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Texas Register

Volume 11, Number 82, October 31, 1986

Pages 4500-4555



Highlights

The Public Utility Commission of Texas proposes an amendment concerning discontinuance of service by water and sewer utilities. Earliest possible date of adoption - November 30 **page 4513**

The Texas State Board of Registration for Professional Engineers proposes amendments concerning the board's review of ap-

plications. Proposed date of adoption - January 29 **page 4515**

The Texas Department of Human Services proposes new sections concerning reimbursement methodology for vendor rates in the intermediate care facility/supported living facility chapter. Earliest possible date of adoption - December 1 **page 4530**

**Office of
the Secretary
of State**

Texas Register

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- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
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- Open Meetings—notices of open meetings
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Texas Administrative Code

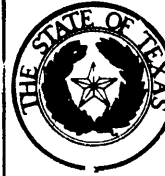
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Attorney General

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

Requests for Opinions

RQ-911. Request from M. Kent Sims, Wheeler County attorney, Wheeler, concerning whether a non-compensated assistant county attorney may, in his capacity as a private attorney, contract with a city for the collection of delinquent taxes.

TRD-8610095

★ ★ ★

RQ-912. Request from David T. Garcis, Brooks County attorney, Falfurrias, concerning the constitutionality of Texas Civil Statutes, Article 5996a, the nepotism statute.

TRD-8610096

★ ★ ★

RQ-913. Request from Paul Ragsdale, chairman, Committee on State, Federal, and International Relations, Austin, concerning whether a mortgage which includes discount points and closing costs may create an effective lien against property which is termed as a homestead.

TRD-8610097

★ ★ ★

RQ-914. Request from Mark H. Dettman, Midland County attorney, Midland, concerning the liability of the state for postage, telegraph, and telephone expenses of the district attorney and district judges of Midland County.

TRD-8610098

★ ★ ★

RQ-915. Request from James F. Dunn, Jr., chairman, Texas State Board of Public Accountancy, Austin, concerning the validity of proposed rule of the Texas State Board of Public Accountancy regarding qualifications of applicants for examination.

TRD-8610099

★ ★ ★

Opinions

JM-566 (RQ-830). Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether interest earned on

the bingo tax, the bank franchise tax, and the mixed beverage tax collected by the state should be remitted to the local jurisdiction for which the taxes were collected.

Summary of Opinion. Funds created by the collection of the bingo tax, the bank franchise tax, and the mixed beverage tax are statutory funds. Taxing units on whose behalf these taxes are collected are not entitled to be credited with interest earned by the deposit of these funds; Texas Civil Statutes, Article 4393-1, §3.042(a), requires that such interest be credited to the General Revenue Fund.

TRD-8610100

★ ★ ★

JM-567 (RQ-769). Request from Edward Woolery-Price, Colorado County attorney, Columbus, concerning whether exemption from certain commodities in Texas Civil Statutes, Article 6701d-11, §5(b), applies to Texas Civil Statutes, Article 6701d-11, §5(a).

Summary of Opinion. The exception in Texas Civil Statutes, Article 6701d-11, §5(b), for an agricultural or forestry commodity prior to the processing of the commodity does not apply to the offense of operating an overloaded vehicle under Texas Civil Statutes, Article 6701d-11, §5(a).

TRD-8610101

★ ★ ★

JM-568 (RQ-827). Request from David H. Cain, chairman, Committee on Transportation, Texas House of Representatives, Austin, concerning construction of the Texas Constitution, Article III, §52(c), relating to county road bonds.

Summary of Opinion. The existence of outstanding road bonds of a county issued under the Texas Constitution, Article III, §52(c), will limit or affect the amount of bonds that a county road district may issue under subsection (b) thereof, and the existence of bonds issued by a road district pursuant to subsection (b) will limit or affect the amount of road bonds a county may issue pursuant to subsection (c).

TRD-8610102

★ ★ ★

JM-569 (RQ-776). Request from Walter Umphrey, chairman, Texas Aeronautics Commission, Austin, concerning whether a county or municipality may lease airport property exclusively to one person.

Summary of Opinion. The United States Code, Title 49, §1349(a), as amended, is violated only when it is applied so as to limit a county or municipality from granting a lease agreement which has the effect of granting an exclusive right of a particular airport service to a lessee and rendering it noncompetitive with other potential lessees.

The attorney general has enforcement authority under Texas Civil Statutes, Article 46c-8, to require compliance and seek penalties for obligations included in grant agreements between the Texas Aeronautics Commission and a county or city.

The Business and Commerce Code, §15.21(a)(1), grants immunity to both cities and counties under the Texas Free Enterprise and Antitrust Act of 1983.

An exclusive contract which violates either federal or state law is unenforceable.

TRD-8610103

★ ★ ★

JM-570 (RQ-800). Request from O. H. "Ike" Harris, chairman, Economic Development Committee, Texas State Senate, Austin, concerning investment of municipal funds in money market mutual funds.

Summary of Opinion. The existing statutes of this state do not authorize the city of Arlington to invest its funds in a money market mutual fund dealing solely in obligations of the United States.

TRD-8610104

★ ★ ★

Open Records Decisions

ORD-440 (RQ-897). Request from Glenn Williams, police legal advisory, City of Austin Police Department, Austin, concerning whether records of an investigation into allegations of sexual abuse of children at the Texas School for the Deaf are exempted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. Records of an investigation into allegations of sexual abuse of children at the Texas School for the Deaf are excepted from public disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1).

TRD-8610105

★ ★ ★

ORD-441 (RQ-882). Request from James R. Raup, McGinnis, Lochridge, and Kilgore, Austin, concerning whether names of school personnel who have not passed TECAT examination are available under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. The Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(2), does not authorize the Austin Independent School District to withhold the names of instructional personnel who have not applied to their professional certificates stickers indicating that they have passed the Texas Examination of Current Administrators and Teachers (TECAT).

TRD-8610106

★ ★ ★

ORD-442 (RQ-898). Request from Robert Bernstein, M.D., Commissioner of Health, Texas Department of Health, Austin, concerning whether information collected by the

Texas Department of Health regarding a shigellosis outbreak is available to the public under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. Except for the portions of the file required by Texas Civil Statutes, Article 4419b-1, §§3.01-3.05, the Texas Department of Health may not, pursuant to Texas Civil Statutes, Article 4419b-1, §3.06, withhold an investigative file concerning the outbreak of shigellosis.

TRD-8610107

★ ★ ★

Emergency

Rules

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

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

TITLE 19. EDUCATION

Part II. Texas Education

Agency

Chapter 133. Pupil-School

Relations

Subchapter B. Discipline

Management

★ 19 TAC §§133.22, 133.26-133.28

The Texas Education Agency adopts on an emergency basis amendments to §§133.22 and 133.26-133.28, concerning discipline management. The amendments are adopted on an emergency basis to bring the sections into immediate agreement with the provisions of the Texas Education Code, §§21.301, 21.3011, and 21.702, which were changed by House Bill 13, 69th Legislature, 1986, Second Called Session.

The amendments reinstate suspension of a student for a period not to exceed six school days per semester for serious or persistent misbehavior as defined in a school district's code of conduct; modify the notice and hearing procedures for removal and/or suspension; delete a list of offenses for which expulsion is indicated, thus allowing a broader list in the statute to take effect; provide for teacher removal of a disruptive student and recommendation for expulsion; transfer the appeals procedures for expulsion from the commissioner of education to the state district courts; and change the requirements for parent-teacher conferences and for parent training workshops in the discipline management plan

The amendments are adopted on an emergency basis under the Texas Education Code, §21.701, which directs the Central Education Agency to review and approve or reject discipline management programs developed by school districts and requires the agency to monitor, through the accreditation process, the development, implementation, and enforcement of discipline management programs.

§133.22. *Discipline Management Programs.*

(a) (No change.)

(b) Content of approved programs.

(1) The board of trustees shall provide in the contents of the plan for the following:

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

(C) The development of a code of student conduct that, at a minimum, includes rules, procedures, and expectations related to conduct and specifies the consequences of violating the code [and for which discipline, removal to an alternative educational setting, or expulsion may be imposed]. The school district shall explain what it will consider to be serious and persistent misbehavior in its discipline management program and student code of conduct. The code of student conduct shall initially be published and distributed to all administrators, teachers, parents, and students. Thereafter, the code of student conduct shall be provided for each newly employed administrator and newly enrolled student, parent, or guardian and to others upon request. The discipline management plan of each district shall provide for procedures to communicate the provisions of the code of student conduct to parents and all interested parties. Changes during the year in the code of student conduct shall be published and distributed to students in a timely manner.

(D) (No change.)

(E) At least two parent-teacher conferences shall be held during the school year for the parents of students who have committed one or more infractions, and/or who have been removed to an alternative educational program at least once during the previous or current semesters, except that, for minor infractions, the district may use its discretion in determining whether a parent-teacher conference is required. This section does not require teachers to conduct two conferences with every parent (although the school district may require any teacher to do so), but the school district is required to conduct the two conferences. The district must first attempt to conduct these conferences face to face, but, where impractical, they may be conducted by telephone. However, if these methods fail, then the district may confer with parents by letter.]

(F) Parent training workshops for home reinforcement of study skills and specific curriculum objectives shall be included in the district's plan.]

(E) [(C)] The district shall provide annually for signed statements by each student's parent that the parent understands and consents to the responsibilities outlined in the district's student code of conduct.

(2)-(3) (No change.)

§133.26. *Suspension of Students; Removal to Alternative Education Programs [Removal of Incurable Students; Alternative Education Program].*

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

(1) Class disruption—Any behavior [, including tardiness,] which violates the rules of a particular classroom and interferes with the teacher's opportunity to present material or the other students' opportunity to concentrate on the material or their assignments.

(2) Community-based alternative school—A program for students who have been removed from the students' assigned campus [for incorrigible conduct] and placed in an alternative [a supervised] educational program [setting] operated by a school district in cooperation with other school districts, juvenile agencies, or other governmental entities.

(3) Discipline management technique—Any action which is intended to promote proper behavior and/or discourage misconduct other than suspension or expulsion [or removal to an alternative education program,] including, but not limited to, student-teacher conferences, suspension of extracurricular activities, detention, [in-school suspension for three days or less,] etc.

(4) Expulsion/[Suspension]—*Suspension of a student from school for more than six school days within a semester.* [The total deprivation of educational services for disciplinary reasons except as modified for handicapped students outlined in §133.28 of this title (relating to Discipline of Handicapped Students).]

(5) Home-based instruction—An unsupervised alternative education program in which students are provided [educational setting whereby a student removed for incorrigible conduct is given] assignments to be completed at home. Except for students who are provided home-based instruction pursuant to the Texas Education Code, §21.3011 (b), students may not be assigned to home-based instruction or be suspended for more than a combined total of six school days in a semester. [Instructional services shall be provided and may include access to school facilities.]

(6)-(7) (No change.)

[(8) Proceeding—Any hearing required by law which may result in a student's expulsion or removal to an alternative education program.

[(9) Reassignment of classes—The removal of a student for incorrigible conduct from his or her assigned classroom to another class on the same campus. To the extent possible, the student should continue to receive instruction in the courses he or she was enrolled in when the removal became effective.] [(8) (10)] School-community guidance center—A program that meets the requirements for school-community guidance centers as specified under the Texas Education Code, §§21.601-21.606.

[(9) (11)] School property—Any property owned by the school district or over which the school district or its personnel exert lawful authority, including property visited by students in connection with a school-sponsored activity, such as a field trip or extracurricular activity.

[(10) Suspension—A deprivation of educational services for disciplinary reasons not to exceed six school days in a semester. A district may adopt a policy to provide students with assignments during the period of suspension. Such a policy shall not interfere with a teacher's ability to instruct the remaining students in that class.

[(12) Serious offenses on school property—Serious offenses include, but are not limited to:

[(A) assaulting a teacher or other individual;

[(B) selling, giving, or delivering to another person or possessing or using:

[(i) marijuana or a controlled substance as defined by the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, or by 21 United States Code §801, *et seq.*;

[(ii) a dangerous drug, as defined by the Texas dangerous drug law, Texas Civil Statutes, Article 4476-14; or

[(iii) a firearm as defined by the Penal Code, §46.01(3); an illegal knife as defined by the Penal Code, §46.01(6); a club as defined by the Penal Code, §46.01(1); or a weapon listed as a prohibited weapon under the Penal Code, §46.06; or

[(iv) an alcoholic beverage, as defined by the Alcoholic Beverage Code, §1.04, or commits a serious act or offense while under the influence of alcohol;

[(C) being under the influence of any of the substances listed in subsections (a)(12)(B)(i), (ii), and (iv) of this section. A student need not be legally intoxicated to be considered under the influence, but the student's faculties must be impaired to a noticeable extent; and

[(D) committing arson as defined by the Penal Code, §28.02.]

[(11) (13)] Transfer to a different school campus—The removal of a student [for incorrigible conduct] from his or her assigned campus to another campus within the same school district.

[(14) Unsupervised educational setting—For the purpose of this section, an unsupervised educational setting shall be home-based instruction.]

(b) Grade adjustment. A district that imposes a grade adjustment for work made up by a student who has been suspended shall adopt a policy that ensures consistent application. [Removal from class for reasons other than removal to an alternative education program.]

(c) Emergency removal.

(1) The board of trustees or its designee may remove a student from his or her regular classes or from school district premises for nondisciplinary health, safety, or welfare reasons whenever the board or its designee determines that an emergency [a compelling reason] exists for doing so. Reasons which may be considered an emergency [compelling] include, but are not limited to, the fact that the student is under the influence of alcohol or drugs, highly agitated, or suffering from any other condition which temporarily threatens his or her welfare, other individuals' welfare, or the efficient operation of the school. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel. Such removal must be for as short a time as is reasonable under the circumstances.

(2) The board of trustees or its designee may remove a student from his or her regular classes or school premises pending any hearing required by law. Such removal must be for as short a time as is reasonable under the circumstances.

(3) Prior to removing a student from school premises under this subsection, the student shall be informed of the reason for the removal and given an opportunity to state any objections to such action.]

(2) [(4)] The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(5) A teacher may remove any student from class for a serious class disruption or for repeated class disruptions. Each school district shall develop procedures in its discipline management program for the removal of students from class for reasons other than to place a student in an alternative education program. These procedures shall include methods to allow teacher recommendations and shall provide for conferences scheduled by the principal at the teacher's request among the teacher, the student, the student's parent or guardian, and the principal or his designee. If a student is returned to the same class without the teacher's permission after

two or more removals by the teacher, the district shall conduct an expedited hearing to determine whether the student should be placed in an alternative education program in accordance with subsection (c) of this section. The student may be placed in an alternative program pending the hearing.

[(6) A student who is removed from his or her regular classes pursuant to this section must be allowed to perform his or her regular assignments as if the removal had not occurred and shall not receive an unexcused absence.

[(7) No removal pursuant to this section shall be considered a removal to an alternative education program.

[(c) Removal to an alternative education program.

[(1) Removal permitted. The board of trustees or its designee may conclude that a student is incorrigible if the student, on school property, has committed one or more serious offenses listed in subsection (a)(12) (A)-(D) of this section.

[(2) Procedure at the hearing.

[(A) No hearing is required prior to the use of any discipline management technique which does not constitute expulsion or removal to an alternative education program.

[(B) Prior to the imposition of any removal to an alternative education program, a hearing must be conducted, at which the following minimum requirements must be met:

[(i) the student shall be advised of the conduct with which he or she is charged;

[(ii) the student shall be given an opportunity to explain his or her version of the incident; and

[(iii) the pupil's parents, guardian, or a representative designated by rules adopted by the board of trustees is entitled to notice of and to participate in a disciplinary proceeding under this section.

[(C) Any hearing may be recorded using any reliable means by any party to the proceeding.

[(3) Appeals. Where an initial decision to remove a student to an alternative education program is made by the board's designee, the decision may be appealed to the board of trustees.

[(4) Assessment.

[(A) Placement in home-based instruction should be used only when there is no reasonable alternative less severe and shall not exceed 10 consecutive school days in any one semester.

[(B) The removal of a student to an alternative education program may not exceed the end of the semester in which the conduct occurred, unless the conduct occurred during the final six weeks of a semester, in which case the removal may not exceed the end of the following semester. If the conduct occurred during the final six weeks of the school year, the removal may not exceed the end of the following fall semester.

[(C) As an exception to subsec-

tion (c)(4)(A) of this section, placement in home-based instruction shall be considered appropriate for the maximum term of removal set forth in subsection (c)(4)(B) of this section for the students who engage in the following incorrigible conduct on school property:

(i) assaults a teacher or other individual;

(ii) sells, gives, or delivers to another person or possesses or uses a prohibited weapon as defined in subsection (a)(12) of this section;

(iii) sells, gives, or delivers to another person or possesses with the intent to sell or distribute alcohol, marijuana, controlled substance, or a dangerous drug as defined in subsection (a)(12) of this section;

(iv) repeatedly possesses for personal use or uses alcohol, marijuana, controlled substance, or a dangerous drug as defined in subsection (a)(12) of this section; or

(v) commits arson as defined in subsection (a)(12) of this section.

(D) A student who commits a disciplinary infraction under this section shall be expected to complete any course work assigned and may not be assessed an academic penalty based solely on the disciplinary infraction.

(5) Removal during appeal. During the pendency of any appeal to the state commissioner of education, a removal to an alternative education program by the board of trustees may be effected.]

§133.27. Expulsion.

(a) Definition. The definitions set forth in §133.26 of this title (relating to Suspension of Students; Removal of Alternative Education Programs [Removal of Incurrigible Pupils; Alternative Education Program]) are applicable to this section.

(b) Expulsion procedure [proceeding].

(1) (No change.)

(2) Before the expulsion, the board or its designee must provide the student a hearing at which the student is afforded requisite due process which shall include the following:

(A) (No change.)

(B) right to a full and fair hearing before the board or its designee [a competent forum];

(C)-(E) (No change.)

(c) Student's status pending appeal. A student may be denied the privileges of his or her home campus pending appeal of an expulsion, provided that he or she is not charged with unexcused absences during such time and is allowed to remain current on all coursework. However, if the student's appeal is denied, he or she need not be given credit for any coursework performed during the pendency of the appeal.

(d) Duration of expulsion. A student who is expelled may be expelled for the remainder of the school year. The expulsion may not extend beyond the end of the school year, unless the conduct for which the ex-

pulsion was assessed occurred during the final six weeks of the school year, in which case the expulsion may not extend beyond the end of the following fall semester.]

§133.28. Discipline of Handicapped Students. Disciplinary actions regarding handicapped students shall be in accordance with §133.26 of this title (relating to Suspension of Students; Removal to Alternative Education Programs [Removal of Incurrigible Pupils; Alternative Education Program]) and §133.27 of this title (relating to Expulsion) except as noted in this section.

(1) (No change.)

(2) Suspension or removal to an alternative education program.

(A) Suspension for a period not to exceed six school days or removal to an alternative education program for a period not to exceed 10 consecutive school days may be effected if a qualified group of professionals first determines that the alleged behavior in question was not related to the handicapping condition or an inappropriate placement. The qualified group of professionals must consist of at least the following members:

(i)-(iii) (No change.)

(B) (No change.)

(C) The term of a handicapped student's removal to an alternative education program shall be assessed in accordance with the requirements of the Texas Education Code, §21.301(d) [§133.26(c)(4)] of this title (relating to Removal of Incurrigible Pupils; Alternative Education Program)]. However, removal for more than 10 consecutive school days may be effected only through ARD committee action.

(3) Emergency removal [Removal for reasons other than to an alternative education program].

(A) Emergency removal of a handicapped student from a class or school for nondisciplinary, health, safety, or welfare reasons [other than to an alternative education program] may only be done for compelling reasons as noted in §133.26(c) [(b)(1)] of this title (relating to Suspension of Students; Removal to Alternative Education Programs [Removal of Incurrigible Pupils; Alternative Education Program]) and shall not exceed five consecutive school days. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel.

(B) (No change.)

(C) Prior to removing a student from school premises under this subsection, the student shall be informed of the reason for the removal and given an opportunity to state any objections to such action.]

(C)(D) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot

be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(D)(4) Removals totaling 15 school days.] When the total number of days a handicapped student is removed to an alternative education program, suspended, or removed for emergency reasons [or removed from school premises for reasons other than removal to an alternative education program, or both] totals 16 [15] school days in any one school year, an ARD committee review of the student's IEP shall be conducted unless such removal is warranted in the student's discipline management plan specified in the student's IEP.

(4)(5) Sanctions specified in students' IEP. The requirements of §133.26 of this title (relating to Suspension of Students; Removal to Alternative Education Programs [Removal of Incurrigible Pupils; Alternative Education Program]), §133.27 of this title (relating to Expulsion), and paragraph (2) and paragraph (3) of this subsection shall not apply to disciplinary sanctions implemented in accordance with specifications in the student's IEP.

(5)(6) Expulsion of handicapped students.

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

(6)(7) Parent participation in ARD committee meetings. The provisions of §89.222 (d) of this title (relating to Parent Participation in ARD Committee Meetings) are applicable in circumstances arising under this section.

(7)(8) Referral for assessment. Local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for assessment. However, a regular education student is not entitled to avoid disciplinary action pending any assessment.

(8)(9) Exclusion from home campus. The exclusion of a handicapped student from his or her home campus, pending appeal of an expulsion, may not exceed 10 days without ARD committee action to determine appropriate services in the interim.

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

RD-8610053

W. N. Kirby
Commissioner of Education

Effective date: October 22, 1986

Expiration date: February 19, 1987

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

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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.

(Editor's Note: The following sections had incorrect earliest possible dates of adoption in issue Number 81 of the Texas Register (11 TexReg 4397). The issue was incorrectly dated October 31, 1986. The earliest possible date of adoption should be November 28, 1986.

10 TAC §109.3

16 TAC §11.221

34 TAC §§155.16, 155.21-155.25, 155.27, 155.29, 155.30, 155.32, 155.36, 155.51

37 TAC §17.29

40 TAC §§85.6003, 85.6005, 85.6009, 86.6018, 85.6029

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules Customer Service

★16 TAC §23.46

The Public Utility Commission of Texas proposes an amendment to §23.46, concerning the discontinuance of service by water and sewer utilities. Jurisdiction over water and sewer utilities was transferred to the Texas Water Commission by the 69th Legislature, 1985.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Ryan also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that rules pertaining to the discontinuance of service by water and sewer utilities will not rest with this commission. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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

§23.46. *Discontinuance of Service.*

(a) Disconnection for delinquent bills.

A customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 26 days from the date of issuance of a bill and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least 10 days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to adequately inform the customer. Attached to or on the face of the termination notice for electric bills shall appear a statement notifying the customer that if they are in need of assistance with the payment of their bill, or are ill and unable to pay their bill, they may be eligible for payment assistance or special payment programs, such as deferred payment plans, disconnection moratoriums for the ill, or energy assistance programs, and to contact the local office of the utility for information on the available programs. Attached to or on the face of the termination notice for telephone [, water, and sewer] bills shall appear a statement notifying the customer that if they are in need of assistance with payment of their bill, or are ill and unable to pay their bill, they may be eligible for alternative payment programs, such as deferred payment plans, and to contact the local office of the utility for more information. If mailed, the cut-off day may not fall on a holiday or weekend, but shall fall on the next working day after the 10th day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notices to the customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(b)-(k) (No change.)

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

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

TRD-8610119

Rhonda Colbert Ryan
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption:

November 30, 1986

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

TITLE 19. EDUCATION

Part II. Texas Education

Agency

Chapter 133. Pupil-School Relations

Subchapter B. Discipline Management

★19 TAC §§133.22, 133.26-133.28

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

The Texas Education Agency proposes amendments to §§133.22 and 133.26-133.28, concerning discipline management. The amendments are necessary to make the sections consistent with the provisions of the Texas Education Code, §§21.301, 21.3011, and 21.702, many of which were changed by House Bill 13, 69th Legislature, 1986, Second Called Session.

The amendments reinstitute suspension of a student for a period not to exceed six school days per semester for serious or persistent misbehavior as defined in a school district's code of conduct; modify the notice and hearing procedures for removal and/or suspension; delete a narrower list of offenses of which expulsion is indicated, thus allowing a broader list in the statute to take effect; provide for teacher removal of a disruptive student and recommendation for expulsion; transfer the appeals procedures for expulsion from the commissioner of education to the state district courts; and change the requirements for parent-teacher conferences and for parent training workshops in the discipline management plan.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period the pro-

posed 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. Moak and Dr. Beverly J. Bardsley, director for policy development, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be consistency of the sections governing discipline management with the provisions of the Texas Education Code. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. 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 in rules has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §21.701, which directs the Central Education Agency to review and approve or reject discipline management programs developed by school districts and requires the agency to monitor, through the accreditation process, the development, implementation, and enforcement of discipline management programs.

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 22, 1986.

TRD-8610054

W. N. Kirby
Commissioner of Education

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

TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers Chapter 131. Practice and Procedure

Board Review of Application

★ 22 TAC §§131.111-131.115, 131.117-131.119

The Texas State Board of Registration for Professional Engineers proposes amendments to §§131.111-131.115 and 131.117-131.119, concerning the board's review of applications.

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 procedures for the board's review of applications. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to 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 regulation necessary for the performance of its duties.

