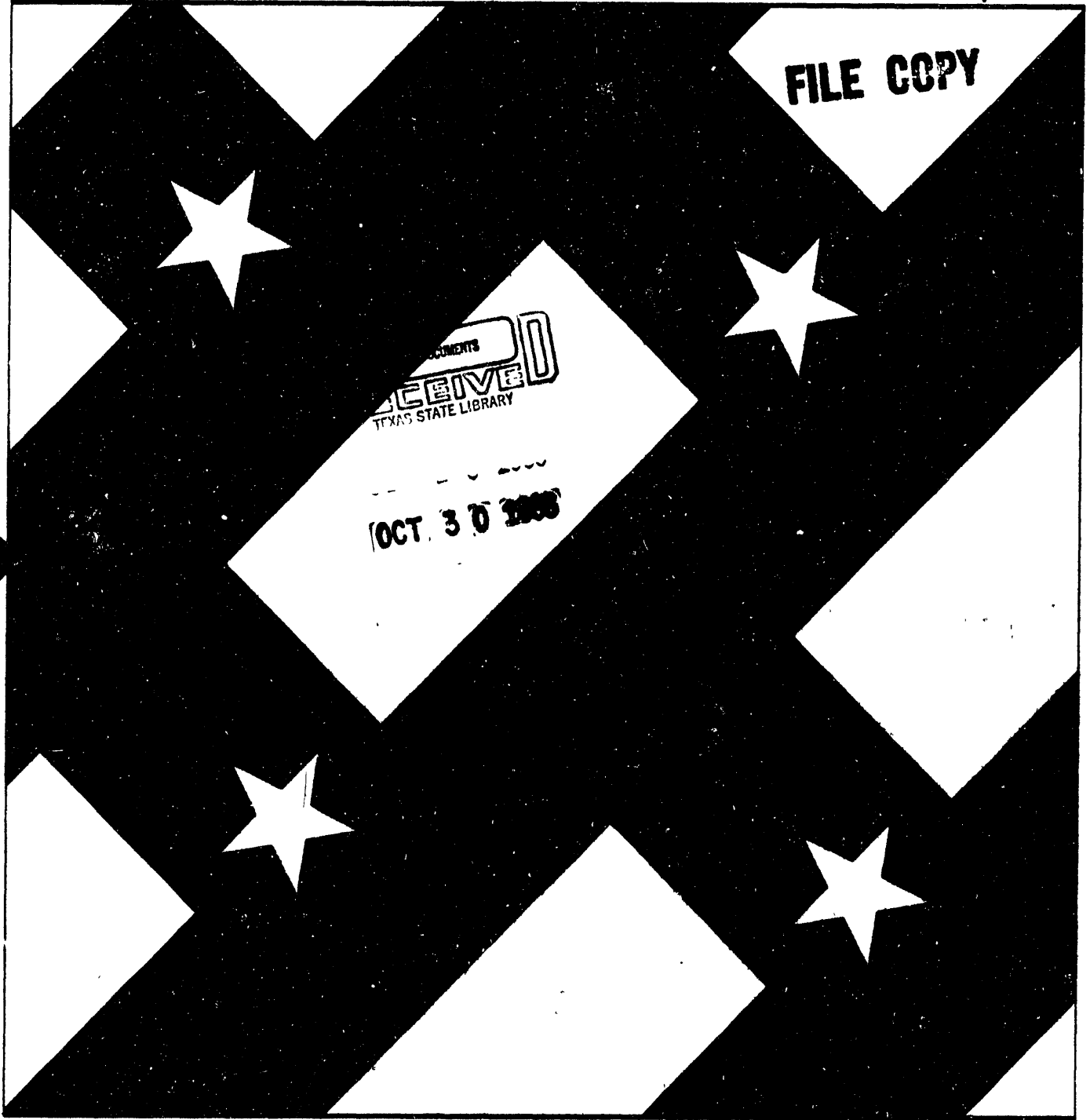


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# Texas Register

Volume 11, Number 80, October 24, 1986

Pages 4391-4456



## Highlights

The Texas Department of Community Affairs proposes a new section concerning personnel standards for the State of Texas Job Training Partnership Act (JTPA) State Program. Earliest possible date of adoption - November 24 . . . . **page 4397**

The Texas Education Agency proposes new sections concerning the price differential in-

dex (PDI) for fiscal years 1987-1988 and 1988-1989. Proposed date of adoption - January 8 . . . . . **page 4403**

The Texas Department of Health adopts new sections setting minimum standards for the licensing of ambulatory surgical centers (ASC) in the State of Texas. Effective date - November 5 . . . . . **page 4413**

**Office of  
the Secretary  
of State**

## Texas Register

The *Texas Register* (ISN 0362-4781), is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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*Illustrations courtesy of Texas Parks and Wildlife Department.*

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# Proposed Rules

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Community Affairs

#### Chapter 5. Job Training

##### Subchapter I. Personnel Standards

★ 10 TAC §5.903

The Texas Department of Community Affairs (TDCA) proposes new §5.903, concerning the adoption by reference of a remedy and sanction policy for violations of the Job Training Partnership Act, §167, for the State of Texas Job Training Partnership Act (JTPA) State Program. The requirements apply to agency contractors. The new section covers requirements of non-discrimination in the State JTPA Program, provides a time-table for compliance upon a finding of discrimination and provides sanctions for continued contractor non-compliance. Copies of the proposed new section may be examined in the office of the TDCA, Training and Employment Development Division, 8317 Cross Park Drive, Austin, or in the *Texas Register* Office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.

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

Clyde McQueen, director of the TDCA Training and Employment Development Division, 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 compliance with the requirements set forth in the Federal Job Training Partnership Act, §167, Public Law 97-300, and with the requirements set forth in the Texas Job Training Partnership Act, §8(c)(10), Texas Civil Statutes, Article 4413(52). There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Douglas C. Brown, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711.

The new section is proposed under Public Law 97-300, §167, and Texas Civil Statutes, Article 4413(52), §8(c)(10), which provides the Texas Department of Community Affairs with the authority to develop and formally issue personnel standards, including equal opportunity compliance, necessary to assure proper operation of programs utilizing federal funds paid to the state under Titles I-III of the JTPA.

§5.903. *Sanctions.* The Texas Department of Community Affairs herein adopts by reference the Remedy and Sanction Policy for Violations of Section 167 of the Job Training Partnership Act. Copies of the section may be obtained in the offices of the Texas Department of Community Affairs, Training and Employment Development Division, 8317 Cross Park Drive, Austin, or in the *Texas Register* Office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.

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 October 15, 1986.

TRD-8609826

Douglas C. Brown  
General Counsel  
Texas Department of  
Community Affairs

Earliest possible date of adoption:  
November 24, 1986  
For further information, please call  
(512) 834-6060.

★ ★ ★

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 105. Foundation School Program

##### Subchapter W. Price Differential Index

★ 19 TAC §§105.466-105.469

The Texas Education Agency proposes new §§105.466-105.469, concerning the price differential index (PDI) for 1987-1988 and 1988-1989.

The index is a mechanism within the state aid to public education formulas for recognizing variations in resource costs due to factors beyond the control of school districts. It is derived from econometric models developed by an advisory committee appointed by the State Board of Education. The index and the formula by which it is applied in the following biennium must be adopted by the State Board of Education at least 30 days before the beginning of each legislative session. It is projected that the application of the PDI will distribute over \$600 million in each year of the next biennium.

New §105.466 contains general provisions and definitions of terms pertaining to the PDI for 1987-1988 and 1988-1989 and explanations of the four component indices used in the composite PDI.

New §105.467 contains provisions for determining the PDI for each school district.

New §105.468 contains the formula for determining the adjusted basic allotment.

New §105.469 is the adoption by reference of a table showing the price differential index and adjusted basic allotment for each school district. The table is entitled "1987-88/1988-89 Price Differential Index and Adjusted Basic Allotment." The formula in proposed new §105.468 and the table in proposed new §105.469 duplicate the formula for adjustment and application of the PDI that is currently in use. This formula will be reexamined by the State Board of Education based on testimony received at a public hearing on the PDI at 1 p.m. on October 29 in Room 1-104 of the William B. Travis Building, 1701 North Congress Avenue, Austin. Existing §§105.461-105.465, which contain the PDI for the current biennium, are still in effect and are not proposed for repeal at this time.

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 small businesses as a result of enforcing or administering the sections. There will be some effect on state and local government, but they are indeterminate.

Mr. Moak and Dr. Beverly J. Bardsley, director for policy development, have deter-

mined 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 a new PDI for 1987-1988 and 1988-1989, with broader scope than the current PDI, resulting in more equitable distribution of the Foundation School Program basic allotment. 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, Policy Development, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 days after notice of a proposed change of rules has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §16.177(b), which requires the State Board of Education by rule to prescribe the specifications of the econometric model on which the price differential index is based, and §16.179, which requires the State Board of Education to adopt a price differential index based on the information from the econometric model and the formula under which the index is applied to the basic allotment under the Foundation School Program.

§105.466. *Price Differential Index for 1987-88 and 1988-89.*

(a) General provisions.

(1) The price differential index shall be calculated using an econometric approach based upon linear regression. The method of least squares shall be used to produce estimates that are the best linear unbiased estimates under classical statistical assumptions.

(2) The price differential index shall be a weighted composite of four indices, each representing a different type of school district cost. The four component indices shall be the instructional salary index, the support and administrative salary index, the plant payroll and contracted services index, and the supplies, materials, and other operating expenses index.

(3) For the 1986-87 school year, the price differential index shall be calculated as described in §§105.461-105.465 of this title (relating to the Specifications for Econometric Model; Data Values for Unadjusted Price Differential Index Factors; Determining Each District's Price Differential Index; Determining the Adjusted Basic Allotment; and Adjusted Price Differential Index and Adjusted Basic Allotment.)

(b) Definition of terms and data elements.

(1) Instructional staff. Instructional staff shall be defined as teachers, nurses, and librarians. The professional status code as reported on the professional personnel roster for the 1985-86 school year as of August 31,

1986, shall be used to determine if an individual was assigned as instructional staff. The assignment shall be the major assignment of the individual as determined by days employed and percent of day assigned. If the professional status code is greater than 0099 and less than 1801, or greater than 4100 and less than 4104, or equal to 8200, then the individual shall be categorized as instructional staff.

(2) Support/administrative staff. Support and administrative staff shall be defined as supervisors, counselors, principals and assistant principals, therapists, diagnosticians, social workers, visiting teachers, physicians, superintendents, and general administrative officers of a district. The professional status code as reported on the professional personnel roster for the 1985-86 school year as of August 31, 1986, shall be used to determine if an individual was assigned as support/administrative staff. The assignment shall be the major assignment of the individual as determined by days employed and percent of day assigned. If the professional status code is greater than 3100 and less than 3301, or greater than 5200 and less than 8101, or greater than 8499, or equal to 4200, then the individual shall be categorized as support/administrative staff.

(3) Monthly salary. The monthly salary shall be calculated as the actual salary divided by the full-time equivalency count, further divided by the number of contract months. The number of contract months shall be determined as follows: 10 for maximum days employed of 183; 11 for maximum days employed of 202 or 207; 12 for maximum days employed of 220 or 226; 10 for any other value of maximum days employed. Only salaries for personnel whose full-time equivalency is at least .95 shall be retained for analysis purposes. The source for all of these elements shall be the professional personnel roster for the 1985-86 school year, maintained by the Central Education Agency as of approximately August 31, 1986.

(4) Supplies, materials, and other operating costs per student. The value of this element shall be the sum of the following specific financial components, divided by the number of students in average daily attendance (ADA) in the 1985-86 school year as defined in paragraph (22) of this subsection. After division by the number of students in ADA, the values of this element shall be restricted to a range of two standard deviations from the mean. For the purpose of this adjustment, a standard deviation shall have the value of \$158.92. Values for this element greater than \$546.69 shall be set to \$546.69. The financial components shall be obtained from the 1985-86 official budgets file at the Central Education Agency as of August 31, 1986. Budgeted expenditures from the general fund and the governmental expendable trust fund groups only shall be used. The components, described by the appropriate codes from *Bulletin 679, Accounting Manual* are: supplies and materials expenditures (Ob-

ject Code 6300) for instruction, instruction-related services, administration, plant services, and data processing (Functions 10, 20, 40, 50, and 70); purchased/contracted services expenditures (Object Code 6200) for data processing (Function 70); and other operating expenses (Object Code 6400) for instruction, instruction-related services, administration, plant services, and data processing (Functions 10, 20, 40, 50, and 70).

(5) Plant payroll and purchased/contracted services per student. This factor shall be the sum of the following specific financial components divided by the number of students in average daily attendance in 1985-86 as defined in paragraph (22) of this subsection. After division by the number of students in ADA, the values of this element shall be restricted to a range of two standard deviations from the mean. For the purpose of this adjustment, a standard deviation shall have the value of \$222.25. Values for this element greater than \$785.48 shall be set to \$785.48. The financial components shall be obtained from the 1985-86 official budgets as of August 31, 1986. Budgeted expenditures from the general fund and the governmental expendable trust fund groups only shall be used. The components, described by the appropriate codes from *Bulletin 679, Accounting Manual* are payroll costs (Object 6100) and purchased/contracted services (Object 6200) for the plant services function (Function 50).

(6) Experience. The value of experience shall be the number of years of creditable experience in the school systems of Texas. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(7) Experience squared. The value of experience squared shall be derived by multiplying the value of experience by itself.

(8) Tenure. The value for tenure shall be the number of years of that an individual has been employed in the reporting public school district. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(9) No degree. This factor shall indicate that an individual has obtained no degree of a bachelor's level or higher. When no degree has been obtained, the value of this factor shall be 1; otherwise the value shall be 0. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(10) Bachelor degree. This factor shall indicate that the highest degree obtained by an individual is at the bachelor's level. When a bachelor degree is the highest level obtained, the value of this factor shall be 1; otherwise the value shall be 0. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(11) Masters degree. This factor shall indicate that the highest degree obtained by an individual is at the masters level. When a masters degree is the highest level obtained, the value of this factor shall be 1; otherwise



the value shall be 0. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(12) Doctors degree. This factor shall indicate that the highest degree obtained by an individual is at the doctors level (Ph.D., Ed.D, M.D., etc.). When a doctors degree is the highest level obtained, the value of this factor shall be 1; otherwise the value shall be 0. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(13) Advanced degree. This factor shall indicate that an individual has obtained a degree higher than the bachelor level. When such a degree has been obtained, the value of this factor shall be 1; otherwise the value shall be 0. The source shall be the professional personnel roster for the 1985-86 school year as of August 31, 1986.

(14) Secondary teaching assignment. This factor shall indicate that a teacher is assigned to secondary education. If the teacher is assigned to secondary education, the factor shall have a value of 1; otherwise the value shall be 0. The assignment shall be determined from the teacher's professional status code on the professional personnel roster for the 1985-86 school year as of August 31, 1986. The assignment shall be the major assignment of the teacher as determined by days employed and percent of day assigned. If the professional status code is greater than 0299 and less than 0400 or if it is greater than 1099 and less than 1801, then the teacher shall be categorized as secondary.

(15) Principal assignment. This factor shall indicate that an individual is assigned as a full-time principal. If the individual is assigned in this manner, the factor shall have a value of 1; otherwise the value shall be 0. The assignment shall be determined from the teacher's professional status code on the professional personnel roster for the 1985-86 school year as of August 31, 1986. The assignment shall be the major assignment of the teacher as determined by days employed and percent of day assigned. If the professional status code is greater than 5100 and less than 5104, then the individual shall be categorized as a principal.

(16) General administrative officer assignment. The factor shall indicate that an individual is assigned as a general administrative officer of the district. If the individual is assigned in this manner, the factor shall have a value of 1; otherwise the value shall be 0. The assignment shall be determined from the teacher's professional status code on the professional personnel roster for the 1985-86 school year as of August 31, 1986. The assignment shall be the major assignment of the teacher as determined by days employed and percent of day assigned. If the professional status code is greater than 9200, then the individual shall be categorized as a general administrative officer.

(17) Superintendent assignment. This factor shall indicate that an individual is

assigned as the district superintendent. If the individual is assigned in this manner, the factor shall have a value of 1; otherwise the value shall be 0. The assignment shall be determined from the teacher's professional status code on the professional personnel roster for the 1985-86 school year as of August 31, 1986. The assignment shall be the major assignment of the teacher as determined by days employed and percent of day assigned. If the professional status code is equal to 9100, then the individual shall be categorized as a superintendent.

(18) Wealth per instructional staff. The value of wealth per instructional staff shall be the 1985 taxable value property for each school district as certified by the State Property Tax Board on May 30, 1986, divided by the number of instructional staff of the district as defined in paragraph (1) of this subsection.

(19) Wealth per support/administrative staff. The value of wealth per support/administrative staff shall be the 1985 taxable value of property for each school district as certified by the State Property Tax Board on May 30, 1986, divided by the number of support/administrative staff of the district as defined in paragraph (2) of this subsection.

(20) Wealth per student. The value of wealth per student staff shall be the 1985 taxable value of property for each school district as certified by the State Property Tax Board on May 30, 1986, divided by the number of students in average daily attendance as defined in paragraph (22) of this subsection.

(21) Total effective tax rate. The total effective tax rate shall be calculated by dividing the maintenance and debt service levies, adjusted for losses due to tax freeze, by the 1985 taxable value of property as certified by the State Property Tax Board on May 30, 1986. The levies shall be determined obtained from the 1985 self report of property as available to the State Property Tax Board by July 31, 1986, or from the 1985-86 official budgets reported to the Central Education Agency where information from the prior source is unavailable.

(22) Average daily attendance. The average daily attendance shall be obtained from the superintendents annual report file for the 1985-86 school year maintained by the Central Education Agency as of August 31, 1986. The best four of eight weeks average daily attendance for the sum of grades prekindergarten (early childhood)-12 shall be used.

(23) Adjacent urbanness scale. This factor, determined on a county basis, shall indicate both a county's own urbanness and its relative proximity to an urban county.

(A) Initially, an urbanness factor shall be determined for each county. The 1984 county population estimates shall be ranked from highest to lowest and the counties assigned to quintiles of population. An urbanness factor shall be assigned as follows: a factor of five to the counties in the first

quintile, a factor of four to the counties in the second quintile, a factor of three to the counties in the third quintile, a factor of two to the counties in the fourth quintile, and a factor of one to the counties in the fifth quintile.

(B) The adjacent urbanness scale shall be determined for each county as follows: the urbanness factor of all contiguous counties to each county shall be summed and the result divided by the number of contiguous counties. This surrounding urbanness average shall then be added to the county's own urbanness factor.

(C) Each district will receive the value of the county to which it is assigned for administrative purposes.

(D) The source of the 1984 population estimates shall be the files of the Comptroller of Public Accounts as of March 31, 1986.

(24) Hybrid county wage. This factor shall be the county average wages, adjusted for district property boundaries.

(A) The county average wage data shall be derived from county information supplied by the Texas Employment Commission to the Comptroller of Public Accounts, reflecting the average monthly wage for selected employees covered by unemployment insurance in Texas during the time period of July 1984-June 1985. Employees in the selected portions of the educational services sector (Standard Industrial Classification Codes 8911 and 8999) shall be excluded. An average monthly wage shall be calculated from this information from the comptroller.

(B) Secondly, the acreage in each county that is within each school district's boundaries shall be identified. The percentage of the total acreage for each school district that the county acreage represents shall be determined. The hybrid county wage shall be determined by multiplying these percentages by the appropriate average county wage and summing the results for each school district.

(C) For districts without property value, the county average wage value of the county to which the district is assigned for administrative purposes shall be used as the hybrid county wage value.

(D) The acreage information shall be derived from Central Education Agency files as of March 31, 1986.

(25) Instructional regional average salary. The value of instructional regional average salary shall be the 1984-85 average salary of beginning instructional staff in the education service center region calculated without data from the district being analyzed. To make this calculation, the salaries and full-time equivalencies of instructional staff, as defined in paragraph (1) of this subsection, in each district with zero years of experience shall be aggregated for each district and for each of the 20 regional education service center regions. The value for each district shall be determined by subtracting the district values from the regional values

and dividing the resulting salaries by the resulting full-time equivalencies. If a district had no zero experience instructional staff in 1984-85, the value shall be the regional average. The source shall be the professional personnel roster for the 1984-85 school year as of August 31, 1986.

(26) Support and administrative regional average salary. The value of support and administrative regional average salary shall be the 1984-85 average salary of support and administrative staff with between 10 and 15 years of experience in the education service center region calculated without data from the district being analyzed. To make this calculation, the salaries and full-time equivalencies of support and administrative staff, as defined in paragraph (2) of this subsection, in each district with between 10 and 15 years of experience shall be aggregated for each district and for each of the 20 regional education service center regions. The value for each district shall be determined by subtracting the district values from the regional values and dividing the resulting salaries by the resulting full-time equivalencies. If a district had no support and administrative staff with the proper years of experience in 1984-85, the value shall be the regional average. The source shall be the professional personnel roster for the 1984-85 school year as of August 31, 1986.

(27) Percent of compensatory students. This value shall be derived by dividing the best six-months average of students claiming free and reduced lunches under the National School Lunch Program (NSL) by the average daily attendance in the district, and multiplying the result by 100. The count of NSL students shall be that number derived from Central Education Agency files as of August 31, 1986. Average daily attendance is defined in paragraph (22) of this subsection.

(28) One year growth. This value shall be determined by dividing the number of students in fall membership in 1985 by the number of students in fall membership in 1984, subtracting 1.0, and multiplying the result by 100. The source of this information shall be the sum of grades prekindergarten (early childhood)-12 on the 1984 and 1985 fall survey of membership files at the Central Education Agency as of August 31, 1986. Where a school district has reduced its span of grades served, the prior year shall be adjusted so that the same grades are being compared.

(29) Two year growth. This value shall be determined by dividing the number of students in fall membership in 1985 by the number of students in fall membership in 1983, subtracting 1.0, and multiplying the result by 100. The source of this information shall be the sum of grades prekindergarten (early childhood)-12 on the 1984 and 1985 fall survey of membership files at the Central Education Agency as of August 31, 1986. Where a school district has reduced its span of grades served, the prior year shall

be adjusted so that the same grades are being compared.

(c) The instructional salary index. The creation of a raw index for instructional salaries shall begin with three stages of linear regressions using the least squares method.

(1) The first regression.

(A) In the first stage regression, the dependent variable shall be the natural logarithm of the monthly salary of instructional staff as defined in subsection (b)(1) and (3) of this section. The independent variables in the regression, which represent instructional staff characteristics, shall be experience, experience squared, no degree, advanced degree, and secondary teaching assignment. By applying the method of least squares, an equation shall be produced which estimates the logarithm of the monthly salary based upon the independent variables. The equation shall be stated as:

$$\begin{aligned} \text{Estimated Log of Monthly Salary} &= 7.45519301 &+ \\ (0.03124875 \times \text{Experience}) &+ \\ (-0.000515241 \times \text{Experience Squared}) &+ \\ (-0.02141287 \times \text{No Degree}) &+ \\ (0.7547241 \times \text{Advanced Degree}) &+ \\ (0.02493436 \times \text{Secondary Teaching Assignment}) &+ \end{aligned}$$

(B) Using the equation produced in the regression, an estimate of the log of each individual's monthly salary shall be made. After converting the logarithmic expression back to dollars, the estimated salary shall be subtracted from the actual salary. The result of the subtraction shall be referred to as the first regression residual, and it represents the amount of variation the linear regression model finds in an individual's salary that is caused by factors other than the individual's characteristics.

(2) The second regression.

(A) For the second stage, the regression residuals shall be summed together for each district and divided by the number of individuals included in the analysis. The result is the average variation per instructional staff within a district. The average, which may be a positive or negative value, shall be the dependent variable for the second regression. The independent variable, which represents the wealth and tax effort characteristics of districts, shall be the natural logarithm of the wealth per instructional staff after it has been divided by 100,000. The least squares method shall be applied to the data for each district, weighted by the number of instructional staff in each district. The resulting equation, which estimates the first regression residual, shall be stated as:

$$\begin{aligned} \text{Estimated First} & \\ \text{Regression Residual} &= -443.740 + \\ & (132.491 \times \text{Log of} \\ & \text{Wealth per Instructional Staff}). \end{aligned}$$

(B) The estimate produced by the second regression shall be subtracted from the first regression residual, producing a value to be called the second regression residual. The second regression residual represents the average amount of variation in instructional staff salaries that is not due to

individual characteristics or wealth characteristics.

(3) The third regression.

(A) In the third regression, the second regression residual shall be the dependent variable. The independent variables used in the third regression shall be the natural logarithm of average daily attendance, the adjacent urbanness scale, the instructional regional average salary, the hybrid county wages, and the percent of compensatory students. The independent variables are measures of characteristics which are beyond the control of districts. When the least squares method of regression is applied, the resulting equation shall be stated as:

$$\begin{aligned} \text{Estimated Second Regression Residual} &= -1693.350 &+ \\ (104.686 \times \text{Log of ADA}) &+ \\ (-4.439250 \times \text{Log of ADA Squared}) &+ \\ (0.045003 \times \text{Instructional Regional} & \\ \text{Average Salary}) &+ \\ (19.060957 \times \text{Adjacent Urbanness Scale}) &+ \\ (0.125279 \times \text{Hybrid County Wage}) &+ \\ (1.582854 \times \text{Percent Compensatory} & \\ \text{Students}). & \end{aligned}$$

(B) The third regression estimates the variation in salaries due to the district characteristics which cannot be controlled. The estimated variation, which may be either positive or negative, shall be the basis for calculation of the raw index value for instructional salaries.

(d) The support and administrative salary index. The creation of a raw index for support and administrative salaries shall begin with three stages of linear regressions using the least squares method.

(1) The first regression.

(A) In the first stage regression, the dependent variable shall be the natural logarithm of the monthly salary of support and administrative staff as defined in subsection (b)(2) and (3) of this section. The independent variables in the regression, which represent support and administrative staff characteristics, shall be experience, experience squared, tenure, bachelor degree, masters degree, doctors degree, principal assignment, general administrative officer assignment, and superintendent assignment. By applying the method of least squares, an equation shall be produced which estimates the logarithm of the monthly salary based upon the independent variables. The equation shall be stated as:

$$\begin{aligned} \text{Estimated Log of Monthly Salary} &= 7.41217560 &+ \\ (0.03117131 \times \text{Experience}) &+ \\ (-0.000561365 \times \text{Experience Squared}) &+ \\ (0.003420940 \times \text{Tenure}) &+ \\ (0.06575953 \times \text{Bachelor Degree}) &+ \\ (0.16794656 \times \text{Masters Degree}) &+ \\ (0.30448728 \times \text{Doctors Degree}) &+ \\ (0.11176619 \times \text{Principal Assignment}) &+ \\ (0.14481144 \times \text{General Administrative} & \\ \text{Officer Assignment}) &+ \\ (0.24372390 \times \text{Superintendent Assignment}). & \end{aligned}$$

(B) Using the equation produced in the regression, an estimate of the log of

each individual's monthly salary shall be made. After converting the logarithmic expression back to dollars, the estimated salary shall be subtracted from the actual salary. The result of the subtraction shall be referred to as the first regression residual, and it represents the amount of variation the linear regression model finds in an individual's salary that is caused by factors other than the individual's characteristics.

(2) The second regression.

(A) For the second stage, the regression residuals shall be summed together for each district and divided by the number of individuals included in the analysis. The result is the average variation per support and administrative staff within a district. The average, which may be a positive or negative value, shall be dependent variable for the second regression. The independent variable, which represents the wealth and tax effort characteristics of districts, shall be the natural logarithm of the wealth per support and administrative staff after it has been divided by 100,000. The least squares method shall be applied to the data for each district, weighted by the number of support and administrative staff in each district. The resulting equation, which estimates the first regression residual, shall be stated as:  
 Estimated First Regression Residual  
 = -827.401 +

$$(160.909 \times \text{Log of Wealth per Support and Administrative Staff}).$$

(B) The estimate produced by the second regression shall be subtracted from the first regression residual, producing a value to be called the second regression residual. The second regression residual represents the average amount of variation in support and administrative staff salaries that is not due to individual characteristics or wealth characteristics.

(3) The third regression.

(A) In the third regression, the second regression residual shall be the dependent variable. The independent variables used in the third regression shall be the natural logarithm of average daily attendance, the adjacent urbanness scale, the support and administrative regional average salary, the hybrid county wages, and the percent of compensatory students. The independent variables are measures of characteristics which are beyond the control of districts. When the least squares method of regression is applied, the resulting equation shall be stated as:

$$\begin{aligned} \text{Estimated Second Regression Residual} &= -2689.172 + \\ &(270.234 \times \text{Log of ADA}) + \\ &(-12.908479 \times \text{Log of ADA Squared}) + \\ &(0.024551 \times \text{Support/Administrative} \\ &\quad \text{Regional Average Salary}) + \\ &(45.749115 \times \text{Adjacent Urbanness Scale}) + \\ &(0.186527 \times \text{Hybrid County Wage}) + \\ &(2.652845 \times \text{Percent Compensatory} \\ &\quad \text{Students}). \end{aligned}$$

(B) The third regression estimates the variation in salaries due to the district characteristics which cannot be controlled.

The estimated variation, which may be either positive or negative, shall be the basis for calculation of the raw index value for support and administrative salaries.

(e) The plant payroll and purchased/contracted services index. The creation of a raw index for plant payroll and purchased/contracted services shall begin with two stages of linear regressions using the least squares method.

(1) The first regression.

(A) In the first stage regression, the dependent variable shall be the budgeted plant payroll and purchased/contracted services expenditures per student as defined in subsection (b)(4) of this section. The independent variables in the regression shall be the natural logarithm of wealth per student and the total effective tax rate. By applying the method of least squares, an equation shall be produced which estimates the budgeted plant payroll and purchased/contracted services expenditures per student based on the independent variables. The equation shall be stated as:

$$\begin{aligned} \text{Estimated Budgeted Expenditures} &= -1527.13494 + \\ &(137.30894 \times \text{Log of Wealth per} \\ &\quad \text{Student}) + \\ &(23720.00050 \times \text{Total Effective Tax Rate}). \end{aligned}$$

(B) An estimate of the budgeted expenditures per student shall be made by using the equation produced by the regression. The estimated budgeted expenditures shall be subtracted from the actual budgeted expenditures, and the result of the subtraction shall be referred to as the first regression residual. The first regression residual represents the amount of variation the linear regression model finds in budgeted expenditures per student that is caused by factors other than wealth and tax effort.

(2) The second regression.

(A) The first regression residual, which may be a positive or negative value, shall be the dependent variable for the second regression. The independent variables for the second regression shall be the percent compensatory students, the squared natural logarithm of average daily attendance, two-year growth, and the hybrid county wages. The independent variables are measures of characteristics which are beyond the control of districts. When the least squares method of regression is applied, the resulting equation shall be stated as:

$$\begin{aligned} \text{Estimated First Regression Residual} &= -174.28184 + \\ &(1.2707364 \times \text{Percent Compensatory} \\ &\quad \text{Students}) + \\ &(0.51823610 \times \text{Log of ADA Squared}) + \\ &(-1.59010911 \times \text{Two Year Growth}) + \\ &(0.08511444 \times \text{Hybrid County Wage}). \end{aligned}$$

(B) The second regression estimates the variation in budgeted plant payroll and purchased/contracted services expenditures per student due to the district characteristics which cannot be controlled. The estimated variation, which may be either positive or negative, shall be the basis for cal-

ulation of the raw index value for plant payroll and purchased/contracted service.

(f) The materials, supplies, and other operating expenses index. The creation of a raw index for supplies, materials, and other operating expense shall begin with two stages of linear regressions using the least squares method.

(1) The first regression.

(A) In the first stage regression, the dependent variable shall be the budgeted supplies, materials, and other operating expenses expenditures per student as defined in subsection (b)(5) of this section. The independent variables in the regression shall be the natural logarithm of wealth per student and the total effective tax rate. By applying the method of least squares, an equation shall be produced which estimates the budgeted supplies, materials, and other operating expenses expenditures per student based on the independent variables. The equation shall be stated as:

$$\begin{aligned} \text{Estimated Budgeted Expenditures} &= -942.06386 + \\ &(87.76618766 \times \text{Log of Wealth per} \\ &\quad \text{Student}) + \\ &(11782.88162 \times \text{Total Effective Tax Rate}). \end{aligned}$$

(B) An estimate of the budgeted expenditures per student shall be made by using the equation produced by the regression. The estimated budgeted expenditures shall be subtracted from the actual budgeted expenditures, and the result of the subtraction shall be referred to as the first regression residual. The first regression residual represents the amount of variation the linear regression model finds in budgeted expenditures per student that is caused by factors other than wealth and tax effort.

(2) The second regression.

(A) The first regression residual, which may be a positive or negative value, shall be the dependent variable for the second regression. The independent variables for the second regression shall be the percent compensatory students, the natural logarithm of average daily attendance, the squared natural logarithm of average daily attendance, and one year growth. The independent variables are measures of characteristics which are beyond the control of districts. When the least squares method of regression is applied, the resulting equation shall be stated as:

$$\begin{aligned} \text{Estimated First Regression Residual} &= 229.55751 + \\ &(.9614820768 \times \text{Percent Compensatory} \\ &\quad \text{Students}) + \\ &(-56.47011391 \times \text{Log of ADA}) + \\ &(2.43148567 \times \text{Log of ADA Squared}) + \\ &(-1.21477609 \times \text{One Year Growth}). \end{aligned}$$

(B) The second regression estimates the variation in budgeted supplies, materials, and other operating expenses expenditures per student due to the district characteristics which cannot be controlled. The estimated variation, which may be either positive or negative, shall be the basis for calculation of the raw index value for sup-

plies, materials, and other operating expenses.

(g) Raw index for instructional salaries. The raw index value for instructional salaries shall be computed with the following formula:

$$\text{Instructional Index} = 1 + \frac{\text{Estimated Second Regression Residual}}{\text{Average Estimated Monthly Salary for Instructional Staff,}}$$

where the estimated second regression residual shall be calculated for a district based on the equation stated in subsection (c) of this section. The average estimated monthly salary for instructional staff shall be computed using the first regression equation applied to all individuals in the analysis, converting the result back to dollars, then summarizing the values and dividing the total by the number of individuals. In the calculation of index values, the average estimated monthly salary's \$2320.94.

(h) Raw index value for support and administrative salaries. The raw index value for support and administrative salaries shall be computed with the following formula:

$$\text{Support/Administrative Index} = 1 + \frac{\text{Estimated Second Regression Residual}}{\text{Average Estimated Monthly Salary for Support/Administrative Staff,}}$$

where the estimated second regression residual shall be calculated for a district based on the equation stated in subsection (d) of this section. The average estimated monthly salary for instructional staff shall be computed using the first regression equation applied to all individuals in the analysis, converting the result back to dollars, then summarizing the values and dividing the total by the number of individuals. In the calculation of index values, the average estimated monthly salary is \$3004.04.

(i) Raw index value for plant payroll and purchased/contracted services. The raw index value for plant payroll and purchased/contracted services shall be computed with the following formula:

$$\text{Plant Index} = 1 + \frac{\text{Estimated First Regression Residual}}{\text{Average Estimated Budgeted Plant Payroll and Purchased/Contracted Services Expenditures per Student,}}$$

where the estimated first regression residual shall be calculated for a district based on the equation stated in subsection (e) of this section. The average estimated budgeted plant payroll and purchased/contracted services expenditures per student shall be computed using the first regression equation applied to all districts, then summarizing the values and dividing the total by the number of districts. In the calculation of index values, the average estimated budgeted expenditures per student shall be 327.7278.

