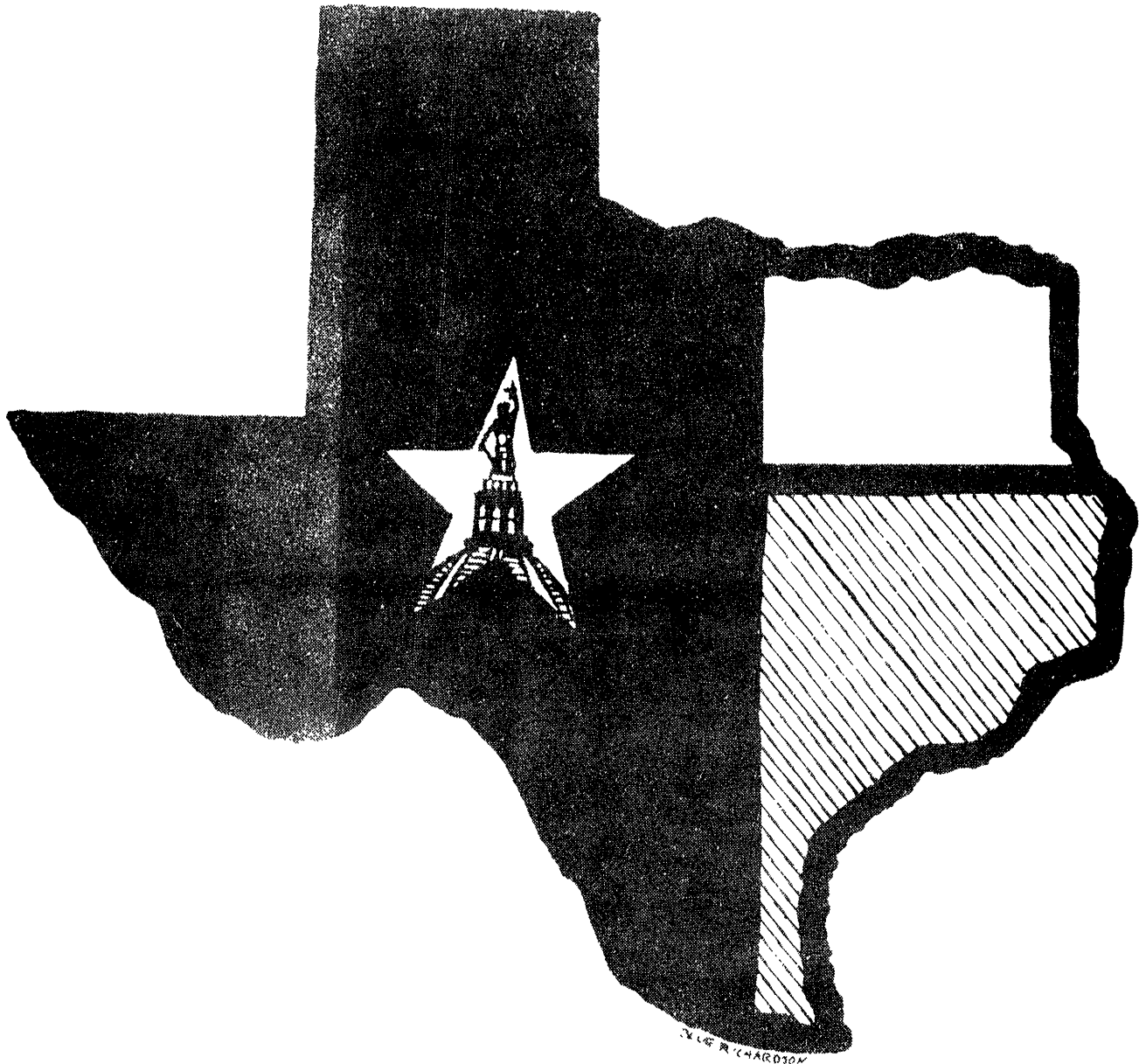


Texas Register

Volume 12, Number 69, September 15, 1987

Pages 3191-3235



Highlights

The Texas Housing Agency adopts on an emergency basis new sections concerning low income rental housing tax credits. Effective date: September 8, 1987. page 3198

The Railroad Commission of Texas proposes an amendment instituting a filing fee for those entities which perform transportation services exclusively for other members of their corporate

family. Earliest possible date of adoption: October 16, 1987. page 3203

The Texas Department of Human Services adopts new sections to clarify and update policies regarding eligibility, contracting, services, payment, and standards. Effective date: September 29, 1987. page 3220

Office of
the Secretary
of State

Texas Register

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- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

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

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

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

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

TAC stands for the *Texas Administrative Code*;

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



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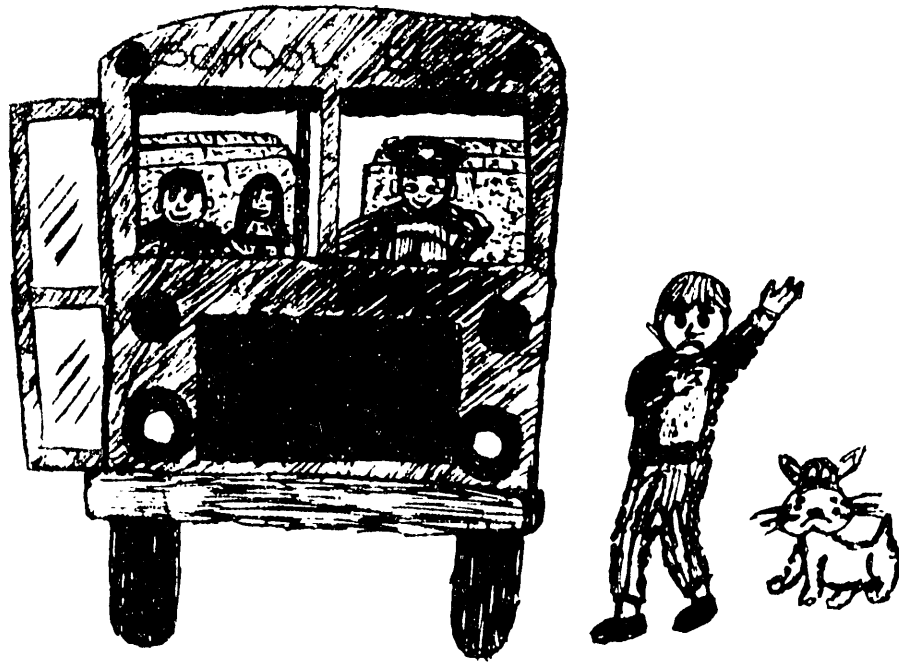
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Attorney

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 Opinion

RQ-1218. Request from Joe L. McCormick, Executive Director, Texas Guaranteed Student Loan Corporation, Austin, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, authorizes Guaranteed Student Loan Corporation to withhold information concerning student loans.

TRD-8707594



RQ-1219. Request from Gary W. Smith, City Attorney, Texarkana, concerning whether minutes of meetings of Law Enforcement Advisory Committee are subject to required disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

TRD-8707695



Opinions

JM-781 (RQ-1064). Request from George Pierce, Chairman, Texas Committee on Urban Affairs, House of Representatives, Austin, concerning whether an individual may divide and sell a tract of land which is located on an existing county road without complying with plat approval requirements and related questions.

Summary of Opinion. Whether an individual divides a tract into two or more parcels for one of the purposes set out in Texas Civil Statutes, Article 6702-1, §2.401, Article 974a, or Article 6702-1, §2.402, and can sell same without being required to comply with plat approval requirements, is a question of fact this office is not authorized to answer. While the absence of a dedication of any parts of the divided land to public use is a relevant circumstance, it is our opinion that a court's decision will not turn on the presence or absence of this factor. The resolution of this issue by the courts will, in

our judgment, be governed by the facts and circumstances of each individual case.

TRD-8707696



JM-782 (RQ-1161). Request from David H. Cain, Chairman, Committee on Transportation, Texas House of Representatives, Austin, concerning whether the Texas Constitution, Article III, §18, or Article XVI, §40, prohibits a member of the Texas House of Representatives from being employed by the Brazos Transit System, a recipient of federal funds.

Summary of Opinion. A member of the House of Representatives is not prohibited by the Texas Constitution, Article III, §18, or Article XVI, §40, from being employed by the Brazos Transit System, a recipient of federal funds administered by the State Department of Highways and Public Transportation.

TRD-8707697



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 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing

Agency

Chapter 149. Low-income Rental Housing Tax Credit Rules

★ 10 TAC §§149.1-149.11

The Texas Housing Agency adopts on an emergency basis the repeal of §§149.1-149.11, concerning low-income rental housing tax credits. The sections are repealed in order to enact new sections which conform to the requirements of new regulations enacted under the Internal Revenue Code of 1986, §42, which provides for credit against federal income taxes for owners of qualified low-income rental housing projects. Emergency repeal is necessary in order to prevent loss of state allocation authority and disruption of the state's low-income rental housing tax credit program.

The repeals are adopted on an emergency basis under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, which provides the Texas Housing Agency with the authority to make rules governing the administration of the agency and its programs.

§149.1. *Scope.*

§149.2. *Definitions.*

§149.3. *Determination of the State's Credit Authority.*

§149.4. *Application Periods, Set-asides.*

§149.5. *Application Content, Processing.*

§149.6. *Tax Credit Certificate.*

§149.7. *Fees, Deposits.*

§149.8. *Filing, Submissions.*

§149.9. *Withdrawals, Amendments, Cancellations.*

§149.10. *Waiver for Board.*

§149.11. *Other Provisions.*

Issued in Austin, Texas, on September 8, 1987.

TRD-8707674

Dan A. McNeil
Executive Administrator
Texas Housing Agency

Effective date: September 8, 1987
Expiration date: November 7, 1987
For further information, please call
(512) 474-2974.



★ 10 TAC §§149.1-149.12

The Texas Housing Agency adopts on an emergency basis new §§149.1-149.12, concerning low-income rental housing tax credits. The new sections provide procedures for the allocation by the agency of certain low-income housing tax credits available under federal income tax laws to owners of qualified low-income rental housing projects. It is necessary to replace on an emergency basis former rules, which are repealed by simultaneous publication on an emergency basis, in order to conform the agency's regulations to new federal regulations, to ensure compliance with applicable federal law and avoid loss of state allocation authority and possible disruption of the state's low-income housing tax credit program.

The new sections are adopted on an emergency basis under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, which provides the Texas Housing Agency with the authority to adopt rules governing the administration of the agency and its programs, and Executive Order WPC-87-15 (August 4, 1987), which provides the Texas Housing Agency with the authority to make housing credit allocations for the State of Texas.

§149.1. *Scope.* The sections in this chapter apply to the allocation by the Texas Housing Agency of certain low-income rental housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, provides for credits against federal income taxes for owners of qualified low-income rental housing projects. That section also establishes a ceiling on the aggregate amount of such tax credits that owners of projects located within a state may receive during a calendar year, and provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order WPC-87-15 (August 4, 1987), the Texas Housing Agency has been

authorized to make housing credit allocations for the State of Texas. Therefore, the purpose of the sections in this chapter is to establish procedures for applying for and obtaining an allocation of the low-income rental housing tax credit. The sections are intended to promote maximum utilization of the available tax credit amount, consistent with ensuring that the tax credits are allocated to owners of projects that will serve the agency's public policy objectives of assisting in the provision of decent, safe, and sanitary housing for persons and families of low income and families of moderate income.

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

Agency—The Texas Housing Agency, a public and official governmental agency of the State of Texas created and organized under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, as amended.

Applicable fraction—The fraction used to determine the qualified basis of a qualified low-income building, as defined more fully in the code, §42(c)(1).

Applicable percentage—The percentage used to determine the amount of the low-income housing tax credit, as defined more fully in the code, §42(b).

Application—An application in the form prescribed by the agency, including any required exhibits or other supporting materials, filed with the agency by a project owner requesting a housing credit allocation.

Board—The board of directors of the agency.

Code—The Internal Revenue Code of 1986, as the same may be amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements, or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the low-income rental housing tax credit program authorized by §42 thereof.

Commitment letter—A commitment letter issued by the agency to a project owner pursuant to §149.4(e) of this title (relating to Applications; Reservations; Commitments; Extensions).

Compliance period—With respect to a project, the period of 15 taxable years beginning with the first taxable year of the

credit period with respect to the project, during which the project owner is required by §42 of the code to maintain the project as rental property and to satisfy certain low-income occupancy requirements, as more fully defined in the code, §42(i)(1).

Credit period—With respect to a building within a project, the period of 10 taxable years beginning with the taxable year the building is placed in service or, at the election of the project owner, the succeeding taxable year, as more fully defined in the code, §42(f)(1).

Eligible basis—With respect to a building within a project, the building's eligible basis as defined in the code, §42(d).

Governmental contribution—Any form of financial assistance made available by any federal agency or state or local governmental unit to a project owner in connection with a project, provided that the amount of such assistance equals or exceeds 5.0% of the total development cost of the project, and provided further that any project financed under the Housing Act of 1949, §515, shall be deemed to have received a governmental contribution.

Housing credit allocation—An allocation by the agency to a project owner of a low-income rental housing tax credit in accordance with §149.6 of this title (relating to Housing Credit Allocations).

Housing credit allocation amount—With respect to a building within a project, the product of the applicable percentage and the qualified basis specified by the agency in making a housing credit allocation to the project owner.

Project—A low-income rental housing project the owner of which represents to be a qualified low-income housing project within the meaning of the code, §42(g).

Project owner—Any individual, joint venture, partnership, corporation cooperative, trust, or other person or entity that owns a project or expects to acquire a project pursuant to a purchase contract satisfactory to the agency.

Qualified basis—With respect to a building within a project, the building's eligible basis multiplied by the applicable fraction, as more fully defined in the code, §42(c).

Qualified nonprofit organization—An organization that is described in the code, §501(c)(3) or (4), that is exempt from federal income taxation under of the code, §501(2) and that includes as one of its exempt purposes the fostering of low-income housing, as more fully defined in the code, §42(h)(5)(C), and temporary treasury regulation §1.42-1T(c)(5)(iii).

Qualified nonprofit project—A project with respect to which a qualified non-profit organization is to materially participate (within the meaning of §469(h) of the code) in the development and continuing operation of the project throughout the compliance period.

Rehabilitation expenditure—

Amounts incurred in connection with the rehabilitation of a project the owner of which represents to be rehabilitation expenditures within the meaning of the code, §42(e).

Reservation letter—A reservation letter issued by the agency to a project owner pursuant to §149.4(c) of this title (relating to Applications; Reservations; Commitments; Extensions).

Rural project—A project located either

(A) outside the boundaries of any metropolitan statistical area (MSA) or primary metropolitan statistical area (PMSA), or

(B) within the boundaries of an MSA or a PMSA designated by the Farmers Home Administration (FmHA) as an eligible area for purposes of FmHA housing assistance programs.

State housing credit ceiling—The limitation imposed by the code, §42(h), on the aggregate amount of housing credit allocations that may be made by the agency during any calendar year, as determined from time to time by the agency in accordance with the code, §42(h), temporary treasury regulation §1.42-1T(b), and §149.3 of this title (relating to State Housing Credit Ceiling).

Total housing development cost—The total of all costs incurred by a project owner in acquiring, constructing, rehabilitating and financing a project, as determined by the agency based on the information contained in the project owner's application.

§149.3. State Housing Credit Ceiling.

(a) The agency shall determine the state housing credit ceiling for each calendar year, beginning with calendar year 1987, by multiplying \$1.25 by the population of the State of Texas as determined by the most recent census estimate (whether final or provisional) released by the United States Bureau of the Census before the beginning of such calendar year, or by such other method as may be permitted by the code.

(b) The agency shall publish each such determination in the *Texas Register* as soon as may be practicable after the making of such determination.

(c) The aggregate amount of housing credit allocations made by the agency during any calendar year shall not exceed the state housing credit ceiling for such year.

(d) Any portion of the state housing credit ceiling for a calendar year that is not used for housing credit allocations during such year expires as of the end of such year and does not carry over to a subsequent year; provided, however, that any unused portion of the state housing credit ceiling for 1989 may be carried over to 1990 and used by the agency to make housing credit allocations to owners of projects containing buildings described in the code, §42(n)(2)(B), and temporary treasury regulation §1.42-1T(g)(2).

§149.4. Applications; Reservations; Commitments; Extensions.

