and small manufacturing firms throughout the State of Texas during fiscal year 1984 and fiscal year 1985. The proposed analysis is to validate the accuracy and soundness of methodology of the past evaluation work that was done internally. The past evaluation was performed on a sampling of 78 and used follow-up, on-site visits, and the difference in metered energy usage 12 months before and 12 months after the original survey. The objectives of this new evaluation are: to add the credibility of a qualified third party who will review the methodology used, assumptions, and data of the internal evaluation to obtain a confidence level of 90% and accuracy within 10%; and to interview the clients to define possible effects (if any) of further implementation as a specific result of the follow-up, on-site visit. Results will be used to insure accuracy of information reported to external organizations and to assist in future program planning direction.

Experience in related work and demonstrated expertise in evaluation techniques are critical. Contractor will work primarily with the organization that conducted the energy surveys—the Energy Training Division, Texas Engineering Extension Service (TEEX), the Texas A&M University System, College Station. Also involved will be the monitoring agency that funds the program, the Energy Efficiency Division, Public Utility Commission of Texas, Austin. Besides work in College Station and Austin, field work to interview survey recipients is expected.

Proposals should include the following items: plan of program work to be performed; outline of interview forms/survey instruments to be used; preliminary schedule of work to be performed; proposed budget: salaries; travel; anticipated level of assistance required from the Energy Training Division; qualification of the contractor to perform these services.

The selection of a proposal will be based on the following criteria in the relative order of importance shown in the list:

- (a) contractor experience and demonstrated experience;
- (b) suitability of proposed plan of program work;
- (c) early completion of finished product;
- (d) proposed cost of work.

Proposals shall be submitted in writing and include the name, address, and telephone number of the bidder. Each proposal shall be submitted by placing five copies thereof in a sealed envelope addressed to Energy Efficiency Division, Public Utilities Commission of Texas, c/o Energy Training Division, Texas Engineering Extension Service, the Texas A&M University System, College Station, Texas 77843, Attention: Malcolm Verdict; and either mailed to

that address or hand-delivered to the Energy Training Division, Texas Engineering Extension Service in Henderson Hall on the College Station campus of Texas A&M University. The sealed envelope should further be marked "Energy Survey Evaluation Bid." Bids must be received in the offices of the Energy Training Division on or before May 27, 1986, to be considered.

The Energy Efficiency Division of the Public Utility Commission shall select the winning bid and reserves the right to reject all bids.

Questions should be directed to Robert Korich of the Energy Training Division at (409) 845-2914.

Issued in Austin, Texas, on April 28, 1986.

TRD-8604048 Bob Korich
Program Manager
Texas Engineering Extension Service

Filed: April 30, 1986
For further information, please call (409) 845-2914.

★ ★ ★

Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to City of Elgin on April 23, 1986, assessing \$6,760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ramon Dasch, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8603921 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: April 25, 1986
For further information, please call (512) 463-7898.

★ ★ ★

Notice of Application for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of April 21-25, 1986.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hear-

ing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of April 21-25, 1986

The Town of Broadus; wastewater treatment facilities; approximately 300 feet west of State Highway 147, adjacent to Caney Creek in San Augustine County; 11772-01; renewal

Post Oak Water Supply Corporation, Hubbard; surface water treatment plant; on the south side of Navarro Mills Reservoir, 600 feet north of FM Road 709, just east of Lawrence Cemetery in Navarro County; 11390-01; renewal

City of Oglesby; wastewater treatment facilities; approximately 1,000 feet west of the St. Louis Southwestern Railroad and on the south side of the Old Gatesville Highway in the southwestern portion of the City of Oglesby in Coryell County; 10914-01; renewal

Harris County Municipal Utility District No. 266, Houston; wastewater treatment facilities; approximately 6,000 feet southwest of the intersection of U.S. Highway 59 and the North Belt Freeway and 750 feet south of the North Belt Freeway, north of the City of Houston in Harris County; 12292-01; renewal

The City of Como; wastewater treatment facilities; on the west side of Carroll Creek near the southwest boundary of the City of Como in Hopkins County; 11313-01; renewal

Harris County Municipal Utility District No. 122; wastewater treatment facilities; approximately 200 feet north and 4,000 feet west of the intersection of Haralson Road with U.S. Highway 90A in Harris County; 12250-01; renewal

Lufkin Independent School District, Lufkin; sewage treatment plant; about 2½ miles north of the City of Lufkin and about ¼ mile west of U.S. Highway 59 on FM Road 2021 in Angelina County; 12276-01; renewal

Hurst Creek Municipal Utility District, Austin; wastewater treatment facilities; approximately 600 feet south of World of Tennis Boulevard and 1,200 feet west of Lohmans Ford Road in the Lakeway Development Complex in Travis County; 12215-01; renewal