(j) Raw index value for supplies, materials, and other operating expenses. The raw index value for supplies, materials, and other operating expenses shall be computed with the following formula:

$$\text{Supplies Index} = 1 + \frac{\text{Estimated First Regression Residual}}{\text{Average Estimated Budgeted Supplies, Materials, and Other Operating Expenses Expenditures per Student,}}$$

where the estimated first regression residual shall be calculated for a district based on the equation stated in subsection (f) of this section. The average estimated budgeted supplies, materials, and other operating expenses expenditures per student shall be computed using the first regression equation applied to all districts, then summarizing the values and dividing the total by the number of districts. In the calculation of index values, the average estimated budgeted expenditures per student shall be 218.8104.

(k) Adjustment of component indices.

(1) For the purposes of calculation of a single composite price differential index, each district component raw index value, calculated as specified in subsections (g)-(j) of this section, shall be divided by the mean index value for the respective index. This division will have the effect of placing all indices on a comparable scale, that is, each index will have a mean index value of 1.0 after this adjustment.

(2) After the division by the mean is complete, the index values for the plant payroll and purchased/contracted services index shall be limited to values that fall within the range of two standard deviations from the mean. For purposes of this adjustment, a standard deviation shall have the value of 0.1235. Districts with a plant payroll and purchased/contracted services raw index value greater than 1.2470 shall be assigned an index value of 1.2470 as a result of this adjustment. Districts with a raw index value less than .7530 shall be assigned an index value of .7530 as a result of this adjustment.

(3) After the division by the mean is complete, the index values for the supplies, materials, and other operating expenses index shall be limited to values that fall within the range of one standard deviation from the mean. For purposes of this adjustment, a standard deviation shall have the value of 0.2070. Districts with a supplies, materials, and other operating expenses raw index value greater than 1.2070 shall be assigned an index value of 1.2070 as a result of this adjustment. Districts with a raw index value less than .7930 shall be assigned an index value of .7930 as a result of this adjustment.

(l) The calculation of a single composite index. Calculation of a single composite index shall be computed according to the following equation:

$$\begin{aligned}
&\text{Price Differential Index} \\
&= (.679418 \times \text{Index Value for Instructional} \\
&\quad \text{Salaries}) + \\
&+ (.180999 \times \text{Index Value for} \\
&\quad \text{Administrative Salaries}) + \\
&+ (.094905 \times \text{Index Value for Plant} \\
&\quad \text{Payroll \& Purchased/} \\
&\quad \text{Contracted Services}) + \\
&+ (.044678 \times \text{Index Value for Supplies,} \\
&\quad \text{Materials, \& Other Operating} \\
&\quad \text{Expenses}),
\end{aligned}$$

where the component index values used for calculation of the price differential index are adjusted as described in subsection (k) of this section. This composite index shall be called the unadjusted price differential index.

(m) Data values for unadjusted price differential index factors.

(1) The data values for the data items listed in subsection (b)(22)-(29) of this section used in the development of the component indices are listed for each school district in Texas the table entitled "Listing of Data Values for 1987-88/1988-89 PDI Factors."

(2) The index values for instructional salaries, support and administrative salaries, plant payroll and contracted services, and

supplies, materials, and other operating expenses, and the unadjusted price differential index are listed for each school district in Texas in the table entitled "1987-88/1988-89 PDI Component and Composite Indices by District."

(3) The tables described in paragraphs (1) and (2) of this subsection are adopted by this reference as an official rule of the Central Education Agency. A copy of each list is available for examination during regular office hours, 8 a.m.-5 p.m., except holidays, Saturdays, and Sundays, at the Central Education Agency. The agency is located at 1701 North Congress Avenue, Austin, Texas 78701.

(4) Should the need for correction of any data values be proven for a district prior to September 1, 1987, the commissioner of education shall adjust the unadjusted index for the district. The decision of the commissioner shall be final.

**§105.467. Determining Each District's Price Differential Index for 1987-88 and 1988-89.**

(a) Adjustment of the index values. To determine the price differential index (PDI) to be used in calculating the adjusted basic allotment for 1987-88 and 1988-89, the commissioner of education shall rank school districts in the order of the unadjusted price differential index values determined under the econometric models and procedures specified in §105.466 of this title (relating to Price Differential Index for 1987-88 and 1988-89). The commissioner shall then divide all district indices by the value of the district at the bottom 5.0% of districts, according to the number of districts, to determine the PDI. However, for any district which has an index of less than 1.00 as a result of this division, the PDI is considered to be 1.00, and for any district in the top 1.0% of districts, according to the number of districts, the PDI is considered to be that of the lowest index value of the districts in that top 1.0%.

(b) Indices for reconfigured districts. The commissioner of education shall determine the price differential index to be used in calculating the adjusted basic allotment for 1987-88 and 1988-89 for districts which are configured differently than at the time of adoption of the index. Districts may be configured differently because of consolidations, annexations, or division into two or more new districts, or other situations which the commissioner considers to be a change in configuration. The decision of the commissioner shall be final and it shall not affect the price differential index of other school districts.

**§105.468. Determining the Adjusted Basic Allotment for 1987-88 and 1988-89.**

For the 1987-88 and 1988-89 school years, the commissioner shall adjust each district's basic allotment by applying for following formula:  $ABA = ((BA \times .76) \times PDI) + (BA \times .24)$  where: "ABA" is the adjusted basic allotment;

"BA" is the basic allotment; and

"PDI" is the price differential index applicable to the district, as described in §105.467 of this title (relating to Determining Each District's Price Differential Index for 1987-88 and 1988-89).

**§105.469. Price Differential Index and Adjusted Basic Allotment for 1987-88 and 1988-89.**

The price differential index (PDI) and adjusted basic allotment for each school district are shown in the table entitled "1987-88/1988-89 Price Differential Index and Adjusted Basic Allotment," which is adopted by this reference as an official rule of the Central Education Agency. A copy of each list is available for examination during regular office hours, 8 a.m.-5 p.m., except holidays, Saturdays and Sundays, at the Central Education Agency. The agency is located at 1701 North Congress Avenue, Austin, Texas 78701.

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 October 17, 1986.

TRD-8609805

W. N. Kirby  
Commissioner of  
Education

Proposed date of adoption: January 8, 1987  
For further information, please call  
(512) 475-7077.

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**TITLE 22. EXAMINING  
BOARDS  
Part VI. Texas State Board  
of Registration for  
Professional Engineers  
Chapter 131. Practice and  
Procedure**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Registration for Professional Engineers, 1917 South IH 35, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas State Board of Registration for Professional Engineers proposes the repeal of §§131.1, 131.8, 131.9, 131.11, and 131.16, concerning general information about the board. In simultaneous action, the agency proposes new §§131.1, 131.8, 131.9, 131.11, and 131.16. The repeals are proposed to remove material made extraneous by the adoption of the new sections. Kenneth J. Bartosh, P.E., executive director, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implica-

tions for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Bartosh also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clarification of the manner in which the board is organized and conducts business. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

#### General

#### ★ 22 TAC §§131.1, 131.8, 131.9, 131.11, 131.16

The repeals are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.1. *Headquarters of the Board.*

§131.8. *Notice of Board Meetings.*

§131.9. *Regular Board Meetings.*

§131.11. *Conduct for Board Meetings.*

§131.16. *Assistant to Executive Director.*

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 October 9, 1986.

TRD-8609788 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
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For further information, please call  
(512) 440-7723

The Texas State Board of Registration for Professional Engineers proposes new §§131.1, 131.8, 131.9, 131.11, and 131.16, concerning the manner in which the board is organized and conducts business.

Kenneth J. Bartosh, P.E., executive 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. Bartosh 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 better clarification of the manner in which the board is organized and conducts business. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The new sections are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.1. *Headquarters of the Board.* This board being constituted under the provisions of Senate Bill 74, 45th Legislature, shall be known as the Texas State Board of Registration for Professional Engineers and shall, hereinafter, be referred to as the board. The headquarters of the board shall be in Austin.

§131.8. *All Meetings Open to the Public.* Regular board meetings, called special board meetings, committee meetings, and other official meetings of the board shall be open to the public and notice shall be provided in accordance with the Texas Open Meetings Act (Texas Civil Statutes, Article 6252-17).

§131.9. *Regular Board Meetings.* Regular board meetings shall be held each calendar quarter at such designated place, date, and time as may be determined by the board. The meetings will normally be held in the months of January, April, July, and October, but may be held later in the quarter at the discretion of the board. Five members of the board shall constitute a quorum. In addition to the notice required by the Texas Open Meetings Act, the executive director shall notify the board members of the date, time, and place of the meeting not less than 72 hours in advance of the meeting.

§131.11. *Rules of Order.* In its deliberations, the board shall be governed by *Robert's Rules of Order*, revised.

§131.16. *Minutes of Board Meetings.* In addition to the distribution required by law, copies of the official minutes of each meeting of the board shall be distributed to such persons as the board may direct and to such private citizens as may make a formal written request. An official copy of all board minutes shall remain on file in the board office, available to any citizen desiring to examine them.

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

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Texas State Board of  
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(512) 440-7723.

#### Bylaws and Definitions [General]

#### ★ 22 TAC §§131.2-131.4, 131.6, 131.7, 131.10, 131.12-131.15, 131.18

The Texas State Board of Registration for Professional Engineers proposes amendments to §§131.2-131.4, 131.6, 131.7, 131.10, 131.12-131.15, and 131.18, concerning bylaws and definitions. The board proposes to change the existing undesignated head "General" to "Bylaws and Definitions," which more accurately describes the contents of the rules contained in that undesignated heading.

The amendments to §§131.2-131.4, 131.6, 131.7, 131.10, and 131.12-131.15 modify that part of the board rules that constitutes the board's bylaws. The amended sections more clearly define the manner in which the board is organized and conducts business.

Section 131.18 is amended by revising seven definitions to better clarify terms used within the Act and board rules. Six definitions have been removed because the terms are defined in the Act. Eight definitions are added to define terms used in the Act that are not otherwise defined.

Kenneth J. Bartosh, P.E., executive 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. Bartosh 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 better understanding by the public of the operation of the board and the clarification of the Act by defining the terms used. 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 Kenneth J. Bartosh, P.E., Executive Director, State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.2. *Organization of the Board.*

(a) The board shall elect from its own membership [members] a chairman, vice chairman, and secretary (Texas Civil Statutes, Article 3271a, §7a [at the meeting prior to July 1]). The officers shall be elected at the regular July board meeting each year, and they shall take office the following September 1. [The officers serve for a period of one year and assume such positions at the outset of the first meeting conducted after July 1. Five members of the board shall constitute a quorum.]

(b) The board as a whole may act as

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the executive committee.

(c) The board may transact official business only when in session with a quorum present and shall not be bound in any way by any statement or action on the part of any individual member except when such statement or action is in pursuance of specific instructions of the board. No order or decree shall be adopted by the board except in open meeting and in accordance with the Texas Open Meetings Act.

§131.3. *Chairman of the Board.* The chairman shall be the executive officer of the board. When present, the chairman shall preside at all meetings. The chairman shall appoint such committees as the board may authorize and [sign all official documents. The chairman shall] perform all other duties usually pertaining to the office of chairman and permitted by law. ~~The duties of the chairman set out in the Act, §9, may be delegated to the executive director.~~

§131.4. *Vice Chairman of the Board.* The vice chairman, in the absence of the chairman, shall perform the duties of the chairman as specified in §131.3 of this title (relating to Chairman of the Board) except that the vice chairman shall not sign certificates of registration [chairman shall sign all official documents of the board]. ~~In the even office of the chairman shall become vacant, the vice chairman shall serve until a successor has been elected.~~

§131.6. *Secretary of the Board.* The secretary of the board is charged with carrying out the duties prescribed in the Act, §§7, 9, 10, and 15, except those duties prescribed in the Act, §9 and §10, which [that within the law] may be delegated to the executive director.

§131.7. *Vacancies in the Board.* If for any reason a vacancy shall occur in the board, the chairman shall call a special meeting for the purpose of preparing a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chairman, the vice chairman shall call the meeting. In such case, the board shall elect from its own membership [at the first regular or special meeting following the special meeting provided for in this section] a new chairman to serve for the balance of the unexpired term as chairman.

§131.10. *Special Board Meetings.* Special meetings may be called at any time by order of the chairman, or shall be called on the written request of any other three members of the board. In addition to the notice required by the Texas Open Meetings Act, the executive director shall notify the board members of the date, time, and place of the meeting not less than 72 hours in advance of the time of the meeting, provided, however, that such meetings may be held on shorter notice whenever telephonic consent is obtained from at least five members of the board. [Notice

as prescribed in board rule or telegraphic notice not less than 72 hours in advance of the date and time of the meeting shall be given each member by the executive director, said notice setting forth the exact time and place of the meeting as determined by the person issuing the call. Notice less than 72 hours in advance of a called special meeting may be given by telephone or other means.]

§131.12. *Order of Business.*

(a) The order of business at all regular and special meetings of the board will, when practicable, be as follows:

- (1) roll call and introduction of visitors and guests;
- (2) reading and/or approval of minutes of previous meeting;
- (3) executive director's report [report of committees];
- (4) enforcement report [report of executive director and reading of communications];
- (5) personal appearances [unfinished business];
- (6) communications [new business];
- (7) old business [reading and consideration of applications];
- (8) new business [examination of applicants];
- (9) examination of applications [ad-journment];
- (10) adjournment.

(b) The board reserves the right to delete and/or [, add to, or] rearrange the order of business specified in subsection (a) of this section where required by law or deemed by the board to be more efficient in the conduct of its business.

(c) The executive director shall prepare an advance agenda to be submitted to each board member prior to each regular board meeting outlining matters to be considered by the board. Additional matter that may arise prior to the meeting, together with additions requested by board members, will constitute the final agenda. Even though members of the public may attend board meetings in accordance with the Texas Open Meetings Act, it does not entitle members of the public to discuss subjects on the agenda.

§131.13. *Fiscal Matters.* The fiscal year of the board shall begin September 1 and close the following August 31 [of each year, unless otherwise provided for by law]. The fiscal year shall be designated to correspond with the calendar year in which it closes. [Payment of all salaries and other operating expenses of the board shall be made by itemized vouchers (claims) on the professional engineers' fund. Such vouchers shall be approved as stipulated by board action.]

§131.14. *Seal of the Board.* The [official] seal of the board shall be an embossed circular seal 2¼ inches in diameter, consisting of two concentric circles. The inner circle shall be 1 3/8 inches in diameter and shall be [contain] the outer circle of the official seal [great seal] of the State of Texas. [The outer circle shall be 2 1/8 inches in diameter,

and] The area between the two circles shall contain the wording "State Board of Registration for Professional Engineers." The executive director shall be the custodian of the seal.

§131.15. *Executive Director.* The executive director shall be employed by the board to be [is] the administrator of the board office. [The executive director shall furnish surety bond to the State of Texas in the amount required by law, said bond to be filed with the secretary of state. The premium on said bond shall be paid out of the professional engineers' fund. The executive director shall be paid such salary as the board may direct. Necessary expenses incurred in traveling in performance of the official duties of the executive director shall be paid on vouchers (claims) handled as prescribed by board rule and law. The executive director shall perform such other duties as may be assigned or delegated by the board and not otherwise precluded by law.]

§131.18. *Definitions.* In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. [For the purpose of this chapter, and unless otherwise required by the context, the following definitions shall prevail.] The singular shall be construed to include the plural and vice versa, and the masculine shall be construed to include the feminine or neuter and vice versa.

Application—A person [party] making application for registration.

Application—The process of submitting the necessary forms, information, and fees to obtain registration as a professional engineer or engineer-in-training (EIT) certification [making application for registration as a professional engineer] in accordance with the provisions of the Act, the board rules of practice and procedure, and by law.

Certificate of registration—A document issued by the board for the State of Texas granting the holder the right to be licensed to practice engineering in Texas by paying the annual license renewal fee prescribed by the Act. [A license issued by the State of Texas granting a licensee the privilege of practicing engineering and renewing his license annually in accordance with the provisions of the Act.]

[Competent to be placed in responsible charge—The technical control and direction of work which requires initiative, engineering ability, and the use of independent judgment.]

Complainant—Any party who has filed a [signed, written] complaint with the board against any party subject to the jurisdiction of the board.

Direct Supervision—The responsibility for the critical watching and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses.

**Engineering**—The profession in which a knowledge of the mathematical and natural sciences gained by study, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

**Gross negligence**—An act or course of action which demonstrates a conscious disregard or indifference to the rights, safety, or welfare of others and which does or could result in financial loss or in injury or damage to life property.

**Incompetency**—A general lack of present ability to perform a given duty, or a deficiency of disposition to use one's ability or experience properly.

[Licensing—Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.]

**Misconduct**—The willful violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Civil Statutes, Article 6252-13c and Article 6252-13d, will also be misconduct under the Texas Engineering Practice Act.

**Party**—Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure and Texas Register Act.

[Practice engineering or practicing engineering—Performing or doing, or offering or attempting to do or perform any service, work, act, or thing within the scope of the practice of engineering.]

[Practice of engineering or practice of professional engineering—Any service or creative work, either public or private, the performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, or engineering sciences to such services or creative work.]

[Professional engineer, registered engineer, registered professional engineer, licensed professional engineer, or engineer—A person who has been duly licensed and registered by the board to engage in the practice of engineering in this state and who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering acquired by professional education and practical experience is qualified to engage in engineering practice.]

**Professional engineering**—Professional service which may include consultation, investigation, evaluation, planning, designing, or direct [responsible] supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

**Registration**—The granting of an original certificate and [initial] license by an agency to an individual.

**Responsible charge**—The direction of engineering work by an engineer to the extent that successful completion of the work is dependent on the decisions made by the engineer without advice or approval by others.

**Responsible supervision**—The supervision of another person's work by a professional engineer to the extent that the engineer assumes the professional responsibility for the work.

[Roster of registered engineers—A roster showing the names and places of business and any other information deemed pertinent by the board of all professional engineers registered prior to a date determined by the board which precedes the publication of the roster.]

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 October 9, 1986.

TRD-8609790 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

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For further information, please call  
(512) 440-7723.

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#### ★ 22 TAC §131.19

The Texas State Board of Registration for Professional Engineers proposes new §131.19, concerning the procedure for handling information requests within the board.

Kenneth J. Bartosh, P.E., 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. Bartosh 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 understanding by the public of the operation of the board. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18239, Austin, Texas 78760.

The new section is proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

**§131.19. Requests for Information.** Any written reports, statistics, or other information requested by the board as a whole or any member thereof shall be made available to all members of the board. A copy of any written request and a summary of the results thereof shall be made a part of the minutes of the appropriate board 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 Austin, Texas, on October 9, 1986.

TRD-8609791 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

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For further information, please call  
(512) 440-7723.

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#### Board Rules

#### ★ 22 TAC §§131.31-131.33, 131.36

The Texas State Board of Registration for Professional Engineers proposes amendments to §§131.31-131.33 and 131.36, concerning the procedures for amendment and adoption of rules and the procedures by which the public can participate in these actions.

Kenneth J. Bartosh, P.E., executive 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. Bartosh 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 better understanding of the procedures by which the board promulgates rules and the procedures to be used by the public to request amendment or adoption of board rules. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18239, Austin, Texas 78760.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

**§131.31. Purpose.** The board shall promulgate and adopt rules as authorized and required by statute which are necessary for the performance of its duties. [ , to] Such rules shall establish standards of conduct and



ethics for engineers, [to] insure strict compliance with and enforcement of the provisions of the Act, [to] insure uniform standards of practice and procedure, and [to] provide for public participation, notice of the agency actions, and a fair and expeditious determination of causes before the board.

**§131.32. Amendments, Deletions, and Additions of Rules.** Proposed amendments, deletions, or additions to the board rules of practice and procedure may be submitted [made] by the staff or any board member [by filing with the executive director. A copy of the proposed amendment, deletion, or addition shall be furnished each board member prior to the next regular or special board meeting]. Board action to accept or amend the proposal shall require five affirmative votes. A proposal or amended proposal, as accepted by the board, can be promulgated as an amendment, deletion, or addition to board rules by following the procedures set out in the Administrative Practice and Texas Register Act, §5 (Texas Civil Statutes, Article 6252-13a, §5). [Upon approval by a quorum, the proposed amendment, deletion, or addition to the board rules of practice and procedure will be adopted in accordance with the Administrative Procedure and Texas Register Act, §5 (Texas Civil Statutes, Article 6252-13a, §5).]

**§131.33. Petition for Adoption of Rules.** Any interested person can request the board to adopt, delete, or amend [may petition the board requesting the adoption of] a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. [A signed copy will be submitted for each board member.] Such a petition will [shall] include, but need not be limited to, the following:

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

**§131.36. Invalid Portions [and Saving Provisions].**

(a) (No change.)

(b) Since individual board rules are adopted, changed, or deleted periodically, each rule herein will apply only to acts occurring on or after the effective date of the rule. An act occurring [offense committed] before the effective date of one or more of these rules will be governed by the rules existing before the effective date, which rules are continued in effect for this purpose as if these rules were not in force. Any proceeding pending before the board on the effective date of one or more of these rules is governed by the rules existing before the effective date of these rules, which rules are continued in effect for this purpose as if these rules were not in force.

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 October 9, 1986.

TRD-8609792 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: January 29, 1987  
For further information, please call  
(512) 440-7723.

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★ 22 TAC §131.37

*(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 State Board of Registration for Professional Engineers, 1917 South IH 35, Austin, or in the Texas Register office, Room 505F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas State Board of Registration for Professional Engineers proposes the repeal of §131.37, concerning the effective date of rules. In simultaneous action, the agency proposes a new §131.37, concerning the effective date of rules. The repeal is proposed to remove material made extraneous by the addition of the new section.

Kenneth J. Bartosh, P.E., 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. Bartosh also has determined that for each year of the first five years the repeal are in effect the public benefit anticipated as a result of enforcing the repeal will be a clarification of the effective date of rules. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 73760.

The repeal is proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

**§131.37. Effective Date.**

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 October 9, 1986.

TRD-8609793 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: January 29, 1987  
For further information, please call  
(512) 440-7723.

The Texas State Board of Registration for Professional Engineers proposes new §131.37, concerning the effective date of rules. The new §131.37 provides the current procedures governing the effective date of rules.

Kenneth J. Bartosh, P.E., 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. Bartosh 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 clarification of the effective date of rules. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The new section is proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

**§131.37. Effective Date.** The effective date of each rule or subdivision of each rule shall be that date published as the effective date of the rule or subdivision of the rule in the Texas Register as a result of the rule-making procedures set out in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a, §5).

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

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TRD-8609794 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: January 27, 1987  
For further information, please call  
(512) 440-7723.

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Application for Registration

★ 22 TAC §131.51, §131.53

The Texas State Board of Registration for Professional Engineers proposes amendments to §131.51 and §131.53, concerning the application for registration.

Kenneth J. Bartosh, P.E., executive 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. Bartosh 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 better clarification of registration requirements and procedures concerning registration. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

**§131.51. Authority.** Applications for registration will be accepted only under the Act, §12(a), (b), or §21. In the event that more than one selection of the Act is applicable, the board reserves the right to select the section under which registration will be granted. Applications for reregistration will also be considered under provisions of the Act, §16(e), when an expired license is not renewable by operation of law. Such applications [, and] will be processed in accordance with all applicable board rules.

**§131.53. Submission of Applications.** Applications for registration will be submitted to the executive director. An application for registration shall be deemed submitted to the executive director when the application form, accompanied by the [appropriate] fee required by statute or board rule, is actually received at the board office. Application forms not accompanied by the proper fee shall be returned to the applicant. When an application is accepted by the executive director and entered into the records [on the books] of the board, the executive director shall send a receipt for the fee. Once an application is accepted and entered into the records [on the books] of the board, the application fee will not be returned and the application, together with all pertinent documents submitted, will become a part of the permanent records of 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.

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(512) 440-7723.

### ★ 22 TAC §§131.54-131.59

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Registration for Professional Engineers, 1917 South IH 35, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas State Board of Registration for Professional Engineers proposes the repeal of §§131.54-131.59, concerning the application for registration. In simultaneous action, the agency proposes to add new §§131.54-131.59, concerning application for registration. The repeals are proposed to remove material made obsolete by the new sections.

Kenneth J. Bartosh, P.E., executive director, 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. Bartosh also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a better clarification of the application process. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The repeals are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

- §131.54. Restriction on Application.**
- §131.55. General Application Information.**
- §131.56. Applications for Registration for Nonresidents.**
- §131.57. Certification of Qualifications.**
- §131.58. Application Fee.**
- §131.59. Withdrawing an Application.**

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 October 9, 1986.  
TRD-8609796 Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: January 29, 1987  
For further information, please call  
(512) 440-7723.

### ★ 22 TAC §§131.54-131.58

The Texas State Board of Registration for Professional Engineers proposes new §§131.54-131.58, concerning the application for registration.

Kenneth J. Bartosh, P.E., executive 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. Bartosh 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 a better clarification of registration requirements and procedures concerning registration. 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 Kenneth J. Bartosh, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The new sections are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

#### **§131.54. General Application Information.**

(a) The executive director may accept an application prior to the receipt of supplemental documents such as reference statements and transcripts of degrees over which the applicant has no control as to time of completion or submission, or both, to the board. The board will not approve an application until the following are provided:

- (1) a completed application form;
- (2) a supplementary experience record;
- (3) transcript(s) of degree(s); and
- (4) five reference statements (three must be from professional engineers).

(b) The board may request additional information or the executive director may recommend the applicant provide additional information. If an applicant declines to provide additional information for an accepted application as recommended by the executive director, the application will be referred for board consideration with documentation of such declination. If, after notification in writing, the applicant fails to provide any part of the required information for an accepted application by the deadlines set by the executive director, the application will be referred to the board to be not approved as an incomplete application. For an accepted application to be considered complete, it must contain at minimum the application form, the supplementary experience record, transcript(s) of degree(s), and reference statements. Withholding information, misrepresentation, or untrue statements on the application for registration or supplemental un-

true statements on the application for registration or supplemental documents will be cause for rejection of the application.

**§131.55. Application for Registration from Nonresidents.** In general, applicants not residents of Texas must apply under the provisions of the Act, §21. To be eligible under §21, the applicant must be registered and in good standing in the state in which he is practicing or formerly practiced, and the applicant must have met the requirements for registration under the Act, §12(a) or (b), at the time he was granted original registration. In addition, the application shall include all documentation as described in §131.54 of this title (relating to General Application Information) to be considered complete. If the applicant is currently registered in the state of his residence or practice but registration was granted under requirements less than those specified in the Act, §12(a) or (b), he may apply under §12(a) or (b), whichever is appropriate, if he has acquired the minimum requirements subsequent to his original registration. Further:

(1) non-Texas residents who have accredited engineering degrees from Texas colleges or universities, or are employees of a company whose primary administrative office (not regional, division, or other subdivision offices) are located in Texas, or move from Texas after initiating an application for registration, or who have taken and passed the principles and practice of engineering examination under §131.102 of this title (relating to Examinations for Record Purposes), may apply for an original registration in this state;

(2) if an application is based on the reciprocity provisions of the Act, the executive director shall secure complete information as to the basis for the issuance of the original out-of-state certificate to determine its conformity with requirements set forth in the Act, §21.

**§131.56. Certification of Qualification.** If a properly executed National Council of Engineering Examiners certification of an applicant's qualifications for registration is provided, it will be accepted as verification of the applicant's educational qualifications and registration in other states. In such instance, transcripts to verify educational requirements and verification of registration in other states by use of board forms will not be required. This certification will not be accepted in lieu of any other required application information.

**§131.57. Application Fee.** Application fees shall be payable to the professional engineers' fund. The board assumes no responsibility for loss in transit of cash remittances. Applications not accompanied by the proper fee will be returned to the applicant. Personal, company, or other checks are acceptable if drawn on a United States bank payable in United States currency without penalty.

(1) An application for registration as a professional engineer under the Act,

§12(a), (b), or §21 shall be accompanied by a fee of \$50, which shall be retained by the board regardless of whether the application is approved, not approved, rejected, or withdrawn.

(2) When an application has been approved and the applicant is registered by the board and issued a certificate of registration, the fee which accompanied the application for registration will be applied toward the required registration fee of \$50.

**§131.58. Withdrawing Applications.**

(a) With the approval of the board, an application for registration may be withdrawn from further consideration by the board.

(b) A request for withdrawal shall be made in writing by the applicant. No such request for withdrawal will be considered if received after the applicant is notified the board has approved, not approved, or proposed to reject his application.

(c) The board may, for reasons it deems sufficient, refuse to grant the request to withdraw and continue to process the application.

(d) An application withdrawn from consideration by action of the board will be so designated on the records of the board and made a part of the minutes of the next regular board meeting. The application itself together with the application fee will be retained by the board. Further action by the applicant to become registered will require a new application and application fee under requirements in effect at the time of the new submittal.

(e) In the event an applicant dies before registration is completed, the application will be withdrawn by 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 Austin, Texas, on October 9, 1986.

TRD-8609797

Kenneth J. Bartosh, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: January 29, 1987  
For further information, please call  
(512) 440-7723.

★ ★ ★

## Chapter 423. Rules of Procedure and Seal

### Hearings, Grievances, and Appeals

#### ★ 22 TAC §423.29, §423.37

The Texas Board of Private Investigators and Private Security Agencies proposes an amendment to §423.29 and new §423.37, concerning contested proceedings and reporters and transcript.

Clema D. Sanders, executive 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.

Ms. Sanders 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 faster disposition of hearings. 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 Clema D. Sanders, Executive Director, P.O. Box 13509, Austin, Texas 78711.

The amendment and new section are proposed under Texas Civil Statutes, Article 4413(29bb), §11, which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

**§423.29. Contested Proceedings.**

(a) Before revoking or suspending a license, security officer commission, or registration or denying an application for a license, security officer commission, or registration, the agency will afford the applicant or petitioner an opportunity for a hearing after reasonable notice of not less than 10 [30] days, except in a case of failure to maintain the required surety bond or insurance.

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

**§423.37. Recordings and Transcript.**

(a) All contested proceedings before the agency will be audio recorded, and copies of the audio recording will be made available to all parties upon filing of a written request with the director and the payment of reasonable fees to cover the cost of the recording.

(b) Contested proceedings may be video recorded if a written request is filed with the director not less than five days prior to the date of hearing. Copies of the video recording will be made available to all parties upon filing of a written request with the director and the payment of reasonable fees to cover the cost of the recording.

(c) Proceedings, or any part of them, must be transcribed on written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties. This section does not limit the agency to a stenographic record of proceedings.

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 October 13, 1986.

TRD-8609812

Clema D. Sanders  
Executive Director  
Texas Board of Private  
Investigators and Private  
Security Agencies

Proposed date of adoption: December 9, 1986  
For further information, please call  
(512) 463-5545.

# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services Chapter 8. Home Energy Assistance Program Program Requirements

The Texas Department of Human Services (DHS) proposes amendments to §§8.1-8.3, the repeal of §8.6, and new §8.6 concerning the requirements for the Home Energy Assistance Program (HEAP).

The department administers the Home Energy Assistance Program established under the Low Income Home Energy Assistance Act of 1981 as amended by the Human Services Reauthorization Act of 1984. In this program, certain low-income households that are vulnerable to the rising costs of energy receive a winter and summer payment. In most cases, the state warrants are payable to the household's energy supplier rather than to a member of the household.

Three policy changes are being proposed for the 1987 winter program. The proposal provides for an increase in the resource limit for households to \$2,000, unless the household has a member age 60 or older. The limit is still \$3,000 for households with members age 60 or older. Also included in the proposal is that all eligible households living in government subsidized housing will receive an energy payment. The payment will be adjusted to reflect the energy costs of these households considering the energy subsidy received from the Department of Housing and Urban Development (HUD). Finally, the provisions regarding the benefit levels are being clarified to reflect that those in the lowest income categories in relation to energy costs will receive the highest benefit level.

Section 8.1 is amended to provide new certification deadlines for eligibility based on receipt of public assistance. Section 8.2 is amended to clarify the methodology for determining the income limits and to incorporate the new resources standard. The income standards for 1987 will be published in the In Addition section of the *Texas Register* later this fall. Section 8.3 is amended to include the policy regarding residents of subsidized housing. New §8.6 provides a more detailed explanation of the basis for determining benefit levels.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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. Packard also has determined that for each year of the first five years the sec-

tions are in effect the public benefit anticipated as a result of enforcing the sections will be that more people will receive assistance with the cost of heating and cooling their homes. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

The department will hold a hearing to accept comments on the proposal beginning at 9 a.m., November 13, 1986, in the Texas Department of Human Services public hearing room, 701 West 51st Street, Austin. Comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division (669), Texas Department of Human Services, P.O. Box 2960, Austin, Texas 78769, Mail Code 222-E, within 30 days of publication in the *Texas Register*.

### ★ 40 TAC §§8.1-8.3

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

#### §8.1. Time Frames for HEAP Qualification.

(a) To qualify for HEAP heating assistance, the household must apply and be certified before the November [December] deadline for December [January] AFDC, SSI, or food stamp benefits, or request an application from DHS during the designated application period for the HEAP heating program.

(b) To qualify for HEAP cooling assistance, the household must apply and be certified before the April [May] deadline for May [June] AFDC, SSI, or food stamp benefits, or request an application from DHS during the designated application period for the HEAP cooling program.

(c) (No change.)

#### §8.2. HEAP Eligibility Criteria.

(a) The household's income is its gross income (without any deductions) as determined by the household's [AFDC, SSI, or food stamp] worker. To meet the income requirement for HEAP assistance, a household's income may not exceed 120% of the poverty income guidelines as projected by DHS staff each year [Department of Health and Human Services' 1985 Poverty Income Guidelines, revised to account for increases in the consumer price index]. The projected guidelines follow the methodology used by the Department of Health and Human Services to account for increases in the consumer price index.

(b) (No change.)

(c) The resource limits for HEAP eligibility are:

(1) \$3,000 for a household consisting of [two or more persons if] at least one person who is 60 years old or older; or

(2) \$2,000 [\$1,500] for all other households.

(d)-(e) (No change.)

### §8.3. Vulnerability.

(a) To qualify for HEAP assistance, the household must be vulnerable to increases in the cost of home energy. Households that reside in privately owned rental housing meet the requirement even if all or part of their cost of heating and cooling [utilities] is included in their rent payment.

(b) Residents of [certain types of] government [public and] subsidized housing meet the requirement even if all or part of the cost of heating or cooling is included in their rent payment or if they receive assistance in paying heating or cooling costs from the Department of Housing and Urban Development (HUD) [are not eligible because they are protected from energy cost increases through subsidies by federal, state, or local governments].

[(c) To comply with the vulnerability requirement, persons who live in public and subsidized housing must either be billed directly by a utility company or pay the total cost to the landlord.]

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 October 17, 1986.

TRD-8609863

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:

November 24, 1986

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

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### ★ 40 TAC §8.6

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

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

#### §8.6. Benefit Amount.

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 October 17, 1986.

TRD-8609865

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:

November 24, 1986

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

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

**§8.6. Benefit Amount.**

(a) For both the winter heating and summer cooling programs, there are three basic benefit levels. The highest benefit level is for households with gross incomes of 0 through 35% of the poverty standard as specified for eligibility determination. The intermediate benefit level is for households with gross incomes of 36 through 70% of the poverty standard. The lowest benefit level is for households with gross incomes of 71 through 120% of the poverty standard. For households living in government subsidized housing, the three basic benefit levels are adjusted as specified in subsection (b) of this section since the energy costs of these households have already been reduced by a government subsidy.