§131.111. Initial Review. An application will be considered complete when all information required by the Act, the board rules, and the instructions has been received and accepted by the executive director or his designated representative. When an application is complete, it will be reviewed by the executive director or his designated representative, and a summary of the application will be prepared. This summary will include a recommendation that the application be approved, not approved, rejected, ~~withdrawn~~, or that no action be taken in accordance with §131.81(12) [§131.81(10)] of this title (relating to Experience Evaluation). The application will then be circulated to individual engineer members of the board [each engineer board member] for [his or her individual] review and vote. The board reserves the right to take action under any section of the Act for which the applicant meets all the requirements at the time the application is submitted regardless of the section designated by the applicant.

§131.112. Approved Applications.

(a) If, on the basis of the initial review, the executive director or his designated representative recommends that an applicant be granted registration and the first engineer board member to review [who reviews] the application concurs and votes accordingly, the applicant will be granted registration and a record of the action will be made a part of the minutes of the next regular board meeting.

(b) If, on the basis of the initial review, the executive director or his designated representative recommends that an applicant be granted registration and the first engineer member of the board of review [board member who reviews] the application does not concur and votes accordingly, or if the executive director or his designated representative does not recommend that the applicant be granted registration, the application will be circulated to individual engineer members [each engineer board member] for [his or her

individual] review until four engineer members [of the board] have voted to approve the application [that the applicant be approved for registration]. After four engineer members vote to approve the application, the applicant will [then] be granted registration and a record of the action will be made a part of the minutes of the next regular board meeting.

(c) If the applicant is required to apply under §12(b) of the Act and pass one or both of the required examinations, the application will be reviewed in the same manner as subsections (A) and (B) of this section, except, in lieu of the board action to approve, the board will grant permission to take the required examination(s). When the applicant has passed the required examination(s), registration may be granted without further board review and a record of this action made a part of the minutes of the next regular board meeting.

§131.113. Applications Not Approved. If, on the basis of information available to the board at the time the application is circulated to individual engineer board members [of consideration of a given application], four engineer members of the board determine [the board determines] that an applicant does not meet the requirements of §12(a), [or] 12(b), [or] [section] 21 of the Act, [and] vote to not approve, the application will not be approved and the applicant will be advised in writing of the board's action [accordance with law]. Such disapproval will not prejudice a subsequent application from the same person. A record of this action will be made a part of the minutes of the next regular board meeting.

§131.114. Rejected Applications. An application for registration is rejected when by quorum vote of the board as a whole, the board decides that the applicant should not be registered for reasons other than failing to meet the requirements of §§12(a) or (b), or 21 of the Act. The vote to reject an application can only follow a previous proposal to reject followed by the procedure set out in §131.118 of this title (relating to Personal Appearances for Rejected Applicants). A record of this action will be made part of the minutes of the appropriate regular board meeting. [If the rejection is based on prior convictions of certain crimes, the board will consider the criteria enumerated in Texas Civil Statutes, Article 6252-13c, and finalize such action as provided in Texas Civil Statutes, Article 6252, 13d.]

§131.115. Reconsideration of Applications Not Approved. At any time within 60 days [one year] after date of notice that an application has not been approved for registration by the board, the applicant may initiate a request that his application be reconsidered. Such a request for reconsideration must be made in writing and shall be accompanied by additional information bearing on the deficiency of the original application. If a request for reconsideration is not initiated within the 60-day period, the applicant will be required to file a new application with the

appropriate fee under the law and rules in effect at the time the new application is filed. [This reconsideration will be under the section of the Act under which the application was initially submitted and will be made without additional fee payment. Additional or explanatory information bearing on the deficiency of the record as originally filed, and that period of time from the date originally submitted to the date of request for reconsideration, must be furnished to the board. If after one year from date of notice of disapproval of an application for registration a request for reconsideration has not been initiated, a new application with appropriate fees is required to be made under a section of the law available on the date the new application is filed.]

§131.117. Scheduling Personal Appearances.

An applicant accepting an invitation for a personal appearance, or an applicant whose request for a personal appearance is approved, will be scheduled by the executive director to appear [for such appearance] at the next appropriate board meeting. An applicant may be excused from the first scheduled personal appearance for good reason. If an applicant fails to appear when scheduled for the second time, the invitation or approval for the personal appearance will be withdrawn and the applicant informed of this action. Approval for a subsequent personal appearance will require additional [requires] board action. The written request for such approval will include [acceptable] reasons for failure to meet any previously scheduled appearances. The interview of an applicant to obtain additional or clarifying information in support of his application is not construed as a hearing. The acceptance or refusal of the board's invitation or the board's disapproval of an applicant's request or personal appearance will not of itself prejudice the board's consideration of the application for registration. A personal appearance is the last administrative appeal available to the applicant.

§131.118. Personal Appearances for Rejected Applicants. If the board proposes to reject an application, the applicant will be notified by personal service, or registered or certified mail. The applicant may, within 30 days after notification, request a personal appearance to present oral arguments before the board and show compliance with all requirements of law for registration and licensure. Although such appearance is a matter of due process, it shall not be construed as a contested case hearing. Such requests for personal appearances shall be made in writing. [and shall contain mitigative information to justify the board's reconsideration of the proposed rejection. The applicant will be scheduled to appear at the next regular board meeting. If the applicant fails to appear at the date and time scheduled, the board will make its final decision on the application based on information available in the file at that time.]

§131.119. Application Files. Applications approved for registration, and incidental papers deemed pertinent to the application will be microfilmed. One microfilm copy will be kept in the board office file and one microfilm copy will be kept in the permanent State Archives file. All other applications and incidental papers deemed pertinent to the application [for registration] will be retained at the discretion of the board. [for a period of two years and then destroyed or further retained at the discretion of the board staff, or as otherwise required by law.]

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

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

TRD-8610125 Kenneth J. Bartosh
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 §131.116

(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 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Registration for Professional Engineers proposes the repeal of §131.116, concerning board review of applications. In concurrent action, the board proposes new §131.116, concerning board review of applications. 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 is in effect the public benefit anticipated as a result of enforcing the repeal will be a clarification of the procedures used by the board in the review of applications. 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 78760.

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.

§131.116. Personal Appearance by Applicant.

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 24, 1986.

TRD-8610126 Kenneth J. Bartosh
Executive Director
Texas State Board of
Registration for
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Proposed date of adoption: January 29, 1987
For further information, please call
(512) 440-7723.

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★ 22 TAC §131.116, §131.120

The Texas State Board of Registration for Professional Engineers proposes new §131.116 and §131.120, concerning board review of applications.

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 section will be a clarification of the procedures used by the board in the review of applications. New §131.120 has been added to clarify the procedures for handling of the applications of registrants with prior criminal convictions. 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 provides the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.116. Personal Appearance by Applicant. A personal appearance before the board may be in order under the following conditions:

(1) prior to final action on an application for registration, the board may invite an applicant for a personal interview to provide additional information or clarify in-

formation submitted in support of his application;

(2) when the request for reconsideration made under §131.115 of this title (relating to Reconsideration of Applications Not Approved) has been reviewed by the board and the application is again not approved, the applicant may then initiate a request for a personal appearance before the board. This request must be made within 60 days after the date of the notice of disapproval of the reconsideration; or

(3) in accordance with §131.118 of this title (relating to Personal Appearances for Rejected Applicants).

§131.120. Criminal Convictions.

(a) The following will apply in the processing of an application for registration as a professional engineer.

(1) The applicant will be required to state, as part of a sworn affidavit, whether he or she has ever been convicted of a felony or misdemeanor.

(2) Applicants with prior convictions will be required to provide a summary of the conviction in sufficient detail to allow the board to determine if it is applicable to the application for registration.

(3) If the board determines the conviction is applicable to the application, the board staff will obtain sufficient details of the conviction to allow the board to determine the effect of the conviction on the applicant's eligibility for registration.

(b) In determining whether a criminal conviction is applicable to an applicant's application, the board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice engineering;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that which the applicant had been previously involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a professional engineer.

(c) In addition to the factors that may be considered under subsection (b) of this section, the board shall consider the following:

(1) extent and nature of the applicant's past criminal activity;

(2) the age of the applicant at the time the crime was committed, and the amount of time that has elapsed since the applicant's last criminal activity;

(3) the conduct and work activity of the applicant prior to and following the criminal activity;

(4) evidence of the applicant's rehabilitation; and

(5) other evidence of the applicant's fitness to practice as a professional engineer.

(d) Crimes relating to the practice of engineering include, but are not limited to, the following:

(1) criminal negligence in the practice of engineering;

(2) soliciting, offering, or receiving any form of bribe in the practice of engineering;

(3) the unauthorized use of property, funds, or proprietary information belonging to another in the practice of engineering;

(4) acts relating to the acquisition, use, or dissemination of confidential information related to engineering; and

(5) any violation as an individual or as a consenting party of any provision of the Texas Engineering Practice Act (Texas Civil Statutes, Article 3271a).

(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be rejected and the applicant will be provided the following information in writing:

(1) the reason for rejecting the application;

(2) the review procedures provided by law that are available to the applicant; and

(3) any dates or time limits governing the applicant's rights to appeal the decision to reject the 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 24, 1986.

TRD-8610127 Kenneth J. Bartosh
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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Registration

★22 TAC §131.137

(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 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Registration for Professional Engineers proposes the repeal of §131.137, concerning the registration process. In concurrent action, the board proposes new §131.137, concerning the present procedures for completing the registration process. 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 is in effect the public benefit anticipated as a result of enforcing the repeal will be a clarification of the procedures to complete the process of registration. 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 78760.

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

§131.137. Disciplinary Actions.

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 24, 1986.

TRD-8610128 Kenneth J. Bartosh
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 §131.137, §131.140

The Texas State Board of Registration for Professional Engineers proposes new §131.137 and §131.140, concerning 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 understanding of the rules governing disciplinary actions as set out in §131.137. Section 131.40 clarifies the registrants responsibility to the board. 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.

§131.137. Disciplinary Actions.

(a) Under the authority and provisions of the Act, §8 and §22, the board must take disciplinary action against a registrant who is found guilty of a violation of law, rules, or conduct. In such case the board may:

- (1) revoke a certificate of registration;
- (2) suspend a registration;
- (3) probate a suspended registration;
- (4) refuse to renew a registration; or
- (5) issue a reprimand.

(b) An individual whose license has expired for nonpayment of renewal fees continues to be a registrant of the board and is subject to all provisions of the Act and board rules governing registrants until such time as registration is revoked by action of the board or the license is not renewable as set out in the Act, §16(e).

(c) In determining disciplinary actions to be taken by the board, the requirements of Texas Civil Statutes, Articles 6252-13c and 6252-13d, as set out in subsection (g) of this section will be considered in addition to any provisions of the Act or board rules.

(d) In determining conduct in the practice of engineering that warrants disciplinary action, the board will consider, among other things, §§131.151-131.157 of this title (relating to Professional Conduct and Ethics), and conviction of certain crimes as provided in Texas Civil Statutes, Articles 6252-13c and 6252-13d.

(e) A registrant alleged to have violated the law, rules, or standards of conduct will be notified by personal service or by certified or registered mail of the facts or conduct alleged to be in violation and shall be afforded an opportunity to present arguments and evidence in his own behalf before a determination of guilt is made by the board.

(f) If, after reviewing the arguments and evidence, the board determines the registrant is guilty of the alleged violation(s), it will propose an action available under the Act, §22, and proceed as follows.

(1) The registrant will be scheduled to make a personal appearance before the board at the earliest possible regular or specially called meeting to present further arguments and pertinent evidence on his behalf. Failure to appear as scheduled without prior written approval of the executive director for a delay will be considered as a default.

(2) If the registrant's license has expired, the board may propose not to renew the license. If the registrant does not concur with this action and submits the required

fee to effect an automatic renewal of his license, the board will renew the license and instigate proceedings to suspend the license or revoke the certificate of registration.

(3) Any board action under subsection (f) of this section which is not informally disposed by stipulation, agreed settlement, consent order, or default may be contested as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and the board rules for hearings and contested cases.

(g) Criminal convictions shall be handled as follows.

(1) Under the authority of Texas Civil Statutes, Article 6252-13c, §4e, and Article 3271a, §8, the board shall revoke the certificate of registration of any registrant convicted and incarcerated for a felony committed subsequent to being registered as a professional engineer. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision subsequent to being registered as a professional engineer regardless of the date of the original conviction.

(2) The board may take any of the actions set out in subsection (a) of this section when a registrant is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to his duties and responsibilities as a professional engineer as set out in §131.120(d) of this title (relating to Criminal Convictions).

§131.140. Registrant's Responsibility to the Board. A registrant whose license is current or renewable under the Act, §16, is responsible to the board and subject to all rules governing the acts of registrants. The registrant shall answer promptly all inquiries concerning matters under the jurisdiction of the board. Failure to do so will be considered misconduct subject to any of the penalties provided under the Act, §22.

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 24, 1986.

TRD-8610129

Kenneth J. Bartosh
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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Professional Conduct and Ethics

★ 22 TAC §131.151

(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 Registra-

tion 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 §131.151, concerning the code of responsibility for professional engineers. In concurrent action, the board proposes new §§131.151-131.157, concerning professional conduct and ethics. 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 is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the intent of the section by removing the canons and ethical considerations that are not enforceable and codifying the disciplinary 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 78760.

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.

§131.151. Code of Responsibility for Professional Engineers.

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-8610130

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

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(512) 440-7723.

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★ 22 TAC §§131.151-131.157

The Texas State Board of Registration for Professional Engineers proposes new §§131.151-131.157, concerning professional conduct and ethics.

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 clarification of the intent of the board by repealing the present §131.151 (Code of Responsibility for Professional Engineers) and replacing it with the proposed sections. This action will remove the canons and ethical considerations that are unenforceable and confusing and will codify the disciplinary rules with some changes in wording and arrangement. 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.

§131.151. Professional Responsibility. The engineer shall not prepare, complete, sign, or seal any designs, plans, specifications, or orders, or in any manner participate in any engineering practice, judgment, or decisions which, when measured by generally accepted engineering standards or procedures, may result in any structure, machine, process, product, or device endangering the lives, safety, health, or welfare of the general public.

§131.152. Independent Professional Judgment.

(a) Except with the consent of his client or employer after full disclosure, the engineer shall not accept employment when there is a reasonable probability that the exercise of his professional judgment, decisions, or practices on behalf of his client or employer may be affected by his own financial, business, property, or personal interests.

(b) The engineer shall avoid all conflicts of interest with his client or employer, but when a conflict of interest is unavoidable, the engineer shall promptly inform his employer or client of any business association, interest, or circumstances, which might tend to influence his professional judgments, decisions, or practices, or the quality of his services.

(c) The engineer shall not accept compensation, material favors, or benefits of any substantial nature, financial or otherwise, from more than one party for services on the same project or assignment, or for services pertaining to the same project or assignment, unless the circumstances are fully disclosed to all interested parties. The phrase "benefits of any substantial nature" is defined to mean

any act, article, money, or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment, without regard to such benefit.

(d) The engineer shall not solicit or accept, directly or indirectly, any financial or other valuable considerations, material favors, or benefits of any substantial nature from any supplier of materials or equipment for any project on which he is performing or has contracted to perform engineering services.

(e) The engineer shall not solicit or accept any gratuity, material favor, or benefits of any substantial nature, directly or indirectly, from contractors, their agents, servants, or employees, or from any other party dealing with his client or employer in connection with any project on which he is performing or has contracted to perform engineering services.

(f) The engineer shall not solicit or accept, directly or indirectly, any engineering contract or employment from a governmental body, agency, or department in which a principal or officer of his organization serves as a member or employee.

(g) When in public service as a member or employee of a governmental body, agency, or department, the engineer shall not participate, directly or indirectly, in consideration or actions with respect to services offered or provided by him, his associates, or his organization to such governmental body, agency, or department.

(h) When in public service as a member or employee of any governmental body, agency, or department, the engineer shall not, directly or indirectly, use or make use of any property, facility, or service of such governmental body, agency, or department for the benefit of any private business or activity in which such engineer also may be engaged, unless prior, proper authority is obtained in writing.

(i) When in private practice or employment the engineer shall not, directly or indirectly, make use of any property, facility, or service of his client or employer for the benefit of said engineer, unless prior, proper authority is obtained in writing.

(j) The engineer shall submit to a client only that work (plans, specifications, reports, etc.) that is his personal efforts, except that work of another engineer may be used in part or in whole with the written consent of the other engineer and with full disclosure to the client.

§131.153. Action Shall Be Competent.

(a) The engineer shall not accept any engineering employment or undertake any engineering assignment, for which he is not qualified by education or experience to perform or carry out adequately and competently; providing and excepting, however, that an engineer may accept an assignment re-

quiring education and experience outside his field of competence to the extent only, that his personal engineering services are restricted solely to those phases of the service or project in which he is qualified and competent, and that all other phases of such services or project shall be performed by legally qualified consultants, associates, or employees. When sealing plans or documents on which two or more engineers have worked, each engineer shall place his seal on the plan or document with a notation describing the work done under his responsible charge.

(b) The engineer shall not affix his signature or seal to any engineering plan or document dealing with subject matter on which he is not qualified by education or experience to form a dependable judgment.

(c) The engineer shall not express an engineering opinion before a court, administrative agency, or other government forum on any subject:

(1) in which he is not qualified by education or experience; or

(2) which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for his conclusion.

§131.154. Confidences and Private Information.

(a) The engineer may reveal confidences and private information under the following circumstances:

(1) when he has obtained the consent of the client or clients, employer or employers, affected, but only after full disclosure to them; or

(2) when required by law or court order; or

(3) when necessary to establish legal proof of his relationship with a client or employer in a court action to recover salaries, fees, or other compensation due him as a result of his employment or association with such client or employer; or

(4) when necessary to defend himself or his employees or associates in a legal action alleging wrongful conduct.

(b) Except as permitted by subsection (a) of this section, the engineer shall not knowingly:

(1) reveal a confidence or private information regarding or in the possession of his client or employer; or

(2) use a confidence or private information regarding or in the possession of his client or employer to the disadvantage of such client or employer; or

(3) use a confidence or private information regarding or in the possession of his client or employer for the advantage of a third person, unless the client or employer consents after full disclosure.

(c) The engineer shall exercise reasonable care to prevent his employees' and associates' unauthorized disclosure or use of private information or confidences regarding or in the possession of a client or employer.

§131.155. Professional Practice and Reputation.

(a) The engineer shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment; providing and excepting, however, that an engineer may pay a duly licensed employment agency its fee or commission for securing engineering employment in a salaried position.

(b) The engineer shall not solicit professional employment by advertising which is false, misleading, or deceptive.

(c) The engineer shall not make, publish, or cause to be made or published any representation or statement concerning his professional qualifications or those of his partners, associates, firm, or organization which is in any way misleading or tends to mislead the recipient thereof, or the public, concerning his engineering education, experience, specializations, or other engineering qualifications.

(d) It shall be a violation of the Texas Engineering Practice Act for a registrant to submit or request a competitive bid to perform engineering services for any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility of the State of Texas, or for any agency or other entity of the federal government, when the procurement of such professional services is in violation of the state's Professional Services Procurement Act or the Federal Property and Administrative Services Act of 1949, as amended.

(1) For purposes of this section, the board has adopted the Supreme Court of Texas' definition of competitive bidding, which in part is as follows: "Competitive bidding . . . contemplates a bidding on the same undertaking upon each of the same material items covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications" (Texas Highway Commission v. Texas Association of Steel Importers, Inc., 372 S.W.2d 525, Texas 1963).

(2) The engineer shall not be considered in violation of the Act in cases where his engineering services may legally be offered, furnished, or performed as an integral part of research and development programs, construction projects, manufactured products, processes, or devices, which are to be offered, performed, supplied, or obtained on the basis of competitive bids.

§131.156. Responsibility to the Engineering Profession.

(a) The engineer shall not:

(1) circumvent or attempt to circumvent any provision of the Texas Engineering Practice Act or general board rule through the actions of another;

(2) participate, directly or indirectly, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Texas Engineering Practice Act or general board rule;

(3) fail to exercise reasonable care or diligence to prevent his partners, associates, and employees from engaging in conduct which, if done by him, would violate any provision of the Texas Engineering Practice Act or general board rule;

(4) violate any of the professional practice requirements of related state statutes and local codes and ordinances in providing engineering services;

(5) engage in any illegal conduct involving moral turpitude;

(6) engage in any conduct that discredits or tends to discredit the engineering profession;

(7) make, publish, or disseminate any statements, criticisms, or arrangements on engineering matters connected with public policy which are inspired or paid for by an interested party or parties, unless he has prefaced such statement or comment by explicitly identifying himself, disclosing the identities of the party or parties on whose behalf he is speaking and revealing the existence of any pecuniary interest he may have in such engineering matter;

(8) permit or allow himself, his professional identification, seal, firm or business name, or his services to be used or made use of, directly or indirectly, or in any matter whatsoever, so as to make possible to create the opportunity for the unauthorized practice of engineering by any person, firm, or corporation in this state;

(9) perform any acts, allow any omissions, or make any assertions or representations in the practice of engineering which are fraudulent, deceitful, or misleading, or which in any manner whatsoever tend to create a misleading impression;

(10) associate with or permit or allow the use of name, firm name or professional identification, or seal in any business venture, project, or enterprise which he knows or should have known is engaged in professional practices which violate any provision of the Texas Engineering Practice Act or any board rule;

(11) associate with or permit the use of his name, professional identification, seal, firm or business name in connection with any venture or enterprise which he knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature;

(12) maliciously injure or attempt to injure or damage the professional reputation of another by any means whatsoever; provided and except, however, that this shall not relieve an engineer of the obligation to expose unethical or illegal conduct to the proper authorities or preclude a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(13) aid or abet, directly or indirectly, any unlicensed person in connection with the unauthorized practice of engineering, or any firm or corporation in the practice of engineering unless carried on in accordance with the provisions of the Texas Engineering Practice Act, §17 and §18;

(14) directly or indirectly or in any manner whatsoever lend his license, seal, or professional identification to any unlicensed person or to any firm or corporation carrying on the practice of engineering contrary to the provisions of the Texas Engineering Practice Act, §17 and §18; or

(15) on his own authority as an employee of the State of Texas or any of its political subdivisions authorize or create any act or situation contrary to the requirements of the Texas Engineering Practice Act, §19.

(b) The engineer shall be personally and professionally responsible and accountable for the care, custody, control, and use of his engineer's seal, his professional signature, and identification. The engineer whose seal has been lost, misplaced, or stolen shall, upon discovery of its loss, report same immediately to the board, which may invalidate the stolen registration number of said seal, if it deems this necessary, and issue another registration number to said engineer.

§131.157. Prevention of Unauthorized Practice.

(a) The engineer shall not practice or offer to practice engineering in any governmental jurisdiction in which to do so would be in violation of the laws regulating the practice of professional engineering in that jurisdiction.

(b) The revocation, suspension, or denial of a license to practice engineering in another jurisdiction, for reasons or causes which the board finds would constitute a violation of the Texas Engineering Practice Act or any rule, regulation, or code promulgated by the board, shall be sufficient cause for the denial, suspension, or revocation of a license to practice engineering in the State of Texas.

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

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

TRD-8610131

Kenneth J. Bartosh
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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Compliance and Enforcement

★ 22 TAC §§131.163-131.165, 131.167

The Texas State Board of Registration for Professional Engineers proposes amendments to §§131.163-131.165, and .131.167, concerning compliance and enforcement.

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 clarification of the procedures for compliance and enforcement. 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.

§131.163. Engineer Relationship. The board shall not recognize as in compliance with §17 and §18 of the Act any relationship between an engineer and a firm, partnership, association, corporation, or other business entity in which the engineer:

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

(4) is not paid a salary, wage, or remuneration as a bona fide member of the business entity[, is not paid a salary, wage, or remuneration] reasonably commensurate with the engineering services performed and the professional responsibilities and accountabilities assumed as a registrant under the Act.

§131.164. Deliberate Violation. Any engineer who directly or indirectly shall enter into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner whatsoever results in a violation of §131.163 of this title (relating to Engineer Relationship) shall be subject to legal and disciplinary actions available to the board.

§131.165. Effect of Legal Action on Application.

(a) The application of a person [The board shall not consider the application of any applicant for registration] against whom the board has initiated legal action may be held at the board's discretion, without approval, disapproval, or rejection [unless and] until:

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

(b) When such compliance has been secured and evidence furnished, the board shall complete the consideration of the [consider such applicant's] application in the [its] regular order of business as other applications to the board.

§131.167. Business Names.

(a) (No change.)

(b) Each registrant is personally responsible to notify the board of each change in his professional engineering association or employment as it [each change] occur. This notification is [and] independent of the [such current] information required on the annual license renewal application.

(c) By written communication, each registrant will submit the following information to the board immediately after each change in his professional association or employment:

(1) full[,] legal trade or business name of the association or employment;

(2) (No change.)

(3) status of business (corporation, assumed name, partnership [or single proprietorship], or self-employment through use of own name);

(4) (No change.)

(5) telephone number of the business office; and

(6) (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 24, 1986.

TRD-8610132

Kenneth J. Bartosh
Executive Director
State Board of
Registration for
Professional Engineers

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

★ ★ ★

★ 22 TAC §131.166

(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 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Registration for Professional Engineers proposes the repeal of §131.166, concerning compliance and enforcement. In concurrent action, the agency proposes to add new §131.166, concerning compliance and enforcement. The repeal is proposed to restructure the section 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 is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the compliance and enforcement of the Texas Engineering Practice Act. 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 78760.

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.

§131.166. Multiple Offices.

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 24, 1986.

TRD-8610133

Kenneth J. Bartosh
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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The Texas State Board of Registration for Professional Engineers proposes new §131.166, concerning compliance and enforcement.

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 clarification of the section concerning multiple offices. 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.