(a) Any project owner that desires a housing credit allocation for a project may submit an application to the agency, which shall be executed by an authorized representative of the project owner and which shall contain the following information:

(1) the project owner's name, address, tax identification number, and legal form of organization;

(2) a description of the project, including a description and specification of the street address of each building within the project;

(3) a statement of whether or not the project is a qualified nonprofit project;

(4) a description of the method of financing used or to be used by the project owner to acquire, construct or rehabilitate the project, as applicable, including a statement as to whether all or any portion has been or will be financed through the issuance of tax exempt obligations described in the code, §103(a);

(5) an estimate of the total housing development cost of the project;

(6) a statement that all required permits, consents or authorization of any governmental unit or other authority required in connection with the acquisition, construction, rehabilitation, or operation of the project have been obtained or can be obtained upon timely application therefor;

(7) if applicable, written evidence of the amount and terms of any governmental contribution relating to the project, which may be in the form of an authorizing resolution of the governing body of the applicable governmental body of the applicable governmental unit or a letter of commitment from an authorized official of such governmental unit;

(8) a statement of whether or not at least 10% of the total number of dwelling units within the project contain three or more bedrooms and are suitable for occupancy by families with children;

(9) a statement of whether the project contains any amenities intended for use by families with children and, if so, a description of such amenities;

(10) a statement of whether or not the project is intended for occupancy primarily by elderly tenants;

(11) a statement of the total housing credit allocation amount requested and the factors upon which such requested amount is based, including the applicable percentage, eligible basis, and qualified basis for each building within the project; and

(12) such other information as the agency may require in the prescribed form of application.

(b) A project owner may file an application at any time prior to the last business day of the calendar year during which the project owner desires to receive a housing credit allocation, or at any time during the calendar year preceding the calendar year

during which the project owner desires to receive a housing credit allocation.

(c) The agency may reject any application that is incomplete or that is not accompanied by the application fee specified in §149.9 of this title (relating to Application, Reservation, and Extension Fees).

(d) Within 10 calendar days after receipt and acceptance of an application, the agency shall respond to the project owner in accordance with either paragraphs (1) or (2) of this subsection, as applicable.

(1) Unless the entire state housing credit ceiling for the applicable calendar year has been reserved, committed, or allocated in accordance with this chapter, the agency shall issue a reservation letter to the project owner. The reservation letter:

(A) shall confirm that the agency has received the project owner's application and has found the application to be in satisfactory form and to contain all required information; and

(B) shall reserve to the project owner the housing credit allocation amount specified therein, subject to compliance by the project owner with the remaining requirements of this chapter and subject further to approval by the board of the project owner's application. The reservation letter shall expire on the date specified therein, which shall be no later than the 120th day following the date thereof or on the last business day of the applicable calendar year, whichever occurs first.

(2) If the entire state housing credit ceiling for the applicable calendar year has then been reserved, committed, or allocated in accordance with this chapter, the agency shall place the application on a waiting list and shall issue to the project owner a written notice of that action. If at any time prior to the last business day of the applicable calendar year, one or more reservation letters or commitment letters expire and a sufficient amount of the state housing credit ceiling becomes available, then the agency shall issue a reservation letter to the project owner in the manner and with the effect described in paragraph (1) of this subsection.

(e) Each project owner that receives a reservation letter shall submit to the agency, not later than the expiration date of such reservation letter, the following:

(1) detailed information on the planning and design of the project, including all amenities and common facilities;

(2) a sworn affidavit, in the form prescribed by the agency, setting forth the total housing development cost of the project;

(3) if applicable, the schedule for construction or rehabilitation of the project, including a scheduled completion date for each building within the project;

(4) a schedule of the proposed initial rent for each unit within the project;

(5) a description of the proposed management of the project;

(6) a market study prepared by a market appraiser selected by the agency, which market study shall be prepared at the expense of the project owner and which shall include:

(A) an evaluation of the existing occupancy/vacancy rates in comparable multifamily rental residential developments in the same market area as the proposed project;

(B) projected absorption rates for at least one year from the date of the study for units in comparable multifamily rental residential developments in the same market area as the project that are suitable for occupancy by low and moderate income tenants;

(C) projected occupancy/vacancy rates for at least one year following the date of the study for the market area in which the project is located, taking into account projected construction periods and lease-up periods for comparable multifamily rental residential developments planned or under construction within such market area at the time of the study;

(D) such other matters as the agency, in its sole discretion, may determine to be relevant to the agency's evaluation of the need for the project and the allocation of the requested housing credit allocation amount;

(7) a written certification, in a form prescribed by the agency, from the market appraiser who prepared the market study required under the preceding paragraph, stating that:

(A) the projected total housing development cost of the proposed project is reasonable;

(B) the proposed project, in light of vacancy and absorption rates for the applicable market area, is not likely to result in a vacancy rate for comparable units within such market area (i.e., standard, well-maintained units within such market area that are reserved for occupancy by low- and moderate-income tenants) that is unreasonable for such market area;

(C) the projected initial rents for the project are reasonably affordable by low- and moderate-income tenants; and

(D) the information submitted by the project owner with respect to the project is credible and reasonably accurate (with any exceptions noted); and

(8) any other information requested by the agency in connection with the application.

(f) As soon as may be practicable following receipt by the agency of the items required by subsection (d) of this section, the agency shall place the application on the agenda for review by the board at the next meeting of the board at which applications will be considered. Within 10 calendar days after the board reviews the application, the agency shall act upon the application in accordance with either paragraph (1) or paragraph (2) of this subsection, as applicable.

(1) If the board approves the application, the agency shall issue a commitment letter to the project owner. The commitment letter shall:

(A) confirm that the agency has approved the application; and

(B) state the agency's commitment to make a housing credit allocation to the project owner in a specified amount, subject to compliance by the project owner with the remaining requirements of this chapter. The commitment letter shall expire on the date specified therein, which shall be no later than the 210th day following the date thereof or on the last business day of the applicable calendar year, whichever occurs first.

(2) If the board disapproves or fails to act upon the application, the agency shall issue to the project owner a written notice so stating.

(g) A project owner, at its option, may submit a consolidated application that includes all items listed in subsections (a) and (d) of this section.

(h) A project owner may request the agency to extend the expiration date of any reservation letter or commitment letter by submitting a written request for such action, accompanied by the extension fee specified in §149.9 of this title (relating to Application, Reservation, and Extension Fees). The request shall specify the term of the extension requested and the reason or reasons why the project owner has been unable to satisfy the requirements of this chapter prior to the original expiration date. The agency may consider and grant such extension requests in its sole discretion; provided, however, that in no event shall the expiration date of a reservation letter or commitment letter be extended beyond the last business day of the applicable calendar year.

§149.5. Agency Set-Asides, Reservations, and Preferences.

(a) Subject to the set-asides, preferences, and priorities set forth in this section, the agency shall issue reservation letters and commitment letters and shall make housing credit allocations on a first-come, first-served basis, based on the date the agency receives and accepts each application. In the event that the agency receives more than one application on a particular date, the priority of such applications shall be determined by random lot, in such manner as the agency may determine. For purposes of this subsection, any application for a housing credit allocation to be made by the agency during a year subsequent to the year in which the agency receives such application shall be treated as having been received on January 1 of the year during which the housing credit allocation is to be made.

(b) 10% of the state housing credit ceiling for each calendar year shall be set aside exclusively for qualified nonprofit projects. The amount so reserved for qualified nonprofit projects shall be made available in accordance with the limitations set forth in paragraphs (1) and (2) of this subsection.

(1) Until August 31 of each year, no reservation letter or commitment letter shall be issued with respect to any existing project which does not require a rehabilitation expenditure.

(2) Until February 28 of each year, no reservation letter or commitment letter shall be issued with respect to any existing project of more than four units with respect to which the owner has requested an increase in the applicable fraction in excess of 60% (provided that this restriction shall not apply to any project with respect to which the project owner has received or expects to receive a governmental contribution).

(c) 90% of the state housing credit ceiling for each calendar year shall be available for all projects (including qualified nonprofit projects), subject to the following reservations and preferences set forth in paragraphs (1)-(4) of this subsection.

(1) Until June 30 of each year, 20% of such amounts shall be reserved for rural projects and 30% shall be reserved for projects with respect to which the owner has received or expects to receive a governmental contribution.

(2) Until August 31 of each year, no reservation letter or commitment letter shall be issued with respect to any existing project that does not involve a rehabilitation expenditure.

(3) Until February 28 of each year, no reservation letter or commitment letter shall be issued with respect to any existing project of more than four units with respect to which the owner has requested an increase in the applicable fraction in excess of 60% (provided, that this restriction shall not apply to any project with respect to which the project owner has received or expects to receive a governmental contribution).

(4) With respect to projects having 20 or more dwelling units (other than projects designed primarily for occupancy by elderly tenants), the agency shall grant a preference to the following types of projects:

(A) projects in which at least 10% of the dwelling units contain at least three bedrooms and that are suitable for occupancy by families with children; and

(B) projects containing amenities approved by the agency as being suitable for families with children.

(5) No reservation letter or commitment letter shall be issued with respect to any project the total development cost of which, as determined by the agency, or the acquisition, construction or rehabilitation cost (excluding financing and other soft costs) of which, as determined by the agency, exceed the square foot limitations established from time to time by the board.

(d) The agency reserves the right to adopt and implement such other set-asides, reservations, and preferences as the agency may deem appropriate in connection with the making of housing credit allocations.

§149.6. Housing Credit Allocations.

(a) The agency shall make a housing

credit allocation to any project owner that holds a commitment letter that has not expired, upon receipt from the project owner of evidence satisfactory to the agency that one or more buildings within the project have been placed in service. Such evidence may be in the form of a certificate of occupancy issued by an appropriate local governmental unit or other written evidence satisfactory to the agency demonstrating that the building or buildings are ready and available for occupancy.

(b) The agency shall make each housing credit allocation by mailing or delivering IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the project owner, with Part I thereof completed in all respects and signed by an authorized official of the agency. A separate housing credit allocation shall be made with respect to each building within a project which is eligible for a housing credit.

(c) In making a housing credit allocation, the agency shall specify a maximum applicable percentage, not to exceed the applicable percentage for the building permitted by the code, §42(b), and a maximum qualified basis amount. In specifying the maximum applicable percentage and the maximum qualified basis amount, the agency shall disregard the first-year conventions described in the code, §42(f)(2)(A) and (3)(B). The agency reserves the right, in connection with each housing credit allocation, to specify a maximum applicable percentage and/or a maximum qualified basis amount lower than that otherwise permitted under the code, §42.

(d) The agency shall not reduce or rescind a housing credit allocation made in accordance with this section.

§149.7. Agency Records; Certain Required Filings.

(a) At all times during each calendar year the agency shall maintain a record of the following:

(1) the cumulative amount of the state housing credit ceiling that has been reserved pursuant to reservation letters during such calendar year;

(2) the cumulative amount of the state housing credit ceiling that has been committed pursuant to commitment letters during such calendar year;

(3) the cumulative amount of housing credit allocations made during such calendar years; and

(4) the remaining unused portion of the state housing credit ceiling for such calendar year.

(b) Not less frequently than quarterly during each calendar year, the agency shall publish in the *Texas Register* each of the items of information referred to in subsection (a) of this section.

(c) The agency shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the agency makes housing credit allocations, a

copy of each completed (as to Part I) IRS Form 8609 mailed or delivered by the agency to a project owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-Income Housing Credit Agencies Report.

§149.8. Agency Responsibilities.

(a) In making a housing credit allocation under this chapter, the agency shall rely upon information contained in the project owner's application to determine whether a building is eligible for the credit under the code, §42. The project owner shall bear full responsibility for claiming the credit and assuring that the project complies with the requirements of the code, §42. The agency shall have no responsibility for ensuring that a project owner that receives a housing credit allocation from the agency will qualify for the housing credit.

(b) Following the making of a housing credit allocation, the agency will not monitor or investigate the continuing compliance of the project with the requirements of the code, §42.

§149.9. Application, Reservation, and Extension Fees.

(a) Each project owner that submits an application shall submit to the agency, along with such application, a nonrefundable application fee in an amount equal to the greater of \$100 or \$5 multiplied by the number of dwelling units in the project.

(b) Each project owner that receives a reservation letter shall submit to the agency, not later than 20 days after the date of the reservation letter, a reservation fee in an amount equal to the greater of \$1,000 or 4.0% of the requested housing credit allocation amount. The agency shall refund ½ of the reservation fee to the project owner upon the making of a housing credit allocation to the project owner in accordance with this chapter. In the event that the agency does not make a housing credit allocation to the owner, the agency shall refund the reservation fee to the project owner in full, unless:

(1) the project owner withdraws the application;

(2) the project owner loses control of the project site, changes the project site, or substantially alters the composition of the project owner such that the agency revokes the reservation letter or commitment letter; or

(3) the project owner fails to place in service, by the expiration date of the commitment letter, one or more of the buildings within the project for which the project owner has requested a housing credit allocation.

(c) Each project owner that requests an extension of the expiration date of a reservation letter or commitment letter shall submit to the agency, along with such request, a nonrefundable extension fee in an amount equal to the greater of \$100 or \$5 multiplied by the number of dwelling units in the project.

(d) The amounts of the application fee, reservation fee, and extension fee specified in this section may be revised by the agency from time to time as necessary to ensure that such fees cover the agency's administrative expenses for processing applications.

§149.10. Manner and Place of Filing Applications.

(a) All applications, letters, documents, or other papers filed with the agency will be received only between the hours of 8 a.m. and 5 p.m. on any day that is not a Saturday, Sunday, or a holiday established by law for state employees.

(b) All items submitted to the agency shall be mailed or delivered to Low-Income Rental Housing Tax Credit Program, Texas Housing Agency, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

§149.11. Withdrawals, Amendments, Cancellations. A project owner may withdraw or amend an application prior to

receiving a reservation, commitment, or housing credit allocation, or may cancel a reservation letter or commitment letter by submitting to the agency a notice, as applicable, of withdrawal, amendment, or cancellation. An amendment of an application that results in an increase in the requested housing credit allocation amount shall cause the application to be treated as having been filed on the date of the amendment.

§149.12. Waiver and Amendment of Rules.

(a) The agency, in its discretion, may waive any one or more of the rules set forth in this chapter in order to encourage the acquisition, construction, reconstruction, or rehabilitation of a project that would meet special needs in the provision of decent, safe, and sanitary housing for low and moderate income tenants including, but not limited to, providing such housing in economically de-

pressed or blighted areas, or providing housing designed and equipped for the elderly or the handicapped.

(b) The agency may amend this chapter at any time in accordance with the provisions of Texas Civil Statutes, Article 6252-13a.

Issued in Austin, Texas, on September 8, 1987.

TRD-8707672

Dan A. McNeil
Executive Administrator
Texas Housing Agency

Effective date: September 8, 1987
Expiration date: November 7, 1987
For further information, please call
(512) 474-2974.



Proposed Rules

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

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

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing Agency

Chapter 149. Low-Income Rental Housing Tax Credit Rules

★ 10 TAC §§149.1-149.11

(Editor's note: The Texas Housing Agency proposes for permanent adoption the repeals it adopts on an emergency basis in this issue. The section numbers and titles of the repeals are published in the Emergency Rules section of this issue.)

The Texas Housing Agency proposes the repeal of §§149.1-149.11, concerning low-income rental housing tax credits. The sections are to be repealed in order to enact new sections conforming to the requirements of new regulations enacted under the Internal Revenue Code of 1986, §42, which provides for credits against federal income taxes for owners of qualified low-income rental housing projects.

Dan A. McNeil, executive administrator, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. McNeil also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be permitting the adoption of new rules for the allocation of low-income housing tax credit authority within the State of Texas, in order to enhance the state's ability to provide safe, sanitary housing for Texans of low and moderate income through the use of an available federal tax credit program administered by the agency. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Dan A. McNeil, P.O. Box 13941, Austin, Texas 78711-3941.

The repeals are proposed under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, which provide the Texas Housing Agency with the authority to

make rules governing the administration of the agency and its 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 September 8, 1987.

TRD-8707675 Dan A. McNeil
Executive Administrator
Texas Housing Agency

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 474-2974.



★ 10 TAC §§149.1-149.12

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

The Texas Housing Agency proposes new §§149.1-149.12, concerning low-income rental housing tax credits. The sections are proposed and adopted on an emergency basis filed for simultaneous publication) to provide procedures for the allocation by the agency of certain low-income rental housing tax credit available under federal income tax laws to owners of qualified low-income rental housing projects.

Dan A. McNeil, executive administrator, 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. McNeil also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the enhancement of the state's ability to provide safe, sanitary housing for Texans of low and moderate income through the efficient and coordinated allocation of federal income tax

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 Dan A. McNeil, P.O. Box 13941, Austin, Texas 78711-3941.

The new section is proposed under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, which provide the Texas Housing Agency with the authority to adopt rules governing the administration of the agency and its programs; and Executive Order WPC-87-15 (August 4, 1987), which provides the Texas Housing Agency with the authority to make housing credit allocations for 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 September 8, 1987.

TRD-8707673 Dan A. McNeil
Executive Administrator
Texas Housing Agency

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 474-2974.