(b) For residents of government subsidized housing, the three basic benefit levels are reduced by a standardized percentage determined by the department. This reduction is based on the best available statewide data reflecting the average heating and cooling costs of subsidized housing residents (taking into account the average subsidy) compared to the average heating and cooling costs of other households. After making this determination, if the benefit amount of nonsubsidized households receiving the lowest benefit level (households in the highest income grouping) exceeds the benefit amount of comparable government subsidized households in lower income groupings, then the benefit amounts of those government subsidized households will be adjusted upward. This ensures that the benefit amounts for the lower income government subsidized households are as much or more than the benefit amounts received by the highest income non-subsidized households.

(c) For heating assistance, the benefit levels described in subsections (a) and (b) of this section are determined on a county-by-county basis, using the best available data from the Texas Railroad Commission on the average cost of natural gas to residential users in each county, the total amount of funds available for the program, and the anticipated caseload. Benefit amounts for eligible households are based on the county of residence at the time of eligibility certification.

(d) For cooling assistance, the benefit levels described in subsections (a) and (b) of this section are determined on a statewide basis, using the best available data from the Public Utility Commission on the average cost of electricity to residential users, the total amount of funds available for the program, and the anticipated caseload.

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 October 17, 1986.

TRD-8609859

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
November 24, 1986  
For further information, please call  
(512) 450-3786.

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**Chapter 29. Purchased Health Services**  
**Subchapter L. General Administration**

**★ 40 TAC §29.1109**

The Texas Department of Human Services (DHS) proposes an amendment to §29.1109, in its purchased health services chapter. Section 29.1109 is amended to specify that the department or its designee pays the Medicare Part B deductible on valid, assigned Medicare claims for Part B services. Payment of Part B coinsurance liabilities continues to be restricted to claims for services that are within the amount, duration, and scope of the Texas Medical Assistance Program.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The estimated additional costs to state government will be \$325,649 for fiscal year 1987; \$455,772 for fiscal year 1988; \$457,551 for fiscal year 1989; \$467,562 for fiscal year 1990; and \$458,348 for fiscal year 1991. There is no effect on local government or small businesses.

Mr. Packard also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the payment of the Part B deductible will help ensure that Medicaid recipients who are eligible for Medicare can avail themselves of Part B services available under Medicare. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Written comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-715, Texas Department of Human Services 222-E, P.O. Box 2960, 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.

**§29.1109. Coordination of Title XIX with Parts A and B of Title XVIII.**

(a) (No change.)

(b) If a Medicaid recipient is eligible for Medicare coverage, the department or its designee pays the recipient's deductible and coinsurance liabilities on valid, assigned Medicare claims as specified in this section. Payment of deductible and coinsurance liabilities is subject to the conditions, limitations, and exclusions of the Texas Medical Assistance Program. The department or its designee pays the recipient's Part B deductible liability on Part B services. Payment for the recipient's Part B coinsurance liability and Part A [and Part B] deductible and coinsurance liabilities is limited to claims for services that:

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

(c) (No change.)

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

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

TRD-8609904

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
November 24, 1986  
For further information, please call  
(512) 450-3786.

★ ★ ★

**★ 40 TAC §29.1124**

The Texas Department of Human Services (DHS) proposes new §29.1124, concerning provider certification/enrollment in Medicare, in its purchased health services chapter. Section 29.1124 requires that for providers to participate in the Texas Medical Assistance Program, they must be approved for and participating in Medicare, as specified by the department or its designee. The purpose of this requirement is to ensure that benefits that are available to a recipient under Medicare are used before payment by Medicaid. The department or its designee may waive the requirement for providers whose types of practice or service are not covered by Medicare.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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. Packard 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 providers will have a clearer understanding of the requirements for participation in the Texas Medical Assistance Program. 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-879,  
Texas Department of Human Services 222-E,  
P.O. Box 2960, Austin, Texas 78769, within  
30 days of publication in the *Texas Register*.

The new section is proposed under the  
Human Resources Code, Title 2, Chapters  
22 and 32, which authorizes the depart-  
ment to administer public and medical as-  
sistance programs.

**§29.1124. Provider Certification/Enrollment  
in Medicare.**

(a) Except as noted in subsection (b)  
of this section, a provider of medical care  
or services must be approved for and parti-  
cipating in Medicare, as specified by the de-  
partment or its designee, to participate in the  
Texas Medical Assistance Program.

(b) The department or its designee  
may waive the enrollment requirement for  
providers whose types of practice or service  
are not covered by Medicare.

This agency hereby certifies that the pro-  
posal has been reviewed by legal counsel  
and found to be within the agency's au-  
thority to adopt.

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

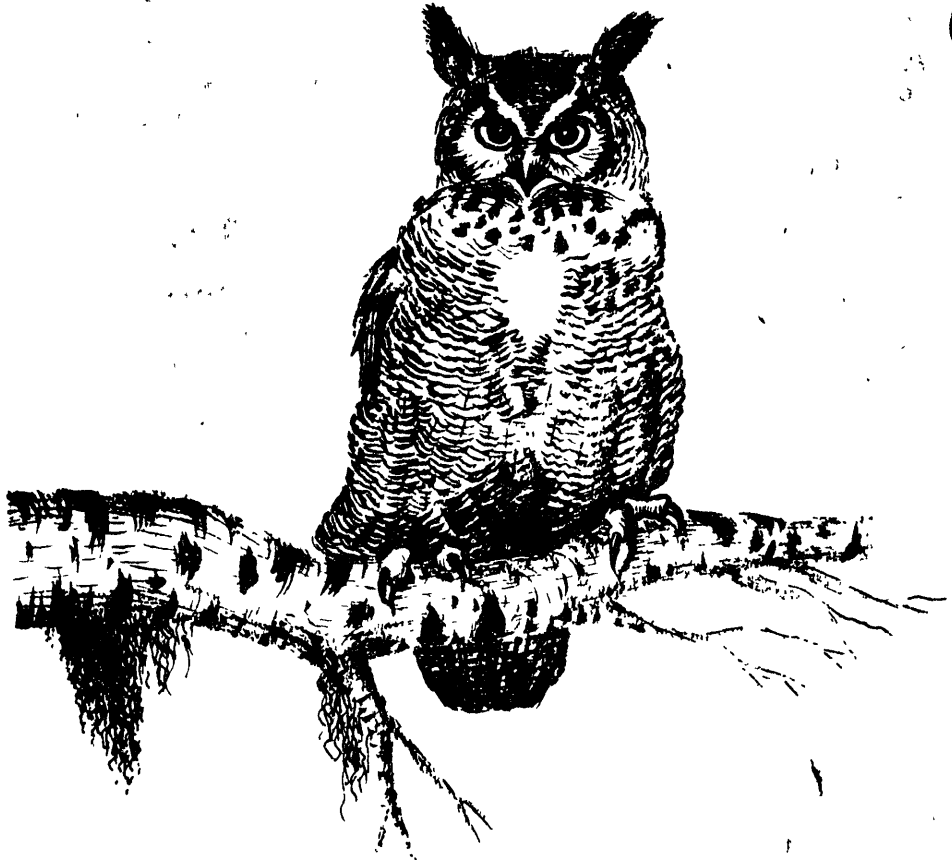
TRD-8609864

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:

November 24, 1986

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



★ ★ ★

# 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 7. BANKING AND SECURITIES

#### Part I. State Finance Commission

##### Chapter 1. Consumer Credit Commission

###### Subchapter B. Miscellaneous Appeals from Orders to Desist or to Refrain

###### ★7 TAC §1.301

The Consumer Credit Section of the State Finance Commission adopts new §1.301, without changes to the proposed text published in the September 5, 1986, issue of the *Texas Register* (11 TexReg 3856).

Adoption of the section is necessary to outline the requirement for appeals from the commissioner's orders to desist or to refrain from violating any provisions of Texas Civil Statutes, Title 79, Article 5069, Subtitles two and three.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 5069-2.03(7), which provide that appeals from the commissioner's orders to desist or to refrain shall be taken to the Consumer Credit Section of the Finance Commission.

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 October 14, 1986.

TRD-860800

Al Endsley  
Consumer Credit  
Commissioner

Effective date: November 5, 1986

Proposal publication date: September 5, 1986

For further information, please call  
(512) 479-1299.

★ ★ ★



### TITLE 25. HEALTH SERVICES

#### Part I. Texas Department of Health

##### Chapter 135. Ambulatory Surgical Centers

The Texas Department of Health adopts the repeal of §135.1, and new §§135.1-135.27, 135.41-135.43, 135.51, 135.52, and 135.61-135.67.

New §§135.2, 135.4-135.11, 135.13-135.27, 135.43, and 135.64 are adopted with changes to the proposed text published in the May 9, 1986, issue of the *Texas Register* (11 TexReg 2153). The repeal of §135.1 and new §§135.1, 135.3, 135.12, 135.41, 135.42, 135.51, 135.52, 135.61-135.63, and 135.65-135.67 are adopted without changes and will not be republished.

The new sections set minimum standards for the licensing of ambulatory surgical centers (ASC) in the State of Texas.

These sections cover the purpose and scope; definitions; fees; governance of a licensed ASC; rights of patients in a licensed ASC; administration of a licensed ASC; quality of care in a licensed ASC; quality assurance in a licensed ASC; medical records in a licensed ASC; facilities and environment in a licensed ASC; anesthesia and surgical services in a licensed ASC; pharmaceutical services; pathology and medical laboratory services in a licensed ASC; radiology services in a licensed ASC; nursing services in a licensed ASC; teaching and publication activities in a licensed ASC; research activities in a licensed ASC; unlicensed ASC; exemptions; application and issuance of license for initial applicants; inspections; renewal of annual license; conditions of annual license; license denial, suspension, or revocation; complaints; reporting of incidents; confidentiality; location; services; codes and standards; general; renovation projects; application of standards; submittal requirements; site requirements; design requirements; mechanical requirements; electrical requirements; and tables.

Numerous commenters submitted specific comments, which were reviewed and resulted in the department's response. Several comments were received with specific recommendations for changes to the new sections.

Regarding §135.2, a commenter recommended that the agency include within the definition of "certified registered nurse anesthetist (CRNA)" the requirement of current certification with the American Association of Nurse Anesthetists and registration with the Board of Nurse Examiners as an advanced nurse practitioner. The agency agrees and has made the requested changes.

A commenter recommended that the agency expand the word "partner" in the definition "change of ownership" to read "general, managing, or controlling partners" based upon the fact that limited partners do not participate in management but are simply liable for their investment. The agency agrees and has done so.

A commenter recommended that the agency add "laboratories accredited by the College of American Pathology Accredited Program" (CAP) to the definition "CLIA licensed laboratory and Medicare-approved referenced laboratory."

The agency disagrees because Medicare does not recognize a Clinical Laboratory Improvement Act (CLIA) laboratory or CAP laboratory as Medicare approved or as having deemed status. The agency has deleted the definition because an ASC cannot utilize these types of laboratories. The agency has, therefore, also deleted the reference to CLIA laboratories in the definition of "Medicare-approved reference laboratory" because an ASC cannot utilize these types of laboratories. Two commenters recommended that the agency delete "doctors of optometry and chiropractors" from the definition "health care practitioners" because neither of these practitioners are licensed to perform surgery of any kind. The agency agrees and has done so.

A commenter recommended that the agency add the definitions of "pharmacist" and "pharmacy support personnel." The agency disagrees because the terms are not used in the context of the regulations.

Regarding §135.4, two commenters stated that the statement in §§135.4-135.11 and 135.14-135.18, "ASCs that do not participate under Title XVIII shall comply with the following. . ." should be deleted as this statement is misleading and is adequately addressed under §135.1. The agency agrees and has deleted this statement in the aforementioned sections. As a result,



the subdivisions of each section have been redesignated appropriately.

All references in this summary of comments to the aforementioned sections are to the proposed subdivision numbers. A commenter recommended that in paragraph (3)(O)(i), the agency add "regarding activities in the ASC" so that the risk management system would not exceed the boundaries of the center's or staff's activity. The agency agrees and has added the recommended language. A commenter recommended that in paragraph (3)(O)(iv), the agency change the word "resolution" to "evaluation" because all complaints should be evaluated, although not all are justified and require a formal resolution.

The agency agrees and has changed the word in paragraph (3). Regarding §135.5, one commenter recommended that the agency change the words "required by law" in paragraph (3) to "authorized by law" because allowing the patient the right to approve or disapprove release of his or her record(s) may result in a delay of necessary care or timely reimbursement. The agency agrees and has changed the wording.

A commenter recommended that the agency change the word "complete" in paragraph (4) to "appropriate" as the word "complete" in this context is ambiguous. The agency agrees and has done so.

A commenter recommended that the agency delete, in paragraph (6)(H), the words "grievances and" and replace with "methods for expressing suggestions to the ASC." The agency disagrees with the suggested wording, but did change the word "grievance" to "complaint" as this language is more appropriate.

A commenter recommended that the agency delete paragraph (7) as it is an unnecessary statement; the right of an individual to request services of a given provider is addressed in §135.5(5). The agency agrees and has deleted the paragraph.

The agency has added a new paragraph (7) to address a consumer issue of misleading or deceptive marketing or advertising by an organization.

Regarding §135.7, a commenter recommended that the agency delete paragraph (4)(A) because the activity may or may not demonstrate that high quality health care services are being provided. The agency agrees and has deleted paragraph (4)(A) because the activity is addressed in §135.11(25).

A commenter recommended that the agency delete paragraph (4)(G), (H), and (L) because patient cooperation, continuity of care, and patient satisfaction are ambiguous and questionable measurements of a facility's quality of service. The agency agrees and has deleted the subparagraphs.

A commenter recommended that the agency delete paragraph (7)(D) as this function is a basic principle of fiscal management and control and the agency surveyor would

have difficulty in assessing this function. The agency agrees and has deleted the subparagraph.

Two commenters recommended that the agency delete paragraph (8) because the provision is impractical and would provide a hardship in ASCs where numerous languages are spoken. The agency agrees to delete paragraph (8) because this issue is addressed under patient's informed consent.

One commenter recommended that the agency add different types of drug utilization reviews. The agency disagrees. Due to the extremely short length of stay for patients, this activity would not be necessary.

Regarding §135.8, one commenter recommended that the agency delete, in paragraph (6)(A), "as well as concerns previously recognized by patients and staff but inadequately addressed" as it is an unnecessary statement. The agency disagrees with the comment because this function is necessary and relevant to the current operations of an ASC.

The agency has added clause (iii) to paragraph (6)(B) to include a log of all patient deaths, emergency and nonemergency transfers, and fires for an additional assessment of quality assurance.

One commenter recommended that the agency delete, in paragraph (6)(D), "and if not, why not" as this is an unnecessary statement. The agency disagrees with the comment because it is an integral part of the quality assurance program to address why a measure did or did not work.

One commenter recommended that the agency delete paragraph (8)(B) because the governing board of the ASC should determine which professions are represented with the quality assurance activities. The agency disagrees because nursing should be the representative for the patient care unit.

One commenter recommended that the agency add to paragraph (8), a subparagraph (C), to state, "If anesthesia is administered in the ASC by CRNAs they shall be represented in quality assurance activities." The agency disagrees because an anesthesiologist may represent the CRNAs in the quality assurance committee as this is covered in §135.8(4).

Regarding §135.9, one commenter recommended that the agency add to paragraph (10) that all preoperative and postoperative medications administered and the drug/dose/route/frequency/quantity of all postoperative drugs dispensed to the patient by the ASC be entered on the ASC patient record. The agency agrees and has incorporated this language in subparagraph (C). The remaining subsections are realphabetized sequentially.

One commenter recommended that the agency change paragraph (10)(D) to read "preoperative diagnostic studies entered

before surgery if required by policy, standing medical orders, or orders by a physician." The agency disagrees because this issue is addressed in the Medical Practice Act, Texas Civil Statutes, Article 4495b.

One commenter recommended that the agency change paragraph (10)(I) to read "evidence of evaluation of the patient by a physician prior to dismissal or of an assessment by qualified health care practitioners in accordance with written criteria." The agency disagrees because this function should be done by a physician as this is a medical judgement.

One commenter stated that there is a conflict between §135.9(10)(J) and §135.11(26). Proposed §135.9(10)(J) states that patients are dismissed in the company of a responsible adult unless a physician writes an order allowing independent dismissal, and proposed §135.11(26) states that patients who have received anesthesia, except locals, shall only be discharged in the company of a responsible adult. The agency agrees that a conflict exists and has changed the language in §135.11(26) to read the same as §135.9(10)(K).

One commenter recommended that the agency change the word "significant" in paragraph (11) to "appropriate" as significant is ambiguous in the context. The agency agrees and has changed the word. One commenter recommended that the agency add to paragraph (17) a statement that the physician's actual signature be required for all medication orders. The agency disagrees because the language is synonymous with the Medicare regulations and is addressed in paragraph (17).

One commenter recommended that the agency delete subparagraphs (A)-(D) of paragraph (17) because the stipulations are excessively restrictive. The agency disagrees as the language is synonymous with Medicare regulations, although the agency did add language to restrict the use of the signature stamp in the ASC only for x-ray reports.

The agency has deleted the requirement for use of a physician signature stamp for pathology from paragraph (17) because an ASC would not be performing pathology work, unless the ASC was Medicare certified as an independent laboratory. The agency has added language to paragraph (18) to include acceptance of a pathologist signature for tissue and cytology reports "from the Medicare-approved reference laboratory."

Regarding §135.10, the agency has changed the number of fire drills in paragraph (1)(C)(iii) from two drills to four drills to be consistent with the Medicare regulations and §135.51(b)(6)(C)(iii). The agency deleted paragraph (12)(C)(i) regarding fluoroscopic procedures because this is not addressed in the construction and design requirements or within the content of the regulations.

Regarding §135.11, a commenter recom-



mended that the agency delete "qualified medical personnel" in paragraph (1) as this term is ambiguous and to insert "qualified health care practitioner."

The agency agrees to delete "qualified medical personnel." However, "physician" rather than "qualified health care practitioner" is considered by the agency to be the more appropriate terminology.

A commenter stated that the term "qualified physician" in paragraph (2) is ambiguous and recommended that the agency add that anesthesia services are supervised by "anesthesiologist, surgeon, or one or more qualified physicians."

The agency agrees and has changed the proposed language to delete "qualified medical personnel" and add "ASC medical staff."

One commenter recommended that the language in paragraphs (6) and (7) be expanded to include participation in pre and postoperative evaluations by CRNAs administering anesthesia. The agency disagrees because this is not consistent with Medicare regulations or practice.

A commenter recommended that the agency delete in paragraph (11) "an office surgical practice" because the statute has no authority over the surgery a physician may conduct in his or her office practice. The agency agrees and has changed the language to read "ASC" as this meets the intent of the statute.

One commenter recommended that the agency include in paragraph (16), the presence or immediate availability of a CRNA to all operative patients until discharged. The agency disagrees because this is not consistent with Medicare regulations or practice.

The agency added language to paragraph (18) for clarification of preprinted operative notes in the medical record.

One commenter recommended that the agency add a subparagraph (J) to paragraph (19) to read "contents of an IV admixture container delivered via IV tubing, injectable medications drawn into syringes or administered from prefilled syringes are used for only one patient; except in special instances approved by the governing body." The agency agrees and has added the subparagraph.

One commenter recommended that the agency add in paragraph (19)(G), the requirement of maintaining a laminar flow hood. The agency disagrees because the use of IV admixture is limited in an ASC and the admixture is intended for use within 24 hours. A laminar flow hood is not necessary and would prevent an ASC from operating a wholesale or large scale IV admixture program.

One commenter questioned the source of blood products in paragraph (20). The agency has added language to clarify the ASC's policy on obtaining blood. One commenter

recommended that the agency add language in paragraph (24) stating whether specific protocols are required or that specific products are available for ASCs using general anesthesia. The agency disagrees because this is already covered in §135.10(4)(J).

The agency has added a new paragraph (27) to include the requirement of a written transfer agreement that includes an effective procedure for the immediate transfer of patients to a hospital.

Regarding §135.12, one commenter recommended that in subsection (a) the source of "professional practice" statements be specified or else delete the term "professional practice." The agency disagrees because the current language is consistent with Medicare regulations.

To §135.13(2)(B), the agency added a provision that allows a "podiatrist" to order lab work. The agency has added language in paragraph (2)(D) that blood bank services shall be provided if blood is authorized by the ASC. The agency has deleted in paragraph (8), the term "reference number" because it is not relevant. The agency has added language to paragraph (9) to clarify that if it is the ASC's policy to administer blood, that policies are to be developed for blood transfusions.

Regarding §135.15, 15 commenters objected to paragraph (2)(C), which would allow personnel other than registered nurses (RNs) to circulate in the operating room(s). The agency agrees in part and has changed the language to allow other than an RN to circulate in ASCs where general anesthesia is not administered and when there is an adequate number of RNs immediately available for an emergency situation. Licensed vocational nurses and surgical technicians will be allowed to assist the RN during general anesthetic cases.

Regarding §135.16, a commenter recommended that the agency delete proposed §135.16 as this section is not necessary or relevant to the health and safety of patients in an ASC. The agency agrees and has deleted the section. The remaining sections are renumbered sequentially.

Regarding §135.27 (now §135.26), one commenter recommended the deletion of the entire section because the resolution of incidents was already addressed in §135.7 and §135.8, which are considered adequate to assure investigation of incidents. The agency disagrees because the department as the regulatory body considers the reporting of certain situations and incidents in a licensed ASC as a mechanism to protect the health and safety of patients. The agency has changed the language in subsection (b) to require that an ASC mail documentation to the department within 30 days of the incident. The requirement for immediate phone contact after the incident was deleted in subsections (b) and (c)(1). The order of subsections (3) and (4) has been changed by the agency for clarification.

One commenter recommended in subsection (d) to include the Texas State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug Enforcement Administration to the list of regulatory agencies to report theft on diversion of controlled substances in an ASC. The agency agrees and has done so.

Regarding §135.43, the agency has included in subsection (a) a new paragraph (5) acknowledging permission to reprint material and registered trade marks of the Life Safety Code and NFPA 101 of the National Fire Protection Association.

Regarding §135.63, one commenter stated that "flood plain" in subsection (a)(2) and "hazardous or hazard-producing plant" in subsection (b)(1) should be defined. The agency disagrees because both of the terms are addressed in other state laws.

Regarding §135.64, one commenter stated that in subsection (e)(1) oxygen and a vacuum pump should be provided at each recovery bed station. The agency disagrees because the requirement would be more stringent than the Medicare regulations. One commenter recommended that the agency reword subsection (f)(3) to allow the pharmacy location and door direct access to surgery, require the pharmacy to be located in a room rather than an area of the recovery room, require all pharmacy storage areas to be secured when unattended, require a laminar flow hood, and require temperature control in the pharmacy room.

The agency has deleted subparagraphs (A)(D) and has included language in paragraph (3) stating that adequate space shall be provided in accordance with Texas State Board of Pharmacy regulations.

Concerning subsection (f)(4), one commenter recommended that the agency require medication carts and lockable enclosed cassettes to be considered drug storage areas that shall be secured at all times. The agency has deleted paragraph (4) as this is addressed by the Texas State Board of Pharmacy regulations. The remaining paragraphs have been renumbered.

One commenter stated that "mechanical destruction" in subsection (k)(1) and "incinerator" in subsection (k)(2) should be clarified. The agency disagrees because the terms are defined in the state's solid waste management regulations (25 TAC Chapter 325).

Regarding §135.65, one commenter suggested in subsection (d)(2)(A) and (B) that the agency state the difference in changes of air per hour supplied to rooms in the ASC versus the air exchange requirements for hospitals. The agency disagrees with changing the air exchange rate because the hospital rate would exceed Medicare requirements.

In addition, a number of other minor changes were made to the sections to assure consistent terminology, clarify the meaning, and improve grammar and style.

commenters who submitted specific concerns included: Texas Dermatological Society; Texas Medical Association; Allied Comprehensive Health Care, Inc.; Texas Association of Nurse Anesthetists; Affiliated Hospital Systems; Dallas Eye Institute; Allied Pharmacy Service, Inc.; Charlotte S. Mitchell, R.N.; Glenn Jones, R.N.; Kathryn J. Brauer, R.N.; Moira A. Satre, R.N.; Margaret Saenz, R.N.; Sheri Voss, R.N.; Luanne South, R.N.; Catherine L. Driscoll, R.N.; Carla H. Villarreal, R.N.; Carolyn J. Clark, R.N.; Cindy Whalley, R.N.; Melissa Lyman, R.N.; Romell Phillips, R.N.; and Deborah P. Jones, R.N.

There were no commenters who opposed the proposed regulations in their entirety; however, the commenters raised questions, expressed concerns, and made recommendations concerning specific provisions in the sections.

### ★ 25 TAC §135.1

The repeal is adopted under Texas Civil Statutes, Article 4437f-2, §3, which provide the Texas Board of Health with the authority to adopt rules covering ambulatory surgical centers.

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 October 15, 1986.

TRD-8609819

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

Effective date: November 5, 1986  
Proposal publication date: May 9, 1986  
For further information, please call  
(512) 458-7245.

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### Operating Requirements for Ambulatory Surgical Centers

#### ★ 25 TAC §§135.1-135.27

The new sections are adopted under Texas Civil Statutes, Article 4437f-2, §3, which provide the Texas Board of Health with the authority to adopt rules covering ambulatory surgical centers.

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

**Act**—Texas Ambulatory Surgical Center Licensing Act, Texas Civil Statutes, Article 4437f-2.

**Administrator**—A person who is a physician, registered nurse, or has a baccalaureate or postgraduate degree in administration or a health-related field; or has one year of administrative experience in a health care setting.

**Ambulatory Surgical Center (ASC)**—A facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

**Autologous blood units**—Units of blood or blood products derived from the recipient.

**Available**—On the premises and sufficiently free from other duties to enable the individual to respond rapidly to emergency situations.

**Certified registered nurse anesthetist (CRNA)**—A currently licensed registered nurse who has current certification from the Council of Certification—Recertification of the American Association of Nurse Anesthetist and who is currently registered with the Board of Nurse Examiners as an advanced nurse practitioner.

**Change of ownership**—

(A) A sole proprietor who transfers all or part of the ASC's ownership to another person or persons;

(B) The removal, addition, or substitution of a person or persons as a general, managing, or controlling partner in an ASC owned by a partnership; or

(C) A corporation that transfers all or part of the corporate stock which represents the ASC's ownership to another person or persons.

**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.

**Disposal**—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**FDA-approved blood bank**—A facility that has been licensed in accordance with the Food and Drug Administration requirements in the preparation of blood and blood products.

**Health care practitioners**—Individuals currently licensed under the laws of this state who may provide services in an ASC, including doctors of medicine, doctors of osteopathy, doctors of dental surgery or dental medicine, doctors of podiatric medicine, registered nurses and licensed vocational nurses.

**Infectious waste**—Waste containing pathogens or biologically active material which because of its type, concentration, and quantity is capable of transmitting disease to persons exposed to the waste.

**Licensed vocational nurse**—A person who is currently licensed under the laws of this state to use the title, licensed vocational nurse.

**Medicare-approved reference laboratory**—A facility that has been certified and

found eligible for Medicare reimbursement, and includes hospital laboratories which may be Joint Commission on Accreditation of Hospitals or American Osteopathic Association accredited or non-accredited Medicare approved hospitals, Medicare certified independent laboratories.

**Pathological waste**—Any material that may produce, harbor or transmit any disease producing agent or microorganism.

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

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

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

**Statute**—Texas Civil Statutes, Article 4437f-2.

**Title XVIII**—Title XVIII of the United States Social Security Act, Public Law 89-87, 1965.

#### §135.4. Governance of a Licensed ASC.

(a) The ambulatory surgical center must have a governing body that sets policy and assumes full legal responsibility for the total operation of the ASC.

(b) The governing body shall be responsible for assuring that medical staff bylaws are current and on file.

(c) The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the ASC. Governing body responsibilities include, but are not limited to:

(1) determining the mission, goals, and objectives of the ASC;

(2) assuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) establishing an organizational structure and specifying functional relationships among the various components of the ASC;

(4) adopting bylaws or similar rules and regulations for the orderly development and management of the ASC;

(5) adopting policies or procedures necessary for the orderly conduct of the ASC;

(6) assuring that the quality of care is evaluated and that identified problems are appropriately addressed;

(7) reviewing all legal and ethical matters concerning the ASC and its staff and, when necessary, responding appropriately;

(8) maintaining effective communication throughout the ASC;

(9) establishing a system of financial management and accountability that includes an audit appropriate to the ASC;

(10) determining a policy on the rights of patients;

(11) approving all major contracts or arrangements affecting the medical care

provided under its auspices, including, but not limited to, those concerning:

(A) the employment of health care practitioners;

(B) an effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC. The ASC must have a written transfer agreement with a hospital or all physicians performing surgery at the ASC must have admitting privileges at a local hospital;

(C) the use of external laboratories;

(D) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, X-ray, and pharmacy services are not provided onsite;

(E) the provision of education to students and postgraduate trainees if the ASC participates in such programs;

(12) formulating long-range plans in accordance with the mission, goals, and objectives of the ASC;

(13) operating the ASC without limitation because of race, creed, sex, or national origin;

(14) assuring that all marketing and advertising concerning the ASC does not imply that it provides care or services which it is not capable of providing; and

(15) developing a system of risk management appropriate to the ASC including, but not limited to:

(A) periodic review of all litigation involving the ASC, its staff, and health care practitioners regarding activities in the ASC;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

(d) The governing body shall provide for full disclosure of ownership to the department.

(e) The governing body shall meet at least annually and keep such minutes or other records as may be necessary for the orderly conduct of the ASC.

(f) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the authority, responsibility, and functions of all such positions shall be defined.

(g) When a majority of its members are physicians, the governing body, either directly or by delegation, shall make (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges. When a majority of the members of the governing body are not physicians, the ASC's bylaws or similar rules and regulations shall specify a procedure for establishing medical review for the purpose of making (in a manner consistent with state law and based on

evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges.

(h) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for nonphysician health care personnel and practitioners.

(i) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the ASC.

#### §135.5. *Rights of Patients in a Licensed ASC.*

(a) Patients shall be treated with respect, consideration, and dignity.

(b) Patients shall be provided appropriate privacy.

(c) Patients' disclosures and records shall be treated confidentially and, except when authorized by law, patients shall be given the opportunity to approve or refuse their release.

(d) Patients shall be provided, to the degree known, appropriate information concerning their diagnosis, treatment, and prognosis. When it is medically inadvisable to give such information to a patient, the information shall be provided to a person designated by the patient or to a legally authorized person.

(e) Patients shall be given the opportunity to participate in decisions involving their health care, except when such participation is contraindicated for medical reasons.

(f) Information shall be available to patients and staff concerning:

(1) patient rights, including those specified in subsections (a)-(e) of this section;

(2) patient conduct and responsibilities;

(3) services available at the ASC;

(4) provisions for after-hours and emergency care;

(5) fees for services;

(6) payment policies;

(7) patient's rights to refuse to participate in experimental research; and

(8) methods for expressing complaints and suggestions to the ASC.

(g) Marketing or advertising regarding the competence and/or capabilities of the organization shall not be misleading to patients.

#### §135.6. *Administration of a Licensed ASC.*

(a) Administrative policies, procedures, and controls shall be established and implemented to assure the orderly and efficient management of the ASC. Administrative responsibilities shall include, but are not limited to:

(1) enforcing policies delegated by the governing body;

(2) employing qualified management personnel;

(3) long-range and short-range planning for the needs of the ASC, as determined by the governing body;

(4) using methods of communicating and reporting, designed to assure the orderly flow of information within the ASC;

(5) controlling the purchase, maintenance, and distribution of the equipment, materials, and facilities of the ASC;

(6) establishing lines of authority, accountability, and supervision of personnel;

(7) establishing controls relating to the custody of the official documents of the ASC; and

(8) maintaining the confidentiality, security, and physical safety of data on patients and staff.

(b) Personnel policies shall be established and implemented to facilitate attainment of the mission, goals, and objectives of the ASC. Personnel policies shall:

(1) define and delineate functional responsibilities and authority;

(2) require the employment of personnel with qualifications commensurate with job responsibilities and authority, including appropriate licensure or certification;

(3) require periodic appraisal of each person's job performance;

(4) specify responsibilities and privileges of employment;

(5) be made known to employees at the time of employment; and

(6) provide adequate orientation and training to familiarize all personnel with the ASC's policies, procedures, and facilities.

(c) The ASC shall periodically assess patient satisfaction with services and facilities provided by the ASC. The findings shall be reviewed by the governing body.

(d) When students and postgraduate trainees are present, their status shall be defined in the ASC's personnel policies.

(e) The status of each category of allied health professionals shall be included in personnel policies and appropriate job descriptions shall be developed.

#### §135.7. *Quality of Care in a Licensed ASC.*

(a) All health care practitioners shall have the necessary and appropriate training and skills to deliver the services provided by the ASC.

(b) Health care practitioners shall practice their professions in an ethical and legal manner.

(c) Patient care responsibilities shall be delineated for all nursing service personnel. Nursing services shall be provided in accordance with recognized standards of practice. There shall be a registered nurse available for emergency treatment whenever there is a patient in the ASC.

(d) The provision of high-quality health care services shall be demonstrated by at least the following:

(1) accessible and available health services;

(2) appropriate and timely diagnostic procedures;

(3) treatment that is consistent with clinical impression or working diagnosis;

(4) appropriate and timely consultation;

(5) absence of clinically unnecessary diagnostic or therapeutic procedures;

(6) provision for services when the ASC is not open;

(7) appropriate, accurate, and complete medical record entries; and

(8) adequate transfer of information when patients are transferred to and from other health care providers.

(e) When clinically indicated, patients shall be contacted as quickly as possible for follow-up regarding significant problems and/or abnormal laboratory or radiologic findings that have been identified.

(f) When the need arises, patients shall be transferred from the care of one health care practitioner to another.

(1) Adequate specialty consultation services shall be made available by prior arrangement.

(2) Referral to another health care practitioner shall be clearly outlined to the patient and arranged with the accepting health care practitioner prior to transfer.

(g) Concern for the appropriateness of care shall be governed by the following:

(1) the relevance of health care services to the needs of the patients;

(2) the absence of duplicative diagnostic procedures;

(3) the appropriateness of treatment frequency; and

(4) the use of ancillary services that are consistent with patients' needs.

(h) Education activities shall relate, in part, to the findings as quality assurance activities and shall include cardiopulmonary resuscitation training.

#### §135.8. *Quality Assurance in a Licensed ASC.*

(a) Quality assurance includes the selection of professional personnel prior to engagement for service, ongoing review of clinical responsibilities and authority, and peer review and supervision of all professional and technical activities of personnel.

(b) The professional and administrative staff shall understand, support, and participate in the quality assurance program.

(c) The quality assurance program shall address clinical, administrative, and cost effective issues. Exclusive concentration on administrative cost effective issues does not fulfill this requirement.

(d) Quality assurance activities shall be conducted by the Quality Assurance Committee, which is composed of specific clinical disciplines within the ASC (individual medical specialties, nursing, etc.) and shall be consistent with the characteristics of the overall quality assurance program and the services provided by the ASC.

(e) Problem identification and resolution activities shall be conducted as part of an ongoing, organized quality assurance pro-

gram in which all practitioners in all clinical disciplines have an opportunity to participate. A variety of self-assessment methodologies shall be used to implement the quality assurance program. Assessment techniques shall examine the structure, process, or outcome of care, and shall be assessed prospectively, concurrently, or retrospectively.

(f) Quality assurance activities shall address the following.