A. B. Tippit, Leon E. Tippit, Gary McCrary, and Stanley Williams, doing business as Ocean Enterprises, Inc., Port Lavaca; shrimp processing plant; at the intersection of Broadway and Harbor Streets in the City of Port Lavaca, Calhoun County; 02069; amendment

Harris County Municipal Utility District No. 36, The Woodlands; wastewater treatment facilities; adjacent to Lateral H of Turkey Creek, approximately 2.2 miles south and 1.2 miles east of the intersection of FM Road 1960 and Interstate Highway 45 in Harris County; 12239-01; renewal

Rolling Fork Public Utility District; wastewater treat-

ment facilities; at 8202 Lettice Street on the west bank of the Rolling Fork Creek, approximately 2 miles north of U.S. Highway 90 in Harris County; 11188-01; renewal

Gustavo Garcia, doing business as North Freeway Center, San Antonio; wastewater treatment facilities; at the intersection of Gulf Bank Road and IH 45 in Harris County; 11657-01; renewal

Harris County Municipal Utility District No. 203, Houston; wastewater treatment facilities; on the south side of Greens Bayou approximately 400 feet south of the intersection of Gears Road and Spears Road in Harris County; 12301-01; renewal

Sheldon Road Municipal Utility District, Houston; sewage treatment plant; approximately 1 1/4 miles south-southwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County; 10541-01; renewal

Leroy J. Everett, doing business as Cedar Bayou Mobile Home Park, Baytown; wastewater treatment plant; 1,800 feet east of State Highway 146 and approximately 500 feet north of Horsepen Bayou in Chambers County; 10990-01; renewal

West Hardin County Consolidated Independent School District, Saratoga; wastewater treatment facilities; immediately south of the intersection of State Highway 105 and FM Road 770 and approximately 1,000 feet east of Pine Island Bayou in Hardin County; 11274-01; renewal

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

TRD-8604003 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: April 29, 1986
For further information, please call (512) 463-7888.



Texas Water Development Board Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Water Development Board requests the submission of research proposals for identifying potential solutions to meet the water supply and sewage service needs and for estimating the costs associated with providing water supply and sewage collection and treatment services to each colonia in Cameron, Willacy, and Hidalgo Counties. Results, analyses, and computations will provide information necessary for determining the water supply and sewage treatment needs and the associated costs for providing these services to the colonias of Cameron, Willacy, and Hidalgo Counties.

Description of Project Objectives. The purpose of this project is to identify potential solutions to meet water supply and sewage service needs and to develop estimates of costs associated with providing water supply and sewage collection and treatment services to each of the colonias in Cameron, Willacy, and Hidalgo Counties. Cost estimates for water supply shall be made for: projects that will deliver water to the individual structure tap and shall be presented in two separate parts: cost to a central distribution point; and cost from the distribution point to the individual dwelling water taps.

Cost estimates for sewage services shall be made in two parts: costs for projects that would collect sewage from individual dwelling sewer taps; and costs for treatment or other disposal alternatives. All work shall be based on a planning period of 1987-2010, and shall include project implementation schedules. The contractor shall contact and coordinate study work with the leadership of existing local water and sewer entities, including irrigation districts, cities, water supply districts and corporations, and others as appropriate. Specific objectives to be addressed by this research project are as follows.

Objective I. Based on information obtained from the work (copy of work list is presented at end of this objective) of the Lower Rio Grande Valley Development Council (LRGVDC), identify and describe potential service areas and potential projects and approaches needed by each colonia for water supply and sewage service, taking into account all existing projects, plans, and service areas. Particular attention shall be paid to opportunities for developing or expanding regional water supply and sewage systems, as well as nontraditional or temporary solutions such as installation of a community water tap and on-site sewage treatment systems, where appropriate, as alternatives to providing the individual dwelling services specified in the preceding description of project objectives. Results of work and services performed by the Lower Rio Grande Valley Development Council will provide input to this project as follows:

- (1) the geographical location of all existing colonia settlements (240 known and an undetermined number that have not yet been identified) located in the three-county Lower Rio Grande Valley area;
- (2) existing water infrastructure service arrangements for the counties of Cameron, Willacy, and Hidalgo;
- (3) present demographic and water use characteristics of existing individual colonia settlements; and
- (4) projections of water supply and sewer service needs through the year 2010.

All data listed in items (1)-(4) will be completed and forwarded on a timely basis in order to meet all data requirements of the selected contractor.

Objective II. Identify and describe potential public and private entities needed to implement and operate projects for each service area for water supply and sewage service. Existing systems and the potential for regional systems must be taken into account.

Objective III. Estimate capital, operation, and maintenance costs, including monthly rates to users, for each potential project identified in Objective I for water supply and sewage service.