TITLE 16. ECONOMIC REGULATION

Part 1. Railroad

Commission of Texas Chapter 5. Transportation Division

Subchapter B. Operating Certificates, Permits, and Licenses

★ 16 TAC §5.40

The Railroad Commission of Texas proposes an amendment to §5.40, concerning intercorporate transportation exemption. The amendment institutes a filing fee for those entities which perform transportation services exclusively for other members of their corporate family, and which are therefore exempted from commission regulation.

Ronald D. Stutes, hearings examiner, has determined that for each year of the first five years the amendment is in effect, there will be fiscal implications as a result

of enforcing and administering the amendment. The effect on state government for each year of the first five year period the amendment is in effect is an estimated increase in revenue of \$4,200 each year. There will be no fiscal implications for local governments or small businesses.

Mr. Stutes also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be an increased ability to enforce the existing requirements that the intercorporate transportation providers have the required level of liability insurance. The anticipated economic cost each year to persons required to comply with the amendment as proposed is \$25 per insurance filing.

Public comment may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §139(c), which provide the commission with the authority to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

§5.40. Intercorporate Transportation Exemption.

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

(c) Application for certificate of notice. Before engaging in the transportation defined in subsection (a) of this section, the parent corporation shall file with the commission the following:

(1) (No change.)

(2) a certificate of insurance which covers all motor vehicles to be used in the transportation with public liability and property damage insurance in the amounts required by §5.183 of this title (relating to Minimum Limits). **Each certificate of insurance filed with the commission shall be accompanied by a filing fee of \$25, which fee shall be in addition to that required in paragraph (4) of this subsection;**

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

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

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

Issued in Austin, Texas, on August 31, 1987

TRD-8707590 Walter Earl Lille
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption
October 16, 1987

For further information, please call
(512) 463-7149

Subchapter L. Insurance
Requirements

★ 16 TAC §5.184

The Railroad Commission of Texas proposes an amendment to §5.184, concerning insurance carrier. The amendment institutes a filing fee for those motor carriers which file proof of insurance with the commission. The amendment also allows any authorized representative of the insurance company to sign the certificate of insurance.

Ronald D. Stutes, hearings examiner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be an estimated increase in revenue of \$86,750 each year. There will be no fiscal implications for local governments or small businesses.

Mr. Stutes 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 an increased ability to enforce the existing requirements that motor carriers have the required level of liability insurance. The anticipated economic act each year to individuals required to comply with the amendment as proposed is \$25 per insurance filing.

Comments on the proposal may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §139(c), which provide the commission with the authority to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

§5.184. Insurance Carrier. No surety bond, insurance policy, or certificate of insurance will be accepted by the commission unless issued by an insurance company or surety company licensed and authorized to do business in the State of Texas in the form prescribed or approved by the State Board of Insurance, and signed or countersigned by [a local recording agent duly licensed by the State Board of Insurance.] **an authorized agent of the insurance or surety company. Each certificate of insurance filed with the commission for the coverage required under §5.181(a)(1) of this title (relating to Evidence of Insurance Required) shall be accompanied by a filing fee of \$25.**

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 August 31, 1987

TRD-8707591 Walter Earl Lille
Special Counsel
Railroad Commission of
Texas

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October 16, 1987
For further information, please call
(512) 463-7149

Subchapter R. Registration of
Interstate Operating Authority

★ 16 TAC §5.346

The Railroad Commission of Texas proposes an amendment to §5.346, concerning evidence of liability security. The amendment institutes a filing fee for interstate for-hire motor carriers which file proof of insurance with the commission.

Ronald D. Stutes, hearings examiner, has determined that for each year of the first five years the amendment is in effect, there will be fiscal implications as a result of enforcing and administering the amendment. The effect on state government for the first five year period the amendment will be in effect is an estimated increase in revenue of \$364,237 each year. There will be no fiscal implications for local governments or small business.

Mr. Stutes 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 an increased ability to enforce the existing requirements that interstate for-hire motor carriers have the required level of liability insurance. The anticipated economic cost each year to persons required to comply with the amendment as proposed is \$25 per insurance filing.

Public comment may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §139(c), which provide the commission with the authority to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

§5.346. Evidence of Liability Security.

(a) (No change.)

(b) Form and execution of liability insurance certificate. The certificate of insurance referred to in subsection (a) of this section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the laws of this state. The certificate shall be in the form set forth in Form E which is made a part hereof. The certificate shall be printed on a rectangular card five inches in height and eight inches in width. The certificate shall be duly completed and executed by such insurer. **Each certificate filed with the commission shall be accompanied by a fee of \$25.**

(c) (No change.)

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

Issued in Austin, Texas, on August 31, 1987.

TRD-8707592 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 463-7149.



Subchapter T. Registration of Operators Exempt from ICC Regulations

★ 16 TAC §5.386

The Railroad Commission of Texas proposes an amendment to §5.386, concerning evidence of liability security. The amendment institutes a filing fee for for-hire motor carriers, exempt from regulation by the Interstate Commerce Commission, which file proof of insurance with the Railroad Commission of Texas. The amendment also eliminates the requirement that the Form E be signed by a Texas local recording agent.

Ronald D. Stutes, hearings examiner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section. The effect on state government is an estimated increase in revenue of \$216,350 each year.

Mr. Stutes 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 an increased ability to enforce the existing requirements that interstate exempt for-hire motor carriers have the required level of liability insurance. The anticipated economic cost each year to individuals who are required to comply with the proposed section will be \$25 per insurance filing.

Comments on the proposal may be submitted to Ronald D. Stutes, Hearing Examiner, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §139(c), which provide the commission with the authority to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

§5.386. Evidence of Liability Security.

(a) (No change.)

(b) Form and execution of liability insurance certificate. The automobile bodily

injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the laws of this state and regulations of the commission. The certificate shall be in the form set forth in Form E, which is made a part hereof. The certificate shall be printed on a rectangular card five inches in height and eight inches in width. The certificate shall be duly completed and executed by the [insurer and signed by a Texas local recording agent] **such insurer. Each certificate filed with the commission shall be accompanied by a fee of \$25.**

(c) (No change.)

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

Issued in Austin, Texas, on August 31, 1987.

TRD-8707593 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 463-7149.



TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct Client Records

★ 22 TAC §501.32

The Texas State Board of Public Accountancy proposes an amendment to §501.32, concerning records. The amendment states the return of the client records requirement and the requirements in providing copies of other records.

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the term "licensee." There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to return or providing copies of records by public accounting professionals.

§501.32. Records.

(a) Upon request, regardless of the status of the client or former client's account, a **certificate or registration holder** [licensee] shall provide to the client or former client any accounting or other records belonging to, or obtained from or on behalf of, the client which the **certificate or registration holder** [licensee] removed from the client's premises or received on behalf of the client, but the **certificate or registration holder** [licensee] may make and retain copies of such documents when they form the basis for work done by him. For a reasonable charge, a **certificate or registration holder** [licensee] shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(1) (No change.)

(2) a copy of any report or other document issued by the **certificate or registration holder** [licensee] to or for such client;

(3) a copy of the **certificate or registration holder's** [licensee's] working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

(b) Working papers developed by a **certificate or registration holder** [licensee] during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting tax, or other professional report prepared by the **certificate or registration holder** [licensee] for a client, shall be and remain the property of the **certificate or registration holder or holders** [licensee or licensees] who developed the working papers.

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 September 3, 1987.

TRD-8707603 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 450-7066.



Advertising and Soliciting

★ 22 TAC §501.41

The Texas State Board of Public Accountancy proposes an amendment to §501.41, concerning discreditable acts by public accounting professionals. The amendment contains a prohibition against acts which reflect adversely on the public accounting profession.

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the term licensee. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to the prohibition against discreditable acts.

§501.41. Discreditable Acts. A **certificate or registration holder** [licensee] shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy.

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 September 4, 1987

TRD 8707604 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:
October 16, 1987
For further information, please call
(512) 450-7066



★ 22 TAC §501.42

The Texas State Board of Public Accountancy proposes an amendment to §501.42, concerning acting through others. The amendment reduces any confusion caused by use of the term "licensee."

Bob E. Bradley, executive director, has determined that for the first five-year pe-

riod the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the term "licensee." There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to the prohibition against discreditable acts.

§501.42. Acting through Others. A **certificate or registration holder** [licensee] shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the **certificate or registration holder** [licensee], would place him in violation of these rules of professional conduct.

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 September 4, 1987.

TRD-8707605 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:
October 16, 1987
For further information, please call
(512) 450-7066.



★ 22 TAC §501.43

The Texas State Board of Public Accountancy proposes an amendment to §501.43, concerning advertising. The amendment combines all forms of communication into communications and reduces any confusion arising out of the use of the term "licensee."

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

Mr. Bradley also has determined that for each year of the first five years the sec-

tion is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the terms "licensee" and "communications." There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to advertising.

§501.43. Advertising.

(a) A **certificate or registration holder** [licensee] shall not use or participate in the use of:

(1) any communication (written, oral, or electronic) having reference to the **certificate or registration holder's** [licensee's] professional services, which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim, nor

(2) any form of communication having reference to the **certificate or registration holder's** [licensee's] professional services, which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(b) (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 September 3, 1987.

TRD-8707606 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption:
October 16, 1987
For further information, please call
(512) 450-7066



★ 22 TAC §501.44

The Texas State Board of Public Accountancy proposes an amendment to §501.44, concerning solicitation. The amendment reduces any confusion arising out of the use of the term "licensee."

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit antici-

pated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the term "licensee." There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to solicitation.

§501.44. *Soliciting.*

(a) A **certificate or registration holder** [licensee] may make a solicitation if and only if:

(1) the solicitation is made to a person who is at that time a client of the **certificate or registration holder** [licensee];

(2) (No change.)

(3) the solicitation is made to a person seeking to secure the performance of professional services currently not being provided by another **certificate or registration holder** [licensee].

(b) A **certificate or registration holder** [licensee] making a solicitation shall have the burden of ascertaining and proving that such solicitation meets the criteria of one or more parts of subsection (a) of this section.

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 September 4, 1987.

TRD-8707607

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

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 450-7066.



★ 22 TAC §501.45

The Texas State Board of Public Accountancy proposes an amendment to §501.45, concerning competitive bidding. The amendment reduces any confusion arising out of the use of the term "licensee," and contains a prohibition against competitive bids for accounting services involving public service offerings.

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the term "licensee" and the prohibition of competitive bids for accounting services in public service offerings. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to competitive bidding.

§501.45. *Competitive Bidding.*

(a) **Certificate or registration holders** [Licensees] shall have the right to engage in competitive bidding on contracts or engagements for professional services except as stated in this section.

(b) (No change.)

(c) Contracts or engagements for the preparation of or opinion on any financial statement which is or can be used by or given to a person **other than the person whose financial statements are being reported** [or entity not a party to the contract or engagement] for the purpose of inducing reliance thereon may not be competitively bid. This prohibition does not apply to:

(1) services for entities having sales or other revenues for the most recent complete fiscal year of not more than \$300,000 (adjusted on the first day of each calendar year by the percent change from January 1, 1979, in the Consumer Price Index for All Urban Consumers, published by the Department of Labor), **unless the opinion and/or financial statements are used in a public offering of securities;**

(2)-(4) (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 September 4, 1987.

TRD-8707608

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

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 450-7066.



★ 22 TAC §501.46

The Texas State Board of Public Accountancy proposes an amendment to §501.46,

concerning form of practice. The amendment reduces any confusion arising out of use of the term "licensee."

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the term "licensee." There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to form of practice.

§501.46. *Form of Practice.* A **certificate or registration holder** [licensee] may practice public accountancy only in a proprietorship, a partnership, or a professional corporation organized in accordance with the Texas Professional Corporation Act, or as an employee of one of these entities.

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

Issued in Austin, Texas, on September 4, 1987

TRD-8707609

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

Earliest possible date of adoption:
October 16, 1987

For further information, please call
(512) 450-7066.



★ 22 TAC §501.48

(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 Public Accountancy, 1033 La Posada, Suite 340, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Public Accountancy proposes the repeal of §501.48, concerning response to mail from the board. The repeal allows for a new section which will allow for a mailing requiring response

to be sent to the last known address of record

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

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the adoption of a new section which will allow a mailing requesting a response to the last known address of record at the board. There is no anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under the Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to responses.

§501.48. Responses.

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 September 4, 1987.

TRD-8707610

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

Earliest possible date of adoption:

October 16, 1987

For further information, please call

(512) 450-7066.



The Texas State Board of Public Accountancy proposes new §501.48, concerning response to correspondence from the board. The new section allows for a mailing requiring response to be sent to the last known address of record.

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the accounting professional will be under a positive responsibility to respond to board correspondence. There is no anticipated

economic cost to individuals who are required to comply with the proposed section

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to response to board correspondence.

§501.48. Responses. A certificate or registration holder shall respond in writing to any communication from the board requesting a response within 30 days of the mailing of such communication by registered or certified mail to the last address furnished to the board by the certificate or registration holder.

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 September 4, 1987

TRD-8707611

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

Earliest possible date of adoption:

October 16, 1987

For further information, please call

(512) 450-7066



★ 22 TAC §501.50

The Texas State Board of Public Accountancy proposes an amendment to §501.50, concerning contracts for quality or peer review. The amendment reduces any confusion arising out of the use of the terms "licensee" and "control".

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of any confusion arising out of the use of the terms "licensee" and "control". There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to contract for quality or peer review.

§501.50. Contract.

(a) In order to protect the confidentiality of privileged information held by a **certificate or registration holder** [licensee] during the course of a quality [control] review or peer review of the **certificate or registration holder's** [licensee's] practice, each such quality [control] review shall be preceded by an agreement which provides, at a minimum:

(1) that the quality [control] review will be conducted only by individuals, groups, or firms who are **certificate or registration holders** [licensees] under this Act or who hold a temporary permit issued by the board;

(2) that the individual, group, or firm conducting the review (the reviewer) is obligated to the **certificate or registration holder** [licensee] being reviewed and to the clients of the **certificate or registration holder** [licensee] being reviewed to maintain the confidentiality of all confidential client information;

(3) that all information which identifies or could lead to the identification of a client of the **certificate or registration holder** [licensee] being reviewed shall not be transmitted to any person without having been reviewed and approved for release by the **certificate or registration holder** [licensee] being reviewed;

(4) that all questions as to the transmission of particular client information which cannot be agreed upon by the reviewer and the **certificate or registration holder** [licensee] being reviewed shall be resolved by the client or clients involved.

(b) Confidential client information acquired by an, **certificate or registration holder** [licensee] or temporary permit holder in the course of conducting a quality [control] review shall be protected by that **certificate or registration holder** [licensee] or temporary permit holder just as if it were confidential information of his own client, and shall be subject to the same rules of disclosure. A disclosure or information to the board for the purpose of a disciplinary complaint or disciplinary investigation shall not constitute an impermissible disclosure of confidential information.

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 September 4, 1987.

TRD-8707612

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

Earliest possible date of adoption
October 16, 1987
For further information, please call
(512) 450-7066

★ ★ ★

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. Texas Department of Human Services

Chapter 8. Home Energy Assistance Program

Program Requirements

★ 40 TAC §§8.2, 8.5, 8.6

The Texas Department of Human Services (DHS) proposes amendments to §§8.2, 8.5, and 8.6, concerning HEAP eligibility requirements, responsibilities of energy suppliers and housing authorities, and benefit amount. For the 1988 Home Energy Assistance Program (HEAP) winter program, people do not need to have a medical need to qualify. Also, HEAP warrants may be payable to housing authorities for households that live in subsidized housing.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Packard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of energy assistance to more individuals. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-357, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Texas Register*.

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

§8.2. HEAP Eligibility Criteria.

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

[(f) Additionally, some person in the household must be:

[(1) 60 years old or older in 1987;
or
[(2) disabled as defined by one of the following:

[(A) receives SSI if under 65 years of age;

[(B) receives AFDC because of incapacity; or

[(C) has a medical condition that increases the person's risk of developing a heat-related illness as certified by a physician or a registered nurse. Participants of the Women, Infants, and Children (WIC) Program may qualify under this criterion upon presentation of current WIC certification documents.]

§8.5. *Responsibilities of Energy Suppliers and Housing Authorities.* Energy suppliers and housing authorities participating in the HEAP vendor payment process have the following responsibilities:

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

§8.6. Benefit Amount.

(a) (No change.)

(b) For residents of government subsidized housing the three basic benefit levels are reduced by a standardized percentage determined by the department. This reduction is based on the best available statewide data reflecting the average heating and cooling costs of subsidized housing residents (taking into account the average subsidy) compared to the average heating and cooling costs of other households. For the 1988 [1987] heating and cooling programs, the percentage reduction is 30%. In subsequent years this percentage reduction will not be increased without the Texas Board of Human Services' approval.

(c)-(e) (No change.)

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

Issued in Austin, Texas, on September 9, 1987.