(1) Important problems or concerns in the care of patients shall be identified. Although the medical record is an important data source for identifying previously unrecognized problems, any sources may be used. Problems concerning accessibility, medical-legal issues, and wasteful practices shall be considered, as well as concerns previously recognized by patients and staff but inadequately addressed.

(2) The frequency, severity, and source of suspected problems or concerns shall be assessed.

(A) Health care practitioners shall participate in the development and application of the criteria used to evaluate the care they provide.

(B) Health care practitioners shall participate in the evaluation of the problems or concerns identified.

(C) A log shall be maintained of all fires, patient deaths, emergency and non-emergency transfers from the ASC to the hospital.

(3) Measures shall be implemented to resolve important problems or concerns that have been identified. Health care practitioners as well as administrative staff shall participate in the resolution of the problems or concerns that are identified.

(4) The problems or concerns shall be reassessed to determine objectively whether or not the measures have achieved and sustained the desired result, and if not, why not.

(5) Through the ASC's designated mechanisms, quality assurance activities shall be reported, as appropriate, to the proper personnel, and the governing body.

(g) Quality assurance activities described in subsection (f) of this section shall encompass, but are not limited to:

(1) the clinical performance of health care practitioners;

(2) the standards for medical records;

(3) quality controls for and the use of radiology, pathology, and medical laboratory services;

(4) other professional and technical services provided; and

(5) studies of patient satisfaction.

(h) The quality assurance program shall be a well-defined organized program designed to enhance patient care through the ongoing objective assessment of important aspects of patient care and the associated or identified problems. The responsibilities for quality assurance activities shall be clearly delineated.

(1) Qualified medical staff shall participate in assessment of medical services by

health care practitioners and shall be accomplished by a specified member(s) of the medical staff or by staff as a group.

(2) Nursing service shall be represented by one or more qualified registered nurses in quality assurance activities.

#### §135.9. *Medical Records in a Licensed ASC.*

(a) The ASC shall develop and maintain a system for the collection, processing, maintenance, storage, retrieval, and distribution of patient medical records.

(b) An individual medical record shall be established for each patient receiving care.

(c) All clinical information relevant to a patient shall be readily available to health care practitioners.

(d) Except when otherwise required by law, any record that contains clinical, social, financial, or other data on a patient shall be strictly confidential and shall be protected from loss, tampering, alteration, destruction, and unauthorized or inadvertent disclosure.

(e) A person shall be designated to be in charge of medical records whose responsibilities include, but are not limited to:

(1) the confidentiality, security, and safe storage of medical records;

(2) the timely retrieval of individual medical records upon request;

(3) the specific identification of each patient's medical record;

(4) the supervision of the collection, processing, maintenance, storage, retrieval, and distribution of medical records; and

(5) the maintenance of a predetermined organized medical record format.

(f) Policies concerning medical records shall address, but are not limited to:

(1) the retention of active records;

(2) the retirement of inactive medical records;

(3) the timely entry of data in medical records; and

(4) the release of information contained in medical records.

(g) Except when otherwise required by law, the content and format of medical records, including the sequence of information, shall be uniform.

(h) Reports, histories and physicals, progress notes, and other patient information (such as laboratory reports, x-ray readings, and consultation) shall be incorporated into the medical record in a timely manner.

(i) Medical records shall be available to authorized health care practitioners any time the ASC is open to patients.

(j) The ambulatory surgical center record shall include the following:

(1) patient identification;

(2) allergies and untoward reactions to drugs recorded in a prominent and uniform location;

(3) all preoperative, postoperative medications administered and drug/dose/route/frequency/quantity of all postoperative drugs dispensed to the patient by the ASC and entered on the patient's record;

(4) significant medical history and results of physical examination;

(5) preop diagnostic studies entered before surgery, if required by policy or ordered by a physician;

(6) findings and techniques of the operation (operative report);

(7) pathology report on all tissues removed during surgery except those exempted by the governing body;

(8) anesthesia administration record that includes either general or local anesthetic;

(9) documentation of a properly executed informed consent;

(10) evidence of evaluation of the patient by a physician prior to dismissal; and

(11) evidence that the patient was dismissed in the company of a responsible adult unless a physician writes an order that the patient may be dismissed without the company of a responsible adult.

(k) Appropriate medical advice given to a patient by telephone shall be entered in the patient's medical record and appropriately signed or initialed.

(l) Entries in patients' medical records shall be legible to clinical personnel and shall be accurate and completed promptly.

(m) Any notation in a patient's medical record indicating diagnostic or therapeutic intervention as part of clinical research shall be clearly contrasted with entries regarding the provision of nonresearch related care.

(n) When necessary for assuring continuity of care, summaries of records of a patient who was treated elsewhere (such as by another physician, hospital, ambulatory surgical center, nursing home, or consultant) shall be obtained.

(o) When necessary for assuring continuity of care, summaries or photocopies of the patient's record shall be transferred to the health care practitioner to whom the patient was referred and, if appropriate, to the facility where future care will be rendered.

(p) Certain repetitive procedures are suitable for preprinted operative notes. These operative notes are suitable as long as they are approved by the governing body and signed by the surgeon and transmit to a knowledgeable reader the events of the surgical procedure.

(q) A physician's signature stamp may be used within the ASC only for x-ray reports in accordance with the following regulations.

(1) The physician using the signature stamp shall supply the ambulatory surgical center with a letter, to be kept on file, notifying the ambulatory surgical center of the use of the stamp.

(2) The signature stamp shall be in the possession of the physician at all times, or shall be locked up with the key in the physician's possession.

(3) No one but the physician shall use the signature stamp.

(4) When a signature stamp is used, the physician shall initial the signature stamp

as it is used.

(r) All final tissue and abnormal cytology reports from the Medicare approved reference laboratory shall be signed by a pathologist.

#### §135.10. Facilities and Environment in a Licensed ASC.

(a) The ASC shall have the necessary personnel, equipment, and procedures to handle medical emergencies that may arise in connection with services sought or provided. At a minimum, the ASC shall provide:

(1) periodic instruction of all personnel in the proper use of safety, emergency, and fire extinguishing equipment;

(2) procedures, including adequate surveillance techniques, that minimize sources and transmission of infections;

(3) a comprehensive emergency plan to address internal and external emergencies, including:

(A) a provision for the safe evacuation of patients during an internal emergency, especially patients who have difficulty walking;

(B) a provision for the most efficient use of available facilities and services during an external emergency; and

(C) a requirement for at least four drills a year of the internal emergency plan; and

(4) personnel trained in cardiopulmonary resuscitation and the use of emergency equipment present in the facility during hours of operation.

(b) Hazards that might lead to slipping, falling, electrical shock, burns, poisoning, or other trauma shall be eliminated.

(c) Facilities shall be clean and properly maintained.

(d) Appropriate emergency equipment and supplies shall be maintained and readily accessible to all areas of each building and shall include the following:

(1) emergency call system;

(2) oxygen;

(3) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and ventilator;

(4) cardiac defibrillator;

(5) cardiac monitoring equipment;

(6) chest tubes and bottle;

(7) tracheostomy set;

(8) laryngoscopes and endotracheal tubes;

(9) suction equipment; and

(10) emergency drugs and supplies specified by the medical staff.

(e) All equipment, including emergency equipment, shall be properly maintained and periodically tested.

(f) There shall be a system for the proper identification, management, handling, transport, treatment, and disposition of hazardous materials and wastes whether solid, liquid, or gas.

(1) This system shall include, but is not limited to, infectious, radioactive, chemical, and physical hazards.

(2) The system shall provide for the protection of patients, staff, and the environment.

(g) The method of disposal for infectious and/or pathological wastes shall be incineration.

(h) If incineration is not feasible, the alternative method shall be treatment of the waste in an autoclave steam sterilization to destroy the pathogens, followed by the burial of the sterilized material in a permitted landfill.

(i) When methods of incineration or high pressure steam sterilization are not feasible, infectious and/or pathological wastes shall be disposed of in a Type I municipal landfill. This procedure, set forth in municipal solid waste management regulations (MSWMR), §135.136(b)(1) of this title (relating to Disposal of Special Wastes), is intended for use only under the following conditions:

(1) when an incinerator is shut down for repair or has been closed because of regulations promulgated pursuant to clean air statutes;

(2) when individual pieces of waste are too large for existing incinerators or autoclaves; or

(3) when the composition of contaminated items, such as plastic bottles, bags, tubing, etc., could be deleterious to the operation of the incinerator or autoclave.

(j) An acceptable procedure for depositing infectious or pathological wastes in a Type I landfill is as follows, according to MSWMR, §325.136(b)(1) of this title (relating to Disposal of Special Wastes).

(1) The waste shall be double bagged in plastic bags not less than 1.5 mil thick. Each bag must be conspicuously marked.

(2) The bags must not be commingled with other wastes; don't put in dumpster.

(3) The landfill operator must be notified the day before a deposit is delivered.

(4) The deposit must be special delivered to the landfill operator early in the morning.

(5) The landfill operator must bury the waste material immediately.

(k) An acceptable procedure for depositing infectious and pathological waste when a landfill is not available shall be as follows according to MSWMR, §325.136(b)(1) of this title (relating to Disposal of Special Wastes):

(1) in a remote location, have a three foot (diameter) bore hole or pit dug which is deep enough to accommodate several deposits;

(2) place autoclaved and appropriately bagged waste (same as subsection (j)(1) and (2) of this section) into the bottom of the hole or pit;

(3) sprinkle one large bag of lime over the entire bottom;

(4) cover with one foot of dirt;

(5) repeat the process until there is only room for two feet of clean dirt on top.

(l) Sufficient space, equipment, and supplies shall be provided to perform the volume of work with optimal accuracy, precision, efficiency, and safety in the laboratory and x-ray.

(1) Work space may be located in the preop area or in a separate room. The work space shall contain laboratory work counter(s), with a sink and electric services, storage cabinet(s) or closet(s).

(2) There shall be work space available for specimen collections. Urine collection rooms shall be equipped with a water closet and lavatory. Blood collection area shall have space for a chair, work counter, and hand wash facilities.

(3) The ASC shall furnish equipment for basic diagnostic purposes, depending on the extent of services provided. Dressing area(s) shall be required, depending on services provided, with convenient access to toilets and may be shared with patient changing/preop rooms.

#### §135.11. Anesthesia and Surgical Services in a Licensed ASC.

(a) Anesthesia services provided in the ASC shall be limited to those techniques that are approved by the governing body upon the recommendation of the anesthesiologist, surgeon, or other physician(s).

(b) Adequate supervision of anesthesia services provided by the ASC shall be the responsibility of an anesthesiologist, surgeon, or one or more qualified physicians who are approved by the governing body upon the recommendation of the ASC medical staff.

(c) Anesthesia shall be administered by anesthesiologists, other qualified physician or dentist anesthetists, qualified certified registered nurse anesthetists, or supervised trainees in an approved educational program.

(d) A person qualified to provide anesthesia services shall be available as long as clinically indicated.

(e) Policies and procedures shall be developed for anesthesia services which include, but are not limited to:

(1) education, training, and supervision of personnel;

(2) responsibilities of nonphysician anesthetists;

(3) responsibilities of supervising physicians; and

(4) use and degree of supplemented local anesthesia.

(f) Anesthesia shall not be administered unless the operating surgeon or anesthesiologist has evaluated the patient immediately prior to surgery to assess the risk of the anesthesia relative to the surgical procedure to be performed.

(g) Patients who have received anesthesia shall be evaluated by the operating surgeon or anesthesiologist after recovery from anesthesia and prior to discharge.

(h) Surgical procedures performed in the ASC shall be limited to those procedures that are approved by the governing body

upon the recommendation of qualified medical personnel.

(i) Adequate supervision of surgery conducted in the ASC shall be a responsibility of the governing body, shall be recommended by qualified medical personnel, and shall be provided by appropriate personnel.

(j) Surgical procedures shall be performed only by health care practitioners who are licensed to perform such procedures within Texas and who have been granted privileges to perform those procedures by the governing body of the ASC, upon the recommendation of qualified medical personnel and after medical review of the practitioner's documented education, training, experience, and current competence.

(k) Surgical procedures to be performed in the ASC shall be reviewed periodically as part of the peer review portion of the ASC's quality assurance program.

(l) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record prior to surgery.

(m) The necessity or appropriateness of the proposed surgery, as well as any available alternative treatment techniques, shall be discussed with the patient prior to scheduling for surgery.

(n) Nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(o) Each operating room shall be designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of all persons in the area. At least one operating room shall be available for surgery.

(1) If flammable agents are present in an operating room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 56A, Standard for the Use of Inhalation Anesthetics, Flammable and Nonflammable, 1978) and with applicable state and local fire codes.

(2) If nonflammable agents are present in an operating room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 56G, Standard for Inhalation Anesthetics in Ambulatory Care Facilities, 1980) and with applicable state and local fire codes.

(p) An anesthesiologist or another physician qualified in resuscitative techniques shall be present or immediately available until all patients operated on that day have been discharged.

(q) With the exception of those tissues exempted by the governing body after medical review, tissues removed during surgery shall be examined by a pathologist, whose signed report of the examination shall be made a part of the patient's medical record.

(r) The findings and techniques of an operation shall be accurately and completely written or dictated immediately after the procedure by the health care practitioner who performed the operation. This description shall be immediately available to the health care practitioners providing patient care and becomes a part of the patient's medical record. Refer to §135.9(p) of this title (relating to Medical Records in a Licensed ASC).

(s) A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, shall be assured through the provision of adequate space, equipment, and personnel.

(1) Provisions shall be made for the isolation or immediate transfer of patients with communicable diseases.

(2) All persons entering operating rooms shall be properly attired.

(3) Acceptable aseptic techniques shall be used by all persons in the surgical area.

(4) Only authorized persons shall be allowed in the surgical area.

(5) Suitable equipment for rapid and routine sterilization shall be available to assure that operating room materials are sterile.

(6) Sterilized materials shall be packaged and labeled in a consistent manner to maintain sterility and identify sterility dates.

(7) Environmental controls shall be implemented to assure a safe and sanitary environment.

(8) Suitable equipment shall be provided for the regular cleaning of all interior surfaces.

(9) Operating rooms shall be appropriately cleaned before each operation.

(10) Contents of an intravenous (IV) admixture container delivered via IV tubing, injectable medications drawn into syringes or administered from pre-filled syringes are used for only one patient; except in special instances approved by the governing body.

(t) Procedures shall be developed for obtaining blood or blood products on a timely basis, unless it is against ASC policy not to obtain blood.

(u) Emergency power adequate for the type of surgery performed shall be available in operative and recovery areas.

(v) Periodic calibration and/or preventive maintenance of equipment shall be provided.

(w) The informed consent of the patient or, if applicable, of the patient's representative, shall be obtained before an operation is performed.

(x) A procedure shall be established for observation and care of the patient during the preoperative preparation and postoperative recovery period.

(y) Protocols shall be established for instructing patients in self-care after surgery, including written instructions to be given to



patients who receive regional and general anesthesia.

(z) Patients who have received anesthesia shall be dismissed in the company of a responsible adult unless a physician writes an order that the patient may be dismissed without the company of a responsible adult.

(aa) An effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC shall be developed. The ASC must have a written transfer agreement with a hospital or all physicians performing surgery at the ASC must have admitting privileges at a local hospital.

**§135.13. Pathology and Medical Laboratory Services in a Licensed ASC.** Pathological and clinical services shall be provided or made available when appropriate to meet the needs of the patients and adequately support the ASC's clinical capabilities.

(1) Pathology and clinical laboratory services shall include, but are not limited to:

(A) conducting laboratory procedures that are appropriate to the needs of the patients;

(B) performing tests in a timely manner;

(C) distributing test results within 24 hours after completion of a test and maintaining a copy of the results in the laboratory; and

(D) performing and documenting appropriate quality assurance procedures, including, but not limited to, calibrating equipment periodically and validating test results through use of standardized control specimens or laboratories.

(2) Preoperative laboratory procedures may be required as follows.

(A) It shall be at the discretion of the ASC to require preoperative laboratory orders.

(B) If specific preoperative laboratory work is required, the medical staff shall approve them in accordance with the medical staff bylaws. Other lab work shall be performed only upon the written order of a physician, podiatrist, or dentist and written on the patient's chart.

(C) These services shall be provided either directly within or through an effective contract arrangement with a Medicare-approved reference laboratory.

(D) The contractual agreement with the Medicare-approved reference laboratory shall provide for routine and stat work to include pathology, clinical, and blood bank services, if blood is authorized by the ASC, and shall be available for review.

(3) The patient may be instructed to go directly to the Medicare-approved reference laboratory or the specimen may be collected on the ambulatory surgical center's premises and then referred to the Medicare-approved reference laboratory.

(4) If the specimens are collected on the premises only, the following shall be maintained:

(A) procedures and policies governing the Medicare reference laboratory specimen requirements; identifying, collection, labeling, storage, and transportation of the specimen, and preventive maintenance of equipment used in processing and storage of specimen;

(B) a log book which shall include patient name and identification number, doctor's name, date the specimen was drawn and sent to the Medicare-approved reference laboratory, laboratory tests ordered, date the final report came back from the reference laboratory, and condition of the specimen. The final report shall be on the patient chart, with copies kept in the ASC's laboratory.

(5) If laboratory tests are performed on the premises, the following shall be maintained:

(A) procedures governing identification, collection, labeling, and storage of specimens;

(B) a log book, which shall include patient name and identification number, doctor's name, date the specimen was drawn, test ordered, and results;

(C) procedures for each test procedure performed by the laboratory, including source of reagents, standards, and calibration procedures, and information concerning the basis for the tested normal ranges;

(D) procedures and documentation of performed maintenance on equipment used to process laboratory work;

(E) dated reports of all examinations performed and made a part of the patient's medical record; and

(F) proficiency testing.

(6) Quality control of the laboratory shall be monitored through the Quality Assurance Committee.

(7) If the ASC designates its laboratory to perform as an independent laboratory, it shall be surveyed according to 42 Code of Federal Regulations, Part 405, Subpart M, §§405.1310-405.1317.

(8) The ASC's can allow laboratory work to be performed and brought in from other Medicare approved reference laboratories or physicians' offices and the following shall be maintained.

(A) Written criteria describing the length of time tests can be done prior to surgery shall be maintained. (In no case shall lab work be performed more than 14 days prior to surgery for local anesthesia, or seven days for general anesthesia.)

(B) Final reports shall be on the patient's chart before surgery.

(C) Laboratory work shall be performed in a Medicare-approved reference laboratory or the patient's physician's office. This shall be written in a policy accepted by the medical staff and governing body.

(9) If it is the ASC's policy to administer blood, policies shall be developed on administration of blood transfusions to

include autologous blood units in accordance with the ASC's operative procedures.

(A) If the operative procedure(s) performed in the ASC (i.e., cataract surgery) does not indicate the necessity for a transfusion, the approved procedures must reflect this and be approved by the medical staff and governing body with ultimate responsibility accepted by the governing body.

(B) If the operative procedure(s) performed in the ASC requires or may require the necessity for transfusions, policies and procedures shall include provisions for stat and routine transfusions. These policies and procedures shall include, but are not limited to, collection, labeling, and transportation of specimen in accordance with the ASC or contract service policies. All patient results shall appear in the patient's chart.

(10) If the ASC performs surgery which incorporates the removal of a tissue specimen or the freezing of a tissue specimen, the specimen shall be submitted to a Medicare-approved reference laboratory. The following shall be maintained:

(A) procedures governing the Medicare-approved reference laboratory specimen requirements, identification, collection, labeling, storage, and transportation of the specimen;

(B) documentation to include patient name and identification number, doctor's name, date the tissue specimen was collected and referred to the Medicare-approved reference laboratory, and date the final report came back from the Medicare-approved reference laboratory. Final copies shall be placed in the patient's chart, with copies kept in the ASC; and

(C) the medical staff bylaws may exempt tissue specimens from pathology exam and the list of exemptions shall be available for review. The exemptions shall be based on the following criteria.

(i) The quality of care shall not be compromised and another suitable means of verification of removal shall be employed.

(ii) The authentic operative report shall document the removal of the tissue specimen.

(iii) The exemptions may include limited categories such as foreign bodies, teeth, and specimens which by nature or condition do not permit fruitful examination.

(11) The medical staff bylaws shall define those specimens for macroscopic pathology examination only and both macroscopic and microscopic pathology examinations.

(12) The original pathology report shall be included in the patient's chart.

(13) Pathology tissue reports and positive cytology reports shall have the written signature of the pathologist interpreting the report. A computerized signature or signature stamp cannot be used.

**§135.14. Radiology Services in a Licensed ASC.**

(a) Radiology services shall be provided or made available when appropriate to meet

the needs of the patients and adequately support the ASC's clinical capabilities. Policy and procedures shall be available for emergency and/or routine radiological procedures.

(b) A radiologist shall authenticate all examination reports, except reports of specific procedures that may be authenticated by physicians who are not radiologists, but who have been granted privileges by the governing body or its designee to authenticate such reports.

(c) Services shall be provided either directly within or through an effective contractual arrangement with a Medicare-approved facility and the contracts shall be available for review.

(1) If services are provided through contractual arrangement the ASC may instruct its patients to go directly to the facility for x-ray service.

(2) If services are provided by an outside x-ray firm coming into the ASC, this portable x-ray firm must be Medicare certified according to 42 Code of Federal Regulations Part 405, Subpart N, §§405.1411-405.1416.

(d) If x-ray services are performed within the ASC, the x-ray department will be surveyed according to 42 Code of Federal Regulations Part 405, Subpart J, §405.1029.

(e) Procedure manuals shall include procedures for all examinations performed, infection control in the ASC and operating rooms to include dress code of personnel and cleaning of equipment.

(f) Policies shall address the quality aspects of radiology services, including, but not limited to:

(1) performing radiology services only upon the written order of a physician or dentist (such orders must be accompanied by a concise statement of the reason for the examination). A written order is required if the x-ray procedure is an integral part of the patient's surgery; and

(2) limiting the use of any radioactive sources in the ASC to physicians who have been granted privileges for such use on the basis of their training, experience, and current competence.

(g) Policies shall address the safety aspects of radiology services, including, but not limited to:

(1) regulation of the use, removal, handling, and storage of any radioactive material which is required to be licensed by the Texas Department of Health, Bureau of Radiation Control;

(2) precautions against electrical, mechanical, and radiation hazards;

(3) proper shielding where radiation sources are used;

(4) acceptable monitoring devices for all personnel who might be exposed to radiation (monitoring devices shall be worn by such personnel in any area with a radiation hazard);

(5) maintenance of radiation exposure records on personnel; and

(6) authenticated, dated reports of all examinations performed shall be made a part of the patient's medical record.

(h) Laser equipment shall be licensed as required by the Texas Department of Health, Bureau of Radiation Control.

#### §135.15. *Nursing Services in a Licensed ASC.*

(a) There shall be an organized nursing service under the direction of a qualified registered nurse and staffed to assure that the nursing needs of all patients are met.

(b) There shall be a plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing service shall include, but is not limited to, nursing care rendered to patients preoperatively, intraoperatively, and postoperatively.

(1) The responsible individual for nursing services shall be a qualified registered nurse whose responsibility and authority for nursing service shall be clearly defined and includes supervision of both personnel performance and patient care.

(2) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(3) Surgical technicians and licensed vocational nurses may be permitted to serve as scrub nurses under the direct supervision of a registered nurse; they shall not be permitted to function as circulating nurses in the operating rooms, except in ASCs where no general anesthesia is administered and when there is an adequate number of RNs immediately available for an emergency situation. Licensed vocational nurses and surgical technicians may assist in circulatory duties under the supervision of a qualified RN during general anesthetic cases.

(4) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(c) There shall be an adequate number of registered nurses on duty to meet the following minimum staff requirements: director of the department (or designee), and supervisory and staff personnel for each service area to assure the immediate availability of a registered nurse for emergency care or for any patient when needed.

(1) A registered nurse shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(2) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

#### §135.16. *Teaching and Publication Activities in a Licensed ASC.*

(a) Policies concerning teaching activities shall address:

(1) the terms and conditions of reimbursement or other compensation;

(2) the reasonableness of the time spent away from direct patient care and administrative activities; and

(3) the training of all students and postgraduate trainees, including the extent of their involvement in patient care activities.

(b) The policy concerning the provision of health care by personnel in any student or postgraduate trainee status shall provide for close and adequate supervision and for informing the patient of the status of the provider.

(c) Policies concerning publishing activities shall address:

(1) the need for governing body approval when the views, policies, and procedures expressed in the publication are attributed to the ASC; and

(2) the terms and conditions of compensation from publication and the cost of publication.

#### §135.17. *Research Activities in a Licensed ASC.*

(a) Research activities shall be performed in accordance with ethical and professional practices and legal requirements, and these activities shall be periodically monitored.

(b) The protocols for conducting research shall be approved by the governing body or its designee after medical and legal review.

(c) Any research activities carried out within the ASC shall be appropriate to the expertise of staff and the resources in the ASC.

(d) Individuals engaged in research shall be provided with adequate facilities.

(e) Provisions shall be made to assure that the rights and welfare of all research subjects are adequately protected and that the informed consent of the subject, in the language spoken by him or her, is obtained by adequate and appropriate methods.

(f) All professional staff shall be informed of the ASC's research policies.

#### §135.18. *Unlicensed Ambulatory Surgical Center.*

(a) If the director has reason to believe that a person or facility may be providing ambulatory surgical 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 §135.19 of this title (relating to Exemptions); or

(3) any and all documentation necessary to establish that ambulatory surgical services are not being provided. Documentation shall include a notarized statement attesting to the fact that ambulatory surgical



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 §135.20 of this title (relating to Application and Issuance of License for Initial Applicants).

(c) If the person or facility submits a claim for exemption, the exemption claim will be processed in accordance with §135.19 of this title (relating to Exemptions).

(d) If the person or facility submits sufficient documentation to establish that ambulatory surgical 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, if any, 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 §135.24(e) and (g) of this title (relating to License Denial, Suspension, or Revocation) will govern.

#### §135.19. Exemptions.

(a) The following facilities are not required to be licensed under the Act:

- (1) an office or clinic of a licensed physician, dentist, or podiatrist;
- (2) a licensed nursing home; or
- (3) a licensed hospital.

(b) 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.

(c) 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.

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

(e) 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 written letter with the reasons supporting exemption within 10 days following receipt of the proposed denial.

(f) If the person or facility does not request an appeal as provided in subsection (e) 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.

(g) The person or facility must submit a completed application and nonrefundable

licensing fee to the department within 10 days following the final denial of exemption.

(h) In the event that a person or facility does not comply as required by subsection (g) of this section, the provisions of §135.24(e) and (g) of this title (relating to License Denial, Suspension, or Revocation) will govern.

#### §135.20. Application and Issuance of License for Initial Applicants.

(a) All first-time applications for licensing, including those from unlicensed operating ASCs and licensed ASCs 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 ASC license. The applicant shall submit to the director a completed original application and the nonrefundable license fee.

(1) The applicant shall provide:

(A) the name and address of the owner of the ASC or a list of names and addresses of persons who own an interest in the ASC;

(B) the name, Texas license number, and license expiration date of the medical chief of staff;

(C) the number of physicians, dentists, and/or podiatrists on staff at the ASC;

(D) the name, Texas license number, and license expiration date of the director of nursing of the ASC; and

(E) whether the ASC has applied for certification under Title XVIII of the Social Security Act.

(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 ASC is operating.

(3) If the director determines that the application for an unlicensed ASC 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 ASC. A presurvey conference, may at the department's discretion, be waived for an applicant of a licensed ASC 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 an ASC to provide ambulatory surgical 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) statement that compliance with either the conditions of participation under Title XVIII or minimum standards in

accordance with these sections 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 ASC prior to the issuance of the first annual license; and

(C) a statement that the ASC shall comply with §135.23 of this title (relating to Conditions of Annual License).

(5) A department surveyor shall inspect the ASC 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 ASC's for which a change of ownership has occurred.

(6) The first annual license shall be issued to an ASC which meets either the conditions of participation under Title XVIII or the minimum standards for a license in accordance with these sections as determined after an inspection.

(7) If the department determines that an on-site inspection of a licensed ASC 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 an ASC that is not participating in the Title XVIII Program is determined not to be in compliance with minimum standards for a license in accordance with these sections after an inspection, the ASC shall come into compliance no later than 30 days prior to the expiration of the temporary license. If the ASC is determined not to be in compliance with minimum standards for licensure in accordance with these sections following a second on-site inspection or mail investigation, 30 days prior to the expiration date of the temporary license, the ASC shall be notified of the proposed denial of the first annual license in accordance with §135.24 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.

#### §135.21. Inspections.

(a) The department shall conduct an initial on-site inspection to determine if either the federal conditions of participation under Title XVIII or the standards for licensing set forth in these sections are being met. Prior to an inspection, the surveyor shall notify the applicant in writing of the date and time of the inspection. The department will evaluate

the ASC on a standard-by-standard basis before the first annual license is issued, unless waived in accordance with §135.20(b)(7) of this title (relating to Application and Issuance of License for Initial Applicants). An on-site inspection for ASCs that are not participating in the Title XVIII Program may be conducted for license renewal. An on-site inspection may be conducted if a change of ownership of a licensed ASC has occurred, if the ASC has not demonstrated compliance with standards, or if complaints against an ASC have been received by the department.

(b) If an on-site inspection is conducted at an ASC that is not participating under the Title XVIII Program, and deficiencies are cited, 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 ASC 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 ASC and the date(s) by which correction(s) will be made; and
- (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 an ASC that is in compliance with minimum standards in accordance with these sections 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 ASC 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 ASC does not timely come into compliance, the department may propose to deny, suspend, or revoke the existing license in accordance with §135.24 of this title (relating to License Denial, Suspension, or Revocation).

#### §135.22. *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 and a nonrefundable license fee. Those ASC's not participating in the Title XVIII Program must also submit a self-survey. Those ASCs that are under the Title XVIII Program will have the ASC's certification verified by the department based upon the results of the current inspection report on file with the department. These documents shall be submitted and postmarked no later than 60 days prior to the expiration date of the license.

(c) The department shall issue a renewal license to a facility which meets either the federal conditions of participation under Title XVIII or the minimum standards for a license set forth in these sections. If an applicant fails to timely submit an application, fee, and self survey, in accordance with subsection (b) of this section, the department shall notify the applicant that the ASC must cease providing ambulatory surgical 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 to provide ambulatory surgical services after the expiration date of the license, the applicant must reapply for an annual license under §135.21 of this title (relating to Application and Issuance of License for Initial Applicants).

#### §135.23. *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 ASC 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 non-refundable fee at least 90 days prior to the change of ownership of each ASC. The procedure shall be handled in accordance with §135.20 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 ASC 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 ASC location to another without prior written approval from the department. If an ASC is relocating, the ASC 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 ASC amending the current ASC 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 an ASC is changed, the department must be notified in writing within 30 days after the effective date of the name change.

#### §135.24. *License Denial, Suspension, or Revocation.*

(a) The department may refuse to issue or renew a license for an ASC that does not participate under Title XVIII if the center:

- (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 an ASC 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 ASC pursuant to the Act; or

(2) materially altering any license issued by the department.

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

(1) an act has been committed by the ASC or its employees which affects the health and safety of a patient;

(2) if an ASC has been cited for deficiencies and fails to submit an acceptable plan of correction in accordance with these sections; or

(3) if an ASC 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) The department shall refuse to issue or renew a license of an ASC that participates under Title XVIII, if the certifying body, Health Care Financing Administration (HCFA), has terminated that ASC's provider agreement under Title XVIII.

(e) 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 §§1.21-1.33 of this title (relating to Formal Hearing Procedures). If a hearing is not requested 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.

(f) 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 patients of an ASC, the department may petition the district court for a temporary restraining order to restrain continuing violations.

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

(h) 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 violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

#### §135.25. Complaints.

(a) The department or its authorized representative may enter the premises of an ASC during normal business hours as necessary to assure compliance with the Act and these sections. The investigation may be conducted on-site, unannounced or announced, or may be investigated by phone or mail.

(b) All licensed ambulatory surgical centers are required to provide the patient and his/her guardian at time of admission a written statement identifying the department as the responsible agency for ambulatory surgical centers complaint investigations. The statement shall inform persons to direct complaints to Juanita Carrell, R.N., Ed.D., Director, Texas Department of Health, Health Facility Licensure and Certification, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Complaints may be registered with the department by phone or in writing. A complainant may provide his/her name, address, and phone number to the department. Anonymous complaints may be registered. All complaints are confidential.

(c) The department will evaluate all complaints against all ambulatory surgical centers. Only those allegations determined to be relevant to the Act will be authorized for investigation.

(d) Conduct of the investigation will include, but not be limited to:

(1) a conference prior to commencing the on-site inspection for the purpose of explaining the nature and scope of the in-

spection between the department's authorized representative and the person who is in charge of the ambulatory surgical center;

(2) inspection of the ASC;

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

(4) an interview with any willing recipient of ambulatory surgical center services at the ASC or in the recipient's home if the recipient grants permission in writing;

(5) an interview with any health care practitioner or ambulatory surgical center personnel who care for the recipient of ambulatory surgical services;

(6) a conference at the conclusion of the inspection between the department's representative and the person who is in charge of the ASC.

(A) The department's representative will identify any records that have been reproduced.

(B) Any records that are removed from an ASC (other than those reproduced) shall be removed only with the consent of the ASC.

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

(f) Following the on-site inspection for those ASCs that do not participate under Title XVIII, the provisions of §135.21(b), (c), (d)(1), (d)(3), (d)(4), (d)(6), and (d)(7) of this title (relating to Inspections) will apply.

#### §135.26. Reporting of Incidents.

(a) Certain situations and incidents that occur in an ambulatory surgical center shall be reported directly to the department.

(b) Upon learning of the incident, the ambulatory surgical center shall report the incident to the Texas Department of Health in Austin. A written letter of explanation with supporting documents must be mailed to the department within 30 days of the incident.

(c) Reportable incidents include the following.

(1) Complications that result in the death of a patient must be reported.

(2) Complications that result in emergency transfer of a patient to a hospital from the ambulatory surgical center must be reported.

(3) Reports of any fire or other damage sustained at the ASC must be reported.

(d) Any theft of drugs and/or diversion of controlled drugs shall be reported to the local police agency, the State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug Enforcement Administration, and the Texas Department of Health.

§135.27. Confidentiality. Requests for information and access to records are governed by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(1) A written request for information is required. The request must sufficiently identify the information requested.

(2) The department may ask for a clarification if it cannot reasonably understand a particular request.

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 October 15, 1986.

TRD-8608818

Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of  
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For further information, please call  
(512) 458-7245.

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## General Construction Requirements for Ambulatory Surgical Centers

### ★ 25 TAC §§135.41-135.43

The new sections are adopted under Texas Civil Statutes, Article 4437f-2, §3, which provide the Texas Board of Health with the authority to adopt rules covering ambulatory surgical centers.

#### §135.43. Codes and Standards.

(a) Generally the following codes and standards are part of §135.51 and §135.52 of this title (relating to Existing Ambulatory Surgical Centers) and §§135.61-135.67 of this title (relating to New Construction Requirements for Ambulatory Surgical Centers) only when referenced in the sections. Existing ASCs which do not comply with the codes and standards may continue to provide service, unless replaced or renovated, and provided that the lack of compliance with the codes and standards do not present a serious hazard to the ASC patients.

(1) National Fire Protection Association standards:

(A) NFPA 10—1981, Standard for Portable Fire Extinguishers.

(B) NFPA 13—1980, Standard for the Installation of Sprinkler Systems.

(C) NFPA 13A—1981, Care and Maintenance of Sprinkler Systems.

(D) NFPA 54—1980, National Fuel Gas Code.

(E) NFPA 56A—1978, Standard for the Use of Inhalation Anesthetics.