Objective IV. Identify and describe potential federal and state financial assistance programs available to implement projects identified in Objective I and according to the implementation schedules identified in Objective I for water supply and sewage service.

Objective V. Prepare and submit a project completion report on or before November 30, 1986.

Description of Funding Consideration. The Texas Water Development Board has reviewed and evaluated the merits of this proposed project and recommended that funding in an amount not to exceed \$150,000 for the project's duration of four months be authorized from the Texas Water Development Board water research and planning fund established under the provisions of the Texas Water Code, Chapter 15. In the event that no acceptable proposal is

submitted, the Texas Water Development Board retains the right to make no award of contract funds as specified by provision of §355.105 of the rules governing the Texas Water Development Board's water research and planning fund as adopted under the Texas Water Code, §§.131 and §5.132.

Explanation of Review Criteria and Procedures. Upon receipt, proposals will be forwarded to the Texas Water Development Board staff member responsible for the specific area under which the proposal is submitted. The responsible staff member will review each proposal and forward the proposals and recommendations to the Texas Water Development Board's Research and Planning Technical Advisory Committee for evaluation. In addition to providing specific comments, each member of the Research and Planning Technical Advisory Committee will be required to rate each proposal in the following categories:

- (1) degree to which the proposal is responsive to the overall purpose and funding criteria and/or the specific purpose of an individual solicitation;
- (2) qualifications of project staff;
- (3) reasonableness of proposed budget and time schedule;
- (4) availability of matching funds or services, if any (not applicable for this project);
- (5) project organization and management, including project monitoring procedures;
- (6) adequacy of proposed technical scope of work;
- (7) directly-related project and staff experience; and
- (8) other information as may be required for the project.

The responsible staff member will prepare for the executive administrator of the Texas Water Development Board a summary of all proposals submitted, along with evaluations and identification of potential conflicts of interest, if any. On the basis of this information, the executive administrator shall make recommendations to the Texas Water Development Board on those proposals that meet requirements for funding. Upon approval of the Texas Water Development Board, the executive administrator of the agency will be authorized to contract with the proposing party.

Deadline for Proposal Submission and Contract Awards. Deadline for submitting proposals is May 30, 1986. Contract(s) will be awarded no later than July 30, 1986. Proposals will be submitted to Dr. Herbert W. Grubb, Director, Water Data Collection, Studies, and Planning Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Guidelines for Proposal Contents. All proposals shall include the following information:

- (1) project title and number as listed in the specific request for proposals;
- (2) discussion of how the proposer intends to fulfill the requirements of the project, including the identification of potential for or plans to incorporate and use proprietary information and any subcontracts planned;
- (3) resumes of principals, subcontractors, and principal investigators (including names, addresses, and phone numbers) and a summary of pertinent experience

of the proposing organization;

(4) time schedule for work to be performed by principals and subcontractors;

(5) plans for implementing results and identification and involvement of potential users (not applicable for this project);

(6) itemized total budget, including fringe benefit costs, overhead costs, and profit margin;

(7) lists of products (reports, plans, or other products) the Texas Water Development Board will receive and completion dates;

(8) suggested monitoring procedures; and

(9) other information as indicated by specific project description.

Ten copies of the full proposal must be filed with the Texas Water Development Board.

The contact person for additional information is Dr. Herbert W. Grubb, Director, Water Data Collection, Studies, and Planning Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-7868.

Statement of Contract Terms and Required Completion Date. Interagency contracts and private contracts will be considered. Procedures for awarding contracts to private consultants shall comply with Texas Civil Statutes, Article 6252-11c, concerning use of private consultants by state agencies. In compliance with Article 6252-11c, proposals submitted by other state agencies and pursuant contractual agreements with such agencies will have priority over proposals forwarded to the Texas Water Development Board by private consultants for contractual consideration. State of Texas contractors (interagency contracts) will be paid on an actual cost reimbursement basis provided for by the State Purchasing and General Services Commission rules and regulations. Private contractors will be paid on a fixed contract amount basis. The contract will provide that 10% of each contract billing be retained for final payment until after receipt and acceptance of all data, reports, and documentation. The contractor expenditures related to the project will be submitted on a monthly basis. Contractual agreements and associated funding will terminate on November 30, 1986. The completion date is November 30, 1986.

Statement Regarding Proprietary Information and Patents. Results of all analyses completed under the terms of the contract with the Texas Water Development Board will be submitted by the contractor in the form of a written report, which will then become public information. Specific provisions will be made in the contract for provisions of ownership of data, analyses, documentation, and reports submitted to and approved by the executive administrator of the Texas Water Development Board.

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

TRD-8603896

Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: April 25, 1986

For further information, please call (512) 463-7860.

★ ★ ★