TRD-8707687

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:
January 1, 1988
For further information, please call
(512) 450-3766

★ ★ ★

Chapter 27. ICF-MR

(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 Service, 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 §§27.2401, 27.2402, 27.2404, 27.2406-27.2408, and 27.4604; and amendments to §§27.2403 and 27.2405. The purpose of the repeals is to delete material that is duplicated elsewhere in department rules. The purpose of the amendment to §27.2403 is to

clarify that, in intermediate care facilities for the mentally retarded (ICFs-MR), wheelchair-accommodating elevators are required only in buildings of two or more stories and only in facilities that serve nonambulatory or mobile nonambulatory residents. The purpose of the amendment to §27.2405 is to provide an option for small, community-based facilities to use hospitals for isolation of residents with infectious illnesses, rather than having to provide this isolation on facility premises.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed repeals and sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the repeals and sections.

Mr. Packard also has determined that for each year of the first five years the repeals and sections are in effect the public benefit anticipated as a result of enforcing the repeals and sections will be the elimination of duplicate material and clearer and more concise department rules. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals and sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-397, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

Subchapter Y. Physical Environment

★ 40 TAC §§27.2401, 27.2402, 27.2404, 27.2406-27.2408

(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 Resources, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

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

§27.2401. *Safety of Residents.*

§27.2402. *Favorable Environment for Residents.*

§27.2404. *Resident Bedrooms and Toilet Facilities.*

§27.2406. *Therapy Service Areas.*

§27.2407. *Building Standards.*

§27.2408. *Active Treatment Program.*

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 September 8, 1987

TRD-8707643 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption
November 16, 1987
For further information, please call
(512) 450 3766



★ 40 TAC §27.2403, §27.2405

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs

§27.2403 *Elevators.* In facilities that have two or more stories and serve nonambulatory or mobile nonambulatory residents, elevators must be [are] installed in [the section of] resident-use areas located on floors above the street level.

(1) Installation of elevators and dumbwaiters must be in compliance [complies] with all applicable codes.

(2) Elevators must be [are] of sufficient size to accommodate a wheelchair [wheeled stretcher].

§27.2405. *Isolation Requirements.* ICF-MR staff must arrange for the hospitalization of residents with infectious illnesses or for the isolation of these residents [provision is made for isolating infectious residents] in well ventilated single bedrooms with [having] separate toilet and bathing facilities. These arrangements must also be [Such facilities are also] available [to provide] for the special care of residents who develop acute illnesses while in the facility and for residents in terminal phases of illness.

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 September 8, 1987

TRD-8707641 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption
November 16, 1987
For further information, please call
(512) 450 3766



Subchapter UU. Safety and Sanitation

★ 40 TAC §27.4604

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.4604. *Fire Protection Exceptions for Smaller ICF's-MR.*

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 September 8, 1987.

TRD-8707642 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption
November 16, 1987
For further information, please call
(512) 450-3766



Withdrawn

Rules An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office and a notice of the withdrawal will appear in the *Register*.

TITLE 16. ECONOMIC
REGULATION
Part I. Railroad Commission
of Texas
Chapter 5. Transportation
Division
Subchapter X. Definitions of Key
Terms Relating to Agricultural
Commodities Exemption

★ 16 TAC §5.535

The Railroad Commission of Texas has withdrawn the emergency effectiveness of amendment to §5.535, concerning the definitions of key terms relating to agricultural commodities exemption. The text of the emergency amendment appeared in the June 2, 1987, issue of the *Texas Register* (12 TexReg 1770). The effective date of this withdrawal is September 4, 1987.

Issued in Austin, Texas, on September 4, 1987

TRD-8707597

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed September 4, 1987
For further information, please call
(512) 463-7149



Name: Debbie South
Grade: 12
School: Arlington High, Arlington

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 *Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

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

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

★ 10 TAC §§9.1, 9.2, 9.4-9.7, 9.9, 9.10

The Texas Department of Community Affairs adopts amendments to §§9.1, 9.2, 9.4-9.7, 9.9, and 9.10, without changes the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 Tex-Reg 2541)

The amendments relate to the allocation of community development block grant (CDGB) nonentitlement area funds under the Texas Community Development Program. The amendments establish the standards and procedures by which the TDCA will allocate community development planning/capacity building, emergency, urgent need, special impact, and interim financing funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1987.

The amendment to §9.1 clarifies and changes requirements relating to joint applications, citizen participation, unmet benefits, and substitution of standardized data. The amendments to §§9.2, 9.4, and 9.9 clarify and make changes in the selection procedures and scoring criteria. The planning/capacity building fund is changed to an annual competition and the Special Impact Fund Technical Review Committee is abolished. The amendments to §§9.5, 9.7, and 9.10 provide clarification. The amendment to §9.6 changes the notice requirements for meetings and the appeals procedures. The amendment to §9.10 modifies the loan repayments requirements and abolishes the technical review committee.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(201), §4A, which provide the Texas Department of Community Affairs with the authority to

allocate CDBG nonentitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the TDCA.

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 September 4, 1987.
TRD-8707623
Bruce W. Anderson
General Counsel
Texas Department of
Community Affairs

Effective date: September 25, 1987
Proposal publication date: August 17, 1987
For further information, please call
(512) 834-6060.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 5. Transportation Division

Subchapter U. General and Special Rules of Practice and Procedure

★ 16 TAC §5.451

The Railroad Commission of Texas adopts an amendment to §5.451, without changes to the proposed text published in the May 8, 1987, issue of the *Texas Register* (12 Tex-Reg 1489).

The amendment assesses the cost of reproducing a record for transmission to a reviewing court, to the party in a contested case that appeals the final order of the commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6252-13a, §19(f), which provide an agency with the authority to assess by rule, record preparation cost to a party that appeals a final order in a contested case.

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 August 31, 1987.
TRD-8707596
Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: September 25, 1987
Proposal publication date: May 8, 1987
For further information, please call
(512) 463-7149.



Subchapter W. Registration of Commercial Carriers

★ 16 TAC §§5.501-5.506

The Railroad Commission of Texas adopts new §§5.501-5.506, with changes to the text as proposed in the July 28, 1987, issue of the *Texas Register* (12 TexReg 2464).

The new sections implement the provisions of Senate Bill 595, 70th Legislature, 1987, which requires all commercial motor vehicles, as defined by the commission, to be registered with the commission; and House Bill 908, 70th Legislature, 1987, which requires all private carriers to file proof of insurance with the commission. As proposed, the new sections would have required all motor vehicles which transported property for a business purpose to register. The sections would have imposed various minimum levels of liability insurance on vehicles, according to the vehicles' size.

Under the adopted sections, only those vehicles which alone, or in combination, have a gross vehicular weight of 10,000 pounds or more will be registered. The business purpose test is retained in this adopted version. Further, a single minimum level of liability insurance coverage (\$500,000) will be required. As the number of vehicles registered is substantially reduced under the sections as adopted, the insurance filing fee has been set at \$25. Finally, to ensure adequate enforce-

ment of the new requirements, an identification decal will be required of all commercial motor vehicles.

A person or entity which operates a commercial motor vehicle must register that vehicle with the commission by February 1, 1987. Applications will be accepted immediately after the effective date of the new sections. A \$1.00 registration fee will be required of each vehicle, and each time proof of insurance is filed with the commission, a filing fee of \$25 will be required. Each commercial vehicle must have an identification decal on its windshield, as well as a cab card in the vehicle, at all times. The registration must be renewed annually, with the annual renewal date determined by the randomly assigned registration number.

Most comments regarding adoption of the new sections concerned either the definition of commercial motor vehicle, or the previous system for filing proof of insurance. Most persons opposing the new sections felt the definition of commercial motor vehicle was too broad, and included vehicles which were essentially indistinguishable from private vehicles. Some comments suggested that the definition be limited to for-hire carriers, while other comments supported the definition as proposed. One comment concerned the dual registration with the commission which would have been required of vehicles which transport LP-gas which are regulated by another division of the commission.

Insurance companies that commented opposed the system which would allow local insurance agents to certify insurance coverage. These agents, they contended, would bind the insurance companies to coverage in violation of company policy and be beyond the control of the companies. The new system of proof will be the same as for all other motor carriers, and will therefore be familiar to all insurance companies which insure motor vehicles operated by businesses. Further comment concerned the definition of surplus lines insurer. Others commented that the levels of insurance required for commercial carriers should be changed, that they were too low or too high. Finally, insurance companies wished to be able to pay the filing fees for their insurance filings on a periodic basis, to avoid the burden of producing numerous checks for small amounts. One comment suggested that the commission should require proof that the commercial carrier has the levels of liability insurance required under federal rules.

Several commenters supported a system of external identification of commercial motor vehicles. Both an identification tag on the vehicle, and the name of the carrier on the door were suggested.

Some comments regarded the difficulty of registering a vehicle prior to its use.

These comments suggested a short grace period before registration was required, or the use of interchangeable cab cards which would not identify the vehicle which was registered. One comment suggested a simultaneous registration with the existing vehicle registration system.

Comments were received which supported a safety system in conjunction with the registration requirement. This system would require some certification of compliance with safety requirements with the registration.

A few comments argued that the commission was not authorized to revoke the registration of a commercial carrier except for unauthorized for-hire operations.

Those commenting in favor of adoption of the new sections included the Oil Field Haulers Association, the Texas Safety Association, the City of Austin, the Sand and Gravel Motor Carriers Association, and the Southwest Warehouse and Transfer Association. Those commenting against adoption of the amendment were insurance companies, companies required to register a substantial number of vehicles, the National-American Wholesale Grocers' Association, the Texas LP-Gas Association, the Private Truck Council of America, the Texas-Electric Cooperatives, Inc., the Texas Mid-Continent Oil and Gas Association, and the Truck Renting and Leasing Association.

The commission was concerned that the previous definition would pose enforcement difficulties which outweighed any potential improvements in safety, therefore the definition was narrowed substantially. The adopted definition balances the burdens of registering huge numbers of vehicles, often virtually indistinguishable from private vehicles, with the legislative intent to improve the safety of vehicles used by businesses. The suggestions that the definition include only for-hire carriers would be in direct opposition to the intent of the statute.

The insurance system as proposed seemed to pose substantial implementation difficulties, as well as causing great concern among the insurers of these vehicles. The resulting system will allow the insurance companies to use a system which is familiar, and in use across the country, and also imposes the same minimum requirements which apply to existing carriers. This level has proven to be available to these businesses, and has provided an acceptable level of protection to the public. The phrasing of the surplus lines provision is taken from the statute which allows acceptance by the commission of filings by surplus lines insurers, and there should be no problems with filings made by those companies. To require a second insurance filing to show compliance with federal regulations would be an unnecessary burden on the commercial carrier.

The requirement in the sections as adopted that an identification decal be placed on the windshield of each commercial motor vehicle will improve the enforcement of the new sections. The requirement that the name of the carrier be placed on each vehicle, however, would place an unjustifiable burden on commercial carriers, some of whom use leased vehicles for short periods.

The suggestion that a grace period be allowed before a vehicle must be registered would conflict with the provisions of the statute, which require the vehicle to have the certificate with the registration number in the vehicle at all times. The suggestion that a company's cab cards be interchanged between vehicles would pose a very large obstacle to enforcement, and hinder identification of the vehicles which are registered with the commission.

The comments which encouraged the commission to require a safety certification with the registration would require the commission to go beyond its authority apparent in the statute. A system of safety enforcement in conjunction with the Texas Department of Public Safety, however, is foreseen in other sections to be proposed by the commission at a later date.

The new sections are adopted under Texas Civil Statutes, Article 911b, §4(a)(13), and Article 6701d, §139(c), which provide the commission with the authority to register commercial motor vehicles and to require filing of proof of liability insurance coverage.

§5.501. *Definitions.*

(a) For the purposes of this subchapter, commercial motor vehicle shall mean any motor vehicle transporting property in furtherance of any commercial enterprise, which motor vehicle has a gross vehicular weight or an actual weight (including any trailer or towed vehicle) of more than 10,000 pounds.

(b) For the purposes of this subchapter, commercial carrier shall mean any person or entity which operates or causes the operation of a commercial motor vehicle upon the public highways of the State of Texas.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the following are not subject to the provisions of this subchapter:

(1) a contract carrier as defined in §5.4(a)(4) of this title (relating to Definitions);

(2) a motor carrier as defined in §5.4(a)(8)(B) of this title (relating to Definitions);

(3) a motor carrier as defined in §5.331 of this title (relating to Definitions);

(4) a motor carrier as defined in §5.371 of this title (relating to Definitions);

(5) a carrier operating under an agricultural permit pursuant to Subchapter X

of this chapter (relating to Agricultural Permits).

(d) Notwithstanding the provisions of subsection (a) of this section, the following are not commercial motor vehicles:

(1) a vehicle registered with the commission pursuant to §9.17 of this title (relating to Registration of LP-Gas Transport); and

(2) a vehicle registered with the commission pursuant to §5.40 of this title (relating to Intercorporate Transportation Exemption).

§5.502. *Applications for Registration of Commercial Motor Vehicles.*

(a) Registration required. A commercial carrier shall not operate any commercial vehicle upon the public streets and highways of this state unless the commission has approved an application for the registration of such vehicle as prescribed by this subchapter. Each commercial carrier is responsible for the registration of all commercial motor vehicles used in its operations. A commercial carrier shall report to the commission any change in its operations prior to undertaking such changes by the filing of a supplemental application. A commercial carrier shall not operate any commercial motor vehicle without a valid cab card issued for that vehicle, or without a valid identification decal attached to the windshield of the vehicle pursuant to §5.504 of this title (relating to Cab Cards; Identification Decals).

(b) Form and execution of application. The application for the registration of such operation, and any supplemental application to report any change in operation, shall be in the form prescribed by the director. The application shall identify the name and principal business address of the commercial carrier, each commercial motor vehicle to be operated by or for the commercial carrier, and the information required by §5.503(b) of this title (relating to Liability Insurance for Commercial Carriers). The application shall be duly executed by an official of the commercial carrier.

(c) Filing of application. The application for the registration of such vehicles shall be filed with the Transportation Division, at P.O. Drawer 12967, Austin, Texas 78711-2967.

(d) Equipment reports. Each commercial carrier shall identify all commercial motor vehicles used in the conduct of its operations by filing an equipment report prescribed by the director with the application. Each commercial motor vehicle shall be identified by its motor vehicle identification number, make, and unit number. One registration number shall be assigned to all commercial motor vehicles registered by a single commercial carrier.

(e) Filing fee. The fees for an application shall be a filing fee of \$25, plus a registration fee of \$1.00 for each vehicle registered. The fee shall be in the form of

a check or money order made payable to the state treasurer of Texas.

(f) Incomplete applications. Any application for registration which is incomplete may be conditionally accepted by the director. Conditional acceptance shall in no way constitute approval of the application. The director will notify the applicant of the additional information necessary to complete the application. If the applicant does not supply all necessary additional information within 45 days, the application will be dismissed and the filing fee and registration fees will be retained by the state treasurer.

(g) Renewal of registration. Subject to the provisions of §5.506(c) of this title (relating to Implementation), registration of a commercial motor vehicle shall be effective for one year. To ensure timely renewal, all renewal applications should be received by the commission no later than 15 calendar days prior to expiration. Each commercial carrier will be assigned an annual date for renewal according to the last digit of the commercial carrier's registration number, as follows.

If the last digit is:	Renew before the first day of:
1C	January
2C	February
3C	March
4C	April
5C	May
6C	June
7C	July
8C	October
9C	November
0C	December

(h) Supplemental equipment report. Before a commercial carrier which has commercial vehicles registered with the commission begins operating any commercial vehicle not currently registered, the carrier shall file with the commission a supplemental equipment report. The supplemental equipment report shall be accompanied by a registration fee of \$1.00 per vehicle. The director will issue a cab card with the carrier's existing registration number, and an identification decal for each additional unit.

(i) Change of address. A commercial carrier shall notify the division of any change of address no later than the date of the change.

§5.503. *Liability Insurance for Commercial Carriers*

(a) Filing required. Every commercial carrier shall file and maintain evidence of currently effective bodily injury and property damage liability insurance, in the amount required by subsection (c) of this section, and such commercial carrier shall not operate any commercial motor vehicle upon the highways of this state unless the carrier has filed and the commission has accepted evidence, as prescribed by subsection (d) of this section, of currently effective insurance. Operation

of a commercial motor vehicle over the public highways of this state without the appropriate insurance on file with the commission shall be a violation of this subchapter. Operation of a commercial motor vehicle over the highways of this state without the insurance coverage required by subsection (c) of this section shall be a violation of this subchapter.

(b) Application in connection with registration of commercial motor vehicles. The evidence of insurance required by this section shall be submitted prior to approval of the original application to register commercial motor vehicles required by §5.502 of this title (relating to Applications for Registration of Commercial Motor Vehicles).