(F) NFPA 56F—1983, Standard for Fire Extinguishing Systems.

(G) NFPA 56K—1980, Standard for Medical Surgical Vacuum Systems.

(H) NFPA 70—1984, National Electric Code.

(I) NFPA 72A—1979, Standard for the Installation, Maintenance, and Use of Local Protective Signaling Systems for Guard's Tour, Fire Alarm, and Supervisory Service.

(J) NFPA 72 B—1979, Standard for Installation, Maintenance, and Use of Auxiliary Protective Signaling Systems for Fire Alarm Services.

(K) NFPA 72 C—1982, Standard for the Installation, Maintenance, and Use of Remote Station Protective Signaling Systems.

(L) NFPA 72 D—1979, Standard for the Installation, Maintenance, and Use of Proprietary Protection Signaling Systems.

(M) NFPA 76 A—1977, Essential Electrical Systems for Health Care Facilities.

(N) NFPA 80—1983, Standard for Fire Doors and Windows.

(O) NFPA 82—1983, Standard on Incinerators Waste and Linen Handling Systems and Equipment.

(P) NFPA 90 A—1981, Installation of Air-Conditioning and Ventilating Systems.

(Q) NFPA 91—1981, Standard for the Installation of Blower and Exhaust Systems.

(R) NFPA 99—1984, Standard for Health Care Facilities.

(S) NFPA 101—1981, Code for Safety to Life from Fire in Buildings and Structures.

(T) NFPA 220—1979, Standard for Types of Building Construction and Materials.

(U) NFPA 255—1979, Method of Test of Surface Burning Characteristics of Building Materials.

(V) NFPA 325 M—1977, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids.

(W) NFPA 701—1977, Standard Methods of Fire Test for Flame-Resistant Textiles and Films.

(2) Other referenced standards and codes.

(A) National Association of Plumbing Heating Cooling Contractors (PHCC)—National Standard Plumbing Code, 1983.

(B) ANSI A 17.1, 1978—Safety Code for Elevators, Duinbwaiters, Escalators and Moving Walks; and Supplement ANSI A 17.1a, 1979.

(C) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHREA)—Standard No. 52-76—Methods of Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter.

(D) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHREA)—Handbook of Applications, 1978.

(E) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHREA)—Handbook of Fundamentals, 1977.

(F) American Society for Testing and Materials (ASTM) - Standard No. E 84—1977A—Method of Text for Surface Burning Characteristic of Building Materials.

(G) Hydronics Institute (Boiler Ratings)—I = B = R Cast iron and SBI

Steel Boilers.

(H) National Council on Radiation Protection (NCRP)—Report No. 49, 1976—Medical X-ray and Gamma Ray Protection for Energies up to 10 MeV Structural Shielding Design and Evaluation.

(I) Underwriters' Laboratories, Inc. (UL)—Standard No. 181, 1974—Factory Made Air Duct Material and Air Duct Connectors.

(3) Standards of the Texas State Purchasing and General Services Commission. These standards are found in 1 TAC §§115.51-115.62 (relating to Elimination of Architectural Barriers).

(4) Other state, county and local codes and standards. In addition to complying with the codes and standards described in paragraphs (1)(3) of this subsection, ASCs shall comply with any applicable building codes, ordinances, and rules or regulations adopted by any city, county or other state agency. Compliance with local codes is a prerequisite for licensing of an ASC. In areas not subject of local building codes, an ASC shall comply with one of the following model building codes:

(A) Uniform Building Code—1982: International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(B) Standard Building Code—1984: International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206.

(5) Copyrights and Registered Trademarks.

(A) The codes and standards referenced in these sections are reprinted with permission from NFPA 101-1985, Life Safety Code, Copyright 1985, National Fire Protection Association, Quincy, MA 02269. This reprinted material is only a portion of the NFPA standards and is not the complete and official position of the NFPA on the referenced subject which would be represented only by the standards in their entirety.

(B) Life Safety Code and NFPA 101 are Registered Trademarks of the National Fire Protection Association, Inc., Quincy, MA.

(b) Availability of codes and standards. The codes and standards referenced in subsection (a)(1)-(4) of this section may be reviewed in the offices of the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin. Copies may be purchased from the various agencies listed as follows:

(1) Air Conditioning and Refrigeration Institute, 1815 North Ft. Myer Drive, Arlington, VA 22209;

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018;

(3) American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(4) American Society of Heating, Refrigerating, and Air-Conditioning, United Engineering Center, 345 East 47th Street,

New York, NY 10017;

(5) Compressed Gas Association, 500 Fifth Avenue, New York, NY 10036;

(6) GSA Specification Consumer Information Distribution Branch, Building 197, Washington Navy Yard, Washington, DC 20407;

(7) Hydronics Institute, 35 Russo Place, Berkeley Heights, NJ 07922;

(8) National Association of Plumbing-Heating-Cooling Contractors, 1016 20th Street, NW, Washington, DC 20036;

(9) National Council on Radiation Protection and Measurement, P. O. Box 30175, Washington, DC 20014;

(10) National Fire Protection Association, Inc., Batterymarch Park, Quincy, MA 02210;

(11) Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20407;

(12) Underwriters' Laboratories, Inc., 353 Princeton Road, Northbrook, IL 60062;

(13) State Purchasing and General Services Commission, P. O. Box 13047, Austin, TX 78711;

(14) U.S. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Bureau of Health Maintenance Organizations and Resources Development, Office of Health Facilities, Division of Facilities Conversion and Utilization, Rockville, MD 20857.

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.

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

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## Existing Ambulatory Surgical Centers

★ 25 TAC §135.51, §135.52

The new sections are adopted under Texas Civil Statutes, Article 4437f-2, §3, which provide the Texas Board of Health with the authority to adopt rules covering ambulatory surgical centers.

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.

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## New Construction Requirements for Ambulatory Surgical Centers

### ★25 TAC §§135.61-135.67

The new sections are adopted under Texas Civil Statutes, Article 4437f-2, §3, which provide the Texas Board of Health with the authority to adopt rules covering ambulatory surgical centers.

#### §135.64. Design Requirements.

##### (a) Administration and public areas.

(1) Entrance. Entrances shall be located at grade level, sheltered from the weather, and able to accommodate wheelchairs. If the ambulatory surgical center is located on a floor above grade within a multilevel office building, the building shall have an entry lobby at grade that meets this requirement. Elevators shall be accessible and shall meet the requirements of subsection (o) of this section. All required stairs and exits shall conform to requirements on NFPA 101, and subsection (p) of this section.

##### (2) Reception area.

(A) A reception area is required of all ambulatory surgical centers and shall include:

- (i) waiting space(s);
- (ii) public toilet facilities;
- (iii) public telephone(s); and
- (iv) drinking fountain(s).

(B) The items mentioned in subparagraph (A)(ii)-(iv) of this paragraph may be shared with other tenants in a multitenant building.

(3) Interview space(s). Space shall be provided for private interviews relating to social services, credit, and admission.

(4) General or individual office(s). Offices shall be provided for business transactions, records, and administrative and professional staff.

(5) Medical records. Medical records shall be located within a secure designated area of the ambulatory surgical center or in a conforming adjoining accessible space.

(6) General storage facilities. A minimum of 50 square feet per operating room is required for general storage space(s). Exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms, and operating room equipment storage.

(7) Functional spaces. Functional spaces required in paragraphs (3)-(5) of this subsection may be in separate rooms or

grouped together in one or more areas as program dictates.

(b) Preoperative waiting—examination—changing.

(1) Preop waiting shall be separate from recovery. This may include patient changing area and preop exam functions. A designated area shall be provided where ambulatory surgical center patients may change from street clothing into hospital gowns and be prepared for surgery. This shall include, when applicable, lockers, toilets, clothing change or gowning area(s), and space for the administration of medications.

(2) A minimum of one patient station per operating room is required. Room size shall be determined by functions to be performed and types of equipment to be used.

(3) Arrangements shall permit at least three feet clearance at each side and at the foot of the patient gurney station or reasonable circulation space if gurney not used. A lavatory or sink equipped for handwashing and a counter or shelf space for writing shall be provided. Patient toilet facilities are required. Patient toilet and changing areas may be shared with recovery room, if conveniently located.

(c) Treatment room(s) for minor procedures (for local anesthetics only). Treatment rooms shall have a minimum floor area of 80 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). The room shall be adequate in size to accommodate equipment required to perform designated function. A lavatory or sink equipped for handwashing and a counter or shelf space for writing shall be provided.

##### (d) Operating room(s).

(1) A minimum of one operating room is required in each facility. Each operating room shall have a minimum clear area of 240 square feet exclusive of fixed or movable cabinets and shelves. Additional clear area may be required to accommodate special functions in one or more of these rooms. Provide an emergency communication system connecting with the surgical suite control station. Provide at least one X-ray film illuminator in each room. Storage space for splints and traction equipment shall be provided for rooms to be used for orthopedic surgery.

(2) Rooms designated primarily for surgical cystoscopic procedures shall be as noted for general operating rooms except that each room may have a flushing rim type floor drain.

##### (e) Recovery room(s).

(1) A minimum of two patient stations per operating room(s) for post-anesthesia/recovery for surgical patients shall be provided. Provide at least three feet each side or between beds and space at foot of bed as needed for work and/or circulation. Patient access to toilet and changing areas required may be shared with preop area.

(2) A separate supervised room shall be provided for use by patients who are able to leave the recovery/post-anesthesia room but need additional time for all vital signs to be stabilized to the point where the patient may leave the facility. It may contain a lounge area for family members with toilet facilities. The reception area may be utilized for this function.

(f) Surgical service areas. The following services shall be provided.

(1) Control station. A control station shall be located to permit visual surveillance of all traffic which enters the operating suite.

(2) Sterilizer equipment. Sterilizer equipment shall be located in a room (or rooms) with access limited to properly gowned personnel and located convenient to serve operating suite. Equipment shall be arranged to minimize contamination of sterile products during removal from sterilizer. ETO (ethylene oxide) sterilizers shall meet OSHA standards for safety.

(3) Pharmacy. Adequate space shall be provided in accordance with the State Board of Pharmacy regulations.

(4) Scrub facilities. A scrub sink shall be provided near the entrance to each operating room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts. One scrub station with dual controls may serve two adjacent operating rooms.

(5) Soiled workroom. A soiled workroom shall be provided for the exclusive use of the surgical suite staff (or a soiled holding room that is part of a system for the collection and disposal of soiled material). The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for handwashing, waste receptacle, and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(6) Fluid waste disposal facilities. These shall be conveniently located with respect to the general operating rooms. A clinical sink or equivalent equipment in a soiled workroom or in a soiled holding room would meet this requirement.

(7) Clean workroom or a clean supply room. A clean workroom is required when clean material is assembled within the surgical suite prior to use. A clean workroom shall contain work counter, and space for clean and sterile supplies. A clean workroom or a clean supply room may be included with the sterilizer equipment (see paragraph (2) of this subsection).

##### (8) Medical gas storage facilities.

(A) Medical gas storage facilities shall be in accordance with the requirements of NFPA 56F.

(B) An anesthesia workroom, if provided for cleaning, testing, and storing anesthesia equipment, shall contain a work counter and sink.

(9) Equipment storage room(s) or areas. Storage room(s) or areas for equipment and supplies used in the surgical suite shall be provided.

(10) Staff clothing change areas.

(A) Appropriate areas shall be provided for male and female personnel (orderlies, technicians, nurses, and doctors) working within the surgical suite. The areas shall contain clothing storage, toilets, lavatories, and space for donning scrub suits and boots. These areas shall be arranged to provide a one-way traffic pattern so that personnel entering from outside the surgical suite can change, gown, and move directly into the surgical suite.

(B) Lounge and toilet facilities for surgical staff shall be provided in centers having three or more operating rooms and shall be located to permit use without leaving the surgical suite. These facilities may be integrated with staff changing areas.

(11) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite.

(12) Laundry/linen service.

(A) Each facility shall have provisions for storage and processing of clean and soiled linen for appropriate patient care. Processing may be done within the facility or by contract.

(B) If linen is processed onsite, within this facility, the following shall be provided:

(i) a receiving, holding, and sorting room for distribution of soiled linen. This may be shared with the soiled utility room or soiled holding room;

(ii) a laundry processing room with washer and dryer equipment (may be located within the soiled holding and sorting room or in a separate room). The washer shall not be located within the sterile processing room;

(iii) storage for laundry supplies;

(iv) handwashing facilities located within each separate room where soiled linen is processed and handled;

(v) that the arrangement of equipment shall permit an orderly flow with a minimum of cross traffic that could mix clean and soiled operations.

(13) Storage space for wheelchairs.

(14) Area for emergency crash cart. An area located out of traffic and convenient to operating and recovery rooms shall be provided for an emergency crash cart.

(g) Radiology.

(1) Radiology may be provided by contract.

(2) If equipment is to be provided for basic diagnostic purposes, the suite shall contain:

(A) film processing facilities; and

(B) viewing and administration area(s).

(h) Laboratory.

(1) Facilities shall be provided either directly within the ambulatory surgical center or through an effective contract arrangement with a nearby hospital or accredited laboratory service.

(2) If the facilities are provided on site, then at least the following minimum laboratory facilities shall be provided in the outpatient facility. They may be contained in the preop area or in a separate room:

(A) laboratory work counter(s), with sink and electric services;

(B) storage cabinet(s) or closet(s); and

(C) specimen collection facilities. For dip stick urinalysis, urine collection rooms shall be equipped with a water closet and lavatory. Blood collection hemocrit facilities shall have space for a chair and work counter and hand wash facilities.

(i) Janitors' closet(s). In addition to the janitors' closet called for in the surgery suite, sufficient janitors' closets shall be provided throughout the facility as required to maintain a clean and sanitary environment. Each shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(j) Engineering service and equipment areas. Equipment rooms with adequate space shall be provided for mechanical equipment, and electrical equipment.

(k) Waste processing services.

(1) Storage and disposal. Space and facilities shall be provided for the safe and sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques as appropriate for the material handling.

(2) Incinerator.

(A) A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of infectious waste. Infectious waste shall include, but shall not be limited to, dressings and material from open wounds and laboratory specimens. Incinerator service may be by contract.

(B) Design and construction of incinerators and trash chutes shall be in accordance with NFPA Standard 82, and shall be designed and equipped to conform to requirements prescribed by air pollution regulations in the area.

(l) Details and finishes. All details and finishes shall meet the following requirements.

(1) Details.

(A) Minimum public corridor width shall be four feet, in clear width except for a corridor where patients are transported in stretchers or beds which shall be eight feet in clear width. Where patients are transported by stretcher, access to at least one exit shall be by an eight-foot wide corridor.

(B) A building used exclusively for the ambulatory surgery center shall comply with NFPA 101, §12.6, and as described herein. Where included in buildings with other occupants, there shall be not less than

one-hour separation between the ambulatory surgical center and any other sections. The ambulatory surgical center shall have not less than two exits to the exterior. Exits, finishes, separation of hazardous areas, and smoke separation shall be as required NFPA 101, Chapter 12.6.

(C) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located not to restrict corridor traffic or reduce the corridor width below the required minimum.

(D) Toilet rooms in recovery areas which may be used by patients shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outwards, or be otherwise designed to be opened without need to push against a patient who may have collapsed within the room.

(E) The minimum width of doors for patient access to examination and treatment rooms shall be three feet. The minimum width of doors to rooms needing access for beds (operating room, recovery, preop) shall be three feet eight inches.

(F) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk-in type closets are considered as occupiable spaces.

(H) Doors, sidelights, borrowed lights, and windows in which the glazing extends down to within 18 inches of the floor (thereby creating possibility of accidental breakage by pedestrian traffic) shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Safety glass or plastic glazing materials shall be used for shower doors and bath enclosures.

(I) Provisions for hand drying shall be included at all handwash facilities except scrub sinks. These shall be single use separate individual paper or cloth units enclosed to provide protection against dust and soil and insure single unit dispensing. Hot air dryers are permitted.

(J) Where labeled fire doors are required, these shall be certified by an independent testing laboratory as meeting the construction requirements equal to those for fire doors in NFPA Standard 80. Reference to a labeled fire door shall be constructed to include labeled frame and hardware.

(K) Dumbwaiters, conveyors, and material handling systems shall comply with ANSI A17.1 "Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks."

(L) Radiation protection requirements of X-ray and gamma ray installations



shall conform with NCRP Reports Nos. 33 and 49. Provisions shall be made for testing the completed installation before use and all defects must be corrected before acceptance.

(M) The minimum ceiling height shall be eight feet with the following exception.

(i) Operating rooms or other rooms containing ceiling-mounted equipment and including those with ceiling-mounted surgical light fixtures shall have height required to accommodate the equipment and/or fixture, but no less than nine feet.

(ii) Rooms containing heat producing equipment shall be ventilated.

(2) Finishes.

(A) Cubicle curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large and small scale tests of NFPA Standard 701.

(B) Flame spread and smoke developed ratings of finishes are covered under NFPA 101. Whenever possible, the use of materials known to produce large amounts of noxious gases shall be avoided.

(C) Conductive flooring may be omitted from treatment and operating rooms provided that a written resolution is signed by the ASC board stating that no flammable anesthetic agents will be permitted in these areas and provided that appropriate notices are permanently and conspicuously affixed to the wall in each such area and room.

(D) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower and bath areas and certain work areas, shall have a nonslip surface.

(E) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(F) Ceilings shall be cleanable and those in surgical rooms and sterile processing shall be readily washable, smooth, and impervious. These sensitive areas shall have a finished ceiling covering all overhead ductwork and piping. Finished ceilings may be omitted in mechanical and equipment spaces, general storage areas, and similar spaces, unless required for fire-resistive purposes.

(G) Acoustical ceilings may be provided in corridors, multipurpose rooms, waiting areas, preop, and recovery areas.

(m) Construction, including fire resistive requirements.

(1) Construction. Construction of a freestanding ambulatory surgical center shall generally be similar to recognized national model building code requirements applicable to office occupancies and to the minimum requirements of NFPA 101 Chapter 12-6, according to the table on general pressure relationships and ventilation of ambulatory sur-

gery areas, §135.67(b) of this title (relating to Tables).

(2) Interior finishes. Interior finish materials shall comply with the flame spread limitations and the smoke production limitations shown in NFPA 101. Wall finishes less than four mil in thickness applied over non-combustible base need not comply with the aforementioned.

(3) Insulation materials. Building insulation materials, unless sealed on all sides and edges, shall have a flame spread rating of 25 or less and a smoke developed rating of 150 or less when tested in accordance with ASTM Standard E 84.

(n) Provision for natural disasters. Special provisions shall be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(o) Elevators. All buildings that have patients' services located on other than the main entrance floor shall have electric or electrohydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated. A hospital-type elevator shall be provided if the operating room(s) are located on a floor other than the preop and/or recovery floors. Installation and testing of elevators shall be in accordance with ANSI A-17.1-1971.

(1) Cars and platforms. Cars shall have a minimum inside floor dimension of not less than five feet. The car door shall have a clear opening of not less than three feet. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five feet wide by seven feet six inches deep. The car door shall have a clear opening of not less than three feet eight inches.

(2) Operation. Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(3) Elevator controls, alarm buttons and telephones. Elevator controls, alarm buttons, and telephones shall be:

- (A) accessible to wheelchair occupants, and
- (B) of a type that will not be activated by heat or smoke.

(p) Field inspection and tests. Inspections and tests shall be made and the owner shall be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes.

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 October 15, 1986.

TRD-8609815

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

Effective date: November 5, 1986  
Proposal publication date: May 9, 1986  
For further information, please call  
(512) 458-7245.

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## TITLE 28. INSURANCE

### Part II. Industrial Accident Board

#### Chapter 41. Contents of Rule-Making Petitions

#### ★28 TAC §41.8

The Industrial Accident Board adopts new §41.8, with changes to the proposed text published in the September 12, 1986, issue of the *Texas Register* (11 TexReg 3921).

The new section is justified as it establishes the procedure to be followed when an interested party wishes to petition the board to adopt a rule. This section is in compliance with Texas Civil Statutes, Article 6252-13a, §11.

Bobby Barnes, board member, received a verbal request from Carol M. Barger, director of Southwest Office Consumers Union, that (B)(5) be amended to add the "and this provision is optional" at the end of the sentence. The amendment to the proposed text was approved by the board as an individual proposing a board rule would be unable in most instances to provide the economic cost of a rule to the public.

The new section is adopted under Texas Civil Statutes, Article 8307, §4, which provide the Industrial Accident Board with the authority to promulgate rules.

#### §41.8. Contents of Rule-Making Petitions.

(a) Changes to these rules may be petitioned by any party. Rule-making petitions shall contain the following:

(1) a brief statement summarizing the proposed section;

(2) the text of the proposed section:  
(A) if an existing section, state the title and code number, and prepare the text to indicate the words and punctuation to be added, changed, or deleted;

(B) if a new section, prepare the text in the exact form proposed for adoption;

(3) a statement of the statutory source of the section;

(4) a suggested effective date;

(5) a cost-benefit analysis, estimating the public benefits to be expected as a result of adoption of the proposed section, and the probable economic cost to persons who are required to comply with the section. This provision is optional;

- (6) any other matter required by law;
- (7) the petitioner's name, complete mailing address, and telephone number; and
- (8) the petitioner's signature.

(b) Five copies of the petition shall be filed with the board by certified mail.

(c) Within 60 days after the petition is submitted, the board shall either initiate rulemaking procedures, or notify the petitioner in writing, stating the reasons for denial.

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 October 15, 1986.

TRD-8609842

William Treacy  
Executive Director  
Industrial Accident Board

Effective date: November 6, 1986

Proposal publication date: September 12, 1986

For further information, please call

(512) 448-7963.

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## Chapter 55. Lump Sum Payments

### ★ 28 TAC §55.55

The Industrial Accident Board adopts new §55.55, with changes to the proposed text published in the September 12, 1986, issue of the *Texas Register* (11 TexReg 3921).

The justification for the adoption of the new section is to provide an easier and quicker procedure for approving settlements after the board has entered an award.

The only comment received was from David DeWall, attorney at law, expressing the view that the last sentence of the section should read "If the board subsequently fails to approve the compromise settlement agreement then the original award will be immediately re-entered."

The board agrees with the suggested change and believes it will facilitate a quicker resolution of the case.

The new section is adopted under Texas Civil Statutes, Article 8307, §4, which provide the Industrial Accident Board with the authority to promulgate rules.

**§55.55. Compromise Settlement Agreement to Set Aside Award.** A compromise settlement agreement, properly executed between or among all parties to the claim, when filed in any board office in the period after an award has been entered but before it becomes final, or suit is filed, will serve to set aside the award as of the date the compromise settlement agreement is filed. If the board subsequently fails to approve the compromise settlement agreement, then the original award will be immediately re-entered.

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 October 15, 1986.

TRD-8609843

William Treacy  
Executive Director  
Industrial Accident Board

Effective date: November 6, 1986

Proposal publication date: September 12, 1986

For further information, please call:

(512) 448-7963.

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## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

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

##### ★ 34 TAC §3.291

The Comptroller of Public Accounts adopts an amendment to §3.291, with changes to the proposed text published in the September 9, 1986, issue of the *Texas Register* (11 TexReg 3896).

The amendment is necessary to simplify bookkeeping requirements for contractors. Contractors will have the option of maintaining records which identify specifically which equipment is used on each job and the length of time it is used on each job or maintaining records of the amount billed for each contract, the exempt or nonexempt status of the customer, and equipment purchases. The contractor may select the option that is most convenient and use it consistently.

The changes are in subsection (d), paragraphs (9)(A), (9)(B), (10)(D), (10)(E), and (10)(G), where the actual useful life of an item may be used if the item's useful life is less than four years.

Comments were received on the proposed section from Heldenfels Brothers, Inc., of Corpus Christi, suggesting that a four year reporting period may be too long for a great number of assets. They simply do not have a four year useful life. The example thought of is large generators and pumps which are used 24 hours/day in some cases. Company automobiles and pickup trucks are rarely kept four years due to high mileage driver.

Heldenfels Brothers, Inc., also suggested that contractors in the industry will lease/rent many pieces of equipment. This differs from conventional leases or out right purchases in that there is an option to return the equipment at anytime during the lease. At that time, all principal and interest payments are reclassified as rental payments. There would be a lot of con-

fusion if this happened as to the taxability of the payments up to that point. If this piece of equipment worked entirely on exempt work, then the contractor would be due a credit for the months accrued and paid tax on it. It never should have been capitalized to begin with and the taxability of the rent would depend upon where it was working. One doesn't know which lease/rentals will be kept and which will be returned and expensed as rent at the beginning of the lease.

They also suggested that the subject of intracompany sales used for determining the percentage of taxable sales will also cause some confusion. Heldenfels Brothers, Inc., have six separate divisions each selling to the other or directly to third party sales. They used the example of their asphalt division which buys all the raw materials to make hot-mix asphalt. It sells the laid down asphalt to the construction division at a predetermined price. The construction division, in turn charges the highway department for the asphalt in place and pays the company for it. In the company books are record of two non-taxable sales and two expenses. The hot mix division has all the raw material, labor, and freight expense for the hot mix. It bills the construction division and recognizes the billing as an expense to the job for the highway department. It in turn bills the highway department for the laid down material and recognizes the income to its division. Each division has expense, revenue, and hopefully profit on each billing, but the company has two non-taxable sales that will be used in this percentage determination. This situation will exist with large contractors who operate different operations independently and are recording each operation's profit/loss.

The comptroller's responded as follows: If an asset's useful life is less than four years, the asset's actual life may be used.

Equipment acquired under a financing lease as defined in §3.294 which is capitalized must continue to be treated as a capital asset under the aggregate method even if the equipment is later returned to the lessor and the bookkeeping entries are revised to reflect rental payments. The only alternative is not to enter it under the aggregate method to begin with and to keep separate records of that equipment's use. Equipment leased under an operating lease as defined in §3.294 must be treated as expensed items and records must be kept as to where the equipment is used.

Intracompany sales are, for sales tax purposes, not considered to be sales. These types of sales should not be included in taxable sales when determining the taxable percentage.

Comments were also received from H. B. Zachry Company of San Antonio, who expressed concern about the requirement that a contractor pay sales tax on a piece of equipment which is purchased for use



on a taxable job. H. B. Zachry feels that this will require major changes to its accounting system, that it may affect good business judgment, and that it should not be necessary for taxpayers already accurately paying all taxes when due.

In response, a contractor may only purchase equipment tax free by issuing an exemption certificate to the supplier certifying that the equipment is purchased for use on an exempt job. The Texas Tax Code, §151.706, provides that a person commits an offense if the person gives an exemption certificate to a seller for a taxable item that the person knows, at the time of purchase, will be used in a manner other than that expressed in the exemption certificate.

A contractor who holds a direct payment permit may purchase equipment tax free by issuing a direct payment exemption certificate to the supplier. An applicant for a direct payment permit must agree to accrue and pay all taxes due on the direct payment return for items not specifically exempted and to make the payment to the state on or before the 20th day of the month following each monthly period in which the items become subject to tax by reason of use in this state. This is one of the qualifications required by law of those who desire to hold a direct payment permit.

There is, therefore, no provision in the sales tax law that would allow a contractor to purchase equipment tax free if it will be used in a taxable manner.

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.

### §3.291. Contractors.

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

(c) Tax responsibilities of contractors improving real property for exempt customers.

(1) Exempt customers are those listed in the Texas Tax Code, §151.309 and §151.310. Contractors improving realty for an organization claiming an exemption from tax under §151.309 and §151.310 should obtain a properly completed exemption certificate to substantiate the exemption. (An exemption certificate is not required for contracts with federal or state agencies.) If the validity of the exemption is not clear, a contractor cannot accept the exemption certificate in good faith and should request additional evidence of the exempt status of the organization. A sales tax letter of exemption from the comptroller addressed to an organization is evidence of its exempt status and will relieve a contractor from further inquiry, except under the circumstances set out in paragraph (2) of this subsection. If a contractor claims an exemption in lieu of paying tax on a purchase by reason of performing a contract with an exempt organization and the comptroller subsequently determines the organization is not exempt, the contractor will be

liable for all taxes, penalties, and interest accruing upon such purchase unless the contractor accepted in good faith a properly completed exemption certificate at the time the contract is entered into. See §3.287 of this title (relating to Exemption Certificates).

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

(d) Uses of equipment; tax due; method of computation.

(1) Purchase of equipment. Contractors improving realty for entities exempt under §151.309(4) or (5), or §151.310, may purchase equipment from suppliers tax free by issuing an exemption certificate as described in subsection (c)(5) of this section in lieu of sales tax. When equipment is used on a job other than as described in subsection (c)(4) of this section, sales tax should be computed using either the specific identification method or the aggregate method described in paragraphs (9) and (10) of this subsection.

(2) Refund or credit for tax paid. A contractor purchasing equipment for use in the performance of a contract with a customer who is not exempt under §151.309(4) or (5) or §151.310 must pay sales tax to the supplier at the time of purchase or, in the case of a direct payment permit holder, accrue the tax on the direct payment return. If at a later date the equipment is used on a job as described in subsection (c)(4) of this section, the contractor may obtain a refund or credit for sales tax directly from the state only by obtaining a written assignment of the right to the refund from the supplier to whom the tax was paid. Direct payment permit holders may take credit on subsequent returns.

(3) Computation of credit. If an assignment is received and if the contractor's records are accurate and complete as required by this subsection, credit will be allowed for equipment purchased for use on a taxable job and subsequently used on an exempt job. The credit should be computed using either the specific identification method or the aggregate method described in paragraphs (9) and (10) of this subsection.

(4) Consumable materials and supplies. If a contractor purchases, rents, or leases materials or supplies tax free for use in performing a contract with an exempt organization under §151.309(4) or (5) or §151.310, and uses the items in some manner or for some purpose other than as described in subsection (c)(4) of this section, the contractor is, at the time of the nonexempt use, liable for tax based upon the purchase price of the items. The tax should be reported and remitted to the comptroller for the reporting period in which the taxable use occurred. For local and MTA tax responsibilities, see §3.377 and §3.427 of this title (relating to Resale or Exemption Certificate Direct Payment Exemption Certificate; and Divergent Use of a Direct Payment Resale or Exemption Certificate).

(5) Equipment. Contractors must select either the specific identification method or the aggregate method to obtain credit or to report tax on equipment use. The

methods may not be used interchangeably and permission to change methods must be requested in writing from the comptroller at least 45 days before the effective date of the change. Such permission will only be granted once each fiscal year and will not be granted retroactively. Contractors who perform contracts to improve realty in other states may not use the aggregate method.

(6) Failure to elect method. A contractor who fails to elect either the specific identification or aggregate method will be presumed to have chosen the aggregate method.

(7) Four-year statute of limitations. No tax will be assessed on equipment purchased tax free if the use in performing a nonexempt contract occurs more than four years from the date of purchase. No credit for tax paid will be allowed for a period of exempt use occurring more than four years from the date of purchase. If the equipment was purchased out of state, the four-year period begins when the equipment enters Texas. See §3.346 of this title (relating to Use Tax) for information on tax due on equipment purchased out of state and brought into Texas for use.

(8) Repairs to equipment.

(A) Repair labor and repair and replacement parts which are capitalized and depreciated for federal income tax purposes must be handled in the same manner as the equipment on which they are placed. The capitalized repair parts and labor may be treated as if it were a separate piece of equipment and depreciated over its own four-year period. A shorter period may be used if the item's useful life is less than four years.

(B) Repair labor and repair or replacement parts which are expensed are not depreciated. Tax is due at the time of purchase if the labor and parts are purchased while the equipment is on a nonexempt job. Tax is not due if the parts and labor are purchased while the equipment is on an exempt job. In situations where the contractor takes equipment off the job to repair it before sending it to another job, the contractor may attribute the repairs to the job from which the equipment came or to the job to which the equipment is going. The contractor must treat these repairs consistently.

(9) Specific identification method of reporting tax due or obtaining credit for tax paid.

(A) To qualify for exemption from tax on equipment claimed to have been used in the performance of exempt contracts using the specific identification method, a contractor must keep records which clearly substantiate such exempt use. The records must identify the item claimed to be exempt, and designate each job upon which it has been used. To qualify for a partial exemption from tax on equipment claimed to have been used on both exempt and nonexempt jobs, the records must identify the equipment, designate each job upon which it has been used, and indicate the date of use and the length of time the equipment was used

on each exempt or nonexempt job. Contracts, job specifications prepared for bids, or other estimates are not acceptable records of the use of equipment. Refund requests based on samples are not acceptable. Tax is due on the full purchase price of the equipment unless these records are maintained.

(B) Equipment purchased for use on an exempt job and subsequently used on a nonexempt job is subject to tax for the period of nonexempt use. Credit may be claimed for tax paid on equipment purchased for use on a nonexempt job and later used on an exempt job for the period of exempt use. The amount of tax or credit due will be based on the equipment's value, as determined by straight line depreciation for a period of four years from the date of purchase, during the period of nonexempt or exempt use. A shorter period may be used if the equipment's useful life is less than four years.

(10) Aggregate method of reporting tax due or obtaining credit for tax paid.

(A) The aggregate method is based on the assumption that all equipment is used equally on all jobs. The contractor must keep verifiable records which substantiate the progress or other contract billings for each contract, the exempt or nonexempt status of the entity for which the contract is performed, and the location of the job site. The records concerning location must include whether or not the job site is within a taxing city or metropolitan transit authority.

(B) Progress or other contract billings for nonexempt contracts must be totaled for the previous fiscal year and divided by progress or other contract billings for all contracts for the previous fiscal year.

(C) Progress or other contract billings for exempt contracts must be totaled for the previous fiscal year and divided by progress or other contract billings for all contracts during the previous fiscal year.

(D) The total purchase price of all equipment on which an exemption certificate was issued should be totaled and divided by the number of report periods in four years (16 if a quarterly filer, 48 if a monthly filer, four if a yearly filer). If less than four years, the equipment's actual life may be used. This amount should be multiplied by the percentage obtained in subparagraph (B) of this paragraph to obtain the amount subject to tax for the report period.

(E) The total purchase price of all equipment on which tax was paid to the supplier should be totaled and divided by the number of report periods in four years. If less than four years, the equipment's actual life may be used. This amount should be multiplied by the percentage obtained in subparagraph (C) of this paragraph to determine the amount subject to credit for the return period.

(F) The amount obtained in subparagraph (E) of this paragraph should be subtracted from the amount obtained in subparagraph (D) of this paragraph to determine the net amount subject to tax or the

net amount subject to credit for the report period.

(G) Equipment purchased during the fiscal year must be added to the aggregate total beginning with the report period in which it was purchased. Each piece of equipment will remain in the aggregate total for a period of four years from the date of purchase. If a piece of equipment has an actual useful life of less than four years, the actual useful life may be used.

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 October 20, 1986.

TRD-860906

Bob Bullock  
Comptroller of Public  
Accounts

Effective date: November 10, 1986  
Proposal publication date: September 9, 1986  
For further information, please call  
(512) 463-4004.

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## Chapter 5. Funds Management (Fiscal Affairs)

### Deferred Compensation—Vendor Participation

#### ★ 34 TAC §5.111

The Comptroller of Public Accounts adopts new §5.111, concerning definitions, with changes to the proposed text published in the August 15, 1986, issue of the *Texas Register* (11 TexReg 3631).

The purpose of this new section is to reflect changes in the state Deferred Compensation Program due to amendments in the authorizing statute, Texas Civil Statutes, Article 6252-3b, passed during the last regular legislative session. A new definition of advertising has been added to the section to reflect the comptroller's new authority to regulate advertising. Other definitions have been reworded for clarity.