§131.166. Multiple Offices. If an engineer or engineering firm maintains offices in more than one locality, the following shall apply.

(1) An office located in Texas having a person licensed as a professional engineer in Texas employed on a full-time basis in the office can solicit and perform engineering work.

(2) An office located in Texas not having a person licensed as a professional engineer in Texas employed on a full-time basis in the office shall not do engineering work for the public of the State of Texas unless:

(A) the engineering work is done under the responsible charge of a professional engineer licensed in Texas and the engineer meets the conditions set out in §131.162 of this title (relating to Firm Compliance); and

(B) the responsible engineer shall personally affix his signature, Texas Professional Engineer's number, and date to all reports, plans, specifications, or other engineering documents issued by the office regardless of the intended use by the client.

(3) An office located in Texas not having a person licensed as a professional engineer in Texas employed on a full-time basis in the office shall not offer to do engineering work for the public unless all negotiations with prospective clients, whether written or oral, clearly designate that an engineer registered in Texas will be in responsible charge of the work.

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 24, 1986.

TRD-8610134
Kenneth J. Bartosh
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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Complaints

★ 22 TAC §§131.171-131.173

The Texas State Board of Registration for Professional Engineers proposes a new undesignated heading entitled Complaints and new §§131.171-131.173, concerning complaints.

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 implica-

tions 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 understanding of the procedures for filing and handling complaints alleging violations of the Texas Engineering Practice Act. 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.

§131.171. General.

(a) Complaints alleging violations of the Act or board rules must be accompanied by sufficient information or factual evidence to establish probable cause.

(b) Complaints shall normally be submitted in writing along with copies or originals of all supporting evidence; however, the executive director may initiate an inquiry based on any information that will establish probable cause.

(c) The board will only act when the basis of the complaint would be a violation of the Act or board rules if substantiated.

(d) If a valid complaint, accompanied by sufficient information or factual evidence to establish probable cause, is filed with the executive director, the board may proceed independent of any action by the complainant to enter into litigation with the defendant or to abandon the complaint.

(e) The board may, upon request, keep the identity of the complainant confidential to the extent permitted by law.

§131.172. Complaints Against Unlicensed Persons.

(a) Complaints alleging violations of the Act or board rules should be in writing and accompanied by sufficient information or factual evidence to establish probable cause. The written complaint may be in any format.

(b) The executive director may accept an oral complaint if the allegation can be substantiated by documents readily available to the board under the Open Records Act.

(c) Upon determination that a violation of the Act or board rules has occurred, the board may take one or more of the following actions:

(1) enter into an agreement of voluntary compliance; or

(2) file an injunctive suit to obtain compliance; or

(3) file a criminal complaint with

the appropriate prosecuting authority as provided by the Act, §23.

§131.173. Complaints Against Licensees.

(a) The provisions of the Texas Engineering Practice Act (TEPA) and the provisions of the Administrative Procedure and Texas Register Act (APTRA) shall apply to the conduct of all investigations and administrative actions in the board's handling of a complaint. In addition, the board may promulgate other procedural rules not inconsistent with TEPA or APTRA.

(b) Complaints shall be submitted on forms provided by the board or in a written form that will provide the same information as the official forms. Information to be provided includes:

(1) description of the alleged violation;

(2) supporting information and factual evidence;

(3) names and addresses of witnesses;

(4) probable source of other pertinent information; and

(5) the part of the Act or the board rule alleged to have been violated.

(c) Upon determination that a violation of the Act or board rules has occurred, the board will take one of the actions set out in the Act, §22. In addition, the board may take injunctive or criminal action if deemed appropriate.

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 24, 1986.

TRD-8610135
Kenneth J. Bartosh
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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IV. School Land Board Chapter 155. Land Resources

The School Land Board proposes the repeal of existing §155.10 and new §155.10, concerning coastal public land fees. The new §155.10 changes the format of the fee schedule to make its contents both clearer and easier to amend. Additionally, it makes the term for all coastal easements negotiable and allows the board to apply a rate formula for private activity encumbering a large area and for commercial activity. A graduated payment schedule for the rate formula is included to reduce any financial impact resulting from the change.

Steve Roberts, deputy commissioner for asset management, has determined that for the first five-year period the proposed repeal and new section will be in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the repeal and new section. The effect on state government is an estimated increase in revenue of \$50,000 in 1986-1987, \$52,000 in 1987-1988, \$54,000 in 1988-1989, \$58,000 in 1989-1990, and \$64,000 in 1990-1991 (each year from November to November). The effect on small businesses will be minimal. The proposed new section will not affect commercial concerns with eight or fewer marina slips or channels of 2,000 square feet or less. The impact on other businesses is difficult to assess because the rates are calculated on adjacent appraised land values, which are a function of several economic variables. Additionally, the impact may be negated due the School Land Board's use of discretionary authority. There will be no effect on local government.

Mr. Roberts also has determined that for each year of the first five years the repeal and new section are in effect the public benefit anticipated as a result of enforcing the repeal and new section will be an increase in revenue to the state by allowing the board more flexibility in determining rates of return for use of state lands. The fees will be applied more equitably and will better allow the state to protect its coastal public lands. The anticipated economic cost to individuals who are required to comply with the proposed repeal and new section will be a possible rate increase for individuals involved in dredging for commercial activity. Private activity encumbering a large area may be charged a higher rate. Since the rate formula consists of factors that are location and time specific, an exact dollar amount cannot be predicted.

Comments on the proposal may be submitted to Dan Miller, Deputy Commissioner for Legal Services, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

Coastal Public Lands

★31 TAC §155.10

(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 School Land Board, 1700 North Congress Avenue, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Natural Resources Code, §33.063, which provides the School Land Board with the authority to prescribe reasonable fees for granting leases, easements, and permits, and under the Natural Resources Code, §33.104(c), which provides the board with the authority to determine reasonable terms, conditions, and consideration for the grants.

§155.10. Fees.

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

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

TRD-8610167 Garry Mauro
Chairman
School Land Board

Earliest possible date of adoption.

December 1, 1986
For further information, please call
(512) 483-5009.

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The new section is proposed under the Natural Resources Code, §33.063, which provides the School Land Board with the authority to prescribe reasonable fees for granting leases, easements, and permits, and under the Natural Resources Code, §33.104(c), which provides the board with the authority to determine reasonable terms, conditions, and consideration for the grants.

§155.10. Coastal Public Land Fees.

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

(1) Amenity value (V)—Value that the coastal public lands adds to the total value of the adjacent upland project. This value is a range, typically from 30% to 70%. Examples: a waterfront condominium is typically worth 30% more than a similar upland condominium with no water; an access channel adds 30% to the value of an adjacent upland project; and 70% of a marina's value can be attributed to the submerged land. The amenity value of other specific uses is determined by the Texas General Land Office's certified appraisers.

(2) Appraised fair market value of adjacent uplands (AFMV)—Value of uplands adjacent to the state land on which the activity being permitted is located. This value is determined by Texas General Land Office's certified appraisers and is supported with cost, income, and market data.

(3) Commercial activity—Activity which is designed to enhance or accommodate a profit-making venture or is associated with a revenue-generating activity.

(4) Mineral interest holder—Holder of a lease for oil or gas extraction who plans to dredge on state-owned lands outside the leasehold tract to obtain access to the leasehold tract.

(5) New dredging—Dredging which is not under current permit with the General Land Office. The new dredging rate is charged for the first year. The maintenance dredging fee is charged for each subsequent year of the term.

(6) Private activity—Activity which is not performed by a public entity, is not designed to enhance or accommodate a profit-

making venture, and is not associated with a revenue generating activity.

(7) Public activity—Activity which is performed by a public entity and is not designed to enhance or accommodate a profit-making venture and is not associated with a revenue-generating activity.

(8) Public entity—City, county, state agency, board or commission, or any other political subdivision of the state except a navigation district. See §155.21(e) of this title (relating to Application; Nature of Original Lease; Sublease; Termination).

(9) Quantity of state land encumbered (Q)—The amount of state land encumbered by the permitted activity and is typically expressed in number of square feet.

(10) Rate formula (RF)—Equals the quantity of state land encumbered multiplied by the appraised fair market value of adjacent uplands multiplied by the amenity value multiplied by rate of return. In symbolic terms: $RF = Q \times AFMV \times V \times ROR$.

(11) Rate of return (ROR)—Derived from current market interest rates. This rate is equal to the prime rate of interest plus two percentage points.

(b) Coastal fees. The School Land Board is authorized to charge the following fees for coastal leases, coastal easements, and structure registrations. When an optional rate formula is indicated, the School Land Board will determine whether to charge the fixed rate or the rate formula.

(1) Coastal lease fees. The School Land Board may only grant coastal leases to certain entities, as prescribed by the Natural Resources Code, §33.105 and §33.109.

(A) Private activity:

(i) filing fee—\$5.00;

(ii) annual fee, \$5.00 minimum—

rate formula.

(B) Commercial activity:

(i) filing fee—\$50;

(ii) annual fee, \$100 minimum—

rate formula.

(C) Public activity, filing fee—\$5.00.

(2) Structure registration fee. Structure registration for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though School Land Board approval is not required for construction, the applicant must register the location of the structure. The structure is granted for a perpetual term. Filing fee—\$5.00.

(3) Coastal easement fees.

(A) Piers and docks. The following fees apply to all piers and docks that are not included in paragraph (2) of this subsection.

(i) Private activity in which the pier or dock is 300 feet long or less and 2,500 square feet or less, filing fee—\$5.00.

(ii) Private activity in which the pier or dock is greater than 300 feet long or 2,500 square feet.

(1) Filing fee—\$50.

(II) Annual fee for all area greater than 300 feet long or 2,500 square feet per square foot, \$100 minimum—\$.10.

(iii) Commercial activity:

(I) filing fee—\$50;

(II) annual fee, per square foot, \$100 minimum—\$.20 or rate formula.

(iv) Public activity, filing fee—\$5.00.

(B) Marinas.

(i) Boat slips in Clear Lake.

(I) Filing fee—\$50.

(II) Annual fee, per linear foot—\$3.60 or rate formula.

(ii) Boat slips in other areas.

(I) Filing fee—\$50.

(II) Annual fee, per linear foot—\$2.88 or rate formula.

(C) Wharves.

(i) Filing fee—\$50.

(ii) Annual fee, per square foot, \$100 minimum—\$.30 or rate formula.

(D) Breakwaters, jetties, groins.

(i) Private activity involving a structure 300 feet long or less, filing fee—\$5.00.

(ii) Private activity involving a structure longer than 300 feet.

(I) Filing fee—\$50.

(II) Annual fee, per square foot, \$25 minimum—\$.10.

(iii) Commercial activity:

(I) filing fee—\$50;

(II) annual fee, per square foot, \$100 minimum—\$.20.

(iv) Public activity, filing fee—\$5.00.

(E) Dredging.

(i) Mineral interest holder:

(I) filing fee—\$50;

(II) first year fee for new dredging, per square foot, \$100 minimum—\$.02;

(III) annual fee for maintenance dredging, per square foot, \$100 minimum—\$.005.

(ii) Private activity when area encumbered is 2,000 square feet or less and channel width is 20 feet or less.

(I) Filing fee—\$50.

(II) First year fee, for new dredging per square foot, \$100 minimum—\$.03.

(III) Annual fee for maintenance dredging, per square foot, \$100 minimum—\$.005.

(iii) Private activity when area encumbered is greater than 2,000 square feet or channel width is greater than 20 feet.

(I) Filing fee—\$50.

(II) First year fee, for new dredging, per square foot, \$100 minimum—\$.03 or rate formula.

(III) Annual fee for maintenance dredging—\$.005 or rate formula.

(iv) General commercial activity:

(I) filing fee—\$50;

(II) first year fee, for new dredging, per square foot, \$100 minimum—\$.04 or rate formula;

(III) annual fee for maintenance dredging, per square foot, \$100 minimum—\$.005 or rate formula.

(v) Commercial activity for marina with eight slips or less:

(I) filing fee—\$50;

(II) first year fee for new dredging, per square foot, \$100 minimum—\$.04;

(III) annual fee for maintenance dredging, per square foot, \$100 minimum—\$.005.

(vi) Commercial activity for marina with more than eight slips:

(I) filing fee—\$50;

(II) first year fee for new dredging, per square foot, \$100 minimum—\$.04 or rate formula;

(III) annual fee for maintenance dredging, per square foot, \$100 minimum—\$.005 or rate formula.

(vii) Public activity, filing fee—\$5.00.

(4) Cabin permits.

(A) Fees.

(i) Filing fee—\$50.

(ii) Annual fee, per square foot of attached roof area, \$175 minimum—\$.70.

(iii) Term—not to exceed five years.

(B) Exception. If the permit was issued prior rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder, the permittee may apply for a continuation of the previous fee.

(c) Term. The term for all coastal leases and coastal easements is negotiable. School Land Board approval is required prior to construction.

(d) Rental adjustments.

(1) At every five-year interval in the term of the lease or easement, the rental will be adjusted in one of the following methods.

(A) Reappraisal by General Land Office appraisers will be performed at five-year intervals. The rental payment will be determined by the rate formula using the AFMV determined by the reappraisal.

(B) A consumer price index adjustment, using the United States all items index, 1967 = 100, will be used for rental adjustment. The amount of the increase will be figured by summing the annual percentage change in the CPI for each year between rate formula adjustments.

(2) Rental adjustments as determined by either reappraisal or CPI adjustment can increase by no more than 40% of the previous five years' rental nor by less than 20% of the previous five years' rental.

(e) Discretionary authority. The School Land Board shall have the authority to reduce or waive any fee set forth herein.

(f) Implementation. A graduated payment schedule shall be implemented with regard to the rate formula such that upon granting a new or upon renewal of a coastal lease or coastal easement the School Land

Board shall charge 50% of the rate formula for the first year of the coastal lease or coastal easement, 75% of the rate formula for the second year of coastal lease or coastal easement, and 100% of the rate formula for the third and all subsequent years of the coastal lease or coastal easement. The graduated payment schedule for the rate formula shall not apply to coastal leases or coastal easements granted after November 11, 1991, or to any coastal lease or coastal easements to which the graduated payment schedule has previously been applied.

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 24, 1986.

TRD-8610168

Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption:

December 1, 1986

For further information, please call
(512) 483-5009.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 16. Intermediate Care Facility/Skilled Nursing Facility (ICF/SNF)

Support Documents

★ 40 TAC §16.9801

The Texas Department of Human Services (DHS) proposes new §16.9801, concerning reimbursement methodology for vendor rates, in its chapter governing intermediate care facility and skilled nursing facility services (ICF/SNF). The department is proposing the repeal of existing reimbursement methodology from its nursing facility administration chapter. The department is simultaneously proposing the repeal of reimbursement methodology for vendor rates in its intermediate care facility for mentally retarded (ICF-MR) chapter and the addition of new methodology to replace it.

The new section is designed to eliminate confusion associated with rate reimbursement methodology and to reduce the number of erroneous cost reports submitted by providers. Clarifications and additions to the methodology include: a description of the appeals process; a more detailed explanation of the basis for determining allowable and unallowable costs; a more concise treatment of related-party transactions; a more detailed treatment of capital asset depreciation schedules; limita-

tions on the depreciation base for facilities that changed ownership after July 18, 1984, to ensure compliance with the Deficit Reduction Act of 1984 and the Omnibus Budget Reconciliation Act of 1985; and an allowance for department latitude to use limits on administration and facility costs.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the new section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The estimated savings to the state are: \$677,419 for fiscal year 1987; \$1,036,985 for fiscal year 1988; \$1,031,743 for fiscal year 1989; \$1,077,604 for fiscal year 1990; and \$1,076,583 for fiscal year 1991. There will be no fiscal implications for 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 anticipated public benefit will be that current methodology is placed in a more appropriate chapter. The new methodology is expected to be more clearly understood by providers, resulting in fewer erroneous cost reports. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

The department will hold a hearing to accept comments on the proposal at 9 a.m. on Wednesday, November 19, 1986, in the Texas Department of Human Services public hearing room, 701 West 51st Street, Austin. Written comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-602, 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 department to administer public and medical assistance programs.

§16.9801. Reimbursement Methodology for Skilled Nursing Facilities and Intermediate Care Facilities.

(a) General information. The Texas Department of Human Services (TDHS) reimburses Texas Medicaid long-term care contracted providers for care provided to recipients in the skilled nursing facility (SNF), intermediate care facility (ICF), and ICF-II levels of care. The Texas Board of Human Services determines reimbursement rates that are statewide and uniform by class of service. To facilitate determination of rates, TDHS staff submit recommendations to the Texas Board of Human Services. Recommendations are based upon analysis of a rate base derived from information submitted by providers in cost reports and other pertinent sources.

(1) Uniform rates. Reimbursement rates are uniform statewide for the same

class of service, with the possible exception of demonstration or pilot implementation projects involving experimental classes, as specified in subsection (g)(3) of this section.

(2) Classes of service. Classes of service are based upon the level of care of the recipient.

(3) Prospective rates. Reimbursement rates are determined prospectively.

(4) Frequency of rate determination. Reimbursement rates are determined at least annually.

(5) Rate period. Rates are effective for one calendar year, from January 1 through December 31, unless the Texas Board of Human Services decides otherwise.

(b) Cost reporting procedures. Each provider must submit financial and statistical information on cost report forms provided by TDHS or on facsimiles which are formatted according to TDHS specifications and are preapproved by TDHS staff.

(1) Accounting methods. All information submitted on cost reports must be based upon the accrual method of accounting except where otherwise specified in the lists of allowable and unallowable costs and in the case of governmental entities operating on a cash basis.

(2) Chart of accounts. Providers must complete cost reports according to TDHS' prescribed chart of accounts and statements of allowable and unallowable costs.

(3) Recordkeeping requirements. Each provider must maintain records according to the requirements stated in §51.50 of this title (relating to Record Retention Requirements). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with TDHS' chart of accounts for long-term care providers constitutes grounds for contract cancellation and recovery of liquidated damages from the provider. In cases of noncompliance, TDHS allows providers 90 days, subsequent to notification, to comply with TDHS recordkeeping requirements. TDHS may withhold all vendor payments to the provider during those 90 days or until the deficiency is corrected. If the provider does not correct the deficiencies within 90 days from the date of notification, TDHS may cancel the provider's contract and recover liquidated damages from the provider, if any are specified in the contract.

(4) Allowable and unallowable costs. Providers must complete the cost report according to TDHS' statements of allowable and unallowable costs.

(5) Cost report certification. Providers must certify the accuracy of cost reports submitted to TDHS in the format specified by TDHS. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to TDHS requirements.

(6) Due date. Providers must submit cost reports to TDHS no later than three months following the end of the provider entity's fiscal year.

(7) Extension of due date. TDHS may grant extensions of due dates for good cause. A good cause is defined as one that the provider could not reasonably be expected to control. Providers must submit requests for extensions in writing to TDHS before the cost report due date. Economic Analysis Division staff respond to requests within 10 work days of receipt.

(8) Amended cost reports. TDHS accepts amended cost reports until the completion of the rate determination process. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after the actual rate determination have no effect on the rate and are not accepted.

(9) Cost report supplements. TDHS may at times require additional financial and other statistical information to ensure the fiscal integrity of the Texas Medicaid Long-term Care Program. Providers must submit the information to TDHS upon request, to the extent that it can be reasonably expected to be at the disposal of the provider.

(10) Failure to file an acceptable cost report. If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, TDHS may withhold vendor payments to that provider until the deficiencies are corrected.

(11) Review of cost report. TDHS staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(12) On-site cost report audits.

(A) Number of on-site audits to be performed. TDHS performs a sufficient number of on-site audits each year to ensure the fiscal integrity of the Texas Medicaid Long-term Care Program. The number of on-site audits performed each year may vary. TDHS arranges on-site audits to maximize the number of on-site audited cost reports available for use in cost projections.

(B) On-site audit standards. TDHS performs on-site cost report audits in a manner consistent with generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in *Standards for Audit of Governmental Organization, Programs, Activities and Functions*, issued by the United States Comptroller General.

(C) Access to records. Each provider entity or its designated agent(s) must allow access to any and all records necessary to verify information submitted to TDHS on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent rec-

ords within 30 days following written notice from TDHS, a hold is placed on vendor payments until access to the records is allowed. If a central office or other entity pertaining to a multifacility operation refuses access to records, then the vendor hold is extended to all related parties having Medicaid contracts with TDHS.

(D) Use of on-site cost report audits. It is the general policy of TDHS to include in the rate base the maximum number of on-site audited cost reports that is reasonably possible. Adjustments consistent with the results of on-site audits are made to the rate base until closure before the final rate analysis.

(E) Reviews of cost report disallowances. A provider who disagrees with disallowances of the items in a cost report and wishes to appeal them is entitled to a review with TDHS staff according to the following procedure. Within 30 calendar days of notification of the disallowances by TDHS Audit Division, the provider must contact the Economic Analysis Division and request a review. Reviews are intended to encourage open discussion between providers and TDHS staff and to promote resolution of matters in dispute. At the earliest possible date which is convenient for all parties concerned, Economic Analysis Division staff arrange a review at which the provider may present all pertinent information supporting his disagreement with any disallowances in question. Three TDHS staff members, including the reimbursement analyst responsible for the ICF/SNF program and a representative of TDHS Audit Division, consider the provider's case and give a written decision within 30 days of the review.

(c) Allowable and unallowable costs.

(1) General information. TDHS defines allowable and unallowable costs to identify expenses which are reasonable and necessary to provide patient care to TDHS clients on the part of an economical and efficient provider. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates to providers. To achieve that objective, TDHS compiles a rate base consisting, if possible, only of allowable cost information. If TDHS classifies a particular type of expense as unallowable for purposes of compiling a rate base, it does not mean that individual providers may not make expenditures of this type. Allowable costs included in the rate base determine only the costs and maximum reimbursement rates associated with an economic and efficient operator. Cost reporting by TDHS Medicaid contracted providers should be consistent with generally accepted accounting principles (GAAP). In cases where TDHS cost reporting rules conflict with GAAP, IRS, or other authorities, TDHS rules take precedence for Medicaid provider cost reporting purposes.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the

context clearly indicates otherwise.

(A) Allowable costs—Those expenses that are reasonable and necessary in the normal conduct of operations relating to patient care in a SNF or ICF. If possible, only allowable costs are included in the rate base.

(i) Reasonable refers to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(ii) Necessary refers to the relationship of the cost to the provision of patient care. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of a SNF or ICF, and must meet all of the following requirements.

(I) The expenditure was not for personal or other activities not specifically related to the provision of long-term care.

(II) The cost does not appear on the list of specific unallowables.

(III) The cost bears a significant relationship to patient care. The test of significance in this case is whether it can be demonstrated that, if the expenditure were eliminated, there would be an adverse impact on patient health, safety, or general well-being.

(IV) The expense was incurred in the purchase of materials, supplies, or services provided directly to the patients or staff of individual SNFs or ICFs in the conduct of normal operations relating to patient care.

(V) The costs are not unallowable under other federal, state, or local laws or regulations.

(iii) Normal conduct of operations relating to patient care refers to otherwise allowable costs that include, but are not limited to, the following.

(I) Expenses for facilities, materials, supplies, or services not used by a SNF or ICF solely for providing long-term patient care. Whenever otherwise allowable costs are attributable partially to personal or other business interests and partially to SNF or ICF patient care, the latter portion may be allowed on a pro rata basis if the proportion of use for SNF or ICF patient care purposes is well-documented.

(II) Related-party transaction. Allowable costs are those which result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the SNF or ICF is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This affiliation or association may be based on common ownership, past or present mutual interests in long-term care or

other types of enterprises, or family ties.

(B) Unallowable costs—Those expenses that are not reasonable or necessary for the provision of patient care in a SNF or ICF, according to the criteria as specified in subparagraph (A) of this paragraph. Unallowable costs are not included in the rate base used for determining recommended reimbursement rates.

(d) List of allowable costs. The following list of allowable costs is not comprehensive, but serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles as specified in subsection (c)(1) of this section.

(1) Compensation of SNF and ICF employees. Only those employees who primarily provide services directly to the residents or staff of individual SNFs and ICFs in the normal conduct of operations relating to resident care: director of nursing; registered nurses; licensed vocational nurses; aides, orderlies, and other salaried direct care staff; medical clerks; food service supervisor; cooks and other food service personnel; laundry and housekeeping staff; recreational staff; social workers; administrator; assistant administrator; houseparents; accountants and bookkeepers; other clerical and secretarial staff; buildings, equipment, and grounds maintenance staff. This includes:

(A) wages and salaries;

(B) payroll taxes and insurance. Federal Insurance Contributions Act (FICA or Social Security), Unemployment Compensation Insurance, Workmen's Compensation Insurance;

(C) employee benefits. Employer-paid health, life, accident, and disability insurance for employees; uniform allowances and meals provided to employees as part of an employment contract; contributions to an employee retirement fund; and deferred compensation. The allowable portion of deferred compensation is limited to the dollar amount that an employer contributes during a cost reporting period. The expense:

(i) must represent a clearly enumerated liability of the employer to individual employees;

(ii) must not be incurred as a benefit to employees who do not primarily provide services directly to the residents or staff of individual SNFs or ICFs; and

(iii) must not represent any form of profit sharing.

(2) Compensation of owners, partners, or stockholders (other than the facility administrator or assistance administrator) who primarily provide services directly to the residents or staff of individual SNFs or ICFs. If the owners, partners, or stockholders are involved in other income-earning activities outside the individual SNF or ICF, allowable compensation expense is limited to the pro rata portion of the actual working time spent

in the SNF or ICF.