(c) Minimum limit. The minimum amount referred to in subsection (a) of this section is \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others.

(d) Proof required. The evidence of bodily injury and property damage liability insurance required shall be in the form set forth in Form E, and shall be duly completed and executed by an authorized representative of an insurance company holding a certificate of authority to transact such kinds of insurance business in the State of Texas or by a surplus lines insurer approved by the State Board of Insurance. The cancellation of the policy of insurance may be effected only by the insurance company or the insured giving 30 days notice in writing to the commission. The 30 days notice period will be calculated from the date notice is actually received by the commission.

(e) Self insurance. Notwithstanding the provisions of subsections (a)-(d) of this section, a commercial carrier may be authorized to self insure for bodily injury and property damage liability in lieu of filing proof of insurance. The authorization for a commercial carrier to self insure may be granted on the same showings required of a motor carrier under the terms of §5.182 of this title (relating to Qualification as Self-Insurer).

(f) Suspension of registration. If the insurance coverage on the operations of a commercial carrier with commercial motor vehicles lapses, the commercial carrier shall immediately cease all operations of commercial motor vehicles. The director shall notify the commercial carrier of the lapse, and that the commercial carrier's registration is subject to cancellation pursuant to the provisions of §5.505 of this title (relating to Cancellation of Registration).

(g) Additional filings and fee. Any additional proof of insurance filed with the commission shall require a filing fee of \$25.

§5.504. *Cab Cards; Identification Decals.*

(a) Form of cab card. The cab card referred to in this section shall be in the form prescribed by the director.

(b) Use of cab cards. The cab card shall be maintained in the cab of the commercial motor vehicle for which it was issued whenever the commercial motor vehicle is operated by, or for the commercial carrier identified on the cab card. The cab card shall not be used for any commercial motor vehicle except the vehicle for which it was originally issued.

(c) Inspection of the cab card. A cab card shall, upon demand, be presented by the driver to any authorized government personnel for inspection.

(d) Destruction of cab cards. Each commercial carrier shall destroy a cab card immediately upon its expiration or at the time the carrier discontinues use of a commercial motor vehicle for which a cab card has been issued. The commercial carrier shall notify the commission when it discontinues use of a registered commercial motor vehicle. If a new commercial motor vehicle is to be substituted for the discontinued vehicle, the same procedures shall apply as for the addition of a new vehicle.

(e) Alteration of cab card. Any erasure, alteration, or unauthorized use of a cab card shall render it void.

(f) Replacement of cab card. If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card may be issued under the same procedures as for the addition of a new vehicle.

(g) Form of identification decal. The identification decal referred to in this section shall be in the form prescribed by the director.

(h) Use of identification decal. The identification decal shall be attached to the inside of the windshield of the commercial motor vehicle for which it was issued, in the far left corner directly above the motor vehicle inspection sticker, if any. The identification decal shall not be used for any commercial motor vehicle except the vehicle for which it was originally issued.

(i) Conflicting state laws. If any law of the state where the commercial motor vehicle is registered, or any political subdivision thereof, prohibits the placement of the identification decal as required by subsection (h) of this section, the decal shall be placed in a permissible place on the windshield, if any. If placement of the decal on the windshield is prohibited, the decal shall be attached to the front left window of the commercial motor vehicle.

(j) Destruction of identification decal. Each commercial carrier shall destroy an identification decal immediately upon its expiration or at the time the carrier discontinues use of a commercial motor vehicle for which the identification decal has been issued. If a new commercial motor vehicle is to be substituted for the discontinued vehicle, a new identification decal may be obtained using the same procedures as for the addition of a new vehicle.

(k) Alteration of identification decal. Any erasure, alteration, or unauthorized use

of an identification decal shall render it void

(l) Replacement of identification decal. If an identification decal is lost, destroyed, mutilated, becomes illegible, or if the windshield to which it is attached is replaced, a new identification decal may be issued under the same procedures as for the addition of a new vehicle.

§5.505. Cancellation of Registration.

(a) Conditions under which registration may be cancelled. The registration of a commercial carrier shall be subject to cancellation under any of the following conditions:

(1) failure to provide evidence of continuous insurance as required by §5.503 of this title (relating to Liability Insurance for Commercial Carriers);

(2) failure to maintain the required continuous insurance during the time the commercial carrier operates a commercial motor vehicle;

(3) violation of the Motor Carrier Act;

(4) violation of any rule or order of the commission;

(b) Notice of cancellation. No registration shall be cancelled or suspended without notice by certified letter, mailed to the commercial carrier's business address on file with the commission, setting a time and place for hearing at which any interested person may appear to show cause why the registration should not be cancelled.

(c) Surrender of cab cards and cessation of operations. Upon issuance of a commission order cancelling or suspending a commercial carrier's registration under this section, the commercial carrier shall immediately return to the commission all cab cards issued to the commercial carrier, and remove all identification decals on the carrier's vehicles. The commercial carrier shall concurrently cease all operations of commercial motor vehicles.

§5.506. Implementation.

(a) Registration.

(1) No commercial carrier shall be required to register its commercial motor vehicles, nor shall any commercial carrier be required to have cab cards in its vehicles, or identification decals attached to the windshields of its vehicles, prior to February 1, 1988. A commercial carrier may register the vehicles which it operates any time after September 1, 1987.

(2) Registration numbers will be randomly assigned to commercial carriers which originally register commercial motor vehicles before June 1, 1988. Commercial carriers which originally register commercial vehicles after June 1, 1988, will be assigned a registration number with the last digit according to the month in which the vehicles are registered, as follows.

If the month of initial registration is: The last digit of the registration number will be:

January	1C
February	2C
March	3C
April	4C
May	5C
June	6C
July	7C
August	7C
September	8C
October	8C
November	9C
December	0C

(3) Incomplete applications filed prior to January 1, 1988, may be conditionally accepted by the director in accordance with the provisions of §5.502(d) of this title (relating to Applications for Registration of Commercial Motor Vehicles). Notwithstanding the provisions of §5.502(f) of this title (relating to Applications for Registration of Commercial Motor Vehicles), the incomplete application will not be dismissed before February 1, 1988.

(b) Insurance.

(1) No commercial carrier shall be required to file and maintain evidence of liability insurance prior to February 1, 1988. A commercial carrier may file evidence of liability insurance covering the commercial motor vehicles which it operates any time after September 1, 1987.

(2) The commission will not issue a cab card or an identification decal until the commercial carrier has registered the commercial motor vehicles which it operates, and has filed evidence of liability insurance.

(c) Initial renewal dates. The initial renewal date of the commercial carrier's registration shall be determined according to the last digit of the registration number, as follows.

If the last digit is:	Renew before:
1C	January 1, 1989
2C	February 1, 1989
3C	March 1, 1989
4C	April 1, 1989
5C	May 1, 1989
6C	June 1, 1989
7C	July 1, 1989
8C	October 1, 1988
9C	November 1, 1988
0C	December 1, 1988

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 August 31, 1987

TRD-8707595 Mack Wallace
Chairman
Railroad Commission of
Texas

Effective date September 25, 1987
Proposal publication date July 28, 1987
For further information, please call
(512) 463-7149



Chapter 7. Gas Utilities

Division

Substantive Rules

***16 TAC §§7.40-7.43, 7.45-7.47,
7.50-7.52, 7.54-7.57, 7.70-7.72,
7.80-7.87, 7.90**

The Railroad Commission of Texas adopts amendments to §§7.40-7.43, 7.45-7.47, 7.50-7.52, 7.54-7.57, 7.70-7.72, 7.80-7.87, and 7.90. Sections 7.42, 7.45, 7.70, and 7.71, are adopted with changes to the proposed text published in the April 14, 1987, issue of the *Texas Register* (12 TexReg 1219). All other sections are adopted without changes and will not be republished. The amendments reorganize and assign new section numbers to current sections for easier reference. The amendment to §7.46 is necessary for the regulation and the use of master meters in apartment units pursuant to Texas Civil Statutes, Article 6053. The amendments are also necessary to clarify the gross receipts tax section and pipeline safety sections. Amendments to the pipeline safety sections are necessary to specify all requirements which were approved by commission order in Gas Utilities Docket Numbers 446 and 484, for easier reference. The amendments also conform the substantive rules to the Gas Utility Division's accepted practice.

Comments were received from Champlin Petroleum Company; Clark, Thomas, Winters and Newton; Energas Company; Houston Pipe Line Company; Entex, Inc.; Exxon Company, U.S.A.; Gulfside Gas Distribution System Ltd.; Lone Star Gas Company; City of Perryton; Southern Union Gas Company; Southwestern Gas Pipeline, Inc.; Valero Transmission Company; Westar Transmission Company; and Texas LP Gas Association. Comments were filed by the City of Perryton in support of the proposed amendments. Comments were filed by Southern Union Gas Company in support of the proposed amendments with suggested modifications. All of the other comments that were filed were in opposition to various aspects of the proposed amendments. The comments are discussed by section.

In regards to §7.42, Energas Company, Southern Union Gas Company, Entex, Inc., Lone Star Gas Company, Valero Transmission Company, and Westar Transmission Company filed comments in opposition to various aspects of the proposed amendment. The primary concern raised was that the commission was attempting to tax nonjurisdictional entities; e.g. nonutility special marketing affiliates. The commission disagrees that the section authorizes such taxation. The intent of the section is to more clearly define what type of utility-related ac-

tivities are taxable for gas utilities, as statutorily defined. The section is not intended to expand a statutory definition of gas utility. Energas Company suggests that §7.42(c)(2) should be changed to apply to burnertip sales engaged primarily in retail gas distribution sales, other than solely engaged. The commission disagrees because local distribution companies are now providing services that are transmission-type in nature, and, therefore, revenues received from those activities should be taxable as they are for transmission companies. Lone Star Gas Company suggests that §7.42(a)(1) should be amended to apply to intercompany activities, rather than intracompany activities. The commission disagrees, since intracompany transactions that are utility-related should be taxable. In addition, the commission has clarified subsection §7.42(b)(7) to apply only to gas utility brokerage fees and/or type sales.

In regards to §7.45, comments were filed by Energas Company, Entex, Inc., Gulfside Gas Distribution System Ltd., Lone Star Gas Company, and Valero Transmission Company in opposition to various aspects of the proposed amendment. The first area of concern was §7.45(2)(C), regarding utility response time by the utility. The comments suggested that the time given was insufficient. The commission disagrees since the amendment requires an initial response and allows additional time for an investigation and report to the commission. The second objection dealt with the inclusion of small commercial customers in the customer deposit section. The commission agrees, and as a result of the comments, has deleted small commercial customers from this subsection. In addition, the commission withdraws a proposed amendment to §7.45(7)(A)(iv), regarding access to premises for the purposes of reading meters.

In regards to §7.70, comments were filed by Energas Company, Entex, Inc., Exxon Company, U.S.A., Gulfside Distribution System Ltd., Lone Star Gas Company, Valero Transmission Company, and Westar Transmission Company, in opposition to various aspects of the proposed amendment. All of the comments suggested that the property value used as criteria for reporting leaks and accidents be raised from the proposed \$5,000 to \$50,000. The commission disagrees because the commission must keep informed of all significant leaks and accidents in order to execute its statutory duty of pipeline safety. The property value is also only one of the criteria set for reporting accidents.

In regards to §7.71, comments were filed by Energas Company, Southern Union Gas Company, Entex, Inc., Exxon Company, U.S.A., Gulfside Gas Distribution System Ltd., Lone Star Gas Company, Westar Transmission Company, and the Texas LP Gas Association, in opposition to the revision of the definition of farm pro-

odorizer. The commission agrees that the definition should not be changed, and as a result of the comments, has modified the definition to apply to wick-type odorizers which do not use more than an average of 10 Mcf per month. The commenters also suggested that the definition of gas company was incorrect. The commission agrees, and as a result of the comment, modified the definition.

In regards to §7.80, Exxon Company, U.S.A. filed comments in support of the proposed amendment since the definitions would now conform with the federal definitions.

The amendments are adopted under Texas Civil Statutes, Article 6053, which provide the Railroad Commission of Texas with the authority to prescribe rules for the regulation of natural gas.

§7.42. Gross Receipts Tax.

(a) Every gas utility under the jurisdiction of the Railroad Commission of Texas pursuant to Texas Civil Statutes, Articles 6050 and 1446e, shall, on or before 30 days after the first day of January, April, July, and October, make and file with the commission a report, under oath showing its gross receipts from all business done by it within this state, as defined in subsection (b) of this section and as required by Texas Civil Statutes, Article 6060, for the preceding quarter. Every gas utility shall also pay into the Treasury of the State of Texas, as gross receipts tax, a sum of money equal to $\frac{1}{4}$ of 1.0% of its gross receipts from all business done by it within this state as required by Texas Civil Statutes, Article 6060, stipulating in the voucher covering the payment the purpose for which it is paid. The gross-receipts tax report shall be of a form and content as established by the Gas Utilities Division and shall be completed in all detail as requested.

(b) Definition of gross receipts. For purposes of this section, gross receipts means all income from intrastate utility-related activities, including, but not limited to, the following items:

(1) revenues received from natural gas sales for resale (including intracompany transactions, which are transactions related companies of the same corporate family except as provided in subsection (c)(1) or (c)(2) of this section);

(2) revenues received from natural gas sales to end-use customers, except as provided in subsection (c)(1) or (c)(2), when the gas utility making the end-use sale has not previously paid the gross receipts tax on the gas which is sold to an end-use customer. If an allocation of costs is made to the transmission function, and approved by the commission, upon which the gross receipts tax is paid by a gas utility which engages in both transmission and distribution of natural gas, then no additional gross receipts tax as provided herein shall be paid on the distribution function. If, however, no such allocation is made, then such gas utility shall be

required to pay gross receipts tax on sales to end-use customers. A properly authorized gate rate shall be deemed to constitute a sufficient allocation of transmission costs;

(3) revenues received from the transportation and/or compression of natural gas;

(4) revenues received from the sale of products extracted from natural gas;

(5) revenues received for natural gas processed by others;

(6) revenues received from the rental of pipelines and/or other facilities to others for the carriage of natural gas; and

(7) revenues received by a gas utility as brokerage fees and/or brokerage type sales of natural gas.

(c) Exemptions.

(1) No sale of natural gas as described herein shall be taxable if it involves the first sale of the gas by the producer thereof exclusively. If the sale by a producer of gas includes both produced and purchased gas, then an allocable portion of the total revenues, based on the percentage of produced gas in the sale, shall not be taxable.

(2) Burnertip sales by a gas utility engaged solely in retail gas distribution shall not be taxable.

(3) Interstate transactions or sales of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 United States Code §717, et seq.) shall not be taxable.

(d) Taxable revenues. Consideration in the form of cash, negotiable instruments, intracompany credits, or other compensation shall be considered as taxable gross revenues.

§7.45. *Quality of Service.* For gas utility service to residential and small commercial customers, the following minimum service standards shall be applicable in unincorporated areas. In addition, each gas distribution utility is ordered to amend its service rules to include said minimum service standards within the utility service rules applicable to residential and small commercial customers within incorporated areas, but only to the extent that said minimum service standards do not conflict with service standards lawfully established within a particular municipality for the gas distribution utility. Said gas distribution utility shall file service rules incorporating said minimum service standards with the Railroad Commission and with the municipalities in the manner prescribed by law.

(1) (No change.)

(2) Customer relations.

(A) (No change.)

(B) Customer complaints. Upon complaint to the utility by residential or small commercial customers either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof. It shall keep a record of all complaints which shall show the name and address of the com-

plainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of one year subsequent to the final disposition of the complaint.

(C) Utility response. Upon receipt of a complaint, either by letter or by telephone, from the regulatory authority on behalf of a customer, the utility shall make a suitable investigation and advise the regulatory authority and complainant of the results thereof. An initial response must be made by the next working day. The utility must make a final and complete response within 15 days from the date of the complaint, unless additional time is granted within the 15-day period. The commission encourages all customer complaints to be made in writing to assist the regulatory authority in maintaining records of the quality of service of each utility; however, telephone communications will be acceptable.

(D) Deferred payment plan. The utility is encouraged to offer a deferred payment plan for delinquent residential accounts. If such a plan is offered, it shall conform to the following guidelines.

(i)-(v) (No change.)

(vi) Any utility which institutes a deferred payment plan shall not refuse a customer participation in such a program on the basis of race, color, creed, sex, marital status, age, or any other form of discrimination as prohibited by law.

(3) Refusal of service.

(A) (No change.)

(B) Applicant's recourse. In the event that the utility shall refuse to serve an applicant under the provisions of these rules, the utility must inform the applicant of the basis of its refusal and that the applicant may file a complaint with the municipal regulatory authority or commission, whichever is appropriate.

(C) (No change.)

(4) (No change.)