The change consists of redefining state employee. The amended definition is the same definition found in the State of Texas Deferred Compensation and 401(k) Plan documents.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-3b, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the deferred compensation program.

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

Advertising material—Includes, but is not limited to:

(A) printed and published material, audiovisual material, and descriptive literature of a vendor or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays;

(B) descriptive literature and sales aids of all kinds issued by a vendor or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;

(C) prepared sales talks, presentations, and materials for use by agents or salesmen, and those representations recurringly made by agents to members of the public;

(D) material used to:

(i) solicit additional amounts from existing participants; or

(ii) modify existing products contracts; and

(E) material included with a product contract when it is delivered and material used in the solicitation of renewals.

Participant—A current or former state employee who has elected to defer a portion of his or her compensation and who has a current balance in a product contract.

Participation agreement—Form signed by a state employee to identify the vendor company, the product contract, and other pertinent information, and authorizing an amount of salary to be deferred.

Plan administrator—For state employees, the comptroller of public accounts or his designee.

Product approval notice—A notice from the plan administrator to a vendor informing the vendor that a particular investment product contract is approved for use in State of Texas deferred compensation plan.

Product contract—An investment contract purchased in the name of the state for the purpose of funding the deferred payment of salaries and wages.

State employee—Any person permanently employed by the State of Texas, whether appointed or elected.

State of Texas deferred compensation plan—A payroll deduction program, authorized by the Internal Revenue Code, §457, allowing state employees to defer taxes by relinquishing their right to current wages for payment at a later date. See §5.112 of this title (relating to Adoption by Reference—State of Texas Deferred Compensation Plan).

State payroll unit—The agency, commission, department, college, university, or other office responsible for the maintenance of state employee earnings records, payroll preparation, and pay warrant distribution.

Vendor or vendor company—A life insurance company, bank, savings and loan association, credit union, or mutual fund that has been approved for participation in deferred compensation by the plan administrator.

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 October 17, 1986.

TRD-8609868

Bob Bullock  
Comptroller of Public  
Accounts

Effective date: November 7, 1986  
Proposal publication date: August 15, 1986  
For further information, please call  
(512) 463-4004.

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### ★34 TAC §5.112

The Comptroller of Public Accounts adopts new §5.112, with changes to the proposed text published in the August 15, 1986, issue of the *Texas Register* (11 TexReg 3632). This new section was proposed to replace current §5.112, which is repealed simultaneously.

The change consists of redefining state employee and current market value in the plan document and thus redating the State of Texas deferred compensation plan to October, 1986. The redefinitions are now in accordance with definitions in adopted §5.111 and §5.113, respectively.

The purpose of this new section is to place the formal plan document of record as part of the comptroller's rules governing this activity. The comptroller is the administrator of the state deferred compensation plan, and this document sets out the terms and conditions of the plan.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-3b, which provide that the comptroller may prescribe, adopt, and enforce rules for the administration of the deferred compensation program.

**§5.112. Adoption by Reference—State of Texas Deferred Compensation Plan.** The Comptroller of Public Accounts hereby adopts by reference State of Texas Deferred Compensation Plan, dated October, 1986. Copies of the document may be obtained from the Deferred Compensation Section, Legal Services Division, Comptroller of Public Accounts, 111 West Sixth Street, Austin, Texas 78701.

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 October 17, 1986

TRD-8609869

Bob Bullock  
Comptroller of Public  
Accounts

Effective date: November 7, 1986  
Proposal publication date: August 15, 1986  
For further information, please call  
(512) 463-4004.

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### ★34 TAC §5.113

The Comptroller of Public Accounts adopts new §5.113, with changes to the proposed text published in the August 15, 1986, issue of the *Texas Register* (11 TexReg 3632). This new section was proposed to replace current §5.113, which is repealed simultaneously.

The purpose of the new section is to clearly define the responsibilities of vendors in the Deferred Compensation Program, to provide procedures to be followed for approval of vendors and products to be used in the program and to provide remedies when vendors fail to meet their responsibilities. The section also details the requirements for approval and use of advertising material. Requirements for reporting to participants and the plan administrator are listed, as are requirements for changing products, distribution to participants, and withholding of federal taxes.

This new section was proposed as a result of problems with some vendors currently in the program who have failed to comply with the terms of their agreements. Those requirements and others authorized by amendments to Texas Civil Statutes, Article 6252-3b, passed during the 69th Legislature, 1985, are being incorporated in these sections. The reporting requirements have also been amended to reflect Statement Number 2 of the Government Accounting Standards Board for financial reporting of deferred compensation plans for state and local government employees.

The changes consist of requiring either a specimen or duplicate policy/contract to be provided to a participant upon his request and a change in the quarterly reporting requirements to a calendar year quarter instead of quarters based on the State of Texas fiscal year. The required information on quarterly reports has been simplified and any distinction between active and retired participants has been removed. Current market value has been redefined for all the products, to exclude any potential penalties; and annuity payouts must be reported according to the accumulation balance minus any payouts. Negotiated transfer of products has been modified to apply only to products sold after November 15, 1986. Minor technical changes were made and some sections reworded or rearranged for clarification.

The following comments were received concerning the adoption of the new section.

Lamar Savings, Hartford, Life Insurance Company of the Southwest, Tropical Savings, Variable Annuity Life Insurance Company, Great-West Life, United Savings, Highway Employees Federal Credit Mutual Life Insurance Company of New York, Gill Savings, Richardson Savings, Home Savings, Nationwide, and the Pioneer Group objected to quarterly reports to the participant and/or the plan administrator due to the added costs of administration and

compounded by the fact that the proposed reporting periods do not coincide with the normal calendar reporting period used by most financial institutions and insurance companies. As a result of their comments, the new section has been changed to require quarterly reports based on a calendar year instead of the state's fiscal year. However, the requirement of quarterly instead of annual reporting to participants and the plan administrator has not been amended. The agency realizes that there will be administrative costs involved to the vendor in preparing quarterly reports, but these reports are required for effective administration by the plan administrator and sufficient communication to the participants.

Home Savings objected to the amount of detail required for reports to participants and the plan administrator. Nationwide objected to an annual summary report to the plan administrator and suggested they be allowed to report quarterly on all participants, without any distinction between active and retired participant reports. Travelers, Life Insurance Company of the Southwest, and Safeco also objected to the distinction between active and retired participant because they have no way of identifying the two kinds of participants. In accordance with these vendors' remarks and with the comptroller's office proposed central accounting system, the quarterly reporting format to the plan administrator and the participants has been simplified and the amount of detail reduced.

Gill Savings and Life Insurance Company of the Southwest objected to including hypothetical withdrawal penalties in current market values. They also objected to reporting deferrals for each quarter since they report a cumulative total each quarter. We agree that calculating hypothetical withdrawal penalties would be too great a task for vendors in an automated system. The definitions of current market value for all products has been amended to exclude any potential penalties. Our requirement to report deferrals on a quarterly basis has not been amended, however, because cumulative reporting is not industry-wide practice and an automated system cannot accept two different kinds of quarterly totals.

Great-West, Travelers, Life of the Southwest, and Nationwide objected to the cumbersome and impossible task of reporting the current market value of annuity payouts as the present value of all future payments. Great-West Life recommended that the vendor be allowed to report the periodic payment amount and frequency on an annual basis. In the early part of the payout phase, this amount would not adequately reflect current market value. The agency has adopted a definition of current market value for lifetime payouts that is the same as for the accumulation stage. This will reasonably state current market value and will not provide an administrative burden for vendors.

Great-West Life, Mutual Life Insurance Company of New York, and Nationwide objected to the requirement that a copy of a contract/policy be given to the participant for the following reasons, respectively: an insurance carrier may be required to deliver a prospectus; the current contract is already on file with the plan administrator; and, under §457, the employee cannot be a party to the contract and the state already requires a disclosure form. Life Insurance Company of the Southwest had the same objections, and proposed sending a duplicate policy certificate instead of a costly duplicate contract. Nationwide proposed that we make a specimen contract/policy optional. The new section has been amended in accordance with Nationwide's proposal. Not all annuity products require a prospectus and, although a copy of the contract/policy may be on file with the agency or plan administrator, the employee may not have easy access to the administrator's files. Complete disclosure can only be achieved by reading the policy/contract itself and a duplicate policy certificate does not supply enough policy information.

Nationwide objected to participants being allowed to transfer their accounts from vendor to vendor stating that it would unilaterally impair existing contracts and that most insurance companies impose transfer restrictions. They recommended approval by the plan administrator before any transfer of accounts be allowed. Most vendors do not impose transfer restrictions other than the usual early withdrawal penalties, but we have amended the disclosure form to allow products with transfer restrictions.

Travelers, Mutual Life Insurance Company of New York, and Gill Savings report distributions on a 1099 or a W-2P and not a W-2. The Pioneer Group does not report to the Internal Revenue Service (IRS) at all, and they and Tropical Savings objected to the plan requirement that vendors be responsible for reporting distributions to the IRS. The requirement that distribution be reported on a W-2 is not a plan requirement, but an IRS requirement (Reg 31.6051-1 (a)). The plan requirement that vendors do all reporting to the IRS has been a contractual requirement since 1982. It expedites payments to participants and to handle withholding any other way would require a substantial increase in staff by the plan administrator.

Travelers objected to mailing copies of IRS reports to participants for lack of a home address and would prefer to give the names of several key personnel rather than be responsible for notifying the plan administrator of any changes in personnel. A participant's home address is required information in the vendor files and is additionally provided by the plan administrator when the participant files a distribution plan. The plan administrator must continue to rely on the vendor to provide correct names and addresses for con-

tact personnel since there is only one plan administrator and over 300 companies.

Tropical Savings and Richardson Savings objected to placing responsibility on the vendor to insure that the 50% rule is complied with in an employee's distribution plan. Although the proposed new section was not meant to imply that the vendor has sole responsibility for the required calculations, we agree with both savings institutions and have omitted the provision.

Nationwide questioned whether the state could, by regulations, unilaterally modify or avoid existing contractual obligations. The rule concerning possible negotiated transfer of products due to termination of vendor participation has been modified to apply only to products sold after November 15, 1986.

The new section is adopted under Texas Civil Statutes, Article 6252-3b, which provide that the comptroller may prescribe, adopt, and enforce rules for the administration of the deferred compensation program.

#### §5.113. Vendor Participation—Deferred Compensation Plan.

##### (a) Eligibility.

(1) Insurance companies. Each insurance company desiring to participate in the plan must be licensed to do business in this state.

(2) Banks. Each state or national bank desiring to participate in the plan must be domiciled in this state and have its deposits insured by the Federal Deposit Insurance Corporation. Each bank participating in the State of Texas deferred compensation plan, and which has on deposit over \$100,000 in total State of Texas funds must provide 100% collateral for all amounts over \$100,000 in accordance with the rules of the State Treasury for state depositories.

(3) Savings and loan associations. Each savings and loan association desiring to participate in the plan must be doing business in this state and have its deposits insured by the Federal Savings and Loan Insurance Corporation.

(4) Credit unions. Each credit union desiring to participate in the plan must be doing business in this state and have its accounts insured by the National Credit Union Administration or the Texas Share Guaranty Credit Union.

(5) Mutual funds. Mutual funds approved for sale in this state may only be marketed by a licensed security dealer or directly by the fund; the licensed security dealer must also be licensed to sell life insurance.

##### (b) Procedure.

(1) Each prospective vendor must complete an application in a format to be provided by the plan administrator.

(2) The application must be accompanied by the following documents:

(A) an original copy of any insurance policy or annuity contract proposed to

be offered, plus evidence of acceptance by the State Board of Insurance;

(B) a copy of each product contract or agreement that will be used in offering deferred compensation to any state employee;

(C) a copy of any type of advertising material specifically designed for use in sale or promotion of a product contract in the plan;

(D) a completed disclosure form;

(E) any other information the plan administrator may require.

(3) If a vendor's name or legal entity changes through merger, sale, dissolution, or any other means, the plan administrator must be notified within 30 days. The notice must include a detailed description of the transaction resulting in the change. If the deferred compensation business will no longer be transacted by the same corporation or other legal entity that was an approved vendor, the entity assuming that business must apply for approval as a vendor within 30 days or transfer all deferred compensation business to another approved vendor.

##### (c) Review of products and materials.

###### (1) General provisions.

(A) Any provision in a product or contract that is contrary to a provision in the State of Texas deferred compensation plan must either be amended to conform to the plan through amendment or endorsement of the product or the provision must be separately listed on the State of Texas disclosure form described in §5.114(a) of this title (relating to Disclosure, Representation, and Violations). Amendments are subject to the requirements of acceptance and verification to the same extent as the original product contract.

(B) To the extent of any conflict, the plan and applicable state and federal law prevail over any provision in a product contract.

(C) There can be no family riders on life insurance products.

###### (2) Insurance companies.

(A) The plan administrator will contact the State Board of Insurance to confirm that insurance policies and/or annuity contracts proposed for use in the deferred compensation plan are the same forms that have been accepted for sale in Texas.

(B) All insurance advertising submitted to the plan administrator for approval will be sent to the State Board of Insurance for additional review and must conform to the rules of that agency.

###### (3) Other vendors.

(A) Product contracts will be reviewed by the plan administrator to insure compliance with the plan and legality.

(B) Any advertising material specifically designed for use in the plan will be reviewed by the plan administrator for accuracy.

(C) All product contracts and other relevant materials must be approved

by the appropriate state regulatory agency if required by other law.

(d) Product approval.

(1) Upon requesting approval to become a vendor in a plan, the company will be sent an application package, including a list of items which must be submitted for approval. Upon approval of the application and of the product and any advertising materials, the product approval notice will be signed by the plan administrator and a copy of the signed notice will be returned to the vendor.

(2) No person may solicit business in the deferred compensation plan prior to approval of the product to be used and receipt of the product approval notice.

(3) No vendor may offer to any state employee any product or product contract that has not been approved by the plan administrator.

(4) Revised or amended product contracts must be approved prior to use.

(5) When an approved product is no longer offered in the deferred compensation plan, the vendor should notify the plan administrator in writing within 30 days.

(6) If a product offers a guaranteed rate of return, notice of any change in the rate must be given to the plan administrator and to all affected participants. No reduction of such rates will be effective unless such notice is given.

(e) Product advertising.

(1) No vendor may use any advertising material specifically designed for use in the plan unless prior approval has been received from the plan administrator.

(2) If a vendor does not intend to use any printed advertising material specifically designed for use in the plan, it must provide the plan administrator with a signed statement to that effect in lieu of requesting approval for any advertising material.

(3) Advertising material offered by an agent or salesman must be approved by the vendor company whose product it promotes. This approval is subject to confirmation by the plan administrator.

(f) Solicitation of business.

(1) A vendor may solicit deferred compensation business through agents or salesmen, direct mail, or at a place of business maintained for that purpose.

(2) Agents or salesmen may solicit business at a state agency's office only with permission from that agency. Vendors should contact the agency deferred compensation administrator to determine the policy concerning on-site solicitation.

(3) Agents or salesmen must have the appropriate state license for the type of product sold.

(4) Each vendor must advise the plan administrator of which of the following methods it will use to market its product, and must provide the plan administrator with the information required for that method.

(A) If the product is sold only through employees of the vendor, that fact

must be stated and no further information is necessary.

(B) If the product is sold through independent agents or contractors through specific authority from the vendor, that fact must be stated and a list of all authorized agents or contractors must be provided to the plan administrator and updated by November 1 of each year.

(C) If the product is sold through independent agents or contractors who do not have a contractual relationship with or authorization from the vendor, that fact must be stated and no further information is necessary.

(5) Each vendor must designate specific contact personnel who will receive the deferrals, answer questions about account balances, and who will serve as a liaison between the plan administrator and vendor management concerning matters of administration and/or vendor reporting. Each contact person must notify the plan administrator in writing of any change in the designated personnel, address, or phone number within 30 days of the change.

(6) With the exception of mutual funds, each out-of-state vendor must designate a responsible individual in Texas as a point of contact for inquiry into any of the business of that vendor in the plan.

(g) Product contracts.

(1) Employee deferrals are initiated by completion of a participation agreement (Form #70-208). No vendor representative may turn in the participation agreement and any required documentation to the employee payroll office; it must be done by the employee. The participation agreement must be signed by the new vendor or its designated agent when an initial salary deferral authorization is made, when there is an increase or decrease in the deferral amount, and when there is a transfer in of a lump-sum payment.

(2) A specimen for duplicate copy of the insurance policy or annuity contract must be mailed or delivered directly to the participant if the participant requests a copy.

(3) All payments and benefits will be calculated without regard to the sex of the beneficiary.

(4) For life insurance policies, the following steps must be taken:

(A) approval of insurability of participant;

(B) letter of intent to insure issued to participant. The letter of intent must notify the participant that the effective date of the policy will be the first day of the month in which the first deferral is received by the insurance vendor;

(C) if the participant requests a specimen copy, it must be delivered to the participant at the same time as the letter of intent;

(D) submission of participation agreement, disclosure form, and letter of intent to agency administrator by participant;

(E) deferrals begin; and

(F) policy issued, a copy of which is sent to the participant upon his request.

(5) The State of Texas is the owner and beneficiary of all deferred compensation products, the amounts contributed to those products, and all earnings. A subaccount should be established for each participant and must be identified as a State of Texas deferred compensation plan account.

(A) The Employer Identification Number, 74-600089, and the mailing address of the Plan Administrator, Deferred Compensation Section, State Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711, must be on record with the vendor.

(B) Vendor identification of each participant should include the participant's social security number and home address.

(h) Reporting.

(1) General requirements.

(A) All reports must be on computer tape in a format prescribed by the plan administrator or manually in a format that is data-entry ready and prescribed by the plan administrator.

(B) The types of products shall be defined and coded as prescribed by the plan administrator.

(C) If a participant has more than one account in the same type of product, a cumulative total for all accounts of that type should be reported.

(2) Reports to the participant.

(A) For life insurance policies, each vendor must provide each participant with a report not less than once each calendar year. The period covered by the report may be either the calendar year or the policy year.

(B) All other product vendors must report to participants at least once each calendar quarter and must include the following information: amount of deferrals, including transfers in; interest earned or accumulated value; any applied product costs or surrender charges; withdrawals; and ending balance/cash value.

(C) Reports should be received by the participant no later than 45 days after the end of the calendar quarter.

(D) Upon separation from state employment, if a distribution is made to the participant in a lump-sum payment, the participant should receive a final report in the format prescribed in subsection (h)(2)(B).

(3) Reports to the plan administrator.

(A) Mutual funds must include the price of shares when reporting number of shares the last working day of August or when confirming a distribution to the participant.

(B) All vendors shall report the following information on all participants each calendar quarter: participant name; social security number; type of product; deferrals for the period, including transfers in; and withdrawals.

(C) At the end of the third quarter, the vendor shall provide the plan administrator with the current market value as of

September 30 (last working day of August for mutual funds) of all participant accounts in addition to the account information set out in subsection (h)(3)(B). Current market value for the different products shall be defined as follows:

(i) Financial Institution Accounts—deferrals plus interest earned minus any withdrawals;

(ii) Mutual funds—market value at close of last working day of August;

(iii) Life insurance policies:

(I) term, zero value;

(II) whole life, cash value;

(iv) Annuities, accumulation and payout: deferrals plus interest minus any payouts.

(D) Each quarterly report to the plan administrator shall provide the participant information in alphabetical order according to the last name of the participant.

(E) The quarterly reports to the plan administrator must be received no later than 45 days after the end of the calendar quarter.

(i) Transfer of account balance.

(1) A participant may transfer the balance of his or her deferred compensation account from one vendor to another more than once annually without specific approval from the agency deferred compensation administrator.

(2) The new vendor must provide a disclosure form for the new product selected.

(3) The plan administrator will direct liquidation of the current account, payable to the state, and then endorse payment of the proceeds to the new vendor.

(4) Transfers of account balances may be reviewed and disapproved by the plan administrator if the transfer is not in the best interests of the participant or the plan.

(5) Any check for a transfer of amounts deferred must be made payable to the State of Texas so it may be reinvested with another vendor company.

(j) Distribution of deferred compensation accounts.

(1) Requests by participant or beneficiary. When requested by the participant or beneficiary, the plan administrator may authorize the distribution of the deferred compensation account upon the occurrence of any of the following events:

(A) retirement of the employee;

(B) death of the employee;

(C) termination of the participant's employment with the state; or

(D) financial hardship of the employee. Financial hardship—unexpected and unreimbursed major expenses that the employee cannot meet from any other source, that are beyond the control of the employee and, in the opinion of the plan administrator, qualifies under the IRS definition of unforeseeable emergency. The denial of a hardship withdrawal may be appealed to the Hardship Committee in the Comptroller's Office upon written request to the plan ad-

ministrator. The decision of the Hardship Committee is final.

(2) Authorization of transfers and distributions.

(A) A letter of authorization for the transfer or distribution of deferred compensation funds will be the only authorization signed by the plan administrator. No vendor forms will be completed by the plan administrator and the vendor must agree to waive additional authorization forms, including signature guarantees by a commercial bank. The plan administrator will provide each vendor with authorized signatures for transfers and distributions.

(B) Distributions from participant accounts should be made payable to the participant or beneficiary and mailed to his home address.

(3) Confirmations. All letters authorizing a lump-sum deposit or distribution to a participant or beneficiary must be acknowledged in a format prescribed by the plan administrator.

(4) Distribution plans.

(A) Each participant must file a distribution plan with the plan administrator within 30 days of separation from state employment. Failure to file a distribution plan will result in the plan administrator authorizing an immediate lump-sum distribution to the participant by the vendor.

(B) The distribution plan will direct the timing and amounts of payments from the employee's deferred compensation account. Once designated, the beginning date of distributions may not be changed.

(C) Except with regard to the beginning date of distributions, the plan may be amended before the first distribution is made. Once distribution begins, the plan may not be amended, except in case of financial hardship.

(D) Distribution plans must be consistent with the distribution options available under the investment contract in which the employee's deferrals are invested.

(5) If a product contract is declared null and void and there is a refund of all deferrals, the refund must be made payable to the State of Texas. There can be no personal refunds to a participant.

(6) Federal taxes.

(A) Yearly earnings are not subject to taxation until they are paid or otherwise made available to the participant (Internal Revenue Code, §457). Earnings are taxed upon distribution as ordinary income.

(B) The vendor must file all reports required by the Internal Revenue Service when any amounts are distributed to the participant. All distributions to the participant are taxable as ordinary income and should be reported on a W-2 form; they are not considered supplemental wages (Rev. Ruling 82-46; Reg 31.6051-1(a)). The employer identification number (EIN) can be that of the plan administrator or the vendor.

(C) The vendor must accurately determine any amounts to be withheld for

taxes based on a W-4 submitted by the participant at the time of a distribution. If no W-4 is provided, the participant should be taxed as if the participant were single with no dependents. TEFRA does not apply to a Section 457 Plan (Section 35.3504.1, Temporary Employment Tax Regulations, News Release R-982, October 8, 1982); withholding is not by election.

(D) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary (Reg. 1.457-1(c)).

(E) Copies of all reports filed with the Internal Revenue Service must be mailed to the participant's home address.

(k) Termination of vendor participation.

(1) A vendor may voluntarily terminate its participation in the State of Texas deferred compensation plan after notifying the plan administrator. Participants must be given not less than 60 days notice of the vendor's intent so they may select a new vendor. Participants who have not transferred their account balances within a reasonable period may be transferred by the vendor as long as there is no loss of principal, earnings, or other benefits to the participant. Transfers of accounts without participant approval must be approved by the plan administrator.

(2) A vendor that does not have a balance in any deferred compensation account for 12 consecutive months will be terminated as a vendor.

(3) A vendor that violates this section, the State of Texas deferred compensation plan document, or its vendor agreement may be required by the plan administrator to terminate its participation as a vendor and negotiate a transfer of product contracts to another vendor or may be subject to a restriction of its right to acquire new business. The negotiated transfer of product contracts required of this subsection only applies to products sold after November 15, 1986.

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 October 17, 1986.

TRD-8609870

Bob Bullock  
Comptroller of Public  
Accounts

Effective date, November 7, 1986  
Proposal publication date, August 15, 1986  
For further information, please call  
(512) 463-4004.

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### ★34 TAC §5.114

The Comptroller of Public Accounts adopts new §5.114, with changes to the proposed text published in the August 15, 1986, issue of the *Texas Register* (11 TexReg 3835). This new section is proposed to replace current §5.114 which was repealed simultaneously.



The change consists of adding a provision that requires an insurance agent to notify his company and the employee in writing of the benefits of an additional or replacement policy.

The new section details the requirements for the disclosure of information about the products offered to participants, including a required disclosure form. It also enumerates a nonexclusive list of violations and remedies, and establishes a procedure for resolution of complaints.

This new section was proposed as a result of problems with some vendors currently in the program who have failed to comply with the terms of their master agreements. Those requirements and others authorized by amendments to Texas Civil Statutes, Article 6252-3b, passed during the 69th Legislature, 1985, are being incorporated in this new section and others being adopted concurrently.

The following comment was received concerning adoption of the new section.

National Western Life suggested that a comparative information form might be used to provide further disclosure when an agent sells a replacement policy. The problem with such a form is getting the information on the initial policy to do a complete comparison. The rules of disclosure have been amended to require the agent to provide his company and the employee with a statement in writing of sufficient reason why the participant would benefit from an additional or replacement policy.

The new section is adopted under Texas Civil Statutes, Article 6252-3b, which provide that the comptroller may prescribe, adopt, and enforce rules for the administration of the deferred compensation program.

#### **§5.114. Disclosure, Representations, and Violations.**

##### **(a) Disclosure.**

##### **(1) Disclosure form.**

(A) The plan administrator will provide a disclosure form to each vendor. The vendor will complete the form to include basic information for each product offered in the plan.

(i) Basic information common to all products and not dependent on the individual purchaser must be uniformly stated on all disclosure forms.

(ii) Disclosure of costs and product information that is dependent on the individual purchaser must be filled in by the vendor representative at the time the employee and the vendor sign the participation agreement and the disclosure form.

(B) Approval and use of disclosure forms.

(i) Within 60 days after the effective date of this section, or when requesting approval of a new product to be offered in the deferred compensation plan, each ven-

dor must submit a proposed disclosure form to the plan administrator.

(ii) A separate disclosure form must be submitted for each product offered. Two or more products may not be described on the same disclosure form.

(iii) The plan administrator and/or the regulatory agency for the type of product offered will review the disclosure form to insure that it accurately describes the product offered. If any discrepancy is noted, the plan administrator or the regulatory agency will contact the vendor to resolve the dispute.

(iv) Upon approval of a disclosure form, the plan administrator will notify the vendor. The vendor shall then have the approved form reproduced to give to each prospective participant.

(v) The type of product shall be in bold face type or type that is larger than that used for other items on the form.

(vi) For a period of six months following the effective date of this section, the vendor may use the proposed disclosure form whether or not approval has been received from the plan administrator. After that date, or upon approval of its disclosure form, whichever is earlier, a vendor may solicit deferred compensation business only for products for which a disclosure form has been approved by the plan administrator and must provide each prospective participant a copy of the approved form.

(C) Information that will not conveniently fit in the space allowed on the disclosure form must be attached to the disclosure form. This includes schedules of payments, charges, cash values, or any other items required to be disclosed.

(2) Advertising material shall not contain any statement contrary to the information contained in the disclosure form.

(3) Agents and salesmen shall not make any representation about a product contrary to any information contained in the disclosure form.

(4) For products with variable interest rates, the disclosure form must state under current interest rate, the word "variable," and provide a blank for the agent or salesman to provide the current interest rate, to the extent permitted by federal law, and the date for which that rate was effective. A misstatement of the current interest rate by more than 0.25% will be considered failure to provide a disclosure form.

(5) If an insurance agent sells an employee an additional or replacement life policy, the agent must provide his company and the employee with a statement in writing of sufficient reason why the participant would benefit from an additional or replacement policy. The written statement by the agent shall become a part of the disclosure form.

(A) Sufficient reason for an additional or replacement policy shall be determined by the new vendor.

(B) The written statement must be reviewed by the plan administrator before

deferral is authorized by the employee's state agency.

##### **(b) Representations to state employees.**

(1) No vendor, agent, or salesman may state, represent, or imply that its product is endorsed or recommended by the plan administrator or the State of Texas.

(2) No vendor, agent, or salesman may state, represent, or imply that its product is the exclusive product available under the deferred compensation plan.

##### **(c) Endorsements.**

(1) Any vendor in the deferred compensation plan receiving an endorsement of its product or products in the deferred compensation program shall notify the plan administrator of that endorsement.

(2) Advertising material produced, authorized, or used by the person or organization making such an endorsement to promote the vendor or product must be approved by the plan administrator prior to use.

(3) The advertising material must state the relationship between the vendor and the person or organization making the endorsement and the basis for the endorsement.

(d) Deferred compensation publications produced by the Comptroller's Office.

(1) A vendor may reproduce any publication of the Comptroller's Office concerning deferred compensation for distribution to state employees.

(2) No changes to such publications may be made by the vendor.

(3) A vendor may not print, stamp, or otherwise affix its name, address, or that of an agent or salesman on comptroller publications or reproductions of comptroller publications for distribution to state employees.

##### **(e) Violations.**

(1) A vendor, agent, or salesman who attempts to solicit deferred compensation business without providing disclosure forms to state employees is in violation of these sections.

(2) A vendor, agent, or salesman who uses an inaccurate or incomplete disclosure form to solicit deferred compensation business from state employees is in violation of these sections.

(3) A vendor, agent, or salesman who gives information to a state employee that is contrary to the information contained on the disclosure form, or makes any statement concerning a product or product contract that is false or misleading is in violation of these sections.

(4) A vendor, agent, or salesman who solicits or encourages participants to transfer account balances from one vendor to another, or to terminate deferrals to one vendor and begin deferrals to another when such transfer or termination is not in the best interests of the participant is in violation of these sections.

##### **(f) Remedies.**

(1) Product contracts or participation agreements obtained through methods that violate these sections are subject to re-



scission and refund of all deferrals plus interest.

(2) A vendor that violates these sections is subject to removal from the program or a restriction of its right to acquire new business.

(3) An agent, salesman, or vendor who violates these sections is subject to a prohibition from further solicitation or acceptance of deferred compensation business.

(4) Possible violations of state insurance or security laws or regulations will be referred to the State Board of Insurance or the State Securities Board for action.

(5) A vendor that is removed from the program must transfer all deferred compensation product contracts to another ven-

dor remaining in the program with no loss to the State of Texas or the participant.

(g) Procedure.

(1) If a complaint is received concerning any vendor, agent, or salesman, or if the plan administrator has cause to object to the actions of any vendor, agent, or salesman, notice and opportunity for hearing will be afforded the vendor, agent, or salesman before action is taken by the plan administrator. See the comptroller's rules of practice and procedure, §§1.1-1.43 of this title (relating to Practice and Procedure).

(2) Violations of contractual obligations will not be handled through administrative procedures. If a satisfactory agreement cannot be reached, these matters will be referred to the attorney general.

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 October 17, 1986.

TRD-8609871

Bob Bullock  
Comptroller of Public  
Accounts

Effective date: November 7, 1986  
Proposal publication date: August 15, 1986  
For further information, please call  
(512) 463-4004.

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# Open Meetings

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

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

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

## Texas Commission for the Blind

**Monday, October 27, 1986, 1:30 p.m.** The Board of the Texas Commission for the Blind (TCB) will meet via conference call in Room 300, TCB Administrative Building, 4800 North Lamar Boulevard, Austin. According to the agenda, the board will hear a report from the Policy and Budget Committee; act on the agency's legislative appropriation request for fiscal year 1988-1989, hear the report from the Employer of the Year Committee; and select Employer of the Year recipients.

**Contact:** Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

**Filed:** October 17, 1986, 2:42 p.m.  
TRD-8609895

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## Texas State Board of Examiners of Professional Counselors

**Saturday, October 25, 1986, 2 p.m.** The Texas State Board of Examiners of Professional Counselors will meet in the Huaco Room, 100 Washington Street, Waco. According to the agenda summary, the board will approve the minutes of the August 2, 1986, meeting; consider the licensure applications and procedures including reviews of disapproved files (applicants with disapproved files may appear for review of their applications); hear the annual report; consider the relationship between the board and the National Board of Certified Counselors; hear committee reports from Examination, Continuing Education, Professional Relations, Complaint, and Budget Committees; consider the cancellation of licenses due to nonrenewal; other matters relating to the licensure and regulation of professional counselors; and set the next meeting date. The board also will meet in executive session relating to board employee status with no decision or votes taken.

**Contact:** Daniel L. Boone, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

**Filed:** October 16, 1986, 4:05 p.m.  
TRD-8609848

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## Interagency Council on Early Childhood Intervention

**Monday, October 27, 1986, 8:30 a.m.** The Interagency Council on Early Childhood Intervention will meet in Room 240, Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin. According to the agenda summary, the council will review and approve the minutes; hear the Advisory Committee report; review Legislative Budget Board revisions; consider the implication of the passage of the Federal Discretionary Grant Program for early childhood; consider an update on the status of proposed cancellation of the contract with the Brazoria County Center for the Retarded; and discuss programmatic revisions and solicitation of program input.

**Contact:** Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

**Filed:** October 16, 1986, 4:05 p.m.  
TRD-8609849

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## Texas Education Agency

**Wednesday, November 5, 1986, 10 a.m.** The Proprietary School Advisory Commission of the Texas Education Agency will meet in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin. Items on the agenda include a discussion of fee for inspection of additional classroom facilities, discussion of fine to be assessed by the administrator for violations of Subchapter G entitled Prohibited Acts, discussion of payment of all assessed fines before issuance of a certificate of approval, discussion of payment of all assessed fines by representatives before registration, designation of Travis County as the court of competent jurisdiction for injunctions, and discussion of bonds

to be allowed in increments of \$5,000 and increase of maximum bond size to \$50,000.

**Contact:** Joe L. Price, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9475.

**Filed:** October 20, 1986, 3:52 p.m.  
TRD-8609940

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## Employees Retirement System of Texas

**Tuesday, October 28, 1986, 9 a.m.** The Board of Trustees of the Employees Retirement System of Texas (ERS) will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will review and approve the board minutes; consider and act on proposed amendments to insurance rules; consider and act on emergency and proposed amendment to Board Rule §73.15; review federal legislation regarding the Social Security Program; act on the appeal of Douglas B. Parker regarding insurance; hear the status report on the state auditor management letter; discuss and act on the proposed Judicial Retirement System of Texas Plan Two operating budget; hear the executive director's report; and set the date of the next trustee meeting. The board also will meet in executive session.

**Contact:** James T. Herod, 18th and Brazos Streets, Austin, Texas 78701, (512) 467-6431, ext. 178.

**Filed:** October 17, 1986, 11:02 a.m.  
TRD-8609890

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## Office of the Governor

**Saturday, October 25, 1986, 8:30 a.m.** The Texas Crime Stoppers Advisory Council of the Criminal Justice Division of the Office of the Governor will meet in the McAllen Holiday, 200 West Expressway 83, McAllen.

Items on the agenda include the approval of minutes of the September 26, 1986, meeting; a report on Local Crime Stoppers Programs; a report on current operations; and a discussion on amendments to Crime Stoppers Advisory Council Rules, Texas Crime Stoppers assistance grant management and reward schedule. The council also will meet in executive session to consider personnel matters concerning the coordinator's possible resignation.