(3) Compensation of outside consultants. This includes medical director, registered nurse, social worker, pharmacist, audiologist, psychologist, recreational therapist, records librarian, physical therapist, occupational therapist, and dentist.

(4) Management fees paid to unrelated parties. The department considers management fees paid to unrelated parties as unallowable.

(5) Management fees paid to related parties and home office overhead expense. Management fees paid to a relation organization must be clearly derived from the actual cost of materials, supplies, or services provided directly to an individual SNF or ICF. A facility that is owned, operated, or controlled by another individual(s) or organization(s) may report the allowable portion of costs for materials, supplies, and services provided directly to that facility. The allowable portion of such costs to a given facility is limited to those expenses that can be directly attributed to the individual establishment.

(A) In multifacility organizations where the clear separation of costs to individual facilities is not always possible, the allowable portion of actual costs for materials, supplies, and services may be allocated to individual Texas ICFs and SNFs on a pro rata basis. The preferred allocation method for these costs is a patient-day-of-service basis. Providers who wish to use a pro rata cost basis may do so, however, if TDHS provides prior approval. Once a provider has chosen an allocation method, he must consistently use that method in preparing subsequent cost reports.

(B) In organizations with multiple levels of management, costs incurred at levels above the individual SNF or ICF in Texas are allowable only if the costs were incurred in the purchase of materials, supplies, or services directly used by the facility staff in the conduct of normal operations relating to patient care. This restriction is consistent with the restrictions placed on independent SNFs or ICFs.

(6) Utilization review committee. This includes professional fees.

(7) Materials and supplies. This includes food and nonalcoholic beverages; dietary supplements; food service supplies; cooking utensils; laundry and housekeeping supplies; office supplies; and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment.

(8) Utilities. This includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph.

(9) Buildings, equipment, and capital expenses. It is generally expected that buildings, equipment, and capital are used by a SNF or ICF solely in the course of normal operations in the provision of patient care, and not for personal business. Whenever this is not the case, the portion of the costs relating directly to the provision of SNF

or ICF resident care may be allowed on a pro rata basis, if the proportion of use for patient care is documented.

(A) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented SNF or ICF property that are valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight-line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 40 years, with a minimum salvage value of 10%;

(ii) building equipment; buildings and grounds improvements and repairs; durable medical equipment, furniture, and appliances; and power equipment and tools used for buildings and grounds maintenance: minimum schedules consistent with *Estimated Useful Lives of Depreciable Hospital Assets*, published by the American Hospital Association; and

(iii) transportation equipment used for the transport of residents or materials and supplies utilized by the SNF or ICF: a minimum of three years for passenger automobiles; five years for light trucks and vans; and seven years for buses, with a minimum salvage value of 10%.

(B) Provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider entity that are valued at less than \$500 at the time of purchase may be treated as ordinary expenses.

(C) Rental and lease expense. Rental and lease expense paid to a related party is limited to the actual allowable cost incurred by the related party. This includes buildings, building equipment, transportation equipment used for the transport of residents or materials and supplies utilized by the SNF or ICF, durable medical equipment, furniture and appliances, and power equipment and tools used for buildings and ground maintenance.

(D) Interest expense.

(i) Interest expense is allowable on loans for the acquisition of allowable items, subject to all of the requirements for allowable costs, plus two additional ones:

(I) the loan must be evidenced in writing; and

(II) the loan must be made in the name of the provider entity as maker or comaker of the note.

(ii) Interest expense on related-party loans is limited to the cost to the provider entity, which is the cost to the related party. The allowed cost in these cases is limited to the alternative interest income which the provider could have earned on the loan principal had the funds been invested in taxable long-term United States Treasury bonds at the prevailing average rate of return during the year in which the loan contract was finalized. The source used in calculating these limits is the U.S. Department of Commerce, Bureau of Economic Analysis, *Sur-*

vey of Current Business and Business Conditions Digest.

(E) Tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, and Texas corporate franchise taxes.

(F) Insurance expense. This includes facility fire and casualty, professional liability and malpractice, and transportation equipment insurance.

(10) Contract services provided by outside vendors. This includes daily direct care services, food service, laundry and linen service, housekeeping service, and professional services such as those of accountants and attorneys.

(11) Business and professional association dues. Limited to associations devoted primarily to issues of patient care.

(12) Outside training costs. Limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the residents of staff of individual SNFs or ICFs. To qualify as an allowable cost, the training must be:

(A) located within the continental United States; and

(B) related directly and primarily to patient care.

(e) List of unallowable costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles as specified in subsection (c)(1) of this section:

(1) compensation in the form of salaries, benefits, or any form of perquisite provided to owners, partners, officers, directors, stockholders, employees, or others who do not provide patient-care-related services directly to the patients or staff of individual SNFs and ICFs;

(2) personal expenses not directly related to the provision of long-term patient care in a SNF or ICF;

(3) forms of compensation that are not clearly enumerated as to dollar amount or which represent profit distributions;

(4) management fees paid to a related organization that are not clearly derived from the actual cost of materials, supplies, or services provided directly to an individual SNF or ICF;

(5) advertising expenses other than those for yellow pages advertising, newspaper ads for employee recruitment, and advertising to meet any statutory or regulatory requirements;

(6) business expenses not directly related to the care of patients in a long-term care facility. This includes business investment activities, stockholder and public relations activities, and farm and ranch operations;

(7) political contributions;

(8) depreciation and amortization of unallowable costs. This includes amounts in excess of those resulting from the straight-line method, capitalized lease expenses in excess of actual lease payments, and goodwill or any excess above the actual value of physical assets at the time of purchase;

(9) trade discounts of all types;

(10) donated facilities, materials, supplies, and services;

(11) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with long-term patient care;

(12) entertainment expenses except those incurred for entertainment provided to the staff of a SNF or ICF as an employee benefit;

(13) expenses for medical services not provided to Medicaid recipients;

(14) expenses incurred for services provided in a SNF or ICF but not related to long-term patient care. This includes meals not provided to residents or to SNF or ICF employees as a part of an employment contract, nonmedical rentals, barber and beauty shop operations, canteens and gift shops, and vending machines;

(15) organizational filing fees, such as those for corporations and limited partnerships; and boards of directors fees;

(16) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(17) fund raising and promotional expenses;

(18) expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts;

(19) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(20) insurance premiums pertaining to items of unallowable cost;

(21) accrued expenses that are not legal obligations of the provider entity or are not clearly enumerated as to dollar amount. This includes any form of profit sharing and the accrued liabilities of deferred compensation plans;

(22) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in the provision of long-term care;

(23) motor vehicles that are not generally suited or are not commonly used to transport patients or facility supplies. This includes aircraft, motor homes and recreational vehicles; sports and luxury automobiles; motorcycles; and heavy trucks, tractors and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of long-term care;

(24) values assigned to the services of unpaid workers and volunteers;

(25) returns, allowances, and refunds;

(26) costs of purchases from a re-

lated party which exceed the original cost to the related party;

(27) out-of-state travel expenses, except for outside training which qualifies as an allowable cost as specified in subsection (d)(12) of this section;

(28) legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor;

(29) contributions to self-insurance funds which do not represent payments based on current liabilities;

(30) any expense incurred because of imprudent business practices;

(31) expenses which cannot be adequately documented;

(32) any expense not allowable under other pertinent federal, state, or local laws and regulations.

(f) Cost finding methodology.

(1) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(A) TDHS excludes from the rate base any unallowable expenses included on the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs which:

(i) are reasonable and necessary for the provision of resident care;

(ii) represent economic and efficient use of resources; and

(iii) are consistent with federal and state Medicaid regulations.

(B) If there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported, TDHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following:

(i) Revenue offsets. TDHS distinguishes between two types of revenues: patient revenues accruing to the SNF or ICF in payment for direct patient care services given, including room and bed holds; and all other revenues. Other revenues include interest income, gifts, grants, donations, beauty and barber shop receipts, prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees or guests. These other revenues are used to offset reported expenses after allowances for reasonable overhead costs. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual SNFs or ICFs.

(ii) Fixed capital asset costs. TDHS defines a historical base for fixed capital asset costs which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The

initial values which constitute the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from cost report data. For newly-constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from TDHS records, allowable buildings depreciation and mortgage interest expense is based upon the historical cost to the first Medicaid contracted owner of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base will be limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985, in the following manner.

(I) Increases in buildings depreciation and buildings rental and lease expense are limited to the lesser of:

(-a-) the current expense reported by the provider; or

(-b-) the historical base adjusted for an inflation index deemed appropriate by TDHS.

(II) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(-a-) the actual mortgage interest expense incurred by the new owner of record during the current cost reporting period; or

(-b-) an amount based upon allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of the sale. TDHS determines an interest rate index appropriate for this purpose.

(iii) Limits on other facility and administration costs. Upper limits may be placed on the amounts of specific line items and categories of line items in the administration and facility cost centers that are included in the rate base to ensure that the results of cost analyses reflect economical and efficient use of resources. Unless otherwise specified in this section, no upper limits are set below the 85th percentile in the array of all costs for a specific line item or category of line items, as reported by all contracted facilities or a specified class of facilities. Upper limits include, but are not limited to, the sum of certain administrative expenses in multifacility organizations which are limited to costs for facilities that are not part of a multifacility organization. The administrative expenses involved are central office overhead; other administrative (including management fees); and salaries and wages for professional administrative, clerical, and secretarial staff. These expenses represent a category of administrative and management services which should be comparable between multifacility and single-facility organizations. Economical and efficient operation dictates similar costs between the two classes of organization.

(iv) Occupancy adjustments. TDHS adjusts facility and administration costs of providers with occupancy rates below 85% to reflect per diem expenses at an 85% occupancy rate, based on the number of contracted beds during the cost reporting period.

(v) Cost projections. TDHS projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate applies. TDHS determines reasonable methods for projecting costs.

(2) Cost determination by cost centers. TDHS combines adjusted expenses from the rate base into four cost centers.

(A) Patient care cost center. The patient care cost center includes all direct patient care expenses; nursing care; and consultant, social service, activity, training, laundry and housekeeping expenses.

(B) Dietary care cost center. The dietary care cost center includes food, food service, and dietary consultant expense.

(C) Facility cost center. The facility cost center includes expenses to operate and maintain the buildings, equipment, and capital necessary to provide patient care.

(D) Administration cost center. The administration cost center includes administrative salaries and supplies and interest on working capital loans.

(g) Rate setting methodology.

(1) Classes of service. Reimbursement rates are determined for each class of service based upon the level of care of the recipient. The classes of service are SNF, ICF, and ICF-II.

(2) Rate determination process. The Texas Board of Human Services determines reimbursement rates for each class of service. TDHS staff submit recommendations for each class of service to the Texas Board of Human Services. Recommended rates are determined in the following manner.

(A) A cost component from the patient care cost center is calculated for each level of care at the median point in the array of adjusted per diem costs for facilities providing that level of care.

(B) Components for the dietary, facility, and administration cost centers are calculated at the median point in the array of adjusted per diem costs for all contracted SNFs and ICFs included in the rate base.

(C) The cost component for each cost center is multiplied by 1.07 and the resulting rate components are summed by level of care to calculate the recommended total reimbursement rates.

(3) Experimental class. TDHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of

providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(4) Exception to the reimbursement rate determined by the Texas Board of Human Services. The reimbursement rate set by the Texas Board of Human Services for each reimbursement class is lowered to the provider's customary charge if the provider's customary charge is less than the Medicaid reimbursement rate for the same services. Customary charge is defined in this case as the average rate charged to non-Medicaid clients for the same services.

(5) Supplemental reimbursement rate determination. The reimbursement rate for community-based ICF-MR VI recipients whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(A) The client must meet all of the following six criteria on the level-of-care assessment form.

Conditions/Procedures	Qualifying Score
Mobility/Ambulation	4
Transferring	4
Bathing	4
Dressing/Grooming	4
Eating	3 or 4
Toileting	1 through 4

(B) The department determines the amount of supplemental reimbursement in the following manner.

(i) The estimated time required by the class of direct care personnel is derived from appropriate and applicable time studies to determine the delivery cost for the supplemental skilled rate. Each time estimate is multiplied by a projected hourly wage rate and by class of personnel, including a factor for payroll, taxes, and benefit expenses. The employee compensation costs are estimated from TDHS Medicaid provider cost reports and wage-and-hour survey data.

(ii) The portion of the skilled nursing class rate which covers employee compensation costs for direct care personnel is determined.

(iii) The amount of the skilled supplemental reimbursement rate is determined by calculating the difference between the amounts in clauses (i) and (ii) of this subparagraphs.

(h) Chart of accounts. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items are:

(1) assets:

(A) current assets.

(i) cash;

(ii) cash; patient trust funds

(fiduciary account not to be added to facility asset total);

- (iii) short-term investments;
- (iv) accounts receivable;
- (v) notes and other receivables;
- (vi) inventory;
- (vii) prepaid expenses;
- (viii) other current assets;

(B) noncurrent assets:

- (i) long-term investments;
- (ii) buildings and equipment;
- (iii) land and land improvements;
- (iv) other tangible assets;
- (v) leasehold improvements:

leasehold improvements, accumulated amortization—leasehold improvements;

- (vi) other intangible assets: Pre-opening and other organizational costs, miscellaneous tangible assets, accumulated amortization—other intangible assets;
- (vii) other assets;

(2) liabilities and capital:

(A) current liabilities:

- (i) accounts payable;
- (ii) accounts payable—patient trust fund (fiduciary account not to be added to facility liability total);

- (iii) notes payable;
- (iv) salaries, wages, and employee benefits payable;
- (v) payroll taxes and insurance payable;

- (I) FICA taxes payable;
- (II) federal income taxes withheld;

held;

- (III) other payroll insurance payable;

- (vi) other taxes payable;
- (I) Texas ad valorem taxes payable;

- (II) Texas franchise taxes payable;

- (III) other taxes payable;

(B) other current liabilities;

(C) long-term liabilities:

- (i) long-term mortgages payable;

- (ii) long-term notes payable;
- (iii) other long-term liabilities;

(D) capital:

- (i) capital: nonprofit organizations or governmental units. Principal fund balance;

- (ii) capital: business corporation:
 - (I) capital stock;
 - (II) additional contributed capital;

- (III) retained earnings;
- (IV) dividends declared;
- (V) net income (or loss);

- (iii) capital: partnership or sole proprietorship:

- (I) capital;
- (II) net income (or loss);
- (III) drawings;

(3) revenue accounts:

(A) SNF-contracted beds:

- (i) skilled—Medicare;
- (ii) skilled—Medicaid;
- (iii) ICF—Medicaid;

(iv) ICF-II—Medicaid;
 (v) other patients;
 (B) ICF-contracted beds:
 (i) skilled—waivered Medicaid;
 (ii) ICF—Medicaid;
 (iii) ICF-II—Medicaid;
 (iv) other patients;
 (C) ICF-II contracted beds:
 (i) skilled—waivered Medicaid;
 (ii) ICF—waivered Medicaid;
 (iii) ICF-II—Medicaid;
 (iv) other patients;
 (D) noncontracted non-MR beds
 (all patients):
 (E) other gross revenue:
 (i) gifts, grants, donations, endowments, and trusts:
 (I) restricted;
 (II) unrestricted;
 (ii) room, bed holds, and reservations;
 (iii) drugs and medications;
 (iv) meals: employees and guests;
 (v) rentals: medical;
 (vi) rentals: nonmedical;
 (vii) interest sources;
 (viii) barber and beauty shop;
 (ix) vending machines;
 (x) canteen and gift shop;
 (xi) social service and activity service;
 (xii) other revenues;
 (F) adjustments to gross revenue:
 (i) allowance for uncollectibles—Medicaid;
 (ii) other adjustments to gross revenue;
 (4) expense accounts:
 (A) routine daily service expense:
 (i) SNF contracted beds:
 (I) salaries and wages: professional staff;
 (II) salaries and wages: other staff;
 (III) medical supplies and nonlegend drugs;
 (IV) contract or outside services;
 (V) other expense;
 (ii) ICF contracted beds:
 (I) salaries and wages: professional staff;
 (II) salaries and wages: other staff;
 (III) medical supplies and nonlegend drugs;
 (IV) contract or outside services;
 (V) other expense;
 (iii) ICF-II contracted beds:
 (I) salaries and wages: professional staff;
 (II) salaries and wages: other staff;
 (III) medical supplies and nonlegend drugs;
 (IV) contract or outside services;
 (V) other expense;
 (iv) noncontracted non-MR

beds:
 (I) salaries and wages: professional staff;
 (II) salaries and wages: other staff;
 (III) medical supplies and nonlegend drugs;
 (IV) other expense;
 (B) consultant service expense (except dietary);
 (C) durable medical equipment (DME) expense:
 (i) purchased DME;
 (ii) leased DME;
 (D) training expense:
 (i) salaries and wages;
 (ii) supplies;
 (iii) contract or outside services;
 (iv) other expenses;
 (E) social services expense:
 (i) salaries and wages;
 (ii) supplies;
 (iii) contract or outside services;
 (iv) other expenses;
 (F) activity service expense:
 (i) salaries and wages;
 (ii) supplies;
 (iii) contract or outside services;
 (iv) other expenses;
 (G) laundry, linen, and house-keeping expense:
 (i) salaries and wages;
 (ii) supplies;
 (iii) contract or outside services;
 (iv) linen and bedding;
 (v) other expenses;
 (H) dietary expense:
 (i) salaries and wages: supervisory and professional staff;
 (ii) salaries and wages: chefs, cooks, and other food service staff;
 (iii) food;
 (iv) supplies (dishes, flatware, napkins, utensils);
 (v) consultant service: dietician/nutritionist;
 (vi) contract or outside services;
 (vii) other services;
 (I) operation and maintenance expense:
 (i) salaries and wages;
 (ii) gas, electricity, water, and wastewater;
 (iii) telephone and telegraph;
 (iv) garbage disposal;
 (v) supplies;
 (vi) maintenance and repairs: buildings, building equipment, and grounds;
 (vii) maintenance and repairs: transportation equipment;
 (viii) maintenance and repairs: departmental equipment;
 (ix) gasoline and oil;
 (x) pest control service;
 (xi) security service;
 (xii) contract or outside services;
 (xiii) other expense;
 (J) buildings, equipment, and other capital expense:
 (i) current year assessed valua-

tion of property from local tax district;
 (ii) cost to acquire the facility by the present owner;
 (iii) rental or lease expense: building and fixed equipment;
 (iv) rental or lease expense: transportation equipment;
 (v) rental or lease expense: other equipment;
 (vi) depreciation: building;
 (vii) depreciation: building equipment;
 (viii) depreciation: land improvements;
 (ix) depreciation: departmental equipment;
 (x) depreciation: transportation equipment;
 (xi) amortization: leasehold improvements;
 (xii) amortization: preopening and other organization expense;
 (xiii) amortization: other;
 (xiv) interest: mortgage loans;
 (xv) interest: working capital loans;
 (xvi) interest: other;
 (xvii) taxes: ad valorem;
 (xviii) taxes: Texas corporate franchise;
 (xix) taxes: other;
 (xx) insurance: building, contents, and grounds;
 (xxi) insurance: transportation expense;
 (xxii) insurance: other;
 (K) general administrative expense:
 (i) salaries and wages: administrator;
 (ii) employee benefits: administrator;
 (iii) salaries and wages: assistant administrator;
 (iv) employee benefits: assistant administrator;
 (v) salaries and wages: owner, partners, or stockholders, (if not administrator or assistant administrator);
 (vi) employee benefits: owner, partners, or stockholder, (if not administrator or assistant administrator);
 (vii) salaries and wages: professional administrative staff;
 (viii) salaries and wages: clerical and secretarial staff;
 (ix) insurance: professional and facility malpractice;
 (x) insurance: other;
 (xi) advertising;
 (xii) travel and seminars;
 (xiii) dues: Associations which represent the interest of nursing homes in Texas;
 (xiv) dues: other;
 (xv) fees: professional services;
 (xvi) fees: other;
 (xvii) miscellaneous office expense;
 (xviii) utilization review committee;

- (xix) central office overhead:
 - (I) salaries and wages;
 - (II) payroll taxes;
 - (III) employee benefits;
 - (IV) advertising;
 - (V) travel and seminars;
 - (VI) dues: association;
 - (VII) dues: other;
 - (VIII) fees: professional services;
 - (IX) fees: other;
 - (X) miscellaneous office expense;
 - (XI) rental or lease expense;
 - (XII) depreciation and amortization expense;
 - (XIII) interest expense;
 - (XIV) taxes: ad valorem;
 - (XV) taxes: Texas corporate franchise;
 - (XVI) taxes: other;
 - (XVII) insurance expenses;
 - (XVIII) operation and maintenance expense;
 - (XIX) other;
- (L) facility payroll tax and employee benefit expense:
 - (i) FICA contributions: all facility employees;
 - (ii) unemployment insurance: all facility employees;
 - (iii) worker's compensation insurance: all facility employees;
 - (iv) employee benefits: all facility employees except administrator, assistant administrator, owner, partner, or stockholder (if not administrator or assistant administrator);
- (5) purchases of services, facilities, and supplies from related organizations:
 - (A) purchases of facilities and supplies from related parties:
 - (i) price paid by facility;
 - (ii) cost to related organization;
 - (B) purchases of services from related parties:
 - (i) price paid by facility;
 - (ii) prevailing price in area for same service;
 - (C) loans from related parties:
 - (i) principal payments during reporting period;
 - (ii) remaining liability at end of reporting period;
 - (iii) interest expense during reporting period;
- (6) other statistical accounts:
 - (A) fixed assets land—number of acres;
 - (B) SNF contracted beds—patient-days of service provided:
 - (i) skilled—Medicare;
 - (ii) skilled—Medicaid;
 - (iii) ICF—Medicaid;
 - (iv) ICF-II—Medicaid;
 - (v) other patients;
 - (C) ICF contracted beds—patient-days of service provided:
 - (i) waived skilled—Medicaid;
 - (ii) ICF—Medicaid;

- (iii) ICF-II—Medicaid;
- (iv) other patients;
- (D) ICF-II contracted beds—patient-days of service provided:
 - (i) waived skilled—Medicaid;
 - (ii) waived ICF—Medicaid;
 - (iii) ICF-II—Medicaid;
 - (iv) other patients.

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 27, 1986.

TRD-8610175 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:
December 1, 1986
For further information, please call
(512) 450-3766.

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Chapter 23. Nursing Facility Administration

Subchapter UUUU. Support Documents

★ 40 TAC §§23.9801, 23.9803-23.9805

(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 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 Texas Department of Human Services (DHS) proposes the repeal of §§23.9801 and 23.9803-23.9805, concerning reimbursement methodology for vendor rates, in its nursing facility administration chapter. The department proposes to place new reimbursement methodology in its chapter on intermediate care facility/skilled nursing facility (ICF/SNF). The department is simultaneously proposing the repeal of current reimbursement methodology for vendor rates in the intermediate care facility for mentally retarded (ICF-MR) chapter and the addition of new methodology to replace it.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the repeals are in effect there will be fiscal implications for state government as a result of enforcing or administering the repeals. The effect on state government is an estimated savings to the state of \$677,419 in fiscal year 1987; \$1,036,985 in fiscal year 1988; \$1,031,743 in fiscal year 1989; \$1,077,804 in fiscal year 1990; and \$1,076,583 in fiscal year 1991. There will be no fiscal implications for local government or small businesses.

Mr. Packard also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated will be that reimbursement methodology will be removed from one chapter, which will allow it to be placed in a more appropriate chapter. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

The department will hold a hearing to accept comments on the proposal at 9 a.m. on Wednesday, November 19, 1986, in the Texas Department of Human Services public hearing room, 701 West 51st Street, Austin. Written comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-602, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

- §23.9801. *Reimbursement Methodology for Rates for Skilled Nursing Facilities and Intermediate Care Facilities.*
- §23.9803. *Chart of Accounts.*
- §23.9804. *Allowable Costs.*
- §23.9805. *Unallowable Costs.*

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-8610174 Marlin W. Johnston
Commissioner
Texas Department of
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December 1, 1986
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(512) 450-3766.

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Chapter 27. Intermediate Care Facility for Mentally Retarded

(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 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 Texas Department of Human Services (DHS) proposes the repeal of §§27.9801 and 27.9803-27.9805 and new §27.9801, concerning reimbursement methodology for Medicaid long-term care providers, in its intermediate care facility for mentally retarded (ICF-MR) chapter. The department is simultaneously proposing the repeal of current reimbursement methodology for

skilled nursing facilities and replacing it with new methodology.

The new section is designed to eliminate confusion associated with rate reimbursement methodology and to reduce the number of erroneous cost reports submitted by providers. Clarifications and additions to the methodology include: a description of the appeals process; a more detailed explanation of the basis for determining allowable and unallowable costs; a more concise treatment of related-party transactions; a more detailed treatment of capital asset depreciation schedules; limitations on the depreciation base for facilities that changed ownership after July 18, 1984, to ensure compliance with the Deficit Reduction Act of 1984; an allowance for department latitude to use limits on administration and facility costs; and exclusion of costs for vocational and educational services in ICFs-MR.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the repeals and new section are 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 and new section.

Mr. Packard also has determined that for each year of the first five years the repeals and new section are in effect the public benefit will be that there will be clearer understanding of reimbursement methodology by ICF-MR providers and therefore a reduced number of erroneous cost reports submitted. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals and new section.