(5) Applicant deposit.

(A) Establishment of credit for residential applicants. Each utility may require a residential applicant for service to satisfactorily establish credit but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills. Subject to these rules, a residential applicant shall not be required to pay a deposit:

(i) if the residential applicant has been a customer of any utility for the same kind of service within the last two years and is not delinquent in payment of any such utility service account and during the last 12 consecutive months of service did not have more than one occasion in which a bill for such utility service was paid after becoming delinquent and never had service disconnected for nonpayment;

(ii) if the residential applicant furnishes in writing a satisfactory guarantee to secure payment of bills for the service required; or

(iii) if the residential applicant furnishes in writing a satisfactory credit rating by appropriate means, including, but not limited to, the production of generally acceptable credit cards, letters of credit reference, the names of credit references which may be quickly and inexpensively contacted by the utility, or ownership of substantial equity.

(B) (No change.)

(C) Amount of deposit and interest for residential service, and exemption from deposit.

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

(D)-(E) (No change.)

(F) Refund of deposit.

(i) If service is not connected or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. The transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection within the meaning of these rules, and no additional deposit may be demanded unless permitted by these rules.

(ii) (No change.)

(G)-(H) (No change.)

(6)-(8) (No change.)

§7.70. *Pipeline Safety.*

(a) Minimum safety standards. All gas pipeline facilities and the transportation of gas within this state, except those facilities and that transportation of gas which are subject to exclusive federal jurisdiction under the Natural Gas Pipeline Safety Act of 1968, shall be designed, constructed, maintained, and operated in accordance with the Minimum Safety Standards, 49 Code of Federal Regulations Part 192, with amendments, and with the additional regulations set out in this section.

(b) Definitions. The following words and terms, when used in this section and §7.71 of this title (relating to Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Person—Any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(2) Gas—Natural gas, flammable gas, or other gas which is toxic or corrosive.

(3) Transportation of gas—The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas; except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area

which the Secretary of Transportation may define as a nonrural area.

(4) Pipeline facilities—Facilities which include, but are not limited to, new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation.

(5) Gas company—Any person who owns or operates pipeline facilities used for the transportation of gas.

(6) Commission—The Railroad Commission of Texas.

(7) Pipeline Safety Section—The Pipeline Safety Section of the Gas Utilities Division of the Railroad Commission of Texas.

(c) Applicability. All gas pipeline facilities and facilities used in the transportation of natural gas shall be subject to the minimum safety standards, as amended, except for those facilities and transportation services subject to the jurisdiction of the Federal Energy Regulatory Commission pursuant to 15 United States Code §717 et seq.

(d) Minimum standards only. The minimum safety standards adopted in subsection (a) of this section establish minimum standards of accepted good practice. Nothing contained in this section shall prevent the commission, after an appropriate public hearing or investigation, from prescribing more stringent permanent standards in individual situations.

(e) Special circumstances.

(1) In the event any gas company cannot determine to its satisfaction the standards applicable to special circumstances, it may, by written application, request the commission for advice and recommendations, and in a special case, the commission may authorize exemption from, or modification, or temporary suspension of any of the provisions of the minimum safety standards.

(2) If a gas company operates pipeline facilities and/or transports gas which are in part subject to the jurisdiction of this commission and in part subject to the Department of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968, it may request in writing to the commission that all of its pipeline facilities and transportation of gas be subject to the exclusive jurisdiction of the Department of Transportation. If the gas company files a written statement under oath that it will fully comply with the federal safety rules and regulations, the commission may grant an exemption from compliance with the commission's safety rules and regulations.

(f) Retroactivity. Nothing in these rules and regulations provided shall be applied retroactively to any existing installations insofar as its design, fabrication, installation, or established operating pressure is concerned, except as required by regulations of the Office of Pipeline Safety, Department of Transportation.

(9) Reports and reporting.

(1) Reporting of accidents, leaks, or incidents.

(A) At the earliest practical moment following discovery, each gas company shall notify the Pipeline Safety Section by telephone of any event that involves a release of gas from its pipeline(s) which:

(i) caused a death or any personal injury requiring hospitalization; or

(ii) required taking any segment of a transmission line out of service; or

(iii) resulted in gas igniting; or

(iv) caused estimated damage to the property of the operator, or others, or both (including gas loss), totaling \$5,000 or more; or

(v) could reasonably be judged as significant because of location, rerouting of traffic, evacuation of building(s), media interest, etc., even though it does not meet clauses (i), (ii), (iii), or (iv) of this subparagraph.

(B) A telephonic report is not required of a leak or incident which meets only subparagraph (A)(ii) of this paragraph, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(C) The telephonic notice required by this paragraph shall be made to the Pipeline Safety Section at (512) 447-2171, and shall include the following:

(i) company/operator name;

(ii) location of leak or incident;

(iii) time of accident/incident;

(iv) fatalities and/or personal injuries;

(v) phone number of operator; and

(vi) other significant facts relevant to the accident or incident.

(D) Except as provided in subparagraph (E) of this paragraph, each gas company shall report, in writing, a summary of each accident or incident, under subparagraph (A) of this paragraph which involved property damage (including cost of gas lost) of the gas company or others or both, of \$5,000 or more. The report shall be submitted to the Pipeline Safety Section as soon as practicable, but not more than 30 days after detection, on forms supplied by the Department of Transportation. This report is to be submitted in duplicate. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(E) The accident or incident report required by subparagraph (D) of this paragraph need not be submitted with respect to master meter systems.

(F) Notwithstanding the exceptions in subparagraphs (D) and (E) of this paragraph, the commission may require that a written report be submitted for an accident or incident.

(2) Pipeline safety annual reports.

(A) Except as provided in subparagraph (B) of this paragraph, each gas company shall submit an annual report for ITS system(s) in the same manner as required by

49 Code of Federal Regulations Part 191. The report shall be submitted to the Pipeline Safety Section in duplicate on forms supplied by the Department of Transportation, not later than March 15, for the preceding calendar year. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(B) The annual report required by subparagraph (A) of this paragraph need not be submitted with respect to:

(i) petroleum gas systems which serve less than 100 customers from a single source; or

(ii) master meter systems.

(h) Records. On or after the effective date of these sections, each gas company operating gas facilities subject to the safety jurisdiction of this commission shall comply with the provisions of the minimum safety standards as amended, with respect to records required. Each gas company shall maintain records as the commission may require which are adequate to show compliance or noncompliance with such rules. All such records shall be kept open and readily available to the commission and/or its representatives at reasonable times.

(i) Inspection and maintenance plans. Each gas company operating a gas facility subject to the safety jurisdiction of this commission shall file with the commission a plan for inspection and maintenance of its facilities. If the commission finds the plan is inadequate to achieve safe operation, it shall require the plan to be revised. Thereafter, any and all changes in such plan of inspection and maintenance shall be filed with the commission 20 days before it becomes effective.

(j) Enforcement.

(1) The Pipeline Safety Section shall have responsibility for the enforcement of the provisions of these sections. To this end, it shall formulate a plan or program for periodic evaluation of the books, records, and facilities of gas companies operating in Texas on a sampling basis, in order to satisfy the commission that the gas companies are in compliance with the provisions of such rules.

(2) In the matter of the enforcement of the provisions of these sections, each gas company operating in Texas, and its officers and employees, shall make readily available any of its files, records, other documents, the plant, property, and facilities to the commission, or its representatives, in the administration and enforcement of these sections.

(3) Each gas company shall provide to the commission, or its representatives, such reports, supplemental data, and information as the commission shall from time to time reasonably require, in the administration and enforcement of these sections.

(k) Revisions of the minimum safety standards. Amendments, changes, and revisions of 49 Code of Federal Regulations Part 192, known as the minimum safety stan-

dards, shall be effective as a rule or regulation of this commission unless specifically rejected by the Commission.

(l) Supplemental regulations. The following provisions supplement the regulations appearing in 49 Code of Federal Regulations Part 192, adopted under subsection (a) of this section.

(1)-(6) (No change.)

§7.71. Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests.

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

(1) Gas Company—Means and includes every person, firm, corporation, or government entity, including but not limited to, municipal corporation, gas utility as defined in Texas Civil Statutes, Article, 6050, et seq.; and gas utility as defined in Texas Civil Statutes, Article 1446e, §1.03(3), engaged in the activity of:

(A) handling, storing, selling, or distributing for direct use by the ultimate consumer, gas for private or commercial uses;

(B) supplying gas by pipelines, or otherwise, for direct consumption in any public building or buildings, or by the general public; or

(C) operating a transmission line under the circumstances described in Title 49 Code of Federal Regulations Part 192.625(B), and amendments thereto

(2) Farm tap odorizer—A wick-type odorizer serving a consumer or consumers off any pipeline other than that classified as distribution as defined in 49 Code of Federal Regulations Part 192.3, which uses not more than 10 mcf on an average day in any month.

(3) All other applicable definitions are found in §7.70(b) of this title (relating to Pipeline Safety).

(b) Odorization of gas.

(1) Every gas company shall continuously odorize gas by the use of a malodorant agent in accordance with the requirements set out in this section unless the gas contains a natural malodor or is odorized in accordance with these requirements prior to delivery by a supplier, as described in this section.

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

(c) General.

(1) The rules In Re: odorization of natural gas or liquefied petroleum gases, and specifications for design, construction, and operation of containers for transporting, storing, or dispensing liquefied petroleum gases, Railroad Commission of Texas, Gas Utilities Docket Number 122 (July 27, 1937), Rules 5, 6, and 7, and In Re: odorization of natural gas, Railroad Commission of Texas, Gas Utilities Docket Number 183 (July 28, 1958), and all amendments thereto are

hereby repealed as of the effective date of this section.

(2) All reports and certificates filed under this section shall be subject to the penalties provided in the Natural Resources Code, §91.143 (two to five years in the penitentiary and \$1,000 fine or both).

(d) Odorization equipment. All gas companies shall utilize odorization equipment approved by the commission as follows.

(1) Commercial manufacturers of equipment used for introducing malodorant required in this section may submit plans and specifications of such equipment to the Pipeline Safety Section with Form PS-25, for approval of standardized models and designs if the equipment is of a type commercially manufactured under accepted rules and practices of the industry. Commission-approved odorization equipment will be placed on a list of acceptable commercially available equipment. Gas companies may install and use this equipment without further approval from the commission.

(2) All gas companies shall, before the installation of shop-made or other odorization equipment not approved according to paragraph (1) of this subsection, submit to the Pipeline Safety Section plans and specifications with the odorization equipment approval Form PS-25 describing the equipment to be used for introducing the malodorant required by this section. The commission shall indicate its approval or disapproval of such plans by written notification.

(3) Any odorization equipment previously approved for use prior to August 14, 1978, need not be reapproved under the terms of this section.

(e) Malodorants. The Pipeline Safety Section shall maintain and promulgate a list of approved malodorants which shall meet the following criteria.

(1) The malodorant, when blended with gas in the amount specified for adequate odorization of such gas shall not be deleterious to humans or to the material present in a gas system, and shall not be soluble in water to a greater extent than 2½ parts, by weight, of malodorant to 100 parts by weight, of water.

(2) The products of combustion from the malodorant shall be nontoxic to humans breathing air containing the products of combustion, and the products of combustion shall not be corrosive or harmful to the material to which such products of combustion would ordinarily come in contact.

(3) The malodorant agent introduced into the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas, shall have a distinctive malodor so that when gas is present in air at a concentration of as much as 1.0% percent or less by volume, the malodor is readily detectable by a person with a normal sense of smell.

(4) Injection of approved malodorant or the natural malodor must be at rate(s) sufficient to achieve the requirement of paragraph (3) of this subsection.

(f) Malodorant injection reports.

(1) Each gas company shall record, as frequently as necessary to maintain adequate odorization, but not less than once each quarter, the following malodorant information for all odorization equipment, except farm tap odorizers. The required information shall be recorded and retained in the company's files:

(A) odorizer location;

(B) brand name and model of odorizer;

(C) name of malodorant, concentrate, or dilute;

(D) quantity of malodorant at beginning of month/quarter;

(E) amount added during month/quarter;

(F) quantity at end of month/quarter;

(G) MMcf of gas purchased during month/quarter; and

(H) injection rate per MMcf;

(2) Farm tap odorizers shall be checked, tested, and serviced at least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Pipeline Safety Section. Each company shall maintain records to reflect the date of service and maintenance on file for at least two years.

(g) Malodorant tests and reports.

(1) The following concentration tests, conducted in accordance with the requirements and procedures heretofore promulgated by the commission, shall be conducted by every gas company of the gas supplied through its facilities and required to be odorized. Other tests conducted in accordance with procedures approved by the Pipeline Safety Section may be substituted for the following room and malodorant concentration test meter methods. Test points shall be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests shall be performed at least once each calendar year or at such other times as the Pipeline Safety staff may reasonably require. The results of these tests shall be recorded on the approved odorant concentration test Form PS-6 or equivalent and retained in each company's files for at least two years.

(A) Room test—test results recorded on Form PS-6 or equivalent shall contain the following:

(i) odorizer name and location;

(ii) date test performed, test time, location of test, and distance from odorizer, if applicable;

(iii) percent gas in air when malodor is readily detectable; and

(iv) signatures of witnesses and supervisor.

(B) Malodorant concentration test meter--test results recorded on Form PS-6 or equivalent shall contain the following.

- (i) odorizer name and location;
- (ii) malodorant concentration meter make, model, and serial number;
- (iii) date test performed, test time, odorizer tested, and distance from odorizer, if applicable;
- (iv) test results indicating percent in air when malodor is readily detectable; and
- (v) signature of person performing the test.

(2) Farm tap odorizers shall be exempt from the odorization testing requirements of paragraph (1) of this subsection.

(3) Gas companies which obtain gas into which malodorant previously has been injected or gas which is considered to have a natural malodor and therefore do not odorize the gas themselves shall be required to conduct quarterly malodorant concentration tests and retain records for a period of two years.

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 August 31, 1987

TRD-8707594 Mack Wallace
Chairman
Railroad Commission of
Texas

Effective date: September 25, 1987
Proposal publication date: April 14, 1987
For further information, please call
(512) 463-7149.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter I. Income

★ 40 TAC §3.902

The Texas Department of Human Services (DHS) adopts an amendment to §3.902 with a change to the proposed text published in the July 28, 1987, issue of the *Texas Register* (12 TexReg 2508). DHS is correcting the reference in subsection (b) (10) to Title VII, Nutrition Program for the Elderly, previously cited as Title VIII. The amendment specifies that in the Aid to Families with Dependent Children (AFDC) Program, DHS always counts as income wages, salaries, and commissions received in cash or in-kind. DHS exempts

unearned in-kind assistance if the applicant does not have the option of receiving the assistance in cash. The section as amended will function as DHS' rule concerning countable income and exclusions from income in the AFDC program. No comments were received regarding adoption of the amendment. The amendment is adopted under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer public assistance programs.

§3.902. Types.

(a) Aid to families with dependent children. The DHS counts the following as income:

(1)–(28) (No change.)

(29) wages, salaries, and commissions received in cash or in kind.

(30) (No change.)

(b) Aid to families with dependent children. Exclusions from income for AFDC are:

(1)–(6) (No change.)

(7) in-kind income. DHS exempts the value of unearned in-kind assistance if the applicant does not have the option of receiving the assistance in cash;

(8) job training allowances. DHS exempts payments from other agencies that do not duplicate assistance provided under the AFDC needs standard as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(vii)(a)-(b). DHS also exempts unearned income payments from the Job Training Partnership Act of 1982 for AFDC children;

(9) native and Indian claims. DHS exempts tax-exempt portions of payments made under the Alaska Native Claims Settlement Act and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Law 92-254 or Public Law 93-135;

(10) nutrition program assistance. DHS exempts the value of supplemental food assistance under the Child Nutrition Act of 1966 and special food services programs for children under the National School Lunch Act. DHS exempts benefits received under the Older Americans Act of 1965, Title VII, Nutrition Program for the Elderly;

(11) relocation assistance benefits. DHS exempts benefits received under the Uniform Relocation Assistance and Real Property Acquisition Act, Title II;

(12) SSI;

(13) third-party funds. DHS exempts money received and used for care and maintenance of a third-party beneficiary who is not a household member;

(14) vendor payments. DHS does not count payments made directly to the applicant's creditor or person providing the service if the person or organization making the payments is outside the household.