**Contact:** Donald S. Dillard, P.O. Box 12428, Austin, Texas 78701, (512) 463-1784.

**Filed:** October 17, 1986, 4:58 p.m.  
TRD-8609901

**Friday, October 31, 1986, 10 a.m.** The Task Force on Border Economic Development of the Office of the Governor will meet in Room 101, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the task force will adopt the minutes; discuss the "Future of a Region" Conference and implications for the Border Task Force recommendations; discuss and adopt issues to be included with recommendations in the final report, including votes on environment, tourism, infrastructure; education and training; business and agribusiness; and state and federal legislative issues; consider other business and conduct an open discussion.

**Contact:** Tom Adams, Room 412, 201 East 14th Street, Austin, Texas 78711, (512) 463-1827.

**Filed:** October 20, 1986, 11:01 a.m.  
TRD-8609909

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### Texas Department of Health

**Saturday, October 25, 1986, 8 a.m.** The Legislative Committee of the Texas Board of Health of the Texas Department of Health will meet in the boardroom, The Westin Paso Del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the committee will approve the minutes of the September 20, 1986, meeting; consider the proposal to draft legislation relating to licensing certain state hospitals; consider the use of administrative penalties to finance the trustee's fund in long-term facilities; consider items relating to certain enforcement provisions in the Litter Abatement Act, the Solid Waste Disposal Act, and Texas Civil Statutes, Article 4477-1; establish an Organ Information Office in the Texas Department of Health; and consider the amendment of the Communicable Disease Prevention and Control Act to consolidate disease control laws.

**Contact:** Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484

**Filed:** October 16, 1986, 4:05 p.m.  
TRD-8609846

**Saturday, October 25, 1986, 10 a.m.** The Texas Board of Health of the Texas Department of Health will meet in the Brahma Room, The Westin Paso Del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the board will approve the minutes of the last meeting; hear the commissioner's report; approve the commendatory resolution; consider the regional update and report on the activities of the Texas Department of Health Region 3/12; consider activities of the El Paso Field Office, Pan American Health Organization; consider Primary Care and Maternal Infant Health Improvement Act and the Indigent Health Care update; hear committee reports from Budget, Legislative, Crippled Children's Services, Emergency and Disaster, Environmental Health, Hospitals, Nursing Homes, Alternate Care, Public Relations, and Strategic Planning Committees; hear announcements and comments (no board action requested); and set the meeting date for November 1986. The board also will meet in executive session.

**Contact:** Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

**Filed:** October 16, 1986, 4:05 p.m.  
TRD-8609847

**Wednesday, October 29, 1986, 1:30 p.m.** The Hospital Data Advisory Committee of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider the overview of the Texas Department of Health and Bureau of State Health Planning and Resource Development; consider the charge to the committee regarding function and responsibility; consider open meeting procedures; consider the overview of bureau activities relevant to the Health Data Advisory Committee on Hospital Data Collection, Hospital Utilization and Financial Data, Hospital Discharge Abstract Data; present and discuss the proposed work program and committee structure; consider the adoption of bylaws; elect officers; consider travel reimbursement policies and procedures, and select the next meeting date.

**Contact:** Carol S. Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

**Filed:** October 16, 1986, 4:04 p.m.  
TRD-8609850

**Friday, October 31, 1986, 10 a.m.** The Texas Emergency Medical Services Advisory Council (TEMSAC) of the Texas Department of Health will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes; hear the TEMSAC chairman's report, the associate commissioner's report, the legislative report; consider rule activity on Emergency Medical Service Rules §§157.21-157.81; hear the TEMSAC ad hoc committee reports from Medical Directors and Education; hear emergency medical services con-

ference report; consider communications and messages to TEMSAC; and set future meeting dates.

**Contact:** Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2601.

**Filed:** October 21, 1986, 8:57 a.m.  
TRD-8609963

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### Texas Historical Commission

**Monday, October 27, 1986, 7:30 a.m.** The Executive Committee of the Texas Historical Commission will meet in the Carrington-Covert House Library, 1511 Colorado Street, Austin. Items on the agenda include the Texas awards for historic preservation, the budget, the Texas Homes Proposal, the Nominating Committee, and Texas Historical Foundation. The committee also will meet in executive session if necessary.

**Contact:** Curtis Tunnell, 1511 Colorado Street, Austin, Texas 78701, (512) 463-6100.

**Filed:** October 16, 1986, 1:27 p.m.  
TRD-8609832

**Monday, October 27, 1986, 9 a.m.** The Texas Historical Commission will hold its quarterly meeting in the French Legation Museum, 802 San Marcos Street, Austin. Items on the agenda summary include the chairman's report, the Main Street Committee report, the Sesquicentennial Committee report, the Federal Programs Committee report, the Archeology Committee report, the Publications Committee report, the Research and Markers Committee report, the Field and Museum Services Committee report, and the Architecture Committee report. The commission also will meet in executive session if necessary.

**Contact:** Curtis Tunnell, 1511 Colorado Street, Austin, Texas 78701, (512) 463-6100.

**Filed:** October 16, 1986, 1:27 p.m.  
TRD-8609833

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### Industrial Accident Board

**Thursday, October 23, 1986, 9:30 a.m.** The Advisory/Delivery Subcommittee of the Industrial Accident Board met in Suite 113, Maplewood Plaza, 5925 Maple Avenue, Dallas. According to the agenda, the subcommittee discussed Article 8306, §15, Lump sum settlement; Article 8306, §18a, Timeliness of commencement of benefits or filing of controversies, suspension of benefits, penalties; and Article 8307, §5c, Multiple subscribers, payment of claims, deposit of proportionate share prior to liability determination.

**Contact:** William Treacy, 200 East Riverside, Austin, Texas 78704, (512) 448-7962.

**Filed:** October 16, 1986, 2:46 p.m.  
TRD-8609839

**Friday, October 24, 1986, 9:30 a.m.** The Texas Industrial Accident Board will meet in Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board will meet in executive session to review board files pursuant to the workers' compensation statute.

**Contact:** William Treacy, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

**Filed:** October 20, 1986, 3:37 p.m.  
TRD-8609937

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### State Board of Insurance

**Tuesday, October 28, 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 9368—application for amendments to the articles of incorporation of Chilton Insurance Company, Dallas, increasing its authorized capital.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

**Filed:** October 20, 1986, 11:51 a.m.  
TRD-8609910

**Tuesday, October 28, 1986, 10 a.m.** The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider a prepaid legal rate filing by Pre-Paid Legal Casualty, Inc.

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

**Filed:** October 17, 1986, 8:37 a.m.  
TRD-8609861

Hearing Sections of the the State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Days, times, rooms, sections, and dockets follow.

**Tuesday, October 28, 1986, 1:30 p.m.** In Room 353, the Commissioner's Hearing Section will consider Docket 9365—whether the certificate of authority of Carolina Continental Insurance Company, Columbia, South Carolina, should be cancelled or revoked.

**Contact:** James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

**Filed:** October 20, 1986, 11:51 a.m.  
TRD-8609911

**Tuesday, October 28, 1986, 1:36 p.m.** In Room 342, the Commissioner's Hearing Section will consider Docket 9372—proposed change in control of Healthamerica Corporation of Texas, San Antonio, a health maintenance organization.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** October 20, 1986, 11:51 a.m.  
TRD-8609912

**Wednesday, October 29, 1986, 9 a.m.** In Room 535, the Fire Marshal's Hearing Section will consider Docket FM-057—whether disciplinary action should be taken against Fire Detection Consultants, Inc., Houston, who holds a certificate of registration to install fire detection and alarm devices and systems.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** October 20, 1986, 11:51 a.m.  
TRD-8609913

**Monday, November 3, 1986, 9 a.m.** In Room 342, the Commissioner's Hearing Section will consider Docket 9331—whether Central Texas Health Plan and its duly authorized divisions Central Texas Health Plan, doing business as South Texas Health Plan, and Central Texas Health Plan, doing business as Mid-Texas Health Plan, Austin, has complied with Commissioner's Order 86-0928, dates September 3, 1986.

**Contact:** James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

**Filed:** October 20, 1986, 11:51 a.m.  
TRD-8609914

**Monday, November 3, 1986, 1:30 p.m.** In Room 342, the Commissioner's Hearing Section will consider Docket 9366—application of Christie Steven Tyler, Dallas, for a Group I, legal reserve life, health, and accident insurance agent's license.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

**Filed:** October 20, 1986, 11:51 a.m.  
TRD-8609915

**Wednesday, November 5, 1986, 8:30 a.m.** The State Board of Insurance will meet in Room 101, John H. Reagan Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the board will consider proposed amendments to the Texas Automobile Manual and endorsement forms relating to miscellaneous type vehicles, and to consider proposed rate adjustments for miscellaneous type vehicles.

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

**Filed:** October 17, 1986, 1:46 p.m.  
TRD-8609891

**Monday, November 17, 1986, 9 a.m.** The State Board of Insurance will meet in Room 101, John H. Reagan Building, 15th Street

and Congress Avenue, Austin. According to the agenda, the board will consider proposed 28 TAC §7.71, Requirements for Annual Statement Diskette Filing, published in 11 TexReg 4272.

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

**Filed:** October 16, 1986, 3:30 p.m.  
TRD-8609845

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### Texas Department of Labor and Standards

**Monday and Tuesday, October 27 and 28, 1986, 1:30 p.m. and 9 a.m., respectively.** The Boiler Division of the Board of Boiler Rules of the Texas Department of Labor and Standards will meet in emergency session in Room 2.120, 26th and Red River Streets, Joe C. Thompson Center, Austin. Items on the agenda include consideration of proposed rules; and the Texas Boiler Certificate of Operation Program, including overall system efficiency, statistical status of certificates of operation, certificate of operation extension request, inspection agency liaison status, and special programs. The emergency status is necessary in order to discuss possible rules regarding boiler maintenance and prevention of explosions.

**Contact:** Steven M. Matthews, P.O. Box 12157, Austin, Texas 78711, (512) 463-2904.

**Filed:** October 20, 1986, 3:29 p.m.  
TRD-8609936

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### Board of Pardons and Paroles

**Monday-Friday, October 27-31, 1986, 1:30 p.m. daily Monday-Thursday and 11 a.m. Friday.** A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners and inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

**Contact:** Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713.

**Filed:** October 17, 1986, 10:14 a.m.  
TRD-8609872

**Tuesday, October 28, 1986, 1:30 p.m.** The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons and restoration of civil rights of citizenship;

emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2704.

**Filed:** October 17, 1986, 10:14 a.m.  
TRD-8609873

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### Texas Parks and Wildlife Department

**Wednesday, November 12, 1986, 6 p.m.** The Commission of the Texas Parks and Wildlife Department will meet in the Bayou Auditorium, Bayou Building, University of Houston, Clear Lake, 2700 Bay Area Boulevard, Houston. According to the agenda, the commission will receive comments from interested persons concerning the Draft Feasibility Report and environmental impact statement prepared by the United States Army Corps of Engineers regarding the Galveston Bay Area Navigation Study, a proposal to widen and deepen the Houston Ship Channel.

**Contact:** Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802

**Filed:** October 16, 1986, 1:57 p.m.  
TRD-8609834

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### Texas State Board of Public Accountancy

**Tuesday, October 21, 1986, 9 a.m.** The State Board of Public Accountancy met in emergency session in Suite 340, 1033 La Posada, Austin. According to the agenda, the board conducted panel hearings on uniform CPA examination candidates to determine if their criminal convictions were relevant to sitting for the examination and subsequent licensure as certified public accountants. The case numbers for four individuals were: 86-09-01X, 86-09-02X, 86-09-03X, 86-09-04X. The emergency status was necessary because the matter of these convictions had not come to the board's attention to prepare for an earlier hearing

**Contact:** Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752-3892, (512) 451-0241.

**Filed:** October 20, 1986, 4:48 p.m.  
TRD-8609952

**Thursday, October 23, 1986, 9 a.m.** The Examination Committee of the Texas State Board of Public Accountancy made an emergency revision to the agenda for a meeting held in Suite 340, 1033 La Posada, Austin. The revision concerned the review of information relating to the November 1986 Uniform CPA Examination; review of non-routine applications, exam candidate applica-

tions held over from prior meeting; review of panel hearings, board and staff assignments; discussion of exam candidate site assignments; review of proctor availability, successful bids for temporary employees at the exam sites; discussion of the use of NASBA statistical questionnaire at the exam sites; review of instructions to handicapped exam candidates, and other matters coming before the committee; and review of other pertinent topics. The emergency status was necessary because the date and time of meeting has been changed because two of the three committee members were unable to attend the previously scheduled meeting on October 22, 1986.

**Contact:** Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752-3892, (512) 451-0241.

**Filed:** October 21, 1986, 8:56 a.m.  
TRD-8609964

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### Texas Department of Public Safety

**Thursday, October 30, 1986, 9 a.m.** The Public Safety Commission of the Texas Department of Public Safety (DPS) will meet in the commission room, DPS Headquarters, 5805 North Lamar Boulevard, Austin. According to the agenda, the commission will approve minutes; consider budget matters, personnel matters, miscellaneous, and other unfinished business.

**Contact:** James B. Adams, 5805 North Lamar Boulevard, Austin, Texas 78756, (512) 465-2000, ext. 3700.

**Filed:** October 21, 1986, 8:46 a.m.  
TRD-8609962

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### Public Utility Commission of Texas

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

**Tuesday, October 28, 1986, 1:30 p.m.** A prehearing conference in Docket 7127—petition of Joe Bryan *et al.* for service area exception within Rusk County.

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

**Filed:** October 16, 1986, 2:48 p.m.  
TRD-8609841

**Thursday, October 30, 1986, 11 a.m.** A prehearing conference in Docket 7031—application of Texas Utilities Electric Company for proposed transmission line and associated substation within Henderson and Kaufman Counties.

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

**Filed:** October 17, 1986, 2:39 p.m.  
TRD-8609896

**Thursday, December 4, 1986, 10 a.m.** A hearing on the merits in Docket 6771—inquiry into the Southwestern Bell Telephone Company Essx custom tariff. The meeting is rescheduled from October 21, 1986.

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

**Filed:** October 20, 1986, 2:43 p.m.  
TRD-8609933

**Tuesday, January 13, 1987, 10 a.m.** A hearing on the merits in Docket 7027—application of AT&T Communications of the Southwest to reduce rates of its 1.544 MBPS digital services tariff.

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

**Filed:** October 17, 1986, 2:39 p.m.  
TRD-8609897

**Thursday, January 22, 1987, 10 a.m.** A hearing on the merits in Docket 7121—application of Poka Lambr Telephone Cooperative, Inc., to revise its tariff for wide area mobile telephone service.

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

**Filed:** October 20, 1986, 2:43 p.m.  
TRD-8609934

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### Railroad Commission of Texas

**Monday, October 20, 1986, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made emergency revisions to the agenda for meetings held in the 12th Floor Conference Room, William B. Travis Building, Austin. Agendas follow.

The division considered Docket 3-86,358—application of Zinn Petroleum Company and Cecil V. Hagen, to separate the Bell Lake (9800) Field into three separate fields to be called the Bell Lake (9800) (9800-A) and (9800-B) Fields, Brazoria County; and Docket 9-87,707—application of Hastings, J.W. Oil Company, to dispose of oil and gas waste by injection into a porous formation not productive of oil or gas Benedict Lease, Well No. 2, Knox City, (north, Strawn) Field, Knox County. The emergency status was necessary because these items were properly noticed for the meeting of October 13, 1986, and were passed.

**Contact:** Margaret Allen, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6924.

**Filed:** October 17, 1986, 10:37 a.m.  
TRD-8609874

The division considered Docket 9-86,284—whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on the Collier Operating Company, Bloodworth -B- (25250) Lease, Well No. Unid A-H, Jack County Regular Field, Jack County; and Docket 9-86,727—Collier Operating Company, Bullinger Lease, Well No. 1, Clay County. The emergency status was necessary because these items were properly noticed for the meeting of October 13, 1986.

**Contact:** Barbara Epstein, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7291.

**Filed:** October 17, 1986, 10:39 a.m.  
TRD-8609875

**Monday, October 27, 1986, 9 a.m.** The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

**Filed:** October 17, 1986, 10:42 a.m.  
TRD-8609876

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:** October 17, 1986, 10:42 a.m.  
TRD-8609877

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:** October 17, 1986, 10:41 a.m.  
TRD-8609878

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:** October 17, 1986, 10:39 a.m.  
TRD-8609879

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:** October 17, 1986, 10:42 a.m.  
TRD-8609880

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:** October 17, 1986, 10:41 a.m.  
TRD-8609881

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:** October 17, 1986, 10:40 a.m.  
TRD-8609882

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:** October 17, 1986, 10:41 a.m.  
TRD-8609884

Consideration of procedure to be used in the application of Bennett and Burrow to reduce the allowable of all oil and gas wells in this state other than stripper wells and wells with tertiary production by a percentage of 10%.

**Contact:** Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6922

**Filed:** October 17, 1986, 10:40 a.m.  
TRD-8609883

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

**Filed:** October 17, 1986, 10:40 a.m.  
TRD-8609885

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:** October 17, 1986, 10:41 a.m.  
TRD-8609886

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

**Contact:** Walter Earl Lilie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

**Filed:** October 17, 1986, 10:41 a.m.  
TRD-8609887

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters; the acceptance of incremental bond amounts for the South Hallsville Mine of the Sabine Mining Company for its operations under Permit 13; the acceptance of incremental bond amounts for South Hallsville Mine of the Sabine Mining Company for its operations under Permit 24; proposed amendment to 16 TAC §11.221, "State Program Regulation," consisting of the adoption by reference of revised coal mining regulations concerning effluent limitations, prime farmland, notices of violation and lands unsuitable for mining; and the awarding of a contract for consultant engineering services to Morrison-Knudsen, Inc., for the Alcoa abandoned mine land project.

**Contact:** J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

**Filed:** October 17, 1986, 10:40 a.m.  
TRD-8609888

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:** October 17, 1986, 10:42 a.m.  
TRD-8609889

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### **Texas Real Estate Commission**

**Monday, October 27, 1986, 9:30 a.m.** The Texas Real Estate Commission (TREC) will meet in the conference room, TREC Headquarters, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will consider the minutes of the September 8, 1986, meeting; hear staff reports for the month of August 1986; consider proposed amendments to 22 TAC §§535.63-535.66 concerning acceptability of courses offered to satisfy educational requirements for licensure; conduct a public hearing on the proposed amendment to 22 TAC §535.202 concerning real estate inspectors; consider the final action on the proposed amendment to 22 TAC §535.202 concerning real estate inspectors; consider the proposed amendment to §535.11 concerning reproduction of promulgated forms, and §535.202 concerning real estate inspectors; and consider motions for rehearing and/or probation. The commission also will meet in executive session to consider Texas Civil Statutes, Article 6252-17.

**Contact:** Camilla S Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

**Filed:** October 17, 1986, 1:46 p.m.  
TRD-8609892

**Monday, October 27, 1986, 9:30 a.m.** The Texas Real Estate Commission (TREC) made

a revision to the agenda for a meeting to be held in the conference room, TREC Headquarters, 1101 Camino La Costa, Austin. The revision concerns consideration of education matters; and proposed amendments to 22 TAC §§535.63-535.66 concerning acceptability of courses offered to satisfy educational requirements for licensure.

**Contact:** Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 463-3900.

**Filed:** October 17, 1986, 4:39 p.m.  
TRD-8609900

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### Texas Savings and Loan Department

The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. Days, times, and agendas follow.

**Monday, October 27, 1986, 9 a.m.** The department will accumulate a record of evidence in regard to the application of First Savings Association of Orange, Houston, Harris County, to change the name to Banc One Savings Association, from which record the commissioner will determine whether to grant or deny the application.

**Contact:** Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

**Filed:** October 16, 1986, 4:32 p.m.  
TRD-8609853

**Tuesday, October 28, 1986, 9 a.m.** The department will accumulate a record of evidence in regard to the application of Texas Mercantile Savings Association, Dallas, Dallas County, to relocate the home office from 10300 North Central Expressway, Dallas, Dallas County, to 5757 Alpha Road, Dallas, Dallas County, from which record the commissioner will determine whether to grant or deny the application.

**Contact:** Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

**Filed:** October 16, 1986, 4:32 p.m.  
TRD-8609854

**Wednesday, October 29, 1986, 9 a.m.** The department will accumulate a record of evidence in regard to the application of Paris Savings and Loan Association, Paris, Lamar County, for a branch office at 1303 West Main Street, Clarksville, Red River County, from which record the commissioner will determine whether to grant or deny the application.

**Contact:** Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

**Filed:** October 16, 1986, 4:32 p.m.  
TRD-8609855

### School Land Board

**Tuesday, October 21, 1986, 10 a.m.** The School Land Board made an emergency revision to the agenda for a meeting held in Room 831, General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. The revision concerned BHP Petroleum (Americas), Inc., granted by the board on September 16, 1986. The emergency status was necessary because of pending litigation and determination when rentals are due.

**Contact:** Linda K. Fisher, Room 836, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

**Filed:** October 17, 1986, 2:27 p.m.  
TRD-8609894

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### State Securities Board

**Tuesday, October 28, 1986, 9 a.m.** The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda summary, the commissioner will determine whether a cease and desist order should be issued prohibiting the sale of securities issued and offered by Miller Properties, Inc., and Jim H. Miller.

**Contact:** Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas 78701, (512) 474-2233.

**Filed:** October 16, 1986, 4:42 p.m.  
TRD-8609856

**Tuesday, October 28, 1986, 11 a.m.** The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda, the commission will determine whether the registration of De La Moet, Inc., as a securities dealer should be revoked or suspended.

**Contact:** Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas 78701, (512) 474-2233.

**Filed:** October 16, 1986, 4:42 p.m.  
TRD-8609857

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### Stephen F. Austin University

**Monday, October 27, 1986, 1:30 p.m.** The Committees of the Board of Regents of Stephen F. Austin University will meet in Room 307, Austin Building, Stephen F. Austin University Campus, Nacogdoches. According to the agenda summary, the board will approve the minutes and personnel matters; hear the faculty workload report, the enrollment report, the underenrolled class report; consider curriculum changes; approve the budget adjustments; consider the final budget position for fiscal year 1986, fee changes for individual instruction courses, the transfer of funds to the emergency loan

program, the contract for charge card services, plans for library addition, the piping repairs at Power Plant No. 1, the plans for renovation of the art studio, the replacement seating for science auditorium, replacement doors for the coliseum, fencing on the beef farm, replacement of the gym floor, resurfacing of tennis courts, addition to ticket booths at the stadium, renovation of paint and carpenter shop, relocation of frame residence to the beef farm, roof repair on music building, replacement of boiler in Boynton Building, replacement of chillers and boilers in Power Plant No. 2, renovation of Rusk Building and project budget, change order on Temple-Eastex Forestry Laboratory, change order on stadium project, and coliseum weight room and equipment.

**Contact:** William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

**Filed:** October 16, 1986, 1:45 p.m.  
TRD-8609835

**Tuesday, October 28, 1986, 9 a.m.** The Board will approve the minutes; consider personnel matters; hear the faculty workload report, the enrollment report, the underenrolled class report; consider curriculum changes; approve the budget adjustments, final budget position for fiscal year 1986, fee changes for individual instruction courses, transfer of funds to emergency loan program, contract for charge card services, plans for library addition, piping repairs at Power Plant No. 1, plans for renovation of art studio, replacement seating for science auditorium, replacement doors for coliseum, fencing on the beef farm, replacement of gym floor, resurfacing of tennis courts, addition to ticket booths at stadium, renovation of paint and carpenter shop, relocation of frame residence to beef farm, roof repair on music building, replacement of boiler in Boynton Building, replacement of chillers and boilers in Power Plant No. 2, renovation of Rusk Building and project budget, change order on Temple-Eastex Forestry Laboratory, change order on stadium project, and the coliseum weight room and equipment.

**Contact:** William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

**Filed:** October 16, 1986, 1:46 p.m.  
TRD-8609836

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### University Interscholastic League

**Sunday and Monday, October 19 and 20, 1986, 9 a.m. daily.** The 46th Legislative Council of the University Interscholastic League made emergency additions to the agenda for meetings held at the Marriott at the Capitol, 11th Street and IH 35, Austin.



The additions concerned policy, athletic, music, and literary related items presented by individuals to the council and references to standing committees, and final action taken by the Legislative Council brought forth. The emergency status was necessary because the need for an executive session on Sunday was just determined.

**Contact:** Baily Marshall, 2622 Wichita Street, Austin, Texas 78712, (512) 471-5883.

**Filed:** October 16, 1986, 3:38 p.m.  
TRD-8609844

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### Water Commission of Texas

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin; Days, times, and agendas follow.

**Tuesday, October 28, 1986, 10 a.m.** The commission will consider water district bond issues, release from escrow, the use of surplus funds, dismissal of rate applications, certificate of convenience applications, proposed water quality permits, amendments and renewals, water use applications, adjudication matters, the levee project matter, and super-fund matters.

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

**Filed:** October 16, 1986, 3:50 p.m.  
TRD-8609851

**Wednesday, October 29, 1986, 10 a.m.** The commission made an addition to the agenda concerning the amendment of the enforcement order concerning Monument Inn Restaurant to extend the term of the order for three months, Harris County.

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

**Filed:** October 20, 1986, 3:59 p.m.  
TRD-8609941

**Wednesday, October 29, 1986, 10 a.m.** The commission made an addition to the agenda concerning a request of Clarence Schulze and England Schulze, doing business as Double "S" Farm for an order for authorization to commence construction of a wastewater disposal facility prior to commission consideration of its application for a permit, Fayette County.

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

**Filed:** October 17, 1986, 4:07 p.m.  
TRD-8609899

**Tuesday, November 18, 1986, 3 p.m.** The commission will consider the administrative penalty and enforcement order for Siro Scopel, doing business as S & P Carwash; application by P Chem, Inc., for renewal of Water Quality Permit 02392 and application

by El Paso Water Utilities Public Service Board for renewal of Water Quality Permit 10408-09.

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

**Filed:** October 16, 1986, 3:49 p.m.  
TRD-8609852

**Monday, November 24, 1986, 2 p.m.** The commission will consider the application by the Sabine River Authority to amend Permit 2948 of Lake Fork Reservoir and Permit 1792 of Lake Tawakoni Reservoir; and Applications 4604 and 4605 by the City of Dallas.

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

**Filed:** October 20, 1986, 3:59 p.m.  
TRD-8609942

**Tuesday, December 9, 1986, 9 a.m.** The Office of Hearings Examiner of the Texas Water Commission will meet in the Assembly Room, Grayson County Courthouse, 100 West Houston, Sherman. According to the agenda summary, the office will consider the application of Gordon Perry, Lot 235C, Route 2, Denison, Texas 75020 for a Proposed Permit 13325-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 13,500 gallons per day from the Oak Creek Mobile Village Wastewater Treatment Plant. The applicant proposes to up-grade the existing facilities currently serving Oak Creek Mobile Village.

**Contact:** Robert Caine, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** October 20, 1986, 3:59 p.m.  
TRD-8609943

**Tuesday, December 16, 1986, 10 a.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow.

The commission will consider Application 5101 of Baker and Associates Joint Venture No. 4 who seek a permit to maintain an existing reservoir created by a dam on an unnamed tributary of Little Bear Creek, tributary of Bear Creek, tributary of the West Fork of the Trinity River, Trinity River Basin, for recreation, Tarrant County.

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

**Filed:** October 20, 1986, 4 p.m.  
TRD-8609944

The commission will consider Application 3175 of Lower Colorado River Authority who seeks to extend the time to commence and complete construction of Baylor Creek Dam and related facilities authorized under Permit 3175. This permit authorizes the permittee to construct Cedar Creek Dam and reservoir on Cedar Creek and Baylor Creek

Dam and reservoir on Baylor Creek, Colorado River Basin, in Fayette County.

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

**Filed:** October 20, 1986, 4 p.m.  
TRD-8609945

The commission will consider Application 5099 of Matagorda Bay Aquaculture, Inc., who seeks a permit to construct and maintain an off channel reservoir complex and to divert water from Tres Palacios Bay, Colorado Lavaca Coastal Basin, into the reservoir complex for industrial (fish farming) purposes, Matagorda County.

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

**Filed:** October 20, 1986, 4 p.m.  
TRD-8609946

The commission will consider Application 5100 of J. T. Stellman who seeks a permit to maintain an existing off channel reservoir complex and to divert water from Port Bay, tributary of Copano Bay, tributary of Aransas Bay, San Antonio Nueces Coastal Basin for industrial purposes Aransas County.

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

**Filed:** October 20, 1986, 4 p.m.  
TRD-8609947

**Thursday, December 18, 1986, 10 a.m.** The Office of Hearing Examiners of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the office will consider Application 5098 of Little Cypress Utility District for a permit to authorize: construction and maintenance of a dam, use of water for construction of the dam, diversion and use in Harrison, Gregg, and Rusk Counties not to exceed 100,000 acre-feet of water per year from the reservoir, diversion and use in Harrison, Gregg, and Rusk Counties not to exceed 29,000 acre-feet of water per year, diversion of the municipal and industrial water from the perimeter of the reservoir and use of the bed and banks of Little Cypress Bayou and Big Cypress Bayou for conveying water released from the reservoir for municipal and/or industrial use.

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

**Filed:** October 20, 1986, 3:59 p.m.  
TRD-8609948

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## Regional Agencies Meetings Filed October 16

**The Edwards Underground Water District, Executive Committee**, met at 1615 North St. Mary's, San Antonio, on October 21, 1986, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78215, (512) 222-2204.

**The Jack County Appraisal District, Board of Directors**, met in the Los Creek Office Building, 216-D South Main, Jacksboro, on October 21, 1986, at 7 p.m. Information may be obtained from Doris G. Ray, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

**The Liberty County Central Appraisal District, Board of Directors**, met at 1820 Sam Houston, Liberty, on October 22, 1986, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 712, Liberty, Texas 77574, (409) 336-6771.

**The Lower Rio Grande Valley Development Council, Board of Directors**, met in the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, on October 16, 1986, at 1:44 p.m. Information may be obtained from Robert A. Chandler, Suite 707, 1701 West Highway 83, McAllen, Texas 78501, (512) 682-3481.

**The Mason County Appraisal Review Board**, met at 206 Fort McKavitt Street, Mason, on October 16, 1986, at 1:45 p.m. Information may be obtained from Ann Stapp, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

**The South Texas Private Industry Council, Inc.**, will meet in the Zapata Community Center, Zapata, on October 23, 1986, at 4 p.m. Information may be obtained from Mike Villarreal, P.O. Box 1757, Laredo, Texas 78044-1757, (512) 722-3973.

**The Trinity River Authority of Texas, Board of Directors**, met at 5300 South Collins, Arlington, on October 22, 1986, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

TRD-8609830

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## Meetings Filed October 17

**The Austin-Travis County Mental Health and Mental Retardation Center, Operation and Planning Committee**, met in the boardroom, 1430 Collier, Austin, on October 21, 1986, at 7:30 a.m. The Finance and Control Committee met at the same location on October 22, 1986, at noon. The Board of Trustees met at the same location on October 23, 1986, at 7 a.m. Information may be ob-

tained from Sharon Taylor, 1430 Collier, Austin, Texas 78704, (512) 447-4141.

**The Dallas Area Rapid Transit (DART), Minority Affairs Committee**, met in emergency session in the DART Office, 601 Pacific Avenue, Dallas, on October 20 and 21, 1986, at 10:30 a.m. daily. The committee also met on October 21, 1986, at the same location at 2 p.m. The Budget and Finance Committee met at the same location on October 20, 1986, at 4 p.m. The board briefing was held October 21 at the same location at 4 p.m. The Mobility Impaired Task Force met at the same location on October 28, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

**The Education Service Center Region VII, Board of Directors**, met at the Service Center, Mount Pleasant, on October 23, 1986, at 7 p.m. Information may be obtained from Scott Ferguson, Mount Pleasant, Texas 75455, (214) 572-8551.

**The Hale County Appraisal District, Board of Directors**, met at the Appraisal District, 302 West Eighth Street, Plainview, on October 23, 1986, at 8 p.m. Information may be obtained from Linda Jaynes, 302 West Eighth Street, Plainview, Texas 79072, (806) 293-4226.

**The Lamb County Appraisal District, Appraisal Review Board**, will meet in the board meeting room, 330 Phelps Avenue, Littlefield, on October 30, 1986, at 7:30 p.m. Information may be obtained from Murlene J. Bilbrey, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

**The Lower Colorado River Authority, Audit and Budget Committee**, met in the Brady Civic Center, Highway 87 North, Brady, on October 22, 1986, at 8 a.m. The Energy Operations Committee, the Finance and Administration Committee, Natural Resources Committee, and Planning and Public Policy Committee met at the same location on the same day at 8 a.m. The Board of Directors met at the same location on October 23, 1986, at 9 a.m. Information may be obtained from John E. Bagalay, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3200.

**The North Central Texas Council of Governments, Executive Board**, met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, on October 23, 1986, at 12:45 p.m. Information may be obtained from Edwina J. Hicks, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300

**The Panhandle Regional Planning Commission, Board of Directors**, met in the conference room, 2736 West 10th Street, Amaril-

lo, on October 23, 1986, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381.

**The Tyler County Tax Appraisal District, Appraisal Review Board**, will meet at 103 North Pecan, Woodville, on October 29, 1986, at 3 p.m. Information may be obtained from Mary F. Mann, Drawer 9, Woodville, Texas 75979, (409) 283-3736.

**The West Central Texas Council of Governments, Executive Committee**, met at 1025 Northeast 10th, Abilene, on October 22, 1986, at 12:45 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-8609860

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## Meetings Filed October 20

**The Bexar Appraisal District, Appraisal Review Board**, will meet at 535 South Main, San Antonio, on October 28, 1986, at 8:30 a.m. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

**The Dallas Area Rapid Transit (DART), Budget and Finance Committee** made an emergency revision to the agenda for a meeting held in the DART Office, 601 Pacific Avenue, Dallas, on October 20, 1986, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

**The Education Service Center Region V, Board of Directors**, will meet in the boardroom, 2295 Delaware Street, Beaumont, on October 28, 1986, at 1:15 p.m. Information may be obtained from Fred J. Waddell, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212.

**The Education Service Center Region XIV, Board of Directors**, will meet at 1850 Highway 351, Abilene, on October 30, 1986, at 5:30 p.m. Information may be obtained from Taressa Huey, Route 1, Box 70-A, Abilene, Texas 79601, (915) 676-8201.

**The Golden Crescent Regional Planning Commission, Board of Directors**, will meet in the boardroom, Building 102, Regional Airport, Victoria, on October 29, 1986, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

**The Gulf Bend Mental Health and Mental Retardation Center, Board of Trustees**, met at 1404 Village Drive, Victoria, on October 23, 1986, at noon. Information may be obtained from Bill Dillard, 1404 Village Drive, Victoria, Texas 77901, (512) 578-5262.

**The Hansford County Appraisal District, Board of Directors, met in emergency session at 709 West Seventh Avenue, Spearman, on October 23, 1986, at 9 a.m. Information may be obtained from Alice Peddy, Box 567, Spearman, Texas 79081, (806) 659-5575.**

**The Henderson County Appraisal District, Board of Directors, met in emergency session at 101 East Corsicana, Athens, on October 20, 1986, at 4 p.m. Information may be obtained from Helen Marchbanks, 101 East Corsicana, Athens, Texas 75751, (214) 675-9296.**

**The Lavaca County Central Appraisal District, Appraisal Review Board, will meet at 113 North Main Street, Hallettsville, on November 3, 1986, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.**

**The Northeast Texas Municipal Water District, Board of Directors, will meet at Highway 250 South, Hughes Springs, on October 27, 1986, at 2 p.m. Information may be obtained from Homer Tanner, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.**

**The North Plains Water District, Board of Directors, will meet at the district office, 702 East First Street, Dumas, on November 3, 1986, at 10 a.m. Information may be obtained from Orval E. Allen, Box 795, Dumas, Texas 79029, (806) 935-6401.**

**The Sabine Valley Regional Mental Health and Mental Retardation Center, Board of Trustees, will meet at the Marshall Family Services, 1500 West Grand Avenue, Marshall, on October 28, 1986, at 7 p.m. Information may be obtained from Ronald R. Cookston, P.O. Box 6700, Longview, Texas 75608, (214) 297-2191.**

**TRD-8609903**

# 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.

## Ark-Tex Council of Governments Request for Proposals

This is a request for proposal to seek staff or consultant services in providing job readiness skills to eligible individuals located in the Ark-Tex Council of Governments (ATCOG) service delivery area. The ATCOG and the Texas Department of Community Affairs administer Job Training Partnership Act (JTPA) services to economic disadvantaged individuals in Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus Counties.