The department will hold a hearing to accept comments on the proposal at 9 a.m. on Wednesday, November 19, 1986, in the Texas Department of Human Services public hearing room, 701 West 51st Street, Austin. Written comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-602, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

Subchapter UUU. Support Documents

★ 40 TAC §§27.9801, 27.9803-27.9805

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§27.9801. *Reimbursement Methodology for Vendor Rates.*

§27.9803. *Chart of Accounts.*

§27.9804. *Allowable Costs.*

§27.9805. *Unallowable Costs.*

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 27, 1986.

TRD-8610173

Marlin W. Johnston
Commissioner
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December 1, 1986

For further information, please call
(512) 450-3788.

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★ 40 TAC §27.9801

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§27.9801. *Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.*

(a) General information. The Texas Department of Human Services (TDHS) reimburses Texas Medicaid contracted providers for care provided to clients in intermediate care facilities for the mentally retarded (ICFs-MR) receiving ICF-MR I, ICF-MR V, and ICF-MR VI levels of care. The Texas Board of Human Services determines reimbursement rates that are statewide and uniform by class of service. To facilitate determination of rates, TDHS staff submit recommendations to the Texas Board of Human Services. Recommendations are based upon analysis of a rate base derived from information submitted by providers in cost reports and other pertinent sources.

(1) Uniform rates. Reimbursement rates are uniform statewide for the same class of service, with the possible exception of demonstration or pilot implementation projects involving experimental classes, as specified in subsection (g)(4) of this section.

(2) Classes of service. Classes of service are based upon the level of care of the recipient.

(3) Prospective rates. Reimbursement rates are determined prospectively.

(4) Frequency of rate determination. Reimbursement rates are determined at least annually.

(5) Rate period. Rates are effective for one calendar year, from January 1 through December 31, unless the Texas Board of Human Services decides otherwise.

(b) Cost reporting procedures. Each provider must submit financial and statistical information on cost report forms provided by TDHS or on facsimiles which are formatted according to TDHS specifications and are preapproved by TDHS staff.

(1) Accounting methods. All information submitted on cost reports must be based upon the accrual method of accounting, except where otherwise specified in the

lists of allowable and unallowable costs and in the case of governmental entities operating on a cash basis.

(2) Chart of accounts. Providers must complete cost reports according to TDHS' prescribed chart of accounts and statements of allowable and unallowable costs.

(3) Recordkeeping requirements. Each provider must maintain records according to the requirements stated in §51.50 of this title (relating to Record Retention Requirements). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with TDHS' chart of accounts for long-term care providers constitutes grounds for contract cancellation and recovery of liquidated damages from the provider. In cases of noncompliance, TDHS allows providers 90 days, subsequent to notification, to comply with TDHS recordkeeping requirements. TDHS may withhold all vendor payments to the provider during those 90 days or until the deficiency is corrected. If the provider does not correct the deficiencies within 90 days from the date of notification, TDHS may cancel the provider's contract and recover liquidated damages from the provider, if any are specified in the contract.

(4) Allowable and unallowable costs. Providers must complete the cost report according to TDHS' statements of allowable and unallowable costs.

(5) Cost report certification. Providers must certify the accuracy of cost reports submitted to TDHS in the format specified by TDHS. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to TDHS requirements.

(6) Due date. Providers must submit cost reports to TDHS no later than three months following the end of the provider entity's fiscal year.

(7) Extension of due date. TDHS may grant extensions of due dates for good cause. A good cause is defined as one that the provider could not reasonably be expected to control. Providers must submit requests for extensions in writing to TDHS before the cost report due date. Economic Analysis Division staff respond to requests within 10 work days of receipt.

(8) Amended cost reports. TDHS accepts amended cost reports until the completion of the rate determination process. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after the actual rate determination have no effect on the rate and are not accepted.

(9) Cost report supplements. TDHS may at times require additional financial and other statistical information to ensure the fiscal integrity of the Texas Medicaid ICF-

MR Program. Providers must submit the information to TDHS upon request, to the extent that it can be reasonably expected to be at the disposal of the provider.

(10) Failure to file an acceptable cost report. If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, TDHS may withhold vendor payments to that provider until the deficiencies are corrected.

(11) Review of cost report. TDHS staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(12) On-site cost report audits.

(A) Number of on-site audits to be performed. TDHS performs a sufficient number of on-site audits each year to ensure the fiscal integrity of the Texas Medicaid Long-term Care Program. The number of on-site audits performed each year may vary. TDHS arranges on-site audits to maximize the number of on-site audited cost reports available for use in cost projections.

(B) On-site audit standards. TDHS performs on-site cost report audits in a manner consistent with generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in *Standards for Audit of Governmental Organization, Programs, Activities and Functions*, issued by the United States Comptroller General.

(C) Access to records. Each provider entity or its designated agent(s) must allow access to any and all records necessary to verify information submitted to TDHS on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from TDHS, a hold is placed on vendor payments until access to the records is allowed. If a central office or other entity pertaining to a multifacility operation refuses access to records, then the vendor hold is extended to all related parties having Medicaid contracts with TDHS.

(D) Use of on-site cost report audits. It is the general policy of TDHS to include in the rate base the maximum number of on-site audited cost reports that is reasonably possible. Adjustments consistent with the results of on-site audits are made to the rate base until closure before the final rate analysis.

(E) Reviews of cost report disallowances. A provider who disagrees with disallowances of items in a cost report and wishes to appeal them is entitled to a review with TDHS staff according to the following procedure. Within 30 calendar days of notification of the disallowances by TDHS Audit Division, the provider must contact the Economic Analysis Division and request

a review. Reviews are intended to encourage open discussion between providers and TDHS staff and to promote resolution of matters in dispute. At the earliest possible date which is convenient for all parties concerned, Economic Analysis Division staff arrange a review at which the provider may present all pertinent information supporting his disagreement with any disallowances in question. Three TDHS staff members, including the reimbursement analyst responsible for the ICF-MR program and a representative of TDHS Audit Division, consider the provider's case and give a written decision within 30 days of the review.

(c) Allowable and unallowable costs.

(1) General information. TDHS defines allowable and unallowable costs to identify expenses which are reasonable and necessary to provide resident care to TDHS clients on the part of an economical and efficient provider. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates to providers. To achieve that objective, TDHS compiles a rate base consisting, if possible, only of allowable cost information. If TDHS classifies a particular type of expense as unallowable for purposes of compiling a rate base, it does not mean that individual providers may not make expenditures of this type. Allowable costs included in the rate base determine only the costs and maximum reimbursement rates associated with an economical and efficient operator. Cost reporting by TDHS Medicaid contracted providers should be consistent with generally accepted accounting principles (GAAP). In cases where TDHS cost reporting rules conflict with GAAP, IRS, or other authorities, TDHS rules take precedence for Medicaid provider cost reporting purposes.

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

(A) Allowable costs—Those expenses that are reasonable and necessary in the normal conduct of operations relating to resident care in an ICF-MR. If possible, only allowable costs are included in the rate base.

(i) Reasonable refers to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.

(ii) Necessary refers to the relationship of the cost to the provision of resident care. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of an ICF-MR, and must meet all of the following requirements.

(I) The expenditure was not for personal or other activities not specifically related to the provision of long-term care.

(II) The cost does not appear on the list of specific unallowables.

(III) The cost bears a significant relationship to resident care. The test

of significance in this case is whether it can be demonstrated that, if the expenditure were eliminated, there would be an adverse impact on resident health, safety, or general well-being.

(IV) The expense was incurred in the purchase of materials, supplies, or services provided directly to the residents or staff of individual ICFs-MR in the conduct of normal operations relating to resident care.

(V) The costs are not unallowable under other federal, state, or local laws or regulations.

(iii) Normal conduct of operations relating to resident care refers to otherwise allowable costs that include, but are not limited to, the following:

(I) expenses for facilities, materials, supplies, or services not used by an ICF-MR solely for providing long-term resident care. Whenever otherwise allowable costs are attributable partially to personal or other business interests and partially to ICF-MR resident care, the latter portion may be allowed on a pro rata basis if the proportion of use for ICF-MR resident care purposes is well-documented;

(II) Related-party transaction. Allowable costs are those which result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the ICFs-MR is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This affiliation or association may be based on common ownership, past or present mutual interests in long-term care or other types of enterprises, or family ties.

(B) Unallowable costs—Those expenses that are not reasonable or necessary for the provision of resident care in an ICF-MR, in accordance with the criteria as specified in subparagraph (A) of this paragraph. Unallowable costs are not included in the rate base used for determining recommended reimbursement rates.

(d) List of allowable costs. The following list of allowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles as specified in subsection (c)(1) of this section.

(1) Compensation of ICF-MR employees. Only those employees who primarily provide services directly to the residents or staff of individual ICFs-MR in the normal conduct of operations relating to resident care: qualified mental retardation profes-

sionals (QMRPs); director of nursing; registered nurses; licensed vocational nurses; trainers, aides, and other salaried direct care staff; medical clerks; food service supervisor; cooks and other food service personnel; laundry and housekeeping staff; recreational staff; social workers; administrator; assistant administrator; houseparents; accountants and bookkeepers; other clerical and secretarial staff; buildings, equipment, and grounds maintenance staff. This includes:

(A) wages and salaries;

(B) payroll taxes and insurance.

Federal Insurance Contributions Act (FICA or social security), unemployment compensation insurance, workmen's compensation insurance;

(C) employee benefits. Employer-paid health, life, accident, and disability insurance for employees; uniform allowances and meals provided to employees as part of an employment contract; contributions to an employee retirement fund; and deferred compensation. The allowable portion of deferred compensation is limited to the dollar amount that an employer contributes during a cost reporting period. The expense:

(i) must represent a clearly enumerated liability of the employer to individual employees;

(ii) must not be incurred as a benefit to employees who do not primarily provide services directly to the residents or staff of individual ICFs-MR; and

(iii) must not represent any form of profit sharing;

(2) compensation of owners, partners, or stockholders (other than the facility administrator or assistance administrator) who primarily provide services directly to the residents or staff of individual ICFs-MR. If the owners, partners, or stockholders are involved in other income-earning activities outside the individual ICF-MR, allowable compensation expense is limited to the pro rata portion of the actual working time spent in the ICF-MR;

(3) compensation of outside consultants. This includes medical director, registered nurse, social worker, pharmacist, audiologist, psychologist, recreational therapist, records librarian, physical therapist, occupational therapist, and dentist;

(4) management fees paid to unrelated parties;

(5) management fees paid to related parties and home office overhead expense. Management fees paid to a relation organization must be clearly derived from the actual cost of materials, supplies, or services provided directly to an individual ICF-MR. A facility that is owned, operated, or controlled by another individual(s) or organization(s) may report the allowable portion of costs for materials, supplies, and services provided directly to that facility. The allowable portion of such costs to a given facility is limited to those expenses that can be directly attributed to the individual establishment;

(A) in multifacility organizations where the clear separation of costs to individual facilities is not always possible, the allowable portion of actual costs for materials, supplies, and services may be allocated to individual Texas ICFs-MR on a pro rata basis. The preferred allocation method for these costs is a resident-day-of-service basis. Providers who wish to use a pro rata cost basis may do so, however, if TDHS provides prior approval. Once a provider has chosen an allocation method, he must be consistently use that method in preparing subsequent cost reports;

(B) in organizations with multiple levels of management, costs incurred at levels above the individual ICF-MR in Texas are allowable only if the costs were incurred in the purchase of materials, supplies, or services directly used by the facility staff in the conduct of normal operations relating to resident care. This restriction is consistent with the restrictions placed on independent ICFs-MR;

(6) utilization review committee. This includes professional fees;

(7) materials and supplies. This includes food and nonalcoholic beverages; dietary supplements; food service supplies; cooking utensils; laundry and housekeeping supplies; office supplies; and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment;

(8) utilities. This includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph;

(9) buildings, equipment, and capital expenses. It is generally expected that buildings, equipment, and capital are used by an ICF-MR solely in the course of normal operations in the provision of resident care, and not for personal business. Whenever this is not the case, the portion of the costs relating directly to the provision of ICF-MR resident care may be allowed on a pro rata basis, if the proportion of use for resident care is documented. Includes:

(A) depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented ICF-MR property that are valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight-line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 40 years, with a minimum salvage value of 10%;

(ii) building equipment; buildings and grounds improvements and repairs; durable medical equipment, furniture, and appliances; and power equipment and tools used for buildings and grounds maintenance: minimum schedules consistent with *Estimated Useful Lives of Depreciable Hospital Assets*, published by the American Hospital Association; and

(iii) transportation equipment used for the transport of residents or materials and supplies utilized by the ICF-MR:

a minimum of three years for passenger automobiles; five years for light trucks and vans; and seven years for buses, with a minimum salvage value of 10%;

(B) provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider entity that are valued at less than \$500 at the time of purchase may be treated as ordinary expenses;

(C) rental and lease expense. Rental and lease expense paid to a related party is limited to the actual allowable cost incurred by the related party. This includes buildings, building equipment, transportation equipment used for the transport of residents or materials and supplies utilized by the ICF-MR, durable medical equipment, furniture and appliances, and power equipment and tools used for buildings and grounds maintenance;

(D) interest expense:

(i) interest expense is allowable on loans for the acquisition of allowable items, subject to all of the requirements for allowable costs, plus two additional ones:

(I) the loan must be evidenced in writing; and

(II) the loan must be made in the name of the provider entity as maker or comaker of the note;

(ii) interest expense on related-party loans is limited to the cost to the provider entity, which is the cost to the related party. The allowed cost in these cases is limited to the alternative interest income which the provider could have earned on the loan principal had the funds been invested in taxable long-term United States Treasury bonds at the average rate of return during the year in which the loan contract was finalized. The source used in calculating these limits is the U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business* and *Business Conditions Digest*.

(E) tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, and Texas corporate franchise taxes;

(F) insurance expense. This includes facility fire and casualty, professional liability and malpractice, and transportation equipment insurance;

(10) contract services provided by outside vendors. This includes daily direct care services, food service, laundry and linen service, housekeeping service, and professional services such as those of accountants and attorneys;

(11) business and professional association dues. Limited to associations devoted primarily to issues of resident care;

(12) outside training costs. Limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the residents of staff of individual ICFs-MR. To qualify as an allowable cost, the training must be:

(A) located within the continental United States; and

(B) related directly and primarily to resident care;

(13) expenses for pre-vocational training. In cases where these services are provided jointly to a variety of clients (as, for example, in a sheltered workshop or similar environment), such that they may be classified as pre-vocational training or active treatment for one group of clients as vocational training for others, the allowable portion of these expenses is that portion which qualifies as active treatment and must be determined on a pro rata client-day-of-service basis. This includes costs of buildings, utilities, supplies, and staff utilized in the provision of such services.

(e) List of unallowable costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles as specified in subsection (c)(1) of this section:

- (1) vocational training expenses;
- (2) expenses for educational services:

(A) educational services are unallowable if they are:

(i) provided in the building, rooms, or area designated or used as a school or educational facility;

(ii) included in the individualized education plans (IEPs) for those residents receiving them, or required by federal and state educational statutes and regulations; and

(iii) education-related services provided to students under 22 years of age;

(B) in cases where the services are provided jointly to a variety of clients (as, of example, in a sheltered workshop or similar environment), and may be classified differently depending upon the characteristics of individual clients, the allowable portion of the pertinent expenses must be determined on a pro rata client-day-of-service basis. This includes costs of buildings, utilities, supplies, and staff utilized in the provision of such services;

(3) compensation in the form of salaries, benefits, or any form of perquisite provided to owners, partners, officers, directors, stockholders, employees, or others who do not provide client-care-related services directly to the residents of staff of individual ICFs-MR;

(4) personal expenses not directly related to the provision of resident care in an ICF-MR;

(5) forms of compensation that are not clearly enumerated as to dollar amount or which represent profit distributions;

(6) management fees paid to a related organization that are not clearly derived from the actual cost of materials, supplies,

or services provided directly to an individual ICF-MR;

(7) advertising expenses other than those for yellow pages advertising, newspaper ads for employee recruitment, and advertising to meet any statutory or regulatory requirements;

(8) business expenses not directly related to the care of residents in an ICF-MR. This includes business investment activities, stockholder and public relations activities, and farm and ranch operations;

(9) political contributions;

(10) depreciation and amortization of unallowable costs. This includes amounts in excess of those resulting from the straight-line method, capitalized lease expenses in excess of actual lease payments, and goodwill or any excess above the actual value of physical assets at the time of purchase;

(11) trade discounts of all types;

(12) donated facilities, materials, supplies, and services;

(13) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with resident care;

(14) entertainment expenses except those incurred for entertainment provided to the staff of an ICF-MR as employee benefit;

(15) expenses for medical services not provided to Medicaid recipients;

(16) expenses incurred for services provided in an ICF-MR but not related to resident care. This includes meals not provided to residents or to ICF-MR employees as a part of an employment contract, non-medical rentals, barber and beauty shop operations, canteens and gift shops, and vending machines;

(17) organizational filing fees, such as those for corporations and limited partnerships, and boards of directors fees;

(18) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(19) fund raising and promotional expenses;

(20) expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts;

(21) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(22) insurance premiums pertaining to items of unallowable cost;

(23) accrued expenses that are not legal obligations of the provider entity or are not clearly enumerated as to dollar amount. This includes any form of profit sharing and the accrued liabilities of deferred compensation plans;

(24) planning and evaluation expenses for the purchase of depreciable assets, except where purchases are actually made and the assets are put into service in the provision of resident care;

(25) motor vehicles that are not generally suited or are not commonly used to transport residents or facility supplies. This includes aircraft; motor homes and recreational vehicles; sports and luxury automobiles; motorcycles; heavy trucks, tractors and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of resident care;

(26) values assigned to the services of unpaid workers and volunteers;

(27) returns, allowances, and refunds;

(28) costs of purchases from a related party which exceed the original cost to the related party;

(29) out-of-state travel expenses, except for outside training which qualifies as an allowable cost as specified in subsection (d)(12) of this section;

(30) contributions to self-insurance funds which do not represent payments based on current liabilities;

(31) any expense incurred because of imprudent business practices;

(32) expenses which cannot be adequately documented;

(33) any expense not allowable under other pertinent federal, state, or local laws and regulations;

(34) legal and other costs associated with litigation between a provider and state or federal agencies, unless the litigation is decided in the provider's favor.

(f) Cost finding methodology.

(1) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(A) TDHS excludes from the rate base any unallowable expenses included on the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs which:

(i) are reasonable and necessary for the provision of resident care;

(ii) represent economic and efficient use of resources; and

(iii) are consistent with federal and state Medicaid regulations.

(B) If there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported, TDHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(i) Revenue offsets. TDHS distinguishes between two types of revenues: resident revenues accruing to the ICF-MR in payment for direct resident care services given, including room and bed holds; and all other revenues. Other revenues include interest income, gifts, grants, donations, beauty and barber shop receipts, prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees or guests. These other revenues are used to offset reported expenses after allowances for reasonable overhead costs. Interest income is used to offset working capital interest expense, not to exceed total interest

costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs-MR.

(ii) **Fraud referrals.** In cases where a provider has been referred to the Office of the Attorney General of the State of Texas for investigation of probable fraudulent cost reporting, alternative expense figures for the cost centers in question are substituted in the rate base. These substitute cost figures are based on the lower of:

(I) the facility's expenses in the pertinent cost centers from the rate base in the most recent cost reporting year which is not part of a fraud investigation; or

(II) the cost associated with the median day of service from the previous year's rate base. In both cases, uninflated costs are adjusted by an appropriate inflation factor to ensure comparability with other data in the current rate base.

(iii) **Fixed capital asset costs.** TDHS defines a historical base for fixed capital asset costs which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values which constitute the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from pertinent cost report data. For newly-constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from TDHS records, allowable buildings depreciation for each provider class is determined for each class of service in the following manner.

(I) Increases in buildings depreciation and buildings rental and lease expense are limited to the lesser of:

(-a-) the current expense reported by the provider; or

(-b-) the historical base adjusted for an inflation index deemed appropriate by TDHS.

(II) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(-a-) the actual mortgage interest expense incurred by the new owner of record during the current cost reporting period; or

(-b-) an amount based upon allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of sale. TDHS determines an interest rate index appropriate for this purpose.

(iv) **Limits on other facility and administration costs.** Upper limits may be placed on the amounts of specific line items and categories of line items in the administration and facility cost centers that are

included in the rate base to ensure that the results of cost analyses reflect economical and efficient use of resources. Unless otherwise specified in this section, no upper limits are set below the 85th percentile in the array of all costs for a specific line item or category of line items, as reported by all contracted facilities or a specified class of facilities.

(v) **Occupancy adjustments.** TDHS adjusts facility and administration costs of providers with occupancy rates below 85% occupancy rate, based on the number of contracted beds during the cost reporting period.

(vi) **Cost projections.** TDHS projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate apply. TDHS determines reasonable methods for projecting costs.

(2) **Cost determination by class of provider.** For rate determination purposes, TDHS distinguishes two classes of ICF-MR providers:

(A) community-based providers; and

(B) state schools.

(3) **Cost determination by cost centers.** Within each of the two provider classes (community-based providers and state schools), TDHS combines adjusted expenses from the rate base into the following cost centers:

(A) **Resident care cost center.** The resident care cost center includes all direct resident care expenses: nursing care; and consultant, social service, activity, training, laundry and housekeeping expenses.

(B) **Dietary care cost center.** The dietary care cost center includes food, food service, and dietary consultant expense.

(C) **Facility cost center.** The facility cost center includes expenses to operate and maintain the buildings, equipment, and capital necessary to provide resident care.

(D) **Administration cost center.** The administration cost center includes administrative salaries and supplies and interest on working capital loans.

(E) **Comprehensive medical cost center.** The comprehensive medical cost center includes medical expenses for services provided directly to state school residents. Since these services are not provided directly to community-based residents by ICF-MR providers, reimbursement for this cost center is limited to those state schools providing comprehensive medical care.

(g) **Rate setting methodology.**

(1) **Classes of providers.** Reimbursement rates are determined separately for each of two classes of ICF-MR providers: community-based providers and state schools.

(2) **Classes of service.** A separate set of reimbursement rates corresponding to classes of service is determined within each provider class. The classes of service are ICF-MR I, ICF-MR V, and ICF-MR VI.

(3) **Rate determination process.** The Texas Board of Human Services determines reimbursement rates for each class of provider (community-based providers and state schools) by class of service (ICF-MR I, ICF-MR V, and ICF-MR VI). TDHS staff submit recommendations to the Texas Board of Human Services. A separate set of recommended rates for each provider class is determined for each class of service in the following manner.

(A) A cost component for each cost center is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. (In calculating the median day of service, days of service delivered by each provider included in the rate base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.)

(B) The cost component for each cost center is multiplied by 1.07 and the resulting rate components are summed by level of care to calculate the recommended total reimbursement rates.

(4) **Experimental class.** TDHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(5) **Exception to the reimbursement rate determined by the Texas Board of Human Services.** The reimbursement rate set by the Texas Board of Human Services for each reimbursement class is lowered to the provider's customary charge if the provider's customary charge is less than the Medicaid reimbursement rate for the same services. Customary charge is defined in this case as the average rate charged to non-Medicaid clients for the same services.

(6) **Supplemental reimbursement rate determination.** The reimbursement rate for community-based ICF-MR VI recipients whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the following six criteria on the level-of-care assessment form:

Conditions/Procedures	Qualifying Score
Mobility/Ambulation	6
Transferring	7
Bathing	7
Dressing/Grooming	7
Eating	6
Toileting	7

(7) The department determines the appropriate amount of supplemental reimbursement in the following manner.

(A) The estimated time required by the class of direct care personnel is derived from appropriate and applicable time studies to determine the delivery cost for the supplemental ICF-MR VI rate. Each time estimate is multiplied by a projected hourly wage rate and by class of personnel, including a factor for payroll, taxes, and benefit expenses. The employee compensation costs are estimated from TDHS Medicaid provider cost reports and wage-and-hour survey data.

(B) The portion of the ICF-MR VI class rate which covers employee compensation costs for direct care personnel is determined.

(C) The amount of the ICF-MR VI supplemental reimbursement rate is determined by calculating the difference between the amounts in subparagraphs (A) and (B) of this paragraph.