(c)–(d) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 9, 1987

TRD-8707686 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Effective date: September 30, 1987
Proposal publication date: July 28, 1987
For further information, please call
(512) 450-3766

◆ ◆ ◆

The Texas Department of Human Services adopts the repeal of §§10.3201-10.3205, 10.3207-10.3210, 29.201-29.206, 55.6101-55.6116, 55.7901-55.7904, 69.4, and 69.131-69.145, and new §§56.101-56.103, 56.201-56.209, 56.301-56.307, 56.401-56.404, 56.501-56.524, 56.601-56.607, 56.701-56.703, and 56.801. New §§56.304, 56.401, 56.402, 56.501, 56.503, 56.505, 56.510, 56.511, 56.607, and 56.701 are adopted with changes to the proposed text published in the July 14, 1987, issue of the *Texas Register* (12 TexReg 2286). The repeal of §§10.3201-10.3205, 10.3207-10.3210, 29.21-29.206, 55.6101-55.6116, 55.7901-55.7904, 69.4, and 69.131-69.145, and new §§56.101-56.103, 56.201-56.209, 56.301-56.303, 56.305-56.307, 56.403, 56.404, 56.502, 56.504, 56.506-56.509, 56.512-56.524, 56.601-56.606, 56.702, 56.703, and 56.801 are adopted without changes and will not be republished.

The department adopts these sections to consolidate all of its rules about family planning into one chapter.

The adopted sections clarify and update policies regarding eligibility, contracting, services, payment, and standards.

The department received comments from the Dental School at the University of Texas Health Science Center at San Antonio, Natural Family Planning for the Greater Houston Area, and an individual. The commenters were neither for nor against the sections, but had suggestions and concerns regarding specific sections. A commenter noted that the terms "family planning," "contraception," and "reproductive needs" are used interchangeably throughout the proposed sections. The commenter stated that "natural family planning" is not a method of contraception; instead it is a method to either achieve, postpone, or avoid a pregnancy. The commenter suggested that the terms "contraception," "reproductive needs," and "natural family planning" be defined and that the department should use the term "contraception" when meaning only drugs or devices that prevent ovulation or fertilization. The department recognizes that a purpose of natural family planning is to assist a woman to become pregnant.

The department, however, limits its family planning program to services and methods that assist people to limit their family size or space their children by avoiding pregnancy through contraception. Because the other purpose of natural family planning is to postpone or avoid pregnancy, the department includes natural family planning as a method. The department does not believe that terms are used interchangeably in the new sections nor that definitions of the terms are needed. The department reviewed the use of each of the terms within the text of the sections to ensure that the terms are used appropriately. Some changes were made. The department believes that the term "contraception" is not limited to drugs or devices but includes practices such as abstinence and natural family planning. Therefore, the commenter's recommendation regarding use of the term was not incorporated.

A commenter suggested that the last sentence in §56.304(a) be amended to read "Natural family planning agency providers are not required to refer inquiries for sterilization or for abortion." This change was made.

A commenter requested a change to §56.401(5) to provide 10 sessions of natural family planning instruction rather than two sessions. The commenter believes that two sessions do not provide sufficient knowledge and experience for people to use the method effectively. The department believes that two sessions are sufficient to instruct people in effective use of the method. Also, the department allows additional method specific counseling to be provided to people who were instructed in natural family planning methods. Therefore, this change was not made.

A commenter suggested that the minimum size for group presentations be specified in §56.401(6). This change was made.

A commenter suggested that an HIV (Human Immunodeficiency Virus) test for AIDS be added to the laboratory tests required in §56.503. The department does not have sufficient funds to add this service to the program at this time. Therefore, this suggestion was not incorporated. The department has provided information to contracted family planning agencies regarding free and low-cost testing resources in the community.

A commenter suggested that the required laboratory tests for males in §56.503(c)(2) should specify with the term "as indicated." The department incorporated this change.

A commenter suggested that §56.505(a) be clarified by specifying that the initial patient education should be provided before the client receives a "prescriptive" contraceptive method. This change was incorporated.

A commenter suggested that if the term "reproductive needs" in §56.510(b)(3) refers to drugs or devices that may prevent pregnancy, the department should use the term "contraception" instead. The department used the term "reproductive needs" to mean more than drugs and devices that prevent pregnancy. To ensure that the department's intent in this section is not misleading, the term was changed to "family planning needs."

A commenter requested a change to §56.511(d) to specify that natural family planning agencies are not required to refer people for pregnancy termination. This clarification was made in paragraph (5).

A commenter requested that the words "or natural family planning instruction" be added after the word "contraception" in §56.511(e). Because natural family planning is considered one of the methods of contraception, this addition was not made.

A commenter suggested that the qualifications for the medical director of a genetic services agency provider in §56.701(a)(1) and for those who may prescribe genetic services in §56.702 should be consistent with the American Board of Medical Genetics (ABMG) definition of a clinical geneticist. The department believes that this comment warrants consideration. Such a change requires further study and consultation but may be proposed later.

A commenter suggested that the description of the genetic services team in §56.701(a)(2) in reality allows a single clinical geneticist to act alone, because nurses and social workers are not professionally trained or certified in genetic diagnosis and counseling. The section, as proposed, required two people, one being a clinical geneticist, to constitute a team. This was the department's intent and therefore, paragraph (2) has not been changed.

The department made other changes to the text of §§56.401, 56.402, 56.501, 56.607, and 56.701 to clarify the types of providers and clients covered by the regulations and the record keeping requirements.

Chapter 10. Family Self-Support Services

Family Planning Services

★ 40 TAC §§10.3201-10.3205, 10.3207-10.3210

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

This agency hereby certifies that the sections 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 September 8, 1987.

TRD-8707658

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: September 29, 1987
Proposal publication date: July 14, 1987
For further information, please call
(512) 450-3766.

Chapter 12. Child Nutrition Programs

Child Care Food Program

★ 40 TAC §12.8

The Texas Department of Human Services (DHS) adopts an amendment to §12.8, concerning the financial management system used in the Child Care Food Program (CCFP). The section, as amended, requires that certain contractors maintain advances of federal funds in interest-bearing accounts. The amendment also requires the contractors to remit quarterly to DHS interest in excess of \$100 per year earned on federal advances deposited. The contractors may retain interest amounts up to \$100 per year for administrative expenses.

The justification for the amendment is to comply with requirements of the Office of Management and Budget final revision to Circular A-110, entitled Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. The intent of the revision is to ensure the maximum use of federal funds by requiring that advance payments be placed in interest-bearing accounts and that interest earned on the funds be returned to the United States Department of Agriculture.

The section as amended will function as DHS' policy concerning the disposition of advance payments and interest earned on advance payments in the CCFP.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment is adopted under federal requirements to be effective June 12, 1987.

§12.8. Financial Management System.

(a) (No change.)

(b) Contractors that are institutions of higher education, hospitals, and/or other nonprofit organizations and receive advances of federal funds must maintain the funds in interest-bearing accounts. The contractors must submit to DHS quarterly all interest in excess of \$100 per year earned on advances, beginning with the quarter in which the interest first exceeds \$100. The contractors may retain interest amounts up to \$100 per year for administrative expenses.

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 September 8, 1987.

TRD-8707659 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: June 12, 1987
For further information, please call
(512) 450-3766.

Summer Food Service Program

★ 40 TAC §12.116

The Texas Department of Human Services (DHS) adopts an amendment to §12.116, concerning advance payments in the Summer Food Service Program (SFSP). The section, as amended, requires that SFSP sponsors maintain advances of federal funds in interest-bearing accounts and that interest in excess of \$100 per year earned on the accounts be remitted quarterly to DHS. Sponsors may retain interest amounts up to \$100 per year for administrative expenses.

The justification for the amendment is to comply with requirements of the Office of Management and Budget final revision to Circular A-110, entitled Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. The intent of the revision is to ensure the maximum use of federal funds by requiring that advance payments be placed in interest-bearing accounts and that interest earned on the funds be returned to the United States Department of Agriculture.

The section as amended will function as DHS' policy concerning the disposition of advance payments and interest earned on advance payments in the SFSP.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment is adopted under federal requirements to be effective June 12, 1987.

§12.116. *Advance Payments.*

(a) Sponsors may receive advance payments from DHS to assist in meeting operating costs and administrative expenses. The DHS makes advance payments according to 7 Code of Federal Regulation §§225.4, 225.7, and 225.11.

(b) Sponsors who are institutions of higher education, hospitals, and/or other nonprofit organizations and receive advances of federal funds must maintain the funds in interest-bearing accounts. The sponsors must return quarterly to DHS interest in excess of \$100 per year earned on advance funds, be-

ginning with the quarter in which the interest first exceeds \$100. The sponsors may retain interest amounts up to \$100 per year for administrative expenses.

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 September 8, 1987.

TRD-8707660 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: June 12, 1987
For further information, please call
(512) 450-3766.

Chapter 29. Purchased Health Services

Subchapter C. Medicaid Family Planning Program

★ 40 TAC §§29.201-29.206

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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 September 8, 1987.

TRD-8707657 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: September 29, 1987.
Proposal publication date: July 14, 1987
For further information, please call
(512) 450-3766.

Chapter 55. Family Services

Subchapter B. Family Planning Services

★ 40 TAC §§55.6101-55.6116

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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 September 8, 1987.

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Commissioner
Texas Department of
Human Services

Effective date: September 29, 1987
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For further information, please call
(512) 450-3766

Subchapter H. Standards for Purchased Title XX Family Planning Services

★ 40 TAC §§55.7901-55.7904

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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.

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

Chapter 56. Family Planning

Subchapter A. Program Information

★ 40 TAC §§56.101-56.103

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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.

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

Subchapter B. Client Rights and Eligibility

★ 40 TAC §§56.201-56.209

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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.

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(512) 450-3766



Subchapter C. Provider Program Requirements

★ 40 TAC §§56.301-56.307

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§56.304. *Obligation to Provide Services.*

(a) For the Title XX Family Planning Program, agency providers, other than natural family planning agency providers, must provide all services scheduled in the plan of operation, subject to applicable laws and regulations. Natural family planning agency providers are required only to refer clients who want temporary contraceptive methods not offered by the agency provider to other providers that offer the requested service in the same geographic area. Natural family planning agency providers are not required to refer inquiries for sterilization or for abortion.

(b) Natural family planning agency provider contracts may specifically waive requirements to provide all services other than natural family planning methods.

(c) Agency providers must also treat complications from sterilization or IUD insertion even if DHS' payment is exceeded. Under Title XX, an agency provider should establish a contingency fund to cover the costs of treating complications that exceed DHS' reimbursements.

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) 450-3766



Subchapter D. Purchased Services

★ 40 TAC §§56.401-56.404

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§56.401. *Counseling and Educational Services.* Counseling and educational services DHS purchases include, but are not limited to:

(1) initial education and counseling for clients concerning the various contraceptive methods and elementary reproductive anatomy to facilitate effective use of the method chosen. This service is reimbursable once for new clients of the agency or for clients whose agency records have been closed for at least one year;

(2) method-specific education and counseling for Title XX clients that provides information about the specific methods chosen by clients including proper use, possible side effects, reliability, and reversibility of the methods. This is reimbursable if provided in conjunction with the initial or annual examination, or when the client changes contraceptive methods or has difficulty with a method;

(3) problem counseling for Title XX clients about problems that are not related to contraceptive methods such as pregnancy, sexually transmitted infections, social and marital problems, health disorders, and sexuality concerns of the disabled and adolescents. This service is reimbursable as often as a physician deems it necessary;

(4) introduction to family planning in a hospital setting for Title XX clients that consists of an overview of family planning benefits to clients in a hospital or in a clinic under the auspices of a hospital to recruit post-partum women to use family planning services following a delivery or pregnancy termination;

(5) natural family planning instruction provided in two sessions to instruct a couple or an individual in natural family planning methods; and

(6) for Title XX, group presentations and discussions with a minimum of five adolescents age 19 and younger to include aspects of human sexuality, personal physical care and hygiene, and methods of family planning. This service is reimbursable once for each type of presentation for a client as part of a group by any one agency provider. The presentations and discussions must comply with policies of the organization under whose auspices the presentations occur. This service is considered outreach and may be billed without determining eligibility of the participants.

§56.402. *Medical Services.* DHS pays for the following medical services according to diagnosis codes and procedure codes specified by DHS:

(1) health history and physical examination;

(2) follow up office visit, when medically necessary. If the follow-up visit is for the purpose of refilling contraceptive supplies, the provider must make a comprehensive inquiry into the client's health related to the contraceptive method used and must check the client's blood pressure, at a minimum;

(3) laboratory services, both routine and special, as determined by DHS. Providers must document the medical necessity for performing special laboratory tests;

(4) contraceptive devices, supplies, and surgical procedures and the diagnosis and treatment of the reproductive system or tract that are performed solely for family planning purposes. If a clinic employs a registered pharmacist or if a physician who serves the clinic dispenses oral contraceptives or authorizes staff to dispense them at the clinic, DHS considers that the clinic dispenses the oral contraceptives. In this circumstance, a fee determined by DHS may be billed for dispensing three or more cycles to a client eligible under Title XX. If a clinic uses a pharmacist in the community to dispense the oral contraceptives, a fee determined by DHS may be billed for dispensing three or more cycles;

(5) postoperative, inpatient hospital care for Title XX vasectomy clients only; and

(6) treatment of complications related to family planning surgical procedures (sterilization and insertion of IUD)

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 September 8, 1987

TRD 8707651 Marlin W Johnston
Commissioner
Texas Department of
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For further information, please call
(512) 450 3766



Subchapter E. Joint TDH/DHS Family Planning Agency Provider Standards (Titles V, X, XIX, and XX)

★ 40 TAC §§56.501-56.524

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§56.501. *Standards for Eligibility and Client Payments (Title XX).*

(a) Only the client requesting family planning services may sign the eligibility form.

(b) In determining income eligibility for clients who are not married and are age 19 and younger, the client's own income must be used instead of family income.

(c) The agency provider must charge nonpublic assistance food stamp recipients and income eligible clients a copayment that does not exceed 25% of the authorized reimbursement amount. Agency providers must not assess a copayment for unmarried clients age 19 and younger.

(d) The agency provider must not deny family planning services to eligible clients because of their inability to pay for services.

§56.503. Health History, Laboratory Tests, and Examination.

(a) Every client requesting family planning medical services or a surgical or prescriptive contraceptive method must be provided an assessment.

(b) For female clients, the assessment must include the following.

(1) Health history. The following information must be obtained initially and annually as prescribed in detail in the appendix section of the standards provided to agency providers:

- (A) gynecologic history;
- (B) obstetric history;
- (C) previous contraceptive history;
- (D) medical and surgical history;
- (E) family history; and
- (F) personal history.

(2) Laboratory tests. The following laboratory tests must be provided initially and annually:

- (A) hemoglobin or hematocrit (initially for all patients; annually only for IUD patients);
- (B) pap smear; and
- (C) culture for *N. gonorrhoea* for patients requesting IUD insertion.

(3) Additional laboratory tests. The following tests must be provided if indicated by results of positive history or if medically necessary:

- (A) culture for, but not limited to, *N. gonorrhoea*, herpes, and chlamydia from endocervix, rectum, or oropharynx;
- (B) microscopic examination or culture and sensitivity of urine;
- (C) syphilis serology;
- (D) rubella titer (if unknown). Not required if records show a positive titer, immunizations, or a history of rubella infection diagnosed by a physician;
- (E) triglycerides and either cholesterol or glucose fasting confirmation level tests;
- (F) pregnancy test;
- (G) microscopic examination of vaginal smear and wet mount for diagnosis of vaginitis;
- (H) sickle-cell screening;
- (I) TB skin test;
- (J) urinalysis for sugar and protein;

(K) any of the tests included in paragraph (2) of this subsection.

(4) Physical examination. The following physical examination procedures must be performed initially and annually:

- (A) height (annually for clients until they reach age 18);
- (B) weight;
- (C) blood pressure;
- (D) head, neck (including thyroid);
- (E) heart;
- (F) lungs;
- (G) breasts and instruction in self-examination;
- (H) abdomen;
- (I) external genitalia;
- (J) pelvic examination, including visualization of cervix and bimanual exam;
- (K) extremities; and
- (L) oropharynx and rectal exam, as indicated.

(c) For male clients, the assessment must include the following.

(1) Health history. The following information must be obtained initially and annually (for vasectomy clients only initially) as prescribed in detail in the appendix section of the standards provided to agencies:

- (A) fertility history;
- (B) medical/surgical history;
- (C) family history; and
- (D) personal history.

(2) Laboratory tests. The following laboratory tests must be performed, as indicated, initially and annually (for vasectomy clients only initially) or the client must be referred for these tests:

- (A) culture for, but not limited to, *N. gonorrhoea*, herpes, and chlamydia from oropharynx, rectum, and urethra, as indicated;
- (B) urinalysis;
- (C) sickle-cell screening;
- (D) hemoglobin or hematocrit;
- (E) syphilis serology;
- (F) preoperative semen analysis for vasectomy clients only (if client has never caused a conception); and
- (G) blood type and clotting time.

(3) Physical examination. The following physical examination procedures must be performed initially and annually for clients requesting medical services or temporary contraception:

- (A) height (only initially for vasectomy clients);
- (B) weight;
- (C) blood pressure;
- (D) genital exam;
- (E) rectal exam, if indicated; and
- (F) oropharynx exam, if indicated.