Proposals are to be received no later than 5 p.m., October 24, 1986, at Ark-Tex Council of Governments, P.O. Box 5307, Building A, Centre West, 911 Loop 151, Texarkana, Texas 75501, in accordance with this request for proposal.

This contract will be awarded to the most reasonable, responsible, and responsive offerer whose proposal is within the competitive cost range and determined to be the most advantageous to ATCOG. The project's scope of work and proposal review factors considered and their relative importance are as follows.

The offerer shall perform, as directed by ATCOG, all of the necessary services required to serve the required number of individuals. The desired services to be rendered to each eligible individual are: career decision making; local labor marketing information; sources of job leads; the job application/resume; job interview; employee/employer rights and benefits; and work maturity. The first seven items are accompanied by a pre-and post-test and shall be administered to each individual. This plan should include the estimated cost for the tasks

The proposal must include sufficient information for the selection committee to evaluate all proposals. The proposal must also include the following information to assist in evaluation of the proposals: information reflecting qualifications of persons to be assigned to provide services; information indicating specialized experience and technical competence of the offeror and its personnel as relates to the services required; the identification of the number and title of staff to be assigned to provide services and their availability relative to current workload; cost and pricing data set out, which indicates the maximum fees to be charged for the various tasks to be provided, specifying the basis for the fee compensation request; and a proposed work plan set out, indicating methods and schedule for accomplishing each phase of the work

The following proposal evaluation review factors will be used: qualifications—20 maximum points; technical competence/experience—30 maximum points; capacity for performance (work force)—20 maximum points; estimated costs—20 maximum points; and methodology—10 maximum points. The total maximum is 100 points. ATCOG will assign points to each criterion based on the content of the proposal only.

The contract type may be a cost reimbursement or a cost reimbursement plus fixed fee with a not-to-exceed limit. After the close of negotiations ATCOG will award the contract to the selected offeror and will promptly notify unsuccessful candidates.

Questions concerning this request for proposals should be addressed to Ermer Pondexter, Ark-Tex Council of Governments, (214) 832-8636.

ATCOG is an equal opportunity/affirmative action employer.

Issued in Texarkana, Texas, on October 14, 1986

TRD-8609837 James D. Goerke  
Executive Director  
Ark-Tex Council of Governments

Filed: October 16, 1986

For further information, please call (214) 832-8636.



## Banking Department of Texas Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On October 6, 1986, the banking commissioner received an application to acquire control of the First State Bank, Blooming Grove, by D. W. George, Tyler.

On October 14, 1986, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on October 14, 1986

TRD-8609838 William F. Aldridge  
Director of Corporate Activities  
Banking Department of Texas

Filed: October 16, 1986

For further information, please call (512) 479-1200.



**Office of Consumer Credit  
Commissioner**

**Notice of Rate Ceilings**

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> Agricultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 10/20/86-10/26/86	18.00%	18.00%
Monthly Rate— Article 1.04(c) <sup>(1)</sup> 10/01/86-10/31/86	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/86-12/31/86	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 <sup>(3)</sup> 10/01/86-12/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) <sup>(3)</sup> 10/01/86-12/31/86	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2) <sup>(2)</sup> 10/01/86-12/31/86	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 <sup>(3)</sup> 10/01/86-12/31/86	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/86-12/31/86	18.00%	N/A
Judgment Rate—Article 1.05, §2 11/01/86-11/30/86	10.00%	10.00%

- (1) For variable rate commercial transactions only
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on October 13, 1986.

TRD-8609798 Al Endsley  
Consumer Credit Commissioner

Filed: October 15, 1986  
For further information, please call (512) 479-1280.



**Texas Commission for the Deaf  
Consultant Proposal Request**

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Texas Commission for the Deaf (TCD) requests proposals for services of consultant(s) to

conduct interpreter training workshops in the State of Texas.

**Description of services.** The consultant(s) will prepare and conduct both intensive and short-term training workshops for beginning and advanced sign language and/or oral interpreters for the deaf and hearing impaired in legal, medical, deaf-blind, and mental health interpreting situations and any other type of training that may benefit interpreters and consumers. Certification preparation workshops will also be conducted before certification evaluations. The consultant(s) will offer training sessions to consumers on effective and efficient use of interpreters.

Those workshops may be set up in local areas in Texas in which interpreter services are provided through provision of TCD contract. The consultant(s) will work closely with contractors (councils or services for the deaf) to have workshops in their respective areas.

The workshops vary from one to four days in length and may involve at least 10 interpreters/participants for each scheduled workshop. The length of time for the workshop shall not exceed five to eight hours per day of the scheduled workshop.

**Evaluation criteria.** The consultant must demonstrate capacity for conducting interpreter training workshops and possess necessary qualifications and a minimum of five years experience in interpreter training workshop or related field of training. Proposals will be evaluated using the following criteria: cost, geographic distribution of services, number of workshops, qualifications of consultants, previous relevant experience, certifications, knowledge of topic areas, services offered in addition to workshops, and content of workshops.

**Selection.** Depending upon the commission funding availability, awards to those who have met all requirements will be based on a first come, first served basis. The commission will award a contract to the individual, organization, or agency that is considered to be best able to perform the services requested. However, the commission reserves the right to reject, in total or part, any and/or all proposals received if it is considered to be in the best interest of the commission. Issuance of this notice in no way constitutes a commitment by the commission to award a contract.

Awards may be made to institutions of higher education that have interpreter training programs. The personnel in such programs must meet the same requirements for qualifications and experience as previously mentioned.

**Contract terms.** The total amount of funds awarded under the program will not exceed \$9,000 for fiscal year 1987. The maximum amount for any one contract will not exceed \$750 per scheduled workshop. The workshops through provision of the commission contract with those funds must be commenced after December 1, 1986, and terminated on or before August 31, 1987. No funds will be available after the termination date for continuation funding of those workshops unless the consultants have resubmitted their proposals. However, the contracts may include amendments for additional funds during the contract period. In no instance will a former employee of the commission be awarded the contract in compliance with the Texas Human Resources Code, §81.016(c).

**Closing date for proposals.** This request has no closing date for proposals; however, the request expires July 31, 1987, or earlier when the funding is exhausted. Proposals sent by mail should be addressed to William F. Eckstein,

Coordinator of Administrative Procedures/Services, Texas Commission for the Deaf, 510 South Congress Avenue, Suite 300, P.O. Box 12904, Austin, Texas 78711. One original and two copies of the proposal are required.

**Contact person.** For additional information, or to notify the commission of intent to make a proposal, contact William F. Eckstein, 510 South Congress Avenue, P.O. Box 12904, Austin, Texas 78711, (512) 469-9891.

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

TRD-8609862 Larry D. Evans  
Executive Director  
Texas Commission for the Deaf

Filed: October 17, 1986  
For further information, please call (512) 469-9891.



## Texas Education Agency Request for Applications

The Texas Education Agency is requesting applications from school districts, education service centers, colleges and universities, human service agencies, nonprofit organizations, individuals, and corporations to develop a consortium model of agencies that provides early identification and support for children who are born into poverty or who are otherwise at risk in the educational process. This request is filed in accordance with the provisions of Texas Civil Statutes, Article 6252-11c.

The model will emphasize coordination between school districts and social service agencies and include such areas as health and nutrition, cognitive stimulation, physical and emotional development, respite care, and family stability. Contractors will be expected to develop models for coordination of social and health service providers and school campuses that focus on parental support for school success.

This project is funded through the United States Department of Education, Education Consolidation and Improvement Act (ECIA), Chapter 2 programs and will be administered by the agency's assistant commissioner for program development.

The contract will be for an 18-month period, which will be approximately January 19, 1987-June 30, 1988.

Selection of the contractor will be based on the contractor's capacity to manage the project, related experience, management and staffing plans, budget, and evaluation procedures.

A copy of the complete request for application may be obtained by calling or writing the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress, Austin, Texas 78701, (512) 463-9304. Applications may be delivered by mail or in person to the Texas Education Agency Document Control Center. Applications received after 5 p.m. on Friday, December 5, 1986, will not be considered for funding.

Issued in Austin, Texas, on October 13, 1986.

TRD-8609807 W. N. Kirby  
Commissioner of Education

Filed: October 15, 1986  
For further information, please call (512) 463-9212.



## Revised Deadline for Request for Proposals

A request for proposals to conduct a study titled Task Force on Dropout Prevention, submitted by the Texas Education Agency was published in the October 3, 1986, edition of the *Texas Register* (11 TexReg 4181). The task force on dropout prevention study will use the results of the Texas school dropout survey project, currently being conducted by the Texas Department of Community Affairs (TDCA).

The Texas school dropout survey project will culminate in a dropout prevention and recovery conference, scheduled for November 11-13, 1986, in Austin. At this conference, the results of the Texas school dropout survey project will be presented.

So that potential proposers may examine the results of the Texas school dropout survey project, the deadline for submitting proposals for the task force on dropout prevention study has been changed from November 14, 1986, to December 12, 1986. Proposals received after December 12, 1986, will not be considered for funding.

A proposer's conference for the task force on dropout prevention study will be conducted on Friday, November 14, from 1 p.m. to 5 p.m. in Room 1-109 of the Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas.

A copy of the complete request for proposal may be obtained by calling or writing the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

Issued in Austin, Texas, on October 13, 1986.

TRD-8609808 W. N. Kirby  
Commissioner of Education

Filed: October 15, 1986  
For further information, please call (512) 463-9212.



## Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

### NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Chillicothe	Chillicothe Hospital District	01-3933	Chillicothe	0	09/26/86
Dallas	Dallas Diagnostic Imaging Center, Ltd	05-3989	Dallas	0	09/26/86
Dallas	Dallas Central Diagnostic Imaging Center	05-3932	Dallas	0	09/30/86
Franklin	Texas Utilities Generating Company	06-3975	Franklin	0	09/30/86

Houston	Interesin Corporation	11-3982	Houston	0	09/19/86
Midlothian	BoxCrow Cement	05-3976	Dallas	0	09/16/86
Orange	Ausimont USA Inc.	10-3958	Orange	0	09/30/86
San Antonio	Malcolm-Pirnie, Inc.	09-3985	San Antonio	0	09/30/86
Throughout Texas	Great Guns, Inc.	10-1990	Sour Lake	10	09/30/86
Throughout Texas	Hillside Equines, Inc.	09-3972	San Antonio	0	09/22/86

LaPorte	E. I. du Pont de Nemours & Company	11-314	LaPorte	47	09/19/86
LaPorte	E. I. du Pont de Nemours & Company	11-314	LaPorte	48	09/29/86
Longview	Texas Eastman Company	07-301	Longview	55	09/30/86
Lubbock	Texas Tech University	02-1536	Lubbock	36	09/26/86
Mission	Mission Hospital, Inc.	08-2802	Mission	10	09/29/86

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Abilene	West Texas Utilities Company	04-3481	Abilene	2	09/25/86
Alvin	Amoco Chemical Corporation	11-1422	Alvin	33	09/19/86
Alvin	Coastal Inspection, Inc.	11-3716	Alvin	11	09/19/86
Amarillo	Panhandle Diagnostic Imaging Center, Ltd	01-3737	Amarillo	3	09/26/86
Arlington	Metroplex Hematology Oncology Associates	05-3211	Arlington	20	09/29/86
Austin	Allan Shivers Radiation Therapy Center	06-1761	Austin	13	09/22/86
Austin	Brackennidge Hospital	06-268	Austin	43	09/26/86
Austin	South Austin Medical Center	06-3273	Austin	9	09/26/86
Austin/Pflugerville	Castleberry Instruments, Inc	06-3372	Austin	2	09/23/86
Beaumont	Baptist Hospital of Southeast Texas	10-0358	Beaumont	44	09/30/86
Beaumont	Mobil Oil Corporation	10-603	Beaumont	36	09/19/86
Bedford	Northeast Community Hospital	05-3455	Bedford	5	09/29/86
Big Spring	Scenic Mountain Medical Center	12-0763	Big Spring	23	09/26/86
Brownwood	Minnesota Mining and Manufacturing Co	99-918	St. Paul, MN	16	09/23/86
Brownwood	Brownwood Regional Hospital, Inc	04-2322	Brownwood	13	09/26/86
Carrollton	North American Philips Lighting Corporation	05-3823	Carrollton	1	09/29/86
Columbus	Columbus Community Hospital	11-3508	Columbus	2	09/24/86
Conroe	Medical Center Hospital	11-1769	Conroe	15	09/29/86
Dallas	GAF Building Materials Corporation	05-3811	Dallas	2	09/22/86
Dallas	Optic-Electronic Corporation	05-2155	Dallas	14	09/23/86
Dallas	Kaiser Foundation Health Plan	05-3755	Dallas	1	09/30/86
Denton	NUMED, Inc.	05-2129	Denton	34	09/29/86
Fort Worth	Medical Ancillary Services, Inc	05-3212	Fort Worth	11	09/22/86
Fort Worth	North Texas Diagnostic Center	05-3807	Fort Worth	3	09/26/86
Gilmer	Baylor Medical Center at Gilmer	07-3493	Gilmer	5	09/29/86
Harlingen	Valley Baptist Medical Center	08-1909	Harlingen	26	09/26/86
Houston	Medical Clinic of Houston	11-1315	Houston	13	09/22/86
Houston	Saint Joseph Hospital	11-2279	Houston	19	09/16/86
Houston	Diagnostic Clinic of Houston	11-3452	Houston	2	09/26/86
Houston	West Houston Surgicare Corporation	11-3768	Houston	1	09/30/86
Houston	St Luke's Episcopal-Texas Children's Hospitals	11-0581	Houston	30	09/30/86
Houston	National Health Laboratories	11-1933	Houston	5	09/30/86

Nacogdoches	Lyle Thorstenson, M D.	10-3420	Nacogdoches	1	09/16/86
Odessa	Medical Center Hospital	12-1223	Odessa	35	09/29/86
Palestine	Anderson County Memorial Hospital	07-2728	Palestine	6	09/29/86
Pasadena	Beltway Community Hospital	11-3502	Pasadena	3	09/22/86
Pont Comfort	Formosa Plastics Corporation Texas	08-3893	Pont Comfort	2	09/22/86
Taylor	Johns Community Hospital	06-3657	Taylor	5	09/16/86
Texas City	Texas City Refining, Inc.	11-2578	Texas City	5	09/25/86
The Woodlands	The Woodlands Community Hospital	11-3772	The Woodlands	2	09/22/86
Throughout Texas	Karl F Edmonds, Inc	07-1607	Kilgore	19	09/19/86
Throughout Texas	Cotton Houston, Inc	11-3920	Houston	1	09/16/86
Throughout Texas	Conam Inspection Division	11-478	Houston	55	09/19/86
Throughout Texas	Houston Gamma Ray Company	09-2932	Uvalde	10	09/19/86
Throughout Texas	NDE-AIDS, Inc	05-2355	Ft. Worth	8	09/19/86
Throughout Texas	Tri-State Labs, Inc.	11-3802	Freeport	3	09/19/86
Throughout Texas	G & G X-Ray, Inc	08-3326	Corpus Christi	7	09/19/86
Throughout Texas	Jim R Sharp	08-3731	Corpus Christi	2	09/19/86
Throughout Texas	Arlington Engineering Company	05-3757	Arlington	1	09/19/86
Throughout Texas	State Department of Highways and Public Transportation	06-197	Austin	45	09/23/86
Throughout Texas	Mason-Johnston & Associates, Inc	05-286	Dallas	13	09/19/86
Throughout Texas	Texas Instruments, Inc	05-946	Dallas	38	09/23/86
Throughout Texas	Atomic Energy of Canada Limited	05-2623	Dallas	8	09/23/86
Throughout Texas	ITL Manlift Services, Inc	11-3795	Searcy, AR	4	09/19/86
Throughout Texas	Pro-Log	02-1828	Denver City	7	09/19/86
Throughout Texas	Pengo Wireline	05-3079	Fort Worth	29	09/15/86
Throughout Texas	Schlumberger Well Services	11-109	Houston	27	09/18/86
Throughout Texas	Rountree Inspection, Inc	07-3412	Longview	9	09/17/86
Throughout Texas	Longview Inspection, Inc	07-3720	Longview	6	09/19/86
Throughout Texas	H B Zachry Company	09-1995	San Antonio	9	09/19/86
Throughout Texas	Bryant-McClelland Consultants	06-3875	Austin	1	09/24/86
Throughout Texas	Southwestern Laboratories	05-1934	Dallas	15	09/29/86
Throughout Texas	Southern Technical Services	11-2683	Lake Jackson	14	09/24/86
Throughout Texas	MIDA Electric Wireline, Inc	08-3145	Refugio	3	09/30/86
Throughout Texas	Southwestern Laboratories	11-299	Houston	47	09/30/86
Throughout Texas	Rountree Inspection, Inc	07-3412	Longview	10	09/30/86
Throughout Texas	Nuclear Measurement Services Co	05-2889	Dallas	5	09/30/86
Tyler	Medical Center Hospital	07-0977	Tyler	41	09/29/86
Waco	Providence Hospital	06-1638	Waco	21	09/30/86



**RENEWALS OF EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	Jordan Laboratories, Inc.	08-2455	Corpus Christi	9	09/30/86
Dallas	Bishop College	05-1207	Dallas	11	09/18/86
Fort Worth	Texas College of Osteopathic Medicine	05-2518	Fort Worth	6	09/18/86
Greenville	Robert Irvin Morgan, M.D.	05-1395	Greenville	8	09/30/86
Houston	Donald P Ford, M D	11-505	Houston	10	09/22/86
Houston	Larpen of Texas, Inc.	11-74	Houston	30	09/19/86
Houston	Charles E Dobbs, M.D	11-368	Houston	7	09/29/86
Houston	Lyondell Petrochemical Company	11-187	Houston	26	09/30/86
Katy	Katy Community Hospital	11-3052	Katy	9	09/30/86
Odessa	R/A Services, Inc	12-3010	Odessa	17	09/25/86
Orange	Polysar Gulf Coast Inc	10-976	Orange	21	09/30/86
Pasadena	Phillips Pipe Line Company	11-2083	Alvin	6	09/25/86
Pittsburg	Pittsburg Medical Center	07-3106	Pittsburg	4	09/29/86
San Antonio	Sheldon P. Braverman, M.D.	09-1226	San Antonio	7	09/29/86
Stafford	Houston Fabricating, Inc.	11-1193	Houston	27	09/18/86
Sweeny	Phillips 66 Company	11-337	Sweeny	26	09/30/86
Texas City	Texas City Refining, Inc	11-2578	Texas City	4	09/19/86
Throughout Texas	Accurate Wireline Services, Inc	08-3056	Corpus Christi	6	09/22/86
Throughout Texas	Non-Destructive Testing Company	05-1008	Grand Prairie	33	09/19/86
Throughout Texas	Petroleum Inspection, Inc	11-1673	Houston	17	09/19/86
Throughout Texas	Daniel Industries, Inc	11-3077	Houston	3	09/24/86
Throughout Texas	Professional Service Industries, Inc	07-3055	Longview	5	09/29/86
Throughout Texas	B & R Inspection and Equipment Company, Inc	12-2564	Midland	7	09/30/86
Throughout Texas	City of Lubbock	02-1735	Lubbock	19	09/30/86
Throughout Texas	Panhandle Perforators, Inc.	01-3065	Pampa	4	09/30/86
Victoria	E I Du Ponte De Nemours & Co., Inc	08-386	Victoria	46	09/19/86

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Bastrop	Bastrop Mining Company	06-3551	Bastrop	1	09/23/86
Beaumont	Joseph Novosel, D.P.M.	10-3665	Beaumont	1	09/16/86
Houston	Fondren Imaging Center	11-3691	Houston	1	09/26/86
Throughout Texas	Professional Service Industries, Inc	09-2845	Oak Brook, IL	8	09/18/86
Throughout Texas	Harmony Drilling Company, Inc.	11-3595	Houston	1	09/29/86
Throughout Texas	BDX Inspection, Inc	12-2959	Odessa	4	09/29/86

In issuing new licenses and amending and renewing existing licenses, the Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property

and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Texas Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday through Friday (except holidays).

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

TRD-860986 Robert A MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: October 16, 1986  
For further information, please call (512) 835-7000.

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**Order Amending Controlled Substance Schedules**

The Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, contains schedules of controlled substances, i.e., lists of drugs and chemical entities which have potential for addiction or abuse. The Act authorizes the Texas commissioner of health to modify the schedules by adding or deleting substances. The Act also requires the commissioner, whenever he makes a change to the schedules, to file a notice of this change with the Texas Secretary of State's Office (notice goes to the attention of the Statutory Filings Division). Furthermore, in order that the public can be informed of these changes, the commissioner files notice of the changes in the In Addition section of the *Texas Register*.

On October 10, 1986, the Commissioner added the substances midazolam and quazepam to the list in Schedule II, §2.06, paragraph (b). The amended section will read as follows.

(a) Schedule IV shall consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system: Alprazolam; Barbital; Bromazepam; Camazepam; Chloral butaine; Chloral hydrate; Chlordiazepoxide; Clobazam; Clonazepam; Clorazepate; Clotiazepam; Cloxazolam; Delorazepam; Diazepam; Estazolam; Ethchlorvynol; Ethinamate; Ethyl loflazepate; Fludiazepam; Flunitrazepam; Flurazepam; Halazepam; Haloxazolam; Ketazolam; Loprazolam; Lorazepam; Lormetazepam; Mebutamate; Medazepam; Meprobamate; Methohexital; Methylphenobarbital; Midazolam; Nimetazepam; Nordiazepam; Oxazepam; Oxazolam; Paraldehyde; Pentazocine, its salts, derivatives, or compounds or mixtures thereof; Petrichloral; Phenobarbital; Pinazepam; Prazepam; Quazepam; Temazepam; Tetrazepam; Triazolam.

(c)-(f) No change.

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

TRD-8609907 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: October 20, 1986  
For further information, please call (512) 458-7248.

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## Revocation of Certificate of Registration

The Texas Department of Health, having duly filed complaints pursuant to *Texas Regulations for Control of Radiation* Part 13.8, has revoked the following certificates of registration.

Listed following is the name, registrant number, city, and date of action: Oliver L. Lattimore, D.D.S., 11-09963, Fort Worth, Texas, September 24, 1986; Mike L. Herod, D.D.S., 08-03354, Harlingen, Texas, September 24, 1986; M. F. Williams, M.D., 05-12031, Houston, Texas, September 24, 1986; Canyon Medical Center, 09-13049, Leakey, Texas, September 19, 1986; The Center for Preventative Medicine, 09-11885, Houston, Texas, September 19, 1986; Joe D. Raxton, D.D.S., 11-09125, Houston, Texas, September 19, 1986; John Lowe, M.A., D.C., 11-11553, Houston, Texas, September 19, 1986; R. W. Thomson, D.C., 05-04055, Fort Worth, Texas, September 19, 1986; Miner J. Holmes, D.D.S., 11-08388, Missouri City, Texas, September 19, 1986; Chiropractic Arts and Science Center, 11-11579, Houston, Texas, September 19, 1986.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas, Monday-Friday 8 a.m.-5 p.m. (except holidays).

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

TRD-8609887 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: October 16, 1986  
For further information, please call (512) 835-7000.

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## Texas Department of Human Services Amended Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) published notice of a consultant contract award. The request for proposals was published in the June 10, 1986, issue of the *Texas Register* (11 TexReg 2682), and the notice of award was published in the August 15, 1986, issue of the *Texas Register* (11 TexReg 3662).

The contract was awarded to Edward N. Jones, Jr., 2503 Forest Bend, Austin, Texas 78704. At this time, DHS is increasing the total cost of the contract to \$33,000. All other information remains the same.

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

TRD-8609827 Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: October 16, 1986  
For further information, please call (512) 450-3766.

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## Public Hearing

The Texas Department of Human Services will conduct a hearing to accept comments on a proposed amendment concerning reimbursement methodology for inpatient hospital services, in its purchased health services chapter. The proposed amendment was published in the October 7, 1986, issue of the *Texas Register* (11 TexReg 4211).

The hearing will begin at 9 a.m., Wednesday, December 3, 1986, in the department's public hearing room, First Floor, East Tower, 701 West 51st Street, Austin, Texas.

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

TRD-8609858 Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: October 17, 1986  
For further information, please call (512) 450-3766.

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## Texas Industrial Accident Board Consumer Price Index

To All Interested Parties:

The adjusted gross annual payroll requirement of an employer for coverage of seasonal workers under the provision of Article 8306, §2b(b), is \$26,450.

The comptroller has established the consumer price index for the State of Texas as 105.8. This is a 2.3% increase from the 1985 value of 103.4.

Issued in Austin, Texas, on September 30, 1986.

TRD-8609840 Joseph C. Gagen  
Chairman  
Texas Industrial Accident Board

Filed: October 16, 1986  
For further information, please call (512) 448-7962.

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## Legislative Budget Board Joint Budget Hearing Schedule

The Executive and Legislative Budget Offices will jointly conduct the following budget hearings to consider appropriations requests for the 1988-1989 biennium, for the period of October 27-31, 1986. Please confirm dates, times, and locations, since experience has shown that some re-scheduling always occurs.

Agency	Date	Place
Texas Department of Health	9 a.m.-October 27	Room 104, John H. Reagan Building, Austin
Texas Department of Health	9 a.m.-October 28	Room 104, John H. Reagan Building, Austin
Texas State Technical Institute	9 a.m.-October 28	Room 103, John H. Reagan Building, Austin
Natural Fibers and Food Protein Commission	9 a.m.-October 28	Room 103, John H. Reagan Building, Austin
Texas Health and Human Services Coordinating Council	9:30 a.m.-October 28	Room 102, John H. Reagan Building, Austin
Texas Water Development Board	9:30 a.m.-October 28	Room 102, John H. Reagan Building, Austin
Public Junior Colleges	1 p.m.-October 28	Room 103, John H. Reagan Building, Austin
Lamar University System (all components)	1 p.m.-October 28	Room 103, John H. Reagan Building, Austin
Texas Southern University	1 p.m.-October 28	Room 103, John H. Reagan Building, Austin
Interagency Council on Early Childhood Intervention	1 p.m.-October 28	Room 104, John H. Reagan Building, Austin
Texas River Compact Commissioners	2 p.m.-October 28	Room 101, John H. Reagan Building, Austin
Texas Cancer Council	3 p.m.-October 28	Room 104, John H. Reagan Building, Austin
Employees Retirement System of Texas	9 a.m.-October 29	Room 214, John H. Reagan Building, Austin
Board of Nurse Examiners	9 a.m.-October 29	Room 102, John H. Reagan Building, Austin
Texas Department of Human Services	9:30 a.m.-October 29	Room 106, John H. Reagan Building, Austin
Commission on Fire Protection Personnel Standards and Education	10:30 a.m.-October 29	Room 213, John H. Reagan Building, Austin
Texas Commission on Human Rights	1 p.m.-October 29	Room 102, John H. Reagan Building, Austin
Texas Department of Public Safety	2 p.m.-October 29	Room 101, 5805 North Lamar Boulevard, Austin
Texas State Board of Public Accountancy	2 p.m.-October 30	Room 102, John H. Reagan Building, Austin
Office of the Attorney General	2 p.m.-October 30	Room 104, John H. Reagan Building, Austin

Veterans Affairs Commission 10 a.m.-October 31 Room 102, John H. Reagan Building, Austin

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

TRD-8608398 Larry Kopp  
Assistant Director for Budgets  
Legislative Budget Office

Filed: October 17, 1986  
For further information, please call (512) 483-1200.

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## Texas State Library and Archives Commission Consultant Contract Reports

The 65th Legislature, Senate Bill 737, (Texas Civil Statutes, Article 6252-11c) requires state agencies and regional councils of governments to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency is required to file with the secretary of state a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, the Act directs the contracting agencies to file copies of the resulting reports with the Texas State Library. The library is required to compile a list of the reports received and submit the list quarterly for publication in the *Texas Register*.

Below is the list of reports received for the third quarter of 1986. The reports may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Texas Department of Agriculture.  
Consultant: Jimmy L. Morrow.  
Title: Citrus Market Information 1985.

Agency: Texas Commission for the Blind.  
Consultant: Jack G. Dial.  
Title: McCarron-Dial Evaluation System.

Agency: Comptroller of Public Accounts.  
Consultant: Coopers & Lybrand Management Consulting Services  
Title: Review of Data Services for State Comptroller's Office, Final.

Agency: Employees Retirement System of Texas.  
Consultant: Coopers & Lybrand.  
Title: Report on the Group Medical Insurance Program.

Agency: Texas Education Agency.  
Consultant: IOX Assessment Associates.  
Titles: Development of the TECAT Report 1: A Job-Relatedness Survey of Potential TECAT Skills; Report 2: Committee Review of TECAT Items; Report 3: Statewide Review of TECAT Items; and Report 4: Final Operational Plan.

Agency: State Department of Highways and Public Transportation.  
Consultant: GSD&M, Texas Pacific Film/Video.  
Titles: Anti-Litter Campaign: Public Service Announcement (Radio). Anti-Litter Campaign: Public Service Announcement (Video).

Agency: Texas Housing Agency.  
Consultant: Coopers & Lybrand.  
Title: Systems Plan for Texas Housing Agency.

Agency: Houston-Galveston Area Council.  
Consultant: PRC.  
Title: Development of a Base Year Network for Model Validation, Final Report.

Agency: Texas Department of Mental Health and Mental Retardation.  
Consultant: Instructional Systems Design, Inc.  
Title: Case Management Instructional Module.

Agency: Nortex Regional Planning Commission.  
Consultant: Frank J. Leal & Associates.  
Title: Audited Financial Reports.

Agency: School Property Tax Board.  
Consultant: Thom. Y. Pickett/Pritchard & Abbott/Capital Appraisal.  
Title: Report of the Findings of the 1985 Property Value Study of School & Appraisal Districts.

Agency: Texas Rehabilitation Commission.  
Consultant: Dr. Larry McCarron.  
Title: Pre-Application Resource Guide for Establishing an Extended Rehabilitation Services Program.

Agency: Texas Tourist Development Agency.  
Consultant: Bob Griffin.  
Title: Traveling Texas (Video news shorts).

Agency: Texas Tourist Development Agency.  
Consultant: U. S. Travel Data Center.  
Title: Economic Impact of Travel on Texas Counties 1984.

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

TRD-8609893 William D. Gooch  
Assistant State Librarian  
Texas State Library and Archives  
Commission

Filed: October 17, 1986  
For further information, please call (512) 463-5481.

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## Texas Department of Public Safety Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Nuclear Waste Programs Office (NWPO), Division of Emergency Management, Texas Department of Public Safety, announces this request for proposals to deliver the services described. The NWPO intends to award the contract to David W. Stevens, Inc., 1621 South Eastside Street, Olympia, Washington 98501, unless a better and more satisfactory offer is received. This contract is a continuation of a previous consulting arrangement.

Interested parties must demonstrate the ability to perform the following tasks: assist the NWPO in scoping activities and developmental activities for potential formal negotiations between the State of Texas and the U.S. Department of Energy (DOE) of a high-level radioactive waste consultation and cooperation agreement under the authority of the Nuclear Waste Policy Act in 1982, §117(c); assist the office in planning and carrying out socioeconomic and institutional studies regarding the plans for and potential impacts of the DOE repository program; assist the office in its planning for and participation in activities of federal and state agencies and organizations as they relate to implementation of the DOE repository program; and travel to Austin or other locations at the request of the office and meet with office and other state staff and officials to provide briefings, status reports, and other information

regarding the work and to seek information relevant to the work products.

Offerors must have the capability to accomplish the requested services, and proposals must include documentation of this capability. Specifically, the offerer must demonstrate experience with, and knowledge of, the following: institutional and procedural provisions of the Nuclear Waste Policy Act (Public Law 97-425), especially §117(c) addressing development and content of consultation and cooperation agreements between potential high-level waste repository host states and the DOE; institutional and procedural provisions of relevant federal and State of Texas statutes and rules including, but not limited to, the applicable United States Nuclear Regulatory Commission rule (10 Code of Federal Regulations Part 960), the applicable United States Environmental Protection Agency rule (40 Code of Federal Regulations Part 191), and the Texas Water Code, Chapter 27 and Chapter 28 and supporting rules; elements of a comprehensive consultation and cooperation agreement between the state and the DOE and details of each of those elements that should be specified in the agreement; logistics and strategies for effective negotiation of a complete and viable consultation and cooperation agreement between the state and the DOE; previous negotiations that have been undertaken to develop similar agreements including issues addressed, problems identified, results, and relative merit of approaches used; effective and thorough public policy analysis, research, and development; and history and status of the institutional and procedural aspects of the DOE high-level waste program.

In addition, proposals must provide a detailed budget breakdown by major category of expense, evidence of legal authority to contract with the NWPO, previous experience of legal authority to contract with the NWPO, previous experience with similar work, a list of personnel and a breakdown of their time commitments to this project, substantiation of the offeror's experience and competence in addressing the issues identified, and an ability to produce work products as requested by the NWPO through August 31, 1987.

Proposals must be received by the Nuclear Waste Programs Office, Division of Emergency Management, Texas Department of Public Safety, by November 7, 1986. The office will choose among any proposals submitted on the basis of demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services.

For details, contact Dan Smith, Deputy Director, Nuclear Waste Programs Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-2198.

Issued in Austin, Texas, on October 14, 1986

TRD-8609831 James B. Adams  
Director  
Texas Department of Public Safety

Filed: October 16, 1986  
For further information, please call (512) 465-2345.

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## **Railroad Commission of Texas Correction of Error**

A proposed amendment submitted by the Railroad Commission of Texas contained an error as published in the October 10, 1986, issue of the *Texas Register* (11 TexReg 4234).

Section 3.8(f)(1) should read: "A person who transports saltwater for hire by any method other than by pipeline shall not haul and dispose of water containing salt or other mineralized substances produced by oil and gas operations, off a lease, unit, or other oil or gas property where it is purchased unless such transporter has qualified for and been issued a saltwater hauler permit by the commission."

## **Office of the Secretary of State Texas Register**

Due to the upcoming November 4, 1986, election, the *Texas Register* has revised issue dates and deadlines for the November 4, 1986, Quarterly Index, and the November 7, 1986, issue of the *Texas Register*.

The Quarterly Index will be published on November 7, 1986. The November 7, 1986, issue of the *Texas Register* will be published on November 4, 1986, thereby changing the deadline for submission of rules to 10 a.m., Wednesday, October 29, and the deadline for open meeting submissions to 10 a.m., Thursday, October 30, 1986.

The publication schedule will resume with the November 11, 1986, issue and follow publication schedule deadlines thereafter.

## **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 Walker Wood Preserving Company on October 13, 1986, assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Woodward, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on October 15, 1986.

TRD-8609825      Mary Ann Hefner  
                         Chief Clerk  
                         Texas Water Commission

Filed: October 15, 1986  
For further information, please call (512) 463-7898.

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