(h) Chart of accounts. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items are:

- (1) assets:
 - (A) current assets:
 - (i) cash;
 - (ii) cash; resident trust funds (fiduciary account not to be added to facility asset total);
 - (iii) short-term investments;
 - (iv) accounts receivable;
 - (v) notes and other receivables;
 - (vi) inventory;
 - (vii) prepaid expenses;
 - (viii) other current assets;
 - (B) noncurrent assets:
 - (i) long-term investments;
 - (ii) buildings and equipment;
 - (iii) land and land improvements;
 - (iv) other tangible assets;
 - (v) leasehold improvements: leasehold improvements, accumulated amortization—leasehold improvements;
 - (vi) other intangible assets: Pre-opening and other organizational costs, miscellaneous tangible assets, accumulated amortization—other intangible assets;
 - (vii) other assets;
- (2) liabilities and capital:
 - (A) current liabilities;
 - (i) accounts payable;
 - (ii) accounts payable—resident trust fund (fiduciary account not to be added to facility liability total);
 - (iii) notes payable;
 - (iv) salaries, wages, and employee benefits payable;
 - (v) payroll taxes and insurance payable:
 - (I) FICA taxes payable;
 - (II) federal income taxes withheld;

- (III) other Payroll insurance payable;
- (vi) other taxes payable;
- (I) Texas ad valorem taxes payable;
- (II) Texas franchise taxes payable;
- (III) Other taxes payable;
- (B) Other current liabilities;
- (C) long-term liabilities:
 - (i) long-term mortgages payable;
 - (ii) long-term notes payable;
 - (iii) other long-term liabilities;
- (D) capital:
 - (i) capital: nonprofit organizations or governmental units. Principal fund balance;
 - (ii) capital: business corporation:
 - (I) capital stock;
 - (II) additional contributed
 - (III) retained earnings;
 - (IV) dividends declared;
 - (V) net income (or loss);
 - (iii) capital: partnership or sole proprietorship:
 - (I) capital;
 - (II) net income (or loss);
 - (III) drawings;
- (3) revenue accounts:
 - (A) ICF-MR VI contracted beds:
 - (i) ICF-MR VI—Medicaid;
 - (ii) other residents;
 - (B) ICF-MR V contracted beds:
 - (i) ICF-MR V—Medicaid;
 - (ii) other residents;
 - (C) ICF-MR I contracted beds:
 - (i) ICF-MR I—Medicaid;
 - (ii) other residents;
 - (D) noncontracted ICF-MR beds (all residents);
 - (E) other gross revenue:
 - (i) gifts, grants, donations, endowments, and trusts;
 - (ii) room, bed holds, and reservations;
 - (iii) drugs and medications;
 - (iv) meals: employees and guests;
 - (v) rentals: medical;
 - (vi) rentals: non-medical;
 - (vii) interest sources;
 - (viii) barber and beauty shop;
 - (ix) vending machines;
 - (x) canteen and gift shop;
 - (xi) social service and activity service;
 - (xii) other revenues;
 - (F) adjustments to gross revenue:
 - (i) allowance for uncollectibles—Medicaid;
 - (ii) other adjustments to gross revenue;
- (4) expense accounts:
 - (A) routine daily service expense:
 - (i) ICF-MR VI contracted beds:
 - (I) salaries and wages: professional staff;
 - (II) salaries and wages: other staff;

- (III) medical supplies and nonlegend drugs;
- (IV) contract or outside services;
- (V) other expense;
- (ii) ICF-MR V contracted beds:
 - (I) salaries and wages: professional staff;
 - (II) salaries and wages: other staff;
 - (III) medical supplies and nonlegend drugs;
 - (IV) contract or outside services;
 - (V) other expense;
- (iii) ICF-MR I contracted beds:
 - (I) salaries and wages: professional staff;
 - (II) salaries and wages: other staff;
 - (III) medical supplies and nonlegend drugs;
 - (IV) contract or outside services;
 - (V) other expense;
- (iv) Noncontracted ICF-MR beds:
 - (I) salaries and wages: professional staff;
 - (II) salaries and wages: other staff;
 - (III) medical supplies and nonlegend drugs;
 - (IV) other expense;
- (B) consultant service expense (except dietary);
- (C) durable medical equipment (DME) expense:
 - (i) purchased DME;
 - (ii) leased DME;
- (D) training expense:
 - (i) salaries and wages;
 - (ii) supplies;
 - (iii) contract or outside services;
 - (iv) other expenses;
- (E) social services expense:
 - (i) salaries and wages;
 - (ii) supplies;
 - (iii) contract or outside services;
 - (iv) other expenses;
- (F) activity service expense:
 - (i) salaries and wages;
 - (ii) supplies;
 - (iii) contract or outside services;
 - (iv) other expenses;
- (G) laundry, linen, and house-keeping expense:
 - (i) salaries and wages;
 - (ii) supplies;
 - (iii) contract or outside services;
 - (iv) linen and bedding;
 - (v) other expenses;
- (H) dietary expense:
 - (i) salaries and wages: supervisory and professional staff;
 - (ii) salaries and wages: chefs, cooks, and other food service staff;
 - (iii) food.

(iv) supplies (dishes, flatware, napkins, utensils);
 (v) consultant service: dietician/nutritionist;
 (vi) contract or outside services;
 (vii) other services;
 (I) operation and maintenance expense:
 (i) salaries and wages;
 (ii) gas, electricity, water, and wastewater;
 (iii) telephone and telegraph;
 (iv) garbage disposal;
 (v) supplies;
 (vi) maintenance and repairs: buildings, building equipment, and grounds;
 (vii) maintenance and repairs: transportation equipment;
 (viii) maintenance and repairs: departmental equipment;
 (ix) gasoline and oil;
 (x) pest control service;
 (xi) security service;
 (xii) contract or outside services;
 (xiii) other expense;
 (J) buildings, equipment, and other capital expense:
 (i) current year assessed valuation of property from local tax district;
 (ii) cost to acquire the facility by the present owner;
 (iii) rental or lease expense: building and fixed equipment;
 (iv) rental or lease expense: transportation equipment;
 (v) rental or lease expense: other equipment;
 (vi) depreciation: building;
 (vii) depreciation: building equipment;
 (viii) depreciation: land improvements;
 (ix) depreciation: departmental equipment;
 (x) depreciation: transportation equipment;
 (xi) amortization: leasehold improvements;
 (xii) amortization: preopening and other organization expense;
 (xiii) amortization: other;
 (xiv) interest: mortgage loans;
 (xv) interest: working capital loans;
 (xvi) interest: other;
 (xvii) taxes: ad valorem;
 (xviii) taxes: Texas corporate franchise;
 (xix) taxes: other;
 (xx) insurance: building, tents, and grounds;

(xxi) insurance: transportation expense;
 (xxii) insurance: other;
 (K) general administrative expense
 (i) salaries and wages: administrator;
 (ii) employee benefits: administrator;
 (iii) salaries and wages: assistant administrator;
 (iv) employee benefits: assistant administrator;
 (v) salaries and wages: owner, partners, or stockholders, (if not administrator or assistant administrator);
 (vi) employee benefits: owner, partners, or stockholder, (if not administrator or assistant administrator);
 (vii) salaries and wages: professional administrative staff;
 (viii) salaries and wages: clerical and secretarial staff;
 (ix) insurance: professional and facility malpractice;
 (x) insurance: other;
 (xi) advertising;
 (xii) travel and seminars;
 (xiii) dues: Association which represent the interest of nursing homes in Texas;
 (xiv) dues: other;
 (xv) fees: professional services;
 (xvi) fees: other;
 (xvii) miscellaneous office expense;
 (xviii) central office overhead:
 (I) salaries and wages;
 (II) payroll taxes;
 (III) employee benefits;
 (IV) advertising;
 (V) travel and seminars;
 (VI) dues: association;
 (VII) dues: other;
 (VIII) fees: professional services;
 (IX) fees: other;
 (X) miscellaneous office expense;
 (XI) rental or lease expense;
 (XII) depreciation and amortization expense;
 (XIII) interest expense;
 (XIV) taxes: ad valorem;
 (XV) taxes: Texas corporate franchise;
 (XVI) taxes: other;
 (XVII) insurance expenses;
 (XVIII) operation and maintenance expense;
 (XIX) other;
 (L) facility payroll tax and employee benefit expense;

(i) FICA contributions: all facility employees;
 (ii) unemployment insurance: all facility employees;
 (iii) worker's compensation insurance: all facility employees;
 (iv) employee benefits: all facility employees except administrator, assistant administrator, owner, partner, or stockholder (if not administrator or assistant administrator);
 (5) purchases of services, facilities, and supplies from related organizations:
 (A) purchases of facilities and supplies from related parties:
 (i) price paid by facility;
 (ii) cost to related organization;
 (B) purchases of services from related parties:
 (i) price paid by facility;
 (ii) prevailing price in area for same service;
 (C) loans from related parties:
 (i) principal payments during reporting period;
 (ii) remaining liability at end of reporting period;
 (iii) interest expense during reporting period;
 (6) other statistical accounts:
 (A) fixed assets land—number of acres;
 (B) ICF-MR VI contracted beds—resident days of service provided:
 (i) ICF-MR VI—Medicaid;
 (ii) other residents;
 (C) ICF-MR V contracted beds—resident days of service provided:
 (i) ICF-MR V—Medicaid;
 (ii) other residents;
 (D) ICF-MR I contracted beds—resident days of service provided:
 (i) ICF-MR I—Medicaid;
 (ii) other residents;

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 27, 1986.

TRD-8610172

Marlin W. Johnston
 Commissioner
 Texas Department of
 Human Services

Earliest possible date of adoption:

December 1, 1986

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

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Adopted

Rules An agency may take final action on a rule 30 days after a proposal has been published in the *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 19. EDUCATION Part II. Texas Education Agency

Chapter 89. Adaptations for Special Populations

The Texas Education Agency adopts the repeal of §§89.71, 89.72, 89.81, 89.91, 89.293, and 89.295, without changes to the proposed text published in the July 29, 1986, issue of the *Texas Register* (11 TexReg 3431).

The repeals allow all sections governing adult basic and secondary education to be included in one complete and updated document.

The repealed sections contain operating procedures for adult education programs that are being consolidated into new §§89.71-89.90, adopted elsewhere in this issue.

No comments were received regarding adoption of the repeals.

Subchapter D. Adult Education Adult Education and Training in General

★ 19 TAC §§89.71, §89.72

The repeals are adopted under the Texas Education Code, §11.18(b), which authorizes the State Board of Education to make rules concerning adult education programs, and §21.111, which authorizes local boards of trustees to conduct vocational classes and other educational programs for students of all ages, subject to the rules and regulations of the State Board of Education.

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 22, 1986.

TRD-8610065

W. N. Kirby
Commissioner of Education

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Proposal publication date: July 29, 1986
For further information, please call
(512) 463-9212.

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Subchapter D. Adult Basic and Secondary Education

★ 19 TAC §§89.71-89.90

The Texas Education Agency adopts new §§89.71-89.90. New §§89.79, 89.80, and 89.85, are adopted with changes to the proposed text published in the July 29, 1986, issue of the *Texas Register* (11 TexReg 3432). The rest of the new sections are adopted without changes and will not be republished.

The new sections provide schools with a single and updated set of rules for operating adult basic and secondary education programs.

The change in §89.80 provides that one member of each adult education cooperative shall be designated as the fiscal agent and shall be responsible for the overall management of the cooperative; all financial matters on behalf of the cooperative in accordance with the requirements of *Bulletin 679, the Financial Accounting Manual*, and the Standard Application System for Adult Education Programs; maintenance of records required by the Central Education Agency; employment of an administrator for the cooperative and itinerant personnel serving cooperative schools; and other responsibilities agreed upon by both the fiscal agent and the cooperative coordinating committee.

The change in §89.85 retains a hold harmless clause prohibiting the reduction of a program's allocation by more than 10% below the preceding year's allocation for only those programs whose contact hour performance is not lower than that of the preceding year.

The new sections include definitions to clarify educational terms; identify essential adult education program components; and set standards for the awarding of diplomas, student eligibility requirements, attendance and class size, staff qualifications and training, instructional time requirements, and staff salaries. The new sections also provide for a program delivery system and the formation of local advisory and coordinating committees; establish procedures for submitting program applications; set standards for funding allocations, tuition, and fees; and provide for allowable and nonallowable program expenditures.

In addition, the sections establish procedures for submitting program reports; provide standards and procedures for the use of staff development funds and the application process for funding special projects; and provide for the Advisory Council for Technical-Vocational Education in Texas to serve as the adult education advisory committee and the addition of adult education practitioners as nonvoting members.

The State Board of Education provided 26 local educators with an opportunity to comment by telephone on the sections. They identified no problem areas and their comments were favorable.

A representative of the Alice Independent School District recommended that the maximum allowable supervisory and administrative costs in §89.87(a) be increased from 25% to 35% of the total budget. The agency responded that keeping the 25% maximum will ensure that an appropriate percentage of the total budget is devoted to direct services.

A representative of the Dallas Independent School District recommended that the requirement for a bachelor's degree under §89.77(e)(1) be waived in cases where the local school cannot find English as a Second Language (ESL) teachers possessing a bachelor's degree. The agency responded that persons without a bachelor's degree can still be employed as aides under §89.77(d).

A representative of the La Vega Independent School District recommended that the cooperative coordinating committee should meet once a year rather than twice a year, as specified in §89.83, and that §89.87(c)(1) be changed to make the cost of the local audit an allowable cost. The agency responded that the requirement for two meetings a year, preferably one in the fall and one in the spring, is reasonable and will allow the committee to discharge its responsibilities more effectively and efficiently. *Bulletin 679, Financial Accounting Manual*, specifies that the audit cost is an indirect cost item and should not be charged as direct cost to the program.

The new sections are adopted under the Texas Education Code, §11.18(b), which authorizes the State Board of Education to make rules concerning adult education

programs, and §21.111, which authorizes local boards of trustees to conduct vocational classes and other educational programs for students of all ages, subject to rules and regulations of the State Board of Education.

§89.79. Salaries for Staff. Salaries shall be based on local policy.

§89.80. Program Delivery System.

(a) There shall be a statewide system of adult education cooperatives for the coordinated provision of adult education services by public school districts, county boards of education, public colleges and universities, and regional education service centers. The commissioner of education shall establish geographical service delivery areas for the formation of cooperatives. To the extent possible, service delivery areas shall be large enough to support a program meeting the requirements of §89.73 of this title (relating to Essential Program Components) and to ensure efficient and effective delivery of services.

(b) Districts which wish to provide adult education services without participating in the statewide system of adult education cooperatives or who wish to withdraw from one cooperative to participate in another may do so only with the approval of the commissioner of education or his designee. Before granting such approval, the commissioner must determine:

(1) that justification has been provided for withdrawal from a cooperative; and

(2) that the district can provide a program which meets the requirements of this subchapter.

(c) One member of the cooperative shall be designated as the fiscal agent by participating cooperative public education systems. The fiscal agent shall be responsible for:

(1) the overall management of the cooperative, including technical assistance to cooperative schools, on-site visits, staff training, and program implementation in accordance with the requirements of this subchapter;

(2) all financial matters on behalf of the cooperative including applications, reports, and accounting in accordance with the requirements of the *Financial Accounting Manual, Bulletin 679*, and the standard application system for adult education programs (SAS);

(3) the maintenance of records and documentation required by the Central Education Agency for audit and monitoring purposes;

(4) the employment of an administrator for the cooperative and itinerant personnel serving cooperative schools;

(5) other responsibilities agreed upon by both the fiscal agent and the cooperative coordinating committee.

§89.85. Allocation of Funds.

(a) Annually, after funds have been

aside for state administration, special projects, staff development, and community education developmental projects, fund allocations shall be developed for each fiscal agent. Allocations shall be computed as follows.

(1) Twenty-five percent of the funds available shall be allocated based on the best available estimates of the number of eligible adults in each district and cooperative.

(2) Seventy-five percent of the funds available shall be allocated based on student contact hours reported by district and cooperative for the most recent complete fiscal year reporting period.

(3) A cooperative's student contact hour annual allocation shall not be reduced by more than 10% below the preceding fiscal year's contact hour allocation, provided that:

(A) sufficient funds are available; and

(B) the cooperative's contact hour performance used in calculating the allocation was not less than that of the preceding fiscal year.

(b) Final allocations shall be made to fiscal agents based upon approved applications.

(c) In the case of cooperatives, the actual allocation will be made to the fiscal agent. Responsibility for further allocation within the cooperative shall be the responsibility of the fiscal agent in accordance with cooperative policies. Disagreements about allocations within a cooperative may be appealed to the Central Education Agency.

(d) The standard application system (SAS) shall be the basis on which the state allocation is provided. Applications will be issued annually. The Central Education Agency will evaluate programs based on required reports of enrollment, attendance, and expenditures, by monitoring local programs, and by on-site evaluations.

(e) Supplemental allocations may be made at the discretion of the commissioner from funds becoming available for local allocations during the program year.

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 22, 1986.

TRD-8610056 W. N. Kirby
Commissioner of Education

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

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Education for Adults

★ 19 TAC §89.81

The repeal is adopted under the Texas Education Code, §11.18(b), which authorizes the State Board of Education to make

rules concerning adult education programs, and §21.111, which authorizes local boards of trustees to conduct vocational classes and other educational programs for students of all ages, subject to the rules and regulations of the State Board of Education.

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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(512) 463-9212.

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Education for Specified Adult Populations

★ 19 TAC §89.91

The repeal is adopted under the Texas Education Code, §11.18(b), which authorizes the State Board of Education to make rules concerning adult education programs, and §21.111, which authorizes local boards of trustees to conduct vocational classes and other educational programs for students of all ages, subject to the rules and regulations of the State Board of Education.

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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(512) 463-9212.

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Subchapter H. Adoptions by Reference

★ 19 TAC §89.293, §89.295

The repeals are adopted under the Texas Education Code, §11.18(b), which authorizes the State Board of Education to make rules concerning adult education programs, and §21.111, which authorizes local boards of trustees to conduct vocational classes and other educational programs for students of all ages, subject to the rules and regulations of the State Board of Education.

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 22, 1986.

TRD-8610059 W. N. Kirby
Commissioner of Education

Effective date: November 12, 1986
Proposal publication date: July 29, 1986
For further information, please call
(512) 463-9212.

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Chapter 121. Public School Finance Personnel

The Texas Education Agency adopts amendments to §§121.1, 121.31, and 121.34. The amendments to §121.31 and §121.34 are adopted with changes to the proposed text published in the August 5, 1986, issue of the *Texas Register* (11 TexReg 3460). The amendment to §121.1 is adopted without changes and will not be republished.

The amendments make public school finance rules consistent with other rule changes relating to accreditation adopted by the State Board of Education. They place the same requirements on all individuals claiming creditable service when employed by public school districts. The change to the proposed text of §121.31 provides that persons holding a Texas certificate and employed in a private school are eligible to receive credit for service during the 1986-87 school year if they perform satisfactorily on the Texas examination for current administrators and teachers (TECAT) before August 31, 1987. The changes to §121.34 substitute the term "a recognized regional accrediting agency" for "the Southern Association of Colleges and Schools."

The amendment to §121.1 adds a provision that the term "accredited institution" include schools accredited by an accrediting agency recognized by the commissioner of education; adds the term "current valid certificate" to make clear that after June 30, 1986, Texas teaching certificates are not valid without evidence that the bearer has passed either the TECAT or the examination for current educators in Texas (ExCET); and clarifies the term "regional accrediting agency" to apply only to the six listed agencies.

The amendment to §121.31 adds the provision that beginning June 30, 1986, service in any entity recognized for creditable service can be counted only if the individual holds a valid certificate at the time the service occurred.

The amendment to §121.34 provides for a transition period for accreditation by the Central Education Agency to accreditation by accrediting associations recognized by the commissioner. Beginning in the 1989-90 school year, the agency will no longer recognize private schools unless they are accredited by a recognized accrediting association. The amendment also provides that beginning with the 1989-90 school

year private schools accredited by accrediting associations recognized by the commissioner will be listed in the Texas School Directory. The amendment also provides a transition period for the 1986-87, 1987-88, and 1988-89 school years.

A representative of the Texas Association of Nonpublic Schools and other representatives of private schools and individuals who teach in private schools expressed the concern that §121.31 as originally proposed would allow certified persons who teach in private schools only one opportunity to take and pass the TECAT. To respond to these concerns, the agency inserted the change in §121.31 previously explained.

Subchapter A. General Provisions

★ 19 TAC §121.1

The amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules concerning the Foundation School Program, and §16.056, which authorizes the State Board of Education to establish the Texas public education compensation plan, which requires the Central Education Agency to make rules to provide for the placement of personnel with prior educational experience into the compensation plan and authorizes credit for work experience for vocational personnel.

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 22, 1986.

TRD-8610080 W. N. Kirby
Commissioner of Education

Effective date: November 12, 1986
Proposal publication date: August 5, 1986
For further information, please call
(512) 463-9212.

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Subchapter C. Years of Service for Salary Increment Purposes

★ 19 TAC §121.31, §121.34

The amendments are adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules concerning the Foundation School Program, and §16.056, which authorizes the State Board of Education to establish the Texas public education compensation plan, which requires the Central Education Agency to make rules to provide for the placement of personnel with prior educational experience into the compensation plan and authorizes credit for work experience for vocational personnel.

§121.31. *General Provisions Concerning Years of Service.*

(a)-(c) (No change.)

(d) For persons employed after June 30, 1986, by a Texas public school in a position that requires certification, the following rule applies: years of experience served after June 30, 1986, in entities identified in §121.33 of this title (relating to Entities Recognized for Creditable Service) and §121.34 of this title (relating to Requirements Concerning Entities Recognized for Creditable Service) may be recognized for salary increment purposes only if the person held a current valid certificate at the time the service occurred. A person holding a Texas certificate and employed in an entity recognized for creditable service other than a Texas public school is eligible to receive credit for service during the 1986-87 school year if the educator performs satisfactorily on the Texas examination for current administrators and teachers prior to August 31, 1987.

§121.34. *Requirements Concerning Entities Recognized for Creditable Service.*

(a) (No change.)

(b) Entities recognized for professional personnel only.

(1) (No change.)

(2) Texas private elementary and secondary schools. For experience prior to the 1986-87 school year, accreditation by the Central Education Agency or the Southern Association of Colleges and Schools is required. For experience in the 1986-87, 1987-88, and 1988-89 school years, service shall be acceptable if the school is accredited by the Central Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education in accordance with §97.7 of this title (relating to Nonpublic Schools). For experience in the 1989-90 school year and thereafter, service shall be acceptable if the school is accredited by an accrediting association recognized by the commissioner of education in accordance with §97.7 of this title (relating to Nonpublic Schools). During the 1986-87, 1987-88, and 1988-89 school years, private schools accredited by the Central Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education will be listed in the Texas School Directory.

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 22, 1986.

TRD-8610081 W. N. Kirby
Commissioner of Education

Effective date: November 12, 1986
Proposal publication date: August 5, 1986
For further information, please call
(512) 463-9212.

TITLE 22. EXAMINING BOARD
Part VII. Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids
Chapter 143. Consumer Information and Complaints

★22 TAC §143.1

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids adopts an amendment to §143.1, without changes to the proposed text published in the July 18, 1986, issue of the *Texas Register* (11 TexReg 3284).

Section 143.1 covering the guidelines for a 30-day trial period is being amended to clarify the rule and mandate specific instructions.

The amendment clarifies the section and mandates specific instructions which will provide more protection to the consumer purchasing a hearing aid.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4566, 1.04(a), which provide the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids with the authority to promulgate procedural rules and regulations.

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 22, 1986.

TRD-8610112

Wanda F. Stewart
Executive Director
Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Effective date: January 1, 1987
Proposal publication date: July 18, 1986
For further information, please call
(512) 459-1488.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part IX. Texas Water Commission

Chapter 297. Water Rights, Substantive
Subchapter A. Definitions

★31 TAC §297.1

The Texas Water Commission adopts an amendment to §297.1, without changes to the proposed text published in the Sep-

tember 16, 1986, issue of the *Texas Register* (11 TexReg 3962).

The amendment concerns the definition of the term "state water."

As amended, the references to the terms "canyon, ravine, depression, or watershed" will be deleted and replaced by the term "watercourse."

Comments were received by Buddy Clark of the Forked Lightning Ranch and from Sally Jo Field, assistant city attorney for the City of Dallas. Mr. Clark stated that he is in favor of the amendment. Ms. Field stated that the City of Dallas is opposed to the amendment for three reasons. First, as amended, the section deviates from the definition of state water contained in the Texas Water Code, §11.021; second, studies should be done to determine the effect of deleting consideration of "canyon, ravine, depression, or watershed" from the hydrology computer model; and third, that the commission would not have jurisdiction over diffused surface water.

The commission believes that the amendment will not alter the extent of its jurisdiction over all waters defined as state water in the Texas Water Code, §11.021. The amendment to the term "state water" contained in §297.1, however, clarifies the commission's interpretation of the term and announces the commission's policy with regard to this matter. The commission's policy is based on the judicial interpretation of the term and includes the well-established concept of a watercourse. The commission believes that including the term "watercourse" in the definition of state water will clarify this matter for the general public. The commission will continue to examine all permit applications for the diversion and use of water from alleged canyons, ravines, and depressions in light of the more clearly established definition of watercourse, and only those canyons, ravines, and depressions having the characteristics of a watercourse will come under the commission's jurisdiction.

The commission believes that the amended definition of state water will not affect the results generated by the computer model used to determine whether water is available for appropriation in the river basins of the state.

The state, in accordance with the common law of Texas, has never asserted jurisdiction over diffused surface water and will not change its practice subsequent to the adoption of this section.

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

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 22, 1986.

TRD-8610092

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

Effective date: November 12, 1986
Proposal publication date: September 16, 1986
For further information, please call
(512) 463-8087.

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Subchapter C. Types of Uses

★31 TAC §297.26

The Texas Water Commission adopts new §297.26, without changes to the proposed text published in the September 16, 1986, issue of the *Texas Register* (11 TexReg 3963).

The new section exempts common land management and soil conservation practices from the water rights permitting process under the Texas Water Code, Chapter 11.

The new section will exempt practices designed to make maximum beneficial use of diffused surface water such as contouring, terracing, and the use of spreader dam systems from the commission's permitting requirements.

The only comment was submitted by Buddy Clark of the Forked Lightning Ranch in favor of the new section.

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

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 22, 1986.

TRD-8610093

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

Effective date: November 12, 1986
Proposal publication date: September 16, 1986
For further information, please call
(512) 463-8087.

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**TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE**

**Part I. Texas Department of
Human Services**

**Chapter 47. Primary Home
Care**

Provider Contracts

★40 TAC §47.9801

The Texas Department of Human Services (DHS) adopts the repeal of §47.9801, concerning contractual agreements for home health agencies, in its Primary Home Care chapter. The section is adopted without changes to the proposed text published in the July 4, 1986, issue of the *Texas Register* (II TexReg 3098).

The repeal removes information from this chapter that is unrelated to the Primary Home Care Program.

The repeal makes primary home care rules clearer and more concise.

No comments were received regarding adoption of the repeal.

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

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

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

TRD-8610171

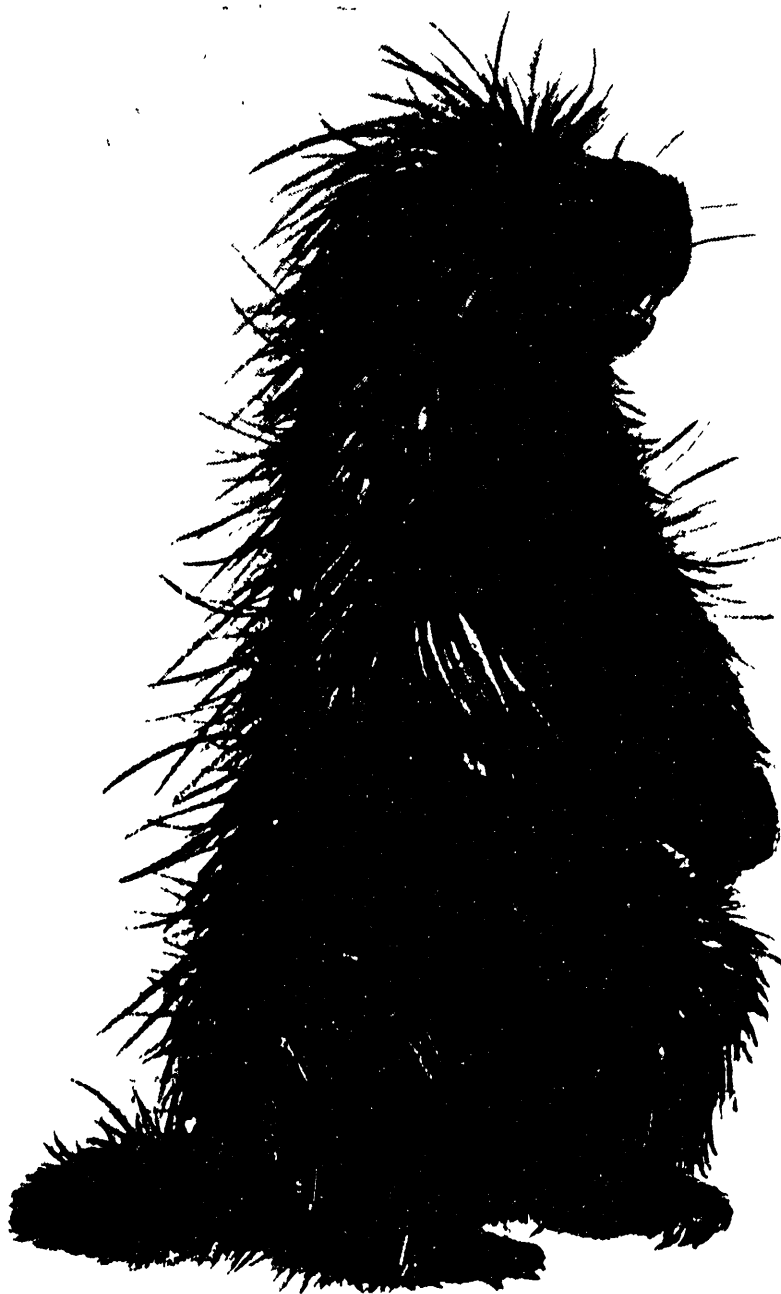
Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: November 17, 1986

Proposal publication date: July 4, 1986

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

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Open Meetings

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

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

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

Texas Department of Agriculture

Tuesday, November 18, 1986, 10 a.m. The Texas Department of Agriculture will meet in the District Office, 5015 College Drive, Vernon. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §76.116(a)(1), by Howard Thatcher, doing business as Allied Sprayers, Inc., holder of a commercial applicator's license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 24, 1986, 10:50 a.m.
TRD-8610140

Tuesday, November 25, 1986, 10 a.m. The Texas Department of Agriculture will meet on the Ninth Floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §76.116(a)(1), by Kenneth Lauderdale, doing business as K&L Farm and Ranch Service, holder of a commercial applicator license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 24, 1986, 10:51 a.m.
TRD-8610141

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Automated Information and Telecommunications Council

Wednesday, November 5, 1986, 9 a.m. The Automated Information and Telecommunications Council will meet in Room 106, John H. Reagan Building, Austin. Items on the agenda include the approval of minutes; the disaster recovery status report; the management consultant status report, future business; and the Long-Range Telecommunications Plan status report. The council also will meet in executive session to consider telecommunications.

Contact: Tina J. Miles, #216, 510 South Congress Avenue, Austin, Texas 78711, (512) 463-5530.

Filed: October 23, 1986, 3:22 p.m.
TRD-8610120

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State Banking Board

Thursday, November 6, 1986, 9:30 a.m. The State Banking Board will meet at 2601 North Lamar Boulevard, Austin. According to the agenda, the board will consider the rules relating to branch banking.

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: October 24, 1986, 4:26 p.m.
TRD-8610169

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Battleship Texas Advisory Board

Saturday, November 8, 1986, 10 a.m. The Battleship Texas Advisory Board will meet at the Battleship Texas, 3527 Battleground Road, La Porte. Items on the agenda include the approval of minutes; approval of expenses; the fundraising report; and the planning of the completion of the Trans-Texas Race along with the ceremony for November 22, 1986. The board also will meet in executive session if necessary.

Contact: W. Douglas Williams, Suite 601, 3033 Chimney Rock, Houston, Texas 77056, (713) 783-8109.

Filed: October 27, 1986, 9:11 a.m.
TRD-8610179

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Texas Department of Corrections

Monday, November 10, 1986, 10 a.m. The Board of Corrections of the Texas Department of Corrections will meet in the Kazel D. Kerper Courtroom, Criminal Justice Center, Sam Houston State University, 815 16th Street at Avenue I, Huntsville. According to the agenda summary, the board will consider operations, inmate affairs, management services, construction, medical, finance, agriculture, business, industries, director's items, and Windham School System. The board also will meet in executive session.

Contact: O. L. McCotter, P.O. Box 99, Huntsville, Texas 77340, (409) 295-6371.

Filed: October 28, 1986, 9:50 a.m.
TRD-8610210

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State Depository Board

Friday, October 31, 1986, 10 a.m. The State Depository Board will meet in the Office of the Treasurer, LBJ Building, 111 East 17th Street, Austin. Items on the agenda include consideration of depository applications received; the investment of eleemosynary funds; and the acquisition by the State Treasurer of Texas Treasury Safekeeping Trust Company Stock pursuant to Senate Bill 8, 69th Legislature, Third Called Session.

Contact: J. Stephen Ravel, P.O. Box 12608, Austin, Texas 78711, (512) 463-5971.

Filed: October 23, 1986, 2:44 p.m.
TRD-8610117

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Texas Commission on Economy and Efficiency in State Government

Wednesday, November 5, 1986, 9 a.m. The Administration Committee of the Texas Commission on Economy and Efficiency in State Government will meet in Room 220, State Capitol, Austin. According to the

agenda, the committee will consider which major department heads shall give a report employing the existence of factors beyond their control as chief executive officers which adversely impact the effective and efficient discharge of their responsibilities. A roundtable discussion of these reports will follow. The committee also will discuss public school finance and accountability.

Contact: Jess M. Irwin, Jr., Room 220, State Capitol, Austin, Texas 78711, (512) 463-1159.

Filed: October 24, 1986, 2:40 p.m.
TRD-8610163

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Texas Education Agency

Friday, October 31, 1986, 10 a.m. The Committee for Long-Range Planning of the State Board of Education of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will conduct a work session on the Long-Range Plan for public education in Texas.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78711, (512) 463-8985.

Filed: October 23, 1986, 1:07 p.m.
TRD-8610109

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Advisory Commission on State Emergency Communications

Thursday, November 6, 1986, 10 a.m. The Advisory Commission on State Emergency Communications will meet in the Banquet Room, Benchmark Inn, 2502 Loop 306, San Angelo. According to the agenda, the commission will review information and consider issues related to a Statewide 9-1-1 emergency telephone service; consider draft legislative proposals for implementation of 9-1-1 service; discuss the content and approach to preparing the final report; and hear public testimony regarding approaches to financing and implementation of 9-1-1 on a statewide basis.

Contact: Jay Staford, P.O. Box 13206, Austin, Texas 78701, (512) 463-1812.

Filed: October 27, 1986, 11:42 a.m.
TRD-8610186

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Texas Employment Commission

Wednesday, October 29, 1986, 8 a.m. The Texas Employment Commission (TEC) met in emergency session in Room 644, TEC

Building, 101 East 15th Street, Austin. According to the agenda summary, the commission considered prior meeting notes, internal procedures of commission appeals, considered and acted on higher level appeals in unemployment compensation cases on Commission Dockets 43 and 43a; and set the date of the next meeting. The emergency status was necessary to meet time requirements. The meeting was rescheduled from October 29, 1986, 8:30 a.m..

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

Filed: October 27, 1986, 3 p.m.
TRD-8610194

Wednesday, November 5, 1986, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. Items on the agenda include prior meeting notes, internal procedures of commission appeals, consideration and action on higher level appeals in unemployment compensation cases on commission Docket 44, and setting the date of the next meeting.

Contact: Courtenay Browning, TEC Building, Room 608, 15th Street and Congress Avenue, Austin, Texas, (512) 463-2226.

Filed: October 27, 1986, 3:01 p.m.
TRD-8610195

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State Finance Commission

Thursday, November 6, 1986, 9:30 a.m. The Banking Section of the State Finance Commission will meet at 2601 North Lamar Boulevard, Austin. According to the agenda, the section will review and approve the minutes; consider the rules relating to branch banking; discuss statutory provisions relating to financial institutions; review departmental operations including budget and personnel and pending litigation; and a legislative update including a discussion of S.C.R. 4.

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: October 24, 1986, 4:26 p.m.
TRD-8610170

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Texas Department of Health

Saturday, October 25, 1986, 9:30 a.m. The Personnel Committee of the Texas Board of Health met in emergency session in Room 906, The Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda, the committee discussed the Texas Department of Health personnel evaluations. The emer-

gency status was necessary in order to meet established department deadlines.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: October 23, 1986, 4:07 p.m.
TRD-8610122

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State Board of Insurance

Monday, November 3, 1986, 10 a.m. The Long-Term Care Insurance Feasibility Study Advanced Group of the State Board of Insurance will meet in Room 304T, Texas Employment Commission, 12th and Trinity Streets, Austin. Items on the agenda include review of the draft report; summarize suggested recommendations; suggest report revisions; approve findings attributed to advisory group; and adopt advisory group recommendations.

Contact: Roy Ray, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6425.

Filed: October 24, 1986, 10:16 a.m.
TRD-8610136

Tuesday, November 4, 1986, 9 a.m. The Fire Marshal'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 FM-058—whether the State Fire Marshal should refuse to renew the certificate of registration to install fire detection and alarm devices and systems of Central Texas Fire and Safety Equipment, Inc., Batrop.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: October 27, 1986, 10:26 a.m.
TRD-8610183

Tuesday, November 4, 1986, 10 a.m. The State Board of Insurance will meet in Room 414, State Board of Insurance, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider petitions by the Texas Catastrophe Property Insurance Association for approval of amendments to its plan of operation, 28 TAC §5.4001; consider final action on amendments to 28 TAC §11.204(7); board orders on several different matters as itemized on the complete agenda; hear the fire marshal's report on personnel matters, the Research and Information Services report on personnel matters, the commissioner's report on personnel matters; and pending and contemplated litigation.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: October 27, 1986, 3:13 p.m.
TRD-8610197

The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. Days, times, and dockets follow.

Tuesday, November 4, 1986, 1:30 p.m. The section will consider Docket 9367—whether disciplinary action should be taken against James Gary Harris, Kress, who holds a Group I, legal reserve life insurance agent's license and local recording agent's multiple line license issued by the State Board of Insurance.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: October 27, 1986, 10:26 a.m.
TRD-8610184

Wednesday, November 5, 1986, 10 a.m. The section will consider Docket 9369—application for original charter of Mission National Life Insurance Company, Houston.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: October 27, 1986, 10:27 a.m.
TRD-8610185

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Texas Board of Land Surveying

Thursday and Friday, November 6 and 7, 1986, 1 p.m. and 8 a.m., respectively. The Texas Board of Land Surveying will conduct its fourth called meeting of 1986 in Room 304, 7703 North Lamar Boulevard, Austin. According to the agenda, the board will discuss proposed revisions to the Land Surveying Practices Act and any other business to come before the board.

Contact: Betty J. Pope, Room 304, 7703 North Lamar Boulevard, Austin, Texas 78752, (512) 452-9427.

Filed: October 24, 1986, 2:18 p.m.
TRD-8610162

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Board of Pardons and Paroles

Monday-Friday, November 3-7, 1986, 1:30 p.m. daily Monday-Thursday and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners and inmates and administrative 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 24, 1986, 10:16 a.m.
TRD-8610137

Tuesday, November 4, 1986, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons and restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2749.

Filed: October 24, 1986, 10:16 a.m.
TRD-8610138

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Texas Parks and Wildlife Department

Wednesday, November 5, 1986, 7 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at 300 South Congress Avenue, Austin. According to the agenda summary, the commission will have dinner and may discuss items on the agenda scheduled for 9 a.m., November 6, 1986.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: October 27, 1986, 2:57 p.m.
TRD-8610190

Thursday, November 6, 1986. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet in Complex Building B, Parks and Wildlife Headquarters, 4200 Smith School Road, Austin. Times and agendas follow.

9 a.m. The commission will approve the minutes, consider employee awards, the Lubbock Lake Landmark, the plan for Mata-gorda Island S.P./WMA, the pipeline easement/Gene Howe WMA, concession/Texas State RR, concession /Palo Duro S.P., concession/Queen Isabella S. Fishing Pier, operating budget/San Jacinto Museum, nongame/waterfowl stamp, WMA regulations, ROW/U.T. Cancer Center, funding/Martin Creek S.R.A., new facilities/Lakeview S.P., easement/San Jacinto S.P., Galveston Bay Oystering, land acquisition/San Jacinto S.P., land acquisition/Lake Mineral Wells S.P., land donation/Orange C., land donation, transfer/Sierra Diablo WMA, land acquisition/Kinney C, litigation Mitchell Development Corporation v. State/Galveston Island S.P., and land acquisition/coastal beach.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: October 27, 1986, 2:57 p.m.
TRD-8610191

9 a.m. The commission will consider issues associated with the annual public comment meeting of August 27, 1986.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: October 27, 1986, 2:58 p.m.
TRD-8610192

noon. The commission will meet in executive session to approve the August 28, 1986, executive session court reporter minutes; the Dover/Lefler property, Orange County; land acquisition-San Jacinto Battleground State Historical Park, Harris County; proposed judgement-Mitchell Development Corporation v. State of Texas; land acquisition-Lake Mineral Wells State Park-Parker County; donation and transfer of land-Sierra Diablo management area; land acquisition-Kinney County; land acquisition-Brazoria County; land acquisitions-coastal beach and wetlands; and land acquisition-Jeff Davis and Presidio Counties.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: October 27, 1986, 2:57 p.m.
TRD-8610193

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Texas State Board of Physical Therapy Examiners

Saturday, November 15, 1986, 9:30 a.m. The Texas State Board of Physical Therapy Examiners will meet in Suite 260, Building C, 1300 Anderson Lane, Austin. According to the agenda, the board will approve the minutes of the last meeting; discuss board members' travel expense limitations; and hear reports from all board committees, including the Education Committee—consideration of English and jurisprudence exams as prerequisite to offering Texas license exam, special request from applicants Baguio and Hubbard, and Texas Board approval, all current APTA approved PT and PTA education programs in the United States; the Rules/Policy Manual Committee—consideration of inclusions to policy manual and review of recent rules interpretations; the Budget Committee—fiscal year 1986 budget report and fiscal year 1987 projected expenditures; and the Investigation Committee—1986 performance and current types of complaints.

Contact: Lois M. Smith, Suite 260, Building C, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-1846.

Filed: October 28, 1986, 8:52 a.m.
TRD-8610206

Texas State Board of Examiners of Psychologists

Wednesday-Saturday, November 5-8, 1986, 8:30 a.m. daily. The Texas State Board of Examiners of Psychologists will meet at the Lincoln Hotel, 4510 LBJ Freeway, Dallas. According to the agenda, the board will consider minutes, the oral exam, application files, opinion letters, proposed rules, interviews, hearings complaints, the meeting with the Texas Psychological Association, supervision guidelines, the budget, jurisprudence exam, and legislative matters.

Contact: Patti Bizzell, Suite C-270, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-2036.

Filed: October 27, 1986, 3:57 p.m.
TRD-8610202

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Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Monday, November 3, 1986, 1 p.m. A joint prehearing conference in Dockets 7122, 7123, 7124, and 7152—complaint of Intellcall, Inc., against private coin phone rates and practices of Southwestern Bell Telephone; complaint of advanced Telecom Systems, Inc., against private coin phone rates and practices of Southwestern Bell Telephone Company; complaint of Intellicall *et al.* against private coin phone rates and practices of Southwestern Bell Telephone Company and application of Southwestern Bell Telephone Company to revise its private coin service tariff.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 23, 1986, 2:50 p.m.
TRD-8610118

Wednesday, November 5, 1986, 9 a.m. A second prehearing conference in Docket 7120—petition of West Texas Utilities Company for order to refund fuel cost overrecoveries and set interim fixed fuel factors.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 27, 1986, 3:11 p.m.
TRD-8610196

Wednesday, November 5, 1986, 10 a.m. A prehearing conference in Docket 7144—petition of Southwestern Public Service Company for authority to refund fuel cost overrecoveries and establish new fixed fuel factors.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 27, 1986, 3:10 p.m.
TRD-8610199

Wednesday, December 3, 1986, 10 a.m. A hearing on the merits in Docket 7120—petition of West Texas Utilities Company for order to refund fuel cost overrecoveries and to set interim fixed fuel factors.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 27, 1986, 3:11 p.m.
TRD-8610200

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Railroad Commission of Texas

Monday, October 27, 1986, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The revision concerned Docket 3-86,165—whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on the Eversole, Gerald, A. E. Baily (03353) Lease, Well No. 1, Pierce Junction Field, Harris County. The emergency status was necessary because this item was properly noticed for the meeting of October 20, 1986, and was passed.

Contact: Barbara Epstein, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7291.

Filed: October 24, 1986, 11:55 a.m.
TRD-8610143

Monday, October 27, 1986, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The revision concerned Docket 8-87,805—application of Exxon Corporation, to carry forward underproduction, W. T. Dobbins Well No. 1-L, Block 16 (Ellen.) Field, Ward County; and Docket 8-87,806—application of Exxon Corporation, W. T. Dobbins Well No. 1-U, Block 16 (Devonian) Filed, Ward County. The emergency status was necessary because these items were properly noticed for the meeting of October 20, 1986, and were passed.

Contact: Walter Davis, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6920.

Filed: October 24, 1986, 11:54 a.m.
TRD-8610144

Monday, November 3, 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 24, 1986, 11:53 a.m.
TRD-8610145

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 24, 1986, 11:53 a.m.
TRD-8610146

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 24, 1986, 11:53 a.m.
TRD-8610147

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 24, 1986, 11:52 a.m.
TRD-8610148

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 24, 1986, 11:53 a.m.
TRD-8610149

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 24, 1986, 11:52 a.m.
TRD-8610150

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 24, 1986, 11:54 a.m.
TRD-8610151

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 24, 1986, 11:55 a.m.
TRD-8610152

Consideration of Docket 20-89,058—whether to adopt on an emergency basis an amendment to Statewide Rule 34 (16 TAC §3.34) for the State of Texas.

Contact: Lisa C. Anderson, P.O. Box 12967, Austin, Texas 78711, (512) 463-7291.

Filed: October 24, 1986, 11:54 a.m.
TRD-8610153

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 24, 1986, 11:55 a.m.
TRD-8610154

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 24, 1986, 11:53 a.m.
TRD-8610155

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: October 24, 1986, 11:53 a.m.
TRD-8610156

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: October 24, 1986, 11:52 a.m.
TRD-8610157

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 24, 1986, 11:54 a.m.
TRD-8610158

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Texas Savings and Loan Department

Tuesday, November 4, 1986, 9:30 a.m. The Texas Savings and Loan Department will meet in Room 201, 2601 North Lamar Boulevard, Austin. According to the agenda

summary, the department will accumulate a record of evidence in regard to the application of San Jacinto Savings and Loan Association, Beaumont, Jefferson County, to change the name of The Savings Banc, a Savings and Loan Association, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, Room 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: October 24, 1986, 12:54 p.m.
TRD-8610159

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State Committee of Examiners for Speech-Language Pathology and Audiology

Friday, November 7, 1986, 9 a.m. The State Committee of Examiners for Speech-Language Pathology and Audiology will meet in Room T-604, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve the minutes of the September 25 and 26, 1986, meeting; discuss the committee newsletter; review complaints and complaint investigations; review committee's comments to proposed rule changes of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; consider correspondence addressed to the committee, and other matters relating to the licensing and regulation of Speech-Language Pathologists and Audiologists (no committee action required); and set the next meeting date.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: October 23, 1986, 1:47 p.m.
TRD-8610113

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Structural Pest Control Board

Thursday, November 6, 1986, 8:30 a.m. The Structural Pest Control Board will meet in Room 250, Building C, 1300 East Anderson Lane, Austin. Items on the agenda summary include the approval of minutes of the September 30, 1986, board meeting; the executive director's report; Randolph Alexander; Steve Baker and M. J. Castrogiovanni, doing business as International Exterminator Corporation; Larry Novy representing TPCA; discussion of termite treatment and inspection standards; and discussion of other proposed regulation changes. The board also will meet in executive session with the attorney to discuss pending litigation.

Contact: David A. Ivie, Room 250, Building C, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-4066.

Filed: October 27, 1986, 9:14 a.m.
TRD-8610177

Sunset Advisory Commission

Friday and Saturday, November 7 and 8, 1986, 10 a.m. and 9 a.m., respectively. The Sunset Advisory Commission will meet in the Senate Chamber, State Capitol, Austin. The agenda for November 7, 1986, includes the approval of minutes; and commission decisions on the Texas Department of Mental Health and Mental Retardation and Texas Department of Corrections. The agenda for November 8, 1986, includes the presentation of staff reports and public testimony of the Texas Board of Private Investigators and Private Security Agencies, Texas Diabetes Council, Texas Conservation Foundation, and Medical Care Advisory Committee.

Contact: Jeri Kramer, Room 305, John H. Reagan Building, 105 West 15th Street, Austin, Texas 78711, (512) 463-1300.

Filed: October 27, 1986, 1:14 p.m.
TRD-8610187

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University of Texas at Austin

Wednesday, October 29, 1986, 4 p.m. The Intercollegiate Athletics Council for Men of the University of Texas at Austin met in Room 240, Bellmont Hall, San Jacinto Street between 21st and 23rd Streets, Austin. According to the agenda summary, the council approved the minutes of the August 22, 1986, meeting; approved the team schedules and changes; considered personnel, old business, tickets and ticket policies, construction, new business, equipment, and development. The council also met in executive session.

Contact: Haila Kauffman, P.O. Box 7399, Austin, Texas 78713, (512) 471-1332.

Filed: October 23, 1986, 4:03 p.m.
TRD-8610121

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Board for Lease of University Lands

Monday, November 10, 1986, 2 p.m. The Board for Lease of University Lands will meet in the Regents' Conference Room, 201 West Seventh Street, Austin. According to the agenda summary, the board will approve the minutes of the meeting; approve the proposed Secondary Recovery Unit, Taylor-Link, West (San Andres) Unit; proposed temporary oil pooling agreement, University Section 13, Block 18 Unit, Pecos County; proposed Gas Pooling Agreement, State of Texas #16-1 Gas Unit, Ward County; approve the prorated or reduced production contract and consideration and approval of oil and gas lease sale.

Contact: Maxine R. Dean, 210 West Sixth Street, Austin, Texas 78702, (512) 499-4290.

Filed: October 24, 1986, 11:19 a.m.
TRD-8610142

Texas Water Commission

Tuesday, October 28, 1986, 1:30 p.m. The Texas Water Commission met in emergency session in Room 123, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission considered the matter of the representation by the attorney general to institute appropriate legal action regarding the Modern Metal Finishing sit at 7432 Bluff Springs Road, Austin. The emergency status was necessary in order to consider referenced matters as soon as possible.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 28, 1986, 9:33 a.m.
TRD-8610209

Tuesday, November 4, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the release from escrow, change orders, water rate matters, proposed water quality permits, amendments and renewals, reinstatement of permit, water use applications, and the waste load evaluation matter.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1986, 4:05 p.m.
TRD-8610123

Thursday, November 6, 1986, 9:30 a.m. The Texas Water Well Drillers Board of the Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will consider the approval of the minutes of its September 4, 1986, meeting; the certification of applicants for registration; applications for the Driller-Trainee registration; whether to set the following complaints for public hearing before the board or for other appropriate legal action: Ray Benton Bonnet, Wayne Devaney, Johnny Folmar, Kenneth Ford, Melvin Wright, Robert Garcia, Jr., Frankie Glass, Donald Haire, Bobby Hampton, Lewis Harbison, Elizabeth Henderon, David Hinze, Jerry Jasek, Dale Robert Jones, David Karl, Paul Klewer, August Kuehn, III, Gregory A. Linder, James Lynn Lovell, Robert Majors, Samuel L. McMillion, Cory Lynn Miller, Fred Paskell, John C. Pearson, Edwin Pender, B. T. Sikes, Thomas Floyd Smith, Steven R. Stone, and John Stelly; and proposed rule changes and staff changes.

Contact: Larry Persky, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8087.

Filed: October 27, 1986, 2:04 p.m.
TRD-8610188

Thursday, November 6, 1986, 1:30 p.m. The Texas Water Well Drillers Board of the Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North

Congress Avenue, Austin. According to the agenda summary, the board will consider whether to set the following complaints for formal hearing before the board or for other appropriate legal action: WWDB-86-018, David Powell, License 2054, at 2:15 p.m.; WWDB-86-020, C. A. Raymond, Jr. License 774, at 3 p.m.; WWDB-86-022, Ronald Glen Davis, License 1979, at 1:30 p.m.; WWDB-86-023, Dwight Northcutt, no license, at 1:45 p.m.; WWDB-86-024, J. W. Oliver, License 1934, at 2 p.m.; WWDB-86-025, Lawrence Pumphrey, no license, at 2:30 p.m.; and WWDB-86-026, C. Justin Walker, License 2654, at 2:30 p.m.

Contact: Larry Persky, P.O. Box 13087, Austin, Texas 78711, (512) 463-8071.

Filed: October 27, 1986, 2:03 p.m.
TRD-8610189

Friday, November 14, 1986, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider Docket 7053-W—complaint against Aqua Water Supply Corporation.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 27, 1986, 4:05 p.m.
TRD-8610203

Monday, November 17, 1986, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the petition for creation of the Barton Springs-Edwards Aquifer Conservation District.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 27, 1986, 4:05 p.m.
TRD-8610204

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. According to the agenda, the commission made a revision to the agenda concerning Application 5100, J. T. Stellman, doing business as Stellman Ranch, seeks a permit to maintain an existing reservoir complex 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 23, 1986, 4:07 p.m.
TRD-8610124

Thursday, December 18, 1986, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission made a revision to the agenda for a meeting to be held in Room

618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. The revision concerns Application 5098 of Little Cypress Utility District.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 27, 1986, 4:05 p.m.
TRD-8610205

Tuesday, February 10, 1987, 10 a.m. The commission will consider Application 5090, City of Longview, which seeks a permit to divert water from the Sabine River, Sabine River Basin, for municipal use in the Longview area, in the Sabine River Basin, which includes the cities of Longview, Kilgore, White Oak, and Hallsville and rural water supply corporation served by these cities, Gregg County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 24, 1986, 3:58 p.m.
TRD-8610164

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Regional Agencies Meetings Filed October 23

The High Plains Underground Water Conservation District #1, Board of Directors will meet in the conference room, 2930 Avenue Q, Lubbock, on November 3, 1986, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Texas Municipal League, Board of Trustees, Insurance Trust Fund, met at the New Orleans Marriott, 55 Canal and Chartres, New Orleans, on October 29, 1986, at 10:30 a.m. Information may be obtained from Allen F. Hyman, 211 East Seventh Street, Suite 1020, Austin, Texas 78701, (512) 320-1320.

TRD-8610108

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Meetings Filed October 24

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on October 31, 1986, at 9 a.m. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Dallas Area Rapid Transit, Budget and Finance Committee, met at 601 Pacific Avenue, Dallas, on October 27, 1986, at 4 p.m. The Board will meet at the same location, on October 28, 1986, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dawson County Central Appraisal District, Board of Directors, will meet at 920 North Dallas Avenue, Lamesa, on November 5, 1986, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Mental Health and Mental Retardation Center of East Texas, Board of Trustees, met at 2323 West Front Street, Tyler, on October 30, 1986, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Heart of Texas Region Mental Health and Mental Retardation, Board of Trustees, met at 110 South 12th Street, Waco, on October 30, 1986, at 11:45 a.m. Information may be obtained from Jan Baty, 110 South 12th Street, Waco, Texas 76701, (817) 752-3451, ext. 213.

The Henderson County Appraisal District, Board of Directors, met at 101 East Corsicana, Athens, on October 27, 1986, at 4 p.m. Information may be obtained from Helen Marchbanks, P.O. Box 430, Athens, Texas 75751, (214) 675-9296.

The High Plains Underground Water Conservation District #1, Board of Directors, will meet for a revised agenda in the conference room, 2930 Avenue Q, Lubbock, on November 3, 1986, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Texas Panhandle Mental Health Authority, Board of Trustees, met in the boardroom, 1901 Medi Park, Amarillo, on October 30, 1986, at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Wheeler County Appraisal District, Board of Directors, will meet at the District Office, Courthouse Square, Wheeler, on November 3, 1986, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.

TRD-8610139

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Meetings Filed October 27

The Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors, will meet at the District Office, Highway 81, Natalia, on November 3, 1986, at 10 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Burnet County Appraisal District, will meet at 215 South Peirce Street, Burnet, on November 13, 1986, at 6:30 p.m. Information may be obtained from Alvin C. Williams, Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Comal Appraisal District, Board of Directors, met at 644 North Loop 337, New Braunfels, on October 30, 1986, at 7:30 p.m. Information may be obtained from Glenn L. Brucks, P.O. Box 1222, New Braunfels, Texas 78130.

The Dallas Area Rapid Transit, Budget and Finance Committee, met for an emergency revised agenda, at 601 Pacific Avenue, Dallas, on October 27, 1986, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Henderson County Appraisal District, Appraisal Review Board, met in emergency session at 101 East Corsicana, Athens, on October 28, 1986, at 9 a.m. Information may be obtained from Helen Marchbanks, P.O. Box 430, Athens, Texas 75751, (214) 675-9296.

TRD-8610178

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Meetings Filed October 28

The Henderson County Appraisal District, Board of Directors, met in emergency session at 101 East Corsicana, Athens, on October 29, 1986, at 4 p.m. Information may be obtained from Helen Marchbanks, P.O. Box 430, Athens, Texas 75751, (214) 675-9296.

The San Patricio County Appraisal District, Board of Directors, will meet in Room 226, Courthouse Annex, Sinton, on November 13, 1986, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The Sulphur River Basin Authority, Board of Directors, will meet at the Best Western Motel Convention Center, IH 30 East, Sulphur Springs, on November 5, 1986, at 1 p.m. Information may be obtained from C.B. Wheeler, P.O. Box 1838, Texarkana, Texas 75504, (214) 794-3121.

TRD-8610207

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In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Request for Proposals

Notice of invitation for proposals. The Texas Air Control Board (TACB) invites all interested parties to submit technical proposals to provide consultant services to the agency. The last day for receipt of proposals is November 20, 1986. The contract will become effective after being signed by the executive director of the TACB and the selected contractor. It will terminate on May 1, 1987, unless otherwise extended. Funds expended under this contract for these services will not exceed \$20,000.

Description of services. The purpose of these contract services is to design the necessary software for the management of the automated data collection system for the El Paso County Vehicle Inspection/Maintenance Program. A copy of a detailed statement of work to be performed is available from the TACB

Procedure for selecting consultant. The TACB will select and award such contracts and engage such services on the basis of demonstrated competence, knowledge, and qualifications for the type of services to be performed and at fair and reasonable prices. This contract is to be funded by a grant from the United States Environmental Protection Agency and must be completed by May 1, 1987, unless otherwise extended. This request for proposals is made under authority of Texas Civil Statutes, Article 6252-11c.

Contact person. Any consultant interested in providing the described services should contact Sabino Gomez, Director, Compliance Division, TACB, 6330 Highway 290 East, Austin, Texas, 78723, (512) 451-5711 for a copy of the statement of work.

Issued in Austin, Texas, on October 27, 1986

TRD-8610176 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: October 27, 1986
For further information, please call (512) 451-5711, ext. 353.

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Banking Department of Texas Notice of Application

Texas Civil Statutes, Article 342-401a, require 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 September 22, 1986, the banking commissioner received an application to acquire control of the Merchants State

Bank, Dallas, by John J. Kendrick, Jr.; Herbert S. Kendrick, Jr.; Sam K. Kendrick Testamentary Trust; Richard M. Kendrick, III; Kenneth L. Kendrick; Deborah Jan Denton; ELK Trust; A. E. Goode; H. Spencer Kendrick, III; Kathryn G. Kendrick; Lawrence J. Brannian; Jeffrey G. Chase; Marvin H. Hancock, Jr.; Mark D. Schooler, of Dallas; and William E. Hurley of Weatherford.

On October 22, 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 22, 1986.

TRD-8610115 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: October 23, 1986
For further information, please call (512) 479-1200.

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Texas Civil Statutes, Article 342-401a, require 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 August 19, 1986, the banking commissioner received an application to acquire control of Citizens State Bank, Princeton, by Charles E. Baker, Granbury, and Don Harris, Brownwood.

On October 22, 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 22, 1986

TRD-8610114 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: October 23, 1986
For further information, please call (512) 479-1200.

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General Land Office Consultant Contract Award

Pursuant to Texas Civil Statutes, Article 6252-11c, §6(b), the General Land Office announces the award of a contract for consulting services. The request for proposals was published in the June 27, 1986, issue of the *Texas Register* (11 TexReg 3004).

The contract is to supplement the Texas Natural Heritage Program and to advise the General Land Office on the transfer of the program to the Texas Parks and Wildlife Department. The contract has been awarded to The Nature Conservancy, a not-for-profit corporation, P.O. Box 270, Chapel Hill, North Carolina, 27514. The contract begins immediately and will continue no later than August 31, 1987. The amount of the contract is not to exceed \$26,975.

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

TRD-8610160 Dan Miller
Deputy Commissioner
Legal Services
General Land Office

Filed: October 24, 1986
For further information, please call (512) 463-5000.

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Texas Department of Health Intends to Revoke Certificates of Registration

The Bureau of Radiation Control, Texas Department of Health, filed complaints against the following registrants for failure to pay fees pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8:

- (1) Murdock Engineering Company, 5100 Airport Freeway West, P. O. Box 2278, Irving, Texas 75061, Registration 5-05646;
- (2) James R. Mitchell, D.D.S., 201 Stadium Drive, Seymour, Texas 76380, Registration 4-07696;
- (3) Orthopaedic Association, 711 West 38th Street, Suite B11, Austin, Texas 78705, Registration 6-03789;
- (4) Larry E. Freeman, D.D.S., 2419 Southmore, Houston, Texas 77004, Registration 11-06279;
- (5) A. D. Henkel, D.D.S., Inc., 3528 Palmer Highway, Texas City, Texas 77590, Registration 11-07511;
- (6) Northwest Hills Pet Clinic, 3424 Greystone Drive, Austin, Texas 78731, Registration 6-05410

The agency intends to revoke the certificates of registration, order the registrants to cease and desist use of radiation machine(s), and order the registrants to divest themselves of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that they have complied with the order and the provisions of Texas Civil Statutes, Article 4590f.

If the fee is paid within 30 days of the date of each complaint, no order will be issued. This notice affords the opportunity for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or

if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas from 8 a.m. to 5 p.m., Monday through Friday (except holidays).

Issued in Austin, Texas, on October 23, 1986

TRD-8610110 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 23, 1986
For further information, please call (512) 450-3766.

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The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of Certificate of Registration 04-06337, issued to Industrial Manufacturing Company of Texas, 2010 East Broadway, P.O. Box 698, Sweetwater, Texas 79956, because the registrant has declared bankruptcy.

All attempts by the agency to obtain a request for termination from the registrant have been unsuccessful. Therefore, the Texas Department of Health, Bureau of Radiation Control, recommends that the certificate of registration be revoked immediately.

In accordance with *Texas Regulations for Control of Radiation* 13.8, this notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of publication of this notice to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificate of registration will be revoked at the end of the 30-day period of notice

Issued in Austin, Texas, on October 22, 1986

TRD-8610116 Robert A. Maclean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 23, 1986
For further information, please call (512) 458-7236.

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The Bureau of Radiation Control, Texas Department of Health, filed complaints against the following registrants, pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8. The agency intends to revoke the certificates of registration, order the registrants to cease and desist use of radiation machine(s), and order the registrants to divest themselves of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that they have complied with the order and the provisions of Texas Civil Statutes, Article 4590f. The complaints are as shown following this notice.

This notice affords the opportunity for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received

within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if compliance is not achieved, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas from 8 a.m. to 5 p.m., Monday through Friday (except holidays).

COMPLAINT

Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against American Medical Systems, 8511 Highway 271 South, P.O. Box 862, Fort Smith, Arkansas 72904 (the registrant), holder of Certificate of Registration 99-09048.

I.

Texas Regulations for Control of Radiation (TRCR) 12.11 (b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On November 1, 1985, the registrant was billed \$100 for fees due on Certificate of Registration 99-09048, covering the period from August 1985, to July 1986. On June 20, 1986, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of fees has not been received.

II.

On July 15, 1986, the registrant was billed \$172 for fees due on Certificate of Registration 99-09048, covering the period from August 1986, to July 1987. Payment of fees has not been received.

III.

TRCR 42.7(a) specifies that the registrant shall file application for renewal of certificate of registration in accordance with TRCR 42.4. On September 24, 1985, the agency notified the registrant of the requirement, and that Certificate of Registration 99-09048, expired on August 31, 1985. Application for renewal was enclosed. On October 23, 1985, and on December 11, 1985, the agency notified the registrant, by certified mail, of the requirement and provided applications for renewal. Receipt of the correspondence was acknowledged for each notification. On December 30, 1985, application for renewal was received. Review of the application revealed it to be deficient, in that several critical data elements were omitted. On January 27, 1986, and on June 13, 1986, the agency notified the registrant, by certified mail, of the deficiency of the application, and identified the information required to complete the application. Receipt of the correspondence was acknowledged for each notification. Information required to complete the application has not been received.

THEREFORE, the agency, as provided in *Texas Regulations for Control of Radiation* 12.8(c), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist

engaging in the business of installing or offering to install or engaging in the business of furnishing or offering to furnish radiation machine servicing or services in the State of Texas, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f. If the items above are corrected within 30 days of the date of this complaint, no order will issue.

COMPLAINT

Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Kevex Corporation, 1101 Chess Drive, Foster City, California 94404, (the registrant), holder of Certificate of Registration 99-10009.

I.

Texas Regulations for Control of Radiation (TRCR) 12.11 (b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On March 14, 1986, the registrant was billed \$100 for fees due on Certificate of Registration 99-10009, covering the period from April 1986, to March 1987. On September 12, 1986, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of fees has not been received.

II.

TRCR 42.7(a) specifies that the registrant shall file application for renewal of certificate of registration in accordance with TRCR 42.4. On February 10, 1986, the agency notified the registrant of the requirement, and that Certificate of Registration 99-10009 was to expire on April 30, 1986. Application for renewal was enclosed for the registrant's use. On August 15, 1986, the agency notified the registrant, by certified mail, that the certificate of registration has expired and provided application for renewal. Receipt of the correspondence was acknowledged. Application for renewal of Certificate of Registration 99-10009 has not been received.

THEREFORE, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(c), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist engaging in the business of installing or offering to install or engaging in the business of furnishing or offering to furnish radiation machine servicing or services in the State of Texas, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If the items above are corrected within 30 days of the date of this complaint, no order will issue.

Issued in Austin, Texas, on October 21, 1986.

TRD-8610070

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

Filed: October 22, 1986

For further information, please call (512) 458-7236.

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The Bureau of Radiation Control, Texas Department of Health, filed a complaint against the following registrant, pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8. The agency intends to revoke the certificate of registration, order the registrant to cease and desist use of radiation machine(s), and order the registrant to divest himself of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with the order and the provisions of Texas Civil Statutes, Article 4590f. The complaint is as shown following this notice.

This notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificate of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas from 8 a.m. to 5 p.m., Monday through Friday (except holidays).

COMPLAINT

Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against David W. Jackson, D.D.S., 116 North Eleventh Street, Garland, Texas 75040 (the registrant), holder of Certificate of Registration 5-07455.

Texas Regulations for Control of Radiation, in Part 32.7 (a)(4), requires that dental x-ray units that operate at energy levels greater than 70 kilovoltspeak (kVp) have 2.5 millimeters of aluminum in the primary beam to remove soft x-rays from the beam. These soft x-rays cause unnecessary exposure to the patient because they are not energetic enough to reach the film and thus make no contribution to the image formed on the film. The General Electric x-ray unit used by the registrant was determined to have 1.5 millimeters of aluminum filtration, in noncompliance with TRCR 32.7(a)(4).

A notice of violation was sent to the registrant on September 26, 1985, calling for a written reply from the registrant within 30 days of receipt. No reply has been received.

On January 6, 1986, the registrant was sent a reminder of the need to respond. On April 17, 1986, a second notice was sent, certified mail, concerning the lack of response calling for a reply within 10 days of receipt and including a copy of the notice of violation. Return receipt has been received, indicating receipt by the registrant on April 21, 1986. No reply has been received.

On June 26, 1986, the registrant was sent a third notice, certified mail, giving 10 days for response. Return receipt has been received, indicating receipt on June 30, 1986. No reply has been received.

THEREFORE, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(c), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machines, and further that the registrant, to be in compliance with *Texas Regulations for Control of Radiation* 13.8(a), either disable the machine or divest

himself of it, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If written response and documentation satisfactory to the agency concerning correction of the item found not in compliance with *Texas Regulations for Control of Radiation* are received within 30 days of the date of this complaint, no order will be issued.

Issued in Austin, Texas, on October 21, 1986.

TRD-8610069 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 22, 1986
For further information, please call (512) 458-7236.



Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders.

(1) Order of revocation issued August 11, 1986, to Donald A. Colwell, D.C., 2412 Pasadena Boulevard, Suite B, Pasadena, Texas 77502, holder of Certificate of Registration 11-11418.

(2) Order of revocation issued July 16, 1986, to James R. Arthur, D.D.S., 304 North Main, P.O. Box 458, Quitman, Texas 75783, holder of Certificate of Registration 7-08434.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a.m.-5 p.m. (except holidays).

Issued in Austin, Texas, on October 21, 1986.

TRD-8610071 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 22, 1986
For further information, please call (512) 458-7236.



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 November 3-7, 1986. Please confirm dates, times, and locations, since experience has shown that some rescheduling always occurs.

Agency	Date	Place
The University of Texas System (all components)	9 a.m. November 3	Room 208, Ashbel Smith Hall, 201 West Seventh Street, Austin
Texas Rehabilitation Commission	9 a.m. November 3	Room 107, John H. Reagan Building, Austin
Texas Commission for the Blind	1:30 p.m. November 3	Room 107, John H. Reagan Building, Austin

Texas State Board of Dental Examiners	9 a.m. November 4	Room 107, John H Reagan Building, Austin
Texas A&M University System (all components)	1 p.m. November 5	Room 104, John H Reagan Building, Austin
Texas Veterinary Medical Diagnostic Laboratory	1 p.m. November 5	Room 104, John H Reagan Building, Austin
Texas School for the Blind	9 a.m. November 6	Room 215, John H Reagan Building, Austin
Texas Commission on Alcohol and Drug Abuse	9 30 a.m. November 6	Room 214, John H Reagan Building, Austin
Texas Department on Aging	9 30 a.m. November 6	Room 103, John H Reagan Building, Austin
Texas State Board of Medical Examiners	9 a.m. November 7	Room 107, John H Reagan Building, Austin
University of Houston System (all components)	9 a.m. November 7	Room 103, John H Reagan Building, Austin
East Texas State University	9 a.m. November 7	Room 103, John H Reagan Building, Austin
East Texas State University at Texarkana	9 a.m. November 7	Room 103, John H Reagan Building, Austin

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

TRD-8610161 Larry Kopp
Assistant Director for Budgets
Legislative Budget Board

Filed: October 24, 1986
For further information, please call (512) 463-1200.

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Office of the Secretary of State Texas Register

Issue Number 81 of the *Texas Register* was incorrectly dated October 31, 1986. It should have been dated October 28, 1986. The *Texas Register* regrets the error and apologizes for any inconvenience.

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 Application for Provisionally-Issued Temporary Permits

Notice is given by the Texas Water Commission of provisionally issued temporary permits issued during the period of October 20-24, 1986.

These permits were issued without notice and hearing pursuant to the Texas Water Code, §11.138, and commission Rules 31 TAC §§303.91-303.93.

The executive director has reviewed each application and found that sufficient water was available at the proposed point of diversion to satisfy the requirements of the applications as well as all existing water rights. It is further noted that these diversions are for not more than 10 acre-feet of water and for a period of not more than one year. If a complaint is received before or after diversions are commenced, a preliminary investigation shall be made by the executive director to determine whether there is a reasonable basis for such complaint. Should the investigation indicate that there is a probability that diversions could result in injury to the complainant, the permit will be canceled, and the application will revert to the status of a pending application and no further diversions may be made until a public hearing is held. Notice of the hearing shall then be sent to the complaining person.

Information concerning any aspect of these permits may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8218.

Listed are the names of the permittees, diversion point, watercourse, amount of water authorized, period of time of the permit, permit number, and the date issued/administratively-complete.

Atlantic Richfield Company; from the stream near FM Road 1427, approximately 20½ miles southwest of Edinburg, Hidalgo County; Rio Grande; four acre-feet, six-month period; TP-5592; October 21, 1986

R. W. McKinney and T. L. James and Company, Inc.; from the stream crossing of IH 10, approximately 24 miles south of Hempstead, Waller County; Besies Creek, tributary Brazos River; ten acre-feet, one-year period; TP-5593; October 21, 1986

Haile & Haile, Inc.; from the stream crossing of FM 187, approximately 23 miles southeast of Uvalde, Uvalde County; Frio River, tributary Nueces River; three acre-feet, six-month period; TP-5594; October 21, 1986

Reece Albert, Inc.; from the stream crossing FM Road 380, approximately six miles east of San Angelo, Tom Green County, tributary Colorado River; one acre-foot, three-month period; TP-5595; October 21, 1986

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

TRD-8610165 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: October 24, 1986
For further information, please call (512) 463-7698.

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Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of October 20-24, 1986.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public

interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of October 20-24, 1986

City of Red Oak; wastewater treatment facilities; approximately 3,000 feet east of IH 35E and 3,800 feet south of Red Oak Road in the City of Red Oak, Ellis County; 11119-01; amendment

Texas Department of Corrections, Darrington Unit, Huntsville; sewage treatment plant; within the Darrington Prison Farm Unit, approximately 3.5 miles north-northwest of the intersection of FM Roads 1462 and 521 in Brazoria County; 10743-01; renewal

City of Texarkana; wastewater treatment plant; approximately 1,000 feet west of U.S. Highway 59 and approximately 9,500 feet north of IH 30 in Bowie County; 10374-08; new

Webb County, Laredo; wastewater treatment plant; northeast of Laredo, approximately one mile northeast of the San Ygnacio Road Crossing of Chacon Creek in Webb County; 12271-01; amendment

City of Kingsville; wastewater treatment plant; north of FM 1717, approximately 1.5 miles east of the intersection of FM Road 1717 and U.S. Highway 77 in Kleberg County; 10696-02; amendment

City of Devers, Rosharon; wastewater treatment facilities; south of the City of Devers, on the south side of U.S. Highway 90, adjacent to Chism Street in Liberty County; 02531; renewal

Richard M. White, doing business as White Sand and Gravel Company, Rosharon; sand and gravel plant; ad-

acent to the Brazos River and reached by going six miles west of Rosharon on FM 1462, then south ½ mile on County Road 39, then west ¼ mile on a private road in Brazoria County; 02531; renewal

City of Itasca; wastewater treatment facilities; approximately one mile south of Itasca, west of U.S. Highway 81 and adjacent to the Missouri Kansas and Texas Railroad in Hill County; 10423-01; renewal

City of Savoy; wastewater treatment facilities; west of FM Road 1752, north of the City of Savoy, near the east bank of Brushy Creek in Fannin County; 10606-01; renewal

Pioneer Concrete of Texas, Inc., Houston; sand and gravel plant; four miles east of IH 45 adjacent to Sleepy Hollow Road in Montgomery County; 02502; renewal

City of Livingston; wastewater treatment facilities; adjacent to Choates Creek and Southern Pacific Railroad, east of the Highway 59 bypass, southwest of the Livingston central business area in Polk County, 10208-01; renewal

Jackson R. Wyatt, wastewater treatment facilities; on the southwest side of U.S. Highway 69 approximately 1¼ mile southeast of the intersection of U.S. Highway 69 with State Highway Loop 287, near the southeast city limits of Lufkin in Angelina County; 11360-01; renewal

City of Maud; wastewater treatment facilities; approximately ¼ mile southeast of the City of Maud, adjacent to U.S. Highway 67 and the St. Louis and Southwestern Railroad in Bowie County; 10767-01; renewal

City of Poteet; wastewater treatment facilities; approximately .4 mile east of State Highway 16, in the southern part of the City of Poteet in Atascosa County; 10859-01; renewal

Issued in Austin, Texas, on October 24, 1986

TRD-8610166 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: October 24, 1986

For further information, please call (512) 463-7898.

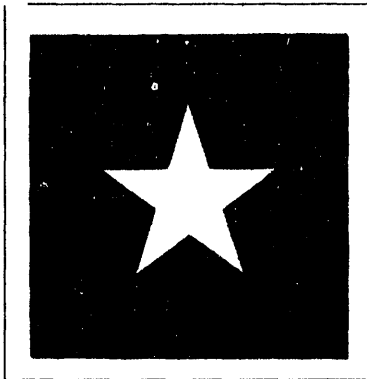
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