§56.505. Education and Counseling.

(a) Initial patient education. Every new client requesting contraceptive services or family planning medical services must be provided initial patient education before the client receives a prescriptive contraceptive

method. Over the counter contraceptive methods may be provided before the client receives the initial patient education but must be accompanied by written instructions on correct use. Initial patient education include at least the following:

- (1) general benefits of family planning services and contraception;
- (2) information on male and female reproductive anatomy and physiology as it applies to contraceptive methods;
- (3) information regarding particular benefits and potential side effects and complications of all contraceptive methods available;
- (4) for methods in which the client expresses interest, information specifically concerning the methods' safety, effectiveness, potential side effects, complications, risks, particular benefits, potential use problems, and danger signs; and
- (5) information concerning all of the clinic's available services and the purpose and sequence of clinic procedures.

(b) Method-specific education and counseling. When the client selects a prescriptive or surgical contraceptive method, method-specific education and counseling must be provided and must include the following:

- (1) findings from the client's history, lab tests, and examination and any contraindications noted if available;
- (2) verbal and written instructions for correct use of the method;
- (3) information regarding potential side effects and complications of the method chosen and what to do if they occur;
- (4) information regarding the recommended schedule for routine return visits; and
- (5) verbal and written instructions about obtaining medical care in a medical emergency involving the contraceptive, including a 24-hour telephone number of a facility providing emergency services.

§56.510. Family Planning Services for Adolescents.

(a) Adolescents age 19 and younger must be provided counseling and medical services that meet their special needs.

(b) The agency provider must ensure that:

- (1) appointment schedules are flexible enough to accommodate immediate access for adolescents requesting services;
- (2) counseling informs adolescents regarding effective use of all medically approved birth control methods, including abstinence and postponement of sexual activity and prescriptive and nonprescriptive methods;
- (3) counseling also prepares them to discuss their family planning needs with family members if they choose to do so;
- (4) for the adolescent electing a nonprescriptive method, full participation in medical procedures is encouraged but may be deferred by the client;

(5) the adolescent is assured that all services are confidential and that any necessary follow-up contact will protect the client's privacy.

56.511. Clients Requesting Pregnancy Testing.

(a) Clients requesting pregnancy tests must be provided an assessment, counseling, and referrals.

(b) For clients requesting a pregnancy test only, the following information must be obtained:

- (1) gynecologic history; and
- (2) previous contraceptive history.

(c) For other clients requesting a pregnancy test, the test as well as a pelvic examination or a referral for a pelvic examination must be provided. The clients must be advised of the following:

(1) that the laboratory test for pregnancy cannot be considered 100% accurate; and

(2) to have a pelvic examination within 15 days to confirm the results of the lab test.

(d) If assessment results indicate that the client is pregnant, the client must be offered information and counseling regarding her pregnancy. The client requesting information about options for an unintended pregnancy must be provided objective counseling about and a referral for the following alternatives:

- (1) prenatal care and delivery;
- (2) infant care;
- (3) foster care;
- (4) adoption; and
- (5) pregnancy termination (not required of natural family planning agencies).

(e) If assessment results indicate that the client is not pregnant, the client must be offered information about contraception.

(f) If the results of the pregnancy test or examination are inconclusive, the client must be instructed to return to the clinic for another assessment within two weeks.

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 September 8, 1987

TRD-8707650 Marlin W. Johnston
 Commissioner
 Texas Department of
 Human Services

Effective date: September 29, 1987
Proposal publication date July 14, 1987
For further information, please call
(512) 450-3766.

Subchapter F. Administrative Requirements for Agency Providers

★ 40 TAC §§56.601-56.607

The new sections are adopted under the Human Resources Code, Title 2, Chapters

22 and 32, which provides the department with the authority to administer public and medical assistance programs

§56.607. Records Retention.

(a) DHS requires that agency providers keep a copy of the client's physical examination in the client's folder if a client is examined in a location other than the agency clinic, such as in the physician's private office.

(b) The agency must maintain all records that reflect performance. Records must be kept for the time period specified in §69.202 of this title (relating to Contractor's Records) or §29.4 of this title (relating to Retention of Records), as appropriate. All records relating to services must be accessible for examining or copying at any reasonable time to representatives of DHS, the United States Department of Health and Human Services, and the attorney general of Texas.

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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 Commissioner
 Texas Department of
 Human Services

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

Subchapter G. Genetic Services

★ 40 TAC §§56.701-56.703

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§56.701. Contract Requirements for the Title XIX Family Planning Program.

(a) A genetic service agency provider may contract with DHS for Title XIX reimbursement for genetic diagnostic and counseling services under the following conditions.

(1) The medical director of the genetic services agency provider is a clinical geneticist (M.D. or D.O.). The clinical geneticist must meet the criteria established by the American Board of Medical Geneticists (ABMG).

(2) A team of professionals provides the genetic diagnostic and counseling services. The team must consist of at least a clinical geneticist and at least one of the following: a nurse (R.N.), a genetic associate (M.S.), a social worker (M.S.W.), a medical geneticist (Ph.D.), or a genetic counselor (M.S.). The members of the team must meet the criteria established by ABMG or work under the direct supervision of a clinical

geneticist. Administrative and support staff may also be involved.

(3) The agency provider's records must contain multiple indexing for easy retrieval of information (by client name, by client number, and by syndrome, according to the International Classification of Diseases (current edition) with Clinical Modifications), and must comply with DHS' records requirements.

(4) The agency provider must arrange for full medical referral services since genetic disorders often encompass several health problems. Independent consultant, laboratory, and radiology services must be billed through the genetic services agency provider under contract with DHS.

(5) Genetic counseling must be provided face-to-face by a clinical geneticist or under the direct supervision of a clinical geneticist.

(6) Services provided by a specialized genetics agency provider must be under a written subcontractual agreement with the prime contractor. The department has the right to approve all subcontractual agreements.

(7) Any applicable state licensure or certification requirements must be met.

(b) Clinical laboratories that are part of the genetic services agency provider and external clinical laboratories used by genetic services agency providers must be directed by a clinical laboratory geneticist as defined by the ABMG. In some cases, the department may approve selected laboratory tests to be conducted by regular clinical laboratories if these laboratories demonstrate the ability to perform these tests. All clinical laboratories must be certified by Title XVIII for services provided and further approved for participation in the Title XIX program.

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

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 Commissioner
 Texas Department of
 Human Services

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

Subchapter H. DHS Direct Delivery of Family Planning Services

★ 40 TAC §56.801

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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.

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



Chapter 69. Purchased Social Services

Subchapter A. Provider Applications

★ 40 TAC §69.4

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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 September 15, 1987.

TRD-8707646 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

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Proposal publication date: July 14, 1987
For further information, please call
(512) 450-3766.



Subchapter H. Billing Procedures

★ 40 TAC §§69.131-69.145

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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 September 8, 1987

TRD-8707645 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

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



Chapter 79. Legal Services Subchapter V. Fraud or Abuse Involving Medical Providers

★ 40 TAC §79.2114

The Texas Department of Human Services (DHS) adopts an amendment to §79.2114, concerning sanctions on medical providers, without changes to the proposed text published in the July 31, 1987, issue of the *Texas Register* (12 TexReg 2509).

The amendment is justified to allow the deputy commissioner or designee of the

program area affected by a violation to decide the sanctions to be imposed, including provider exclusion and fraud referral.

The amendment will function to provide a clearer understanding of the department's authority.

The department received one comment from the Texas Health Care Association regarding the adoption. The commenter objected to a designee being allowed to impose a sanction because this kind of decision is too important for an employee who is not at the commissioner or deputy commissioner level. The department agrees that not any employee can make the decision; however, the section has always given a designee this responsibility, if appropriate. Therefore, the department is not changing this requirement at this time.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority 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 September 8, 1987.

TRD-8707644 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

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



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*.

State Bar of Texas

Friday, September 11, 1987, 9 a.m. The Executive Committee of the State Bar of Texas made an emergency addition to the agenda of a meeting in Room 104, Texas Law Center, 1414 Colorado Street, Austin. The addition concerns a report of general counsel concerning capital recovery fee, water and wastewater connection, and the Gene Cavin Center. The emergency status was necessary because the matter cannot wait for the next executive committee meeting.

Contact: Paul Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 475-6202.

Filed: September 9, 1987, 3:29 p.m.
TRD-8707713



Texas Employment Commission

Wednesday, September 16, 1987, 8 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting, consider internal procedures of commission appeals, program implementation in light of *Ibarra v. TEC et al.*, action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 37, and set date of next meeting. The commission will also meet in executive session to consult with office of attorney general on *Tom Cuellar v. TEC et al.* and *Hodges v. TEC et al.*

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: September 8, 1987, 2:49 p.m.
TRD-8707678



Texas Department of Health

Friday, September 18, 1987, 9 a.m. The Municipal Solid Waste Management and

Resource Recovery Advisory Council of the Texas Department of Health will meet in Room T-610, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes of the April 21, 1987, meeting; hear the divisions director's report on budget, incinerator ash, open burning and resource recovery conference; consider summary of legislation from 70th Legislature; and discuss the Interim Study Committee of Senate concerning funding, tires, legislation, and county program exemptions.

Contact: L. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271.

Filed: September 9, 1987, 4:41 p.m.
TRD-8707716



Health and Human Service Coordinating Council

Friday, September 18, 1987, 10 a.m. The Health and Human Services Coordinating Council, will meet in the Second Floor Conference Room, Ashbel Smith Hall, Seventh and Colorado Streets, Austin. According to the agenda summary, the council will approve minutes of the January 9, 1987, meeting; hear reports of the executive director, advisory groups to the council, Texas Foundation for Human Services, and current council projects; consider appointments, hear presentation by the Texas State Working Team for Vocational Training for Limited English Proficient Adults and Youth; and consider old and new business.

Contact: Patrice Thomas, 311-A, East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: September 8, 1987, 3:04 p.m.
TRD-8707679



Texas Higher Education Coordinating Board

Thursday, October 1, 1987. Various committees for the Texas Higher Education Coor-

inating Board will meet in the boardroom, Bevington A. Reed Building, 200 East Riverside Drive, Austin. Times and agendas follow.

9:30 a.m. The Community Colleges and Technical Institutes Committee will consider matters relating to community junior colleges and technical institutes.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:11 p.m.
TRD-8707663

9:45 a.m. The Student Services Committee will consider matters relating to student services.

Contact: Kenneth A. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:10 p.m.
TRD-8707664

10 a.m. The Campus Planning Committee will consider matters relating to facilities and campus planning.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:10 p.m.
TRD-8707665

10:30 a.m. The Committee of the Whole will hear a report of Board Liaison Committee with the State Board of Education on selection of a contractor for basic skills testing of entering college students.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:10 p.m.
TRD-8707666

10:45 a.m. The Committee of the Whole will hear a report on research programs and other new assignments from the Select Committee and the Legislature (including Agency Sunset Review).

Contact: Kenneth H. Ashworth, P.O. Box

12788, Capitol Station, Austin, Texas 78711, (512) 462-6400

Filed: September 8, 1987, 2:10 p.m.
TRD-8707667

11 a.m. The Health Affairs Committee will consider a request from the University of Texas Medical Branch at Galveston to reorganize the administration of the School of Nursing from a centralized to a decentralized departmental structure.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:10 p.m.
TRD-8707668

11:15 a.m. The Universities Committee will consider matters relating to universities.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:10 p.m.
TRD-8707669

1 p.m. The Financial Planning Committee will consider matters relating to financial planning and administration.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400.

Filed: September 8, 1987, 2:09 p.m.
TRD-8707670

Friday, October 2, 1987, 9 a.m. The Coordinating Board will consider matters relating to the Committee on Student Services; the Committee on Community Colleges and Technical Institutes; the Committee on Facilities and Campus Planning; the Committee on Health Affairs; the Committee on Universities; and the Committee on Financial Planning and Administration.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 462-6400

Filed: September 8, 1987, 2:09 p.m.
TRD-8797671



State Board of Insurance

Friday, September 11, 1987, 11 a.m. The State Board of Insurance made an emergency addition to the agenda of a meeting held in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider filing by the Board of Private Investigators and Private Security Agencies of a seller's certificate surety bond and filing by the Department of Labor and Standards of a career counseling services bond. The emergency status was necessary to provide bonding requirements for private investigators which will provide immediate compliance with recently adopted House Bill 888 and to provide bonding requirements for career counselors which will provide im-

mediate compliance with recently adopted Senate Bill 1142.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: September 9, 1987, 3:21 p.m.
TRD-8707711

Thursday, September 17, 1987, 10 a.m. The board will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider proposed 28 TAC §§19.1001-19.1011 concerning continuing education requirements for agents; appointment of advisory committee for implementation of continuing education requirements for agents; board orders on several different matters; personnel matters concerning Fire Marshal, Research and Information Services, and Commissioner; and litigation concerning decision on the appeal of Peter Mansfield from action of the Texas Catastrophe Property Insurance Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: September 9, 1987, 3:21 p.m.
TRD-8707712

Friday, September 18, 1987, 1:30 p.m. The board will meet in Room 342, 1110 San Jacinto Street, Austin. The board will consider Docket 9668—Application of Coventry Corporation, a Delaware corporation, to acquire control of American Service Life Insurance Company, Fort Worth.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: September 10, 1987, 9:40 a.m.
TRD-8707733



Texas Advisory Commission on Intergovernmental Relations

Friday, September 18, 1987. Various committees on intergovernmental relations will meet in the John H. Reagan Office Building, 105 West 15th Street, Austin. Dates, times, and agendas are as follows.

8:30 a.m. The Special Committee on Operations and Funding will meet in Room 107, to review a report on the fiscal year 1987 finances, consider potential new grants and contracts, and consider amendments to the operating budget for fiscal year 1988.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: September 8, 1987, 4:47 p.m.
TRD-8707680

9:30 a.m. The New Federalism Committee will meet in Room 107, to consider progress reports including productivity and management; high-level radioactive waste issues; and

low-level radioactive waste issues; and other current projects.

Contact: Jay G. Stanford, P.O. Box 13206 Austin, Texas 78711, (512) 463-1812.

Filed: September 8, 1987, 4:46 p.m.
TRD-8707681

9:30 a.m. The State-Local Issues Committee will meet in Room 106, to hold a hearing on progress reports on commission projects for the Texas Cancer Council, 9-1-1 emergency communications, and other current projects.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: September 8, 1987, 4:46 p.m.
TRD-8707682

10:30 a.m. The Texas Advisory Commission on Intergovernmental Relations will meet in Room 106, to hear the executive director's report; committee reports, including Operations and Funding Committee, State-Local Issues Committee; and the New Federalism Committee; consider taking action regarding the modification of the current budgets and proposals; initiation or modification of grants and contracts for the commission projects; and publication of project reports considered by the committee.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: September 8, 1987, 4:45 p.m.
TRD-8707683



Texas Department of Mental Health and Mental Retardation

Friday, September 18, 1987, 9:30 a.m. The Board of Mental Health and Mental Retardation for the Texas Department of Mental Health and Mental Retardation will meet in the Auditorium, Central Office, 909 West 45th Street, Austin. According to the agenda, the board will hear citizen's comments; approve minutes of the August 11-12, 1987, meeting; consider commissioner's calendar, the report on *Lelsz v. Kavanagh, R.A.J. v. Miller*, and board commendation to Ellie Selig; consider capital construction plan and budget; the memorandum of understanding TDC/ TDMHMR; discuss roadway easement at Fort Worth Psychiatric Hospital; clarify duties of the commissioner; and litigation.

Contact: Gary E. Miller, M.D., P.O. Box 12668, Capitol Station, Austin, Texas 78701, (512) 465-4588.

Filed: September 8, 1987, 11:22 a.m.
TRD-8707640



Texas State Board of Examiners of Psychologists

Thursday-Saturday, September 17-19, 1987, 9:30 a.m., daily. The Texas State Board of Examiners of Psychologists will meet in the Woodfin Suites Hotel, 7685 Northcross Drive, Austin. According to the agenda, the board will consider minutes, oral exam applications, opinion letters, proposed rules, interviews, hearings, complaints, supervision guidelines, budget, legislative matters, and hold a meeting with the executive committee of the Texas Psychological Association.

Contact: Patti Bizzell, 1300 East Anderson Lane, Suite C-270, Austin, Texas 78752 (512) 835-2036.

Filed: September 8, 1987, 2:11 p.m.
TRD-8707662



Texas State Board of Public Accountancy

Friday, September 18, 1987, 9 a.m. The Entry and Reentry Screening Committee for the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the board will consider ratification of approved applications for registration of partnerships and professional corporations; consider applications for reinstatement of CPA certificates; ratification of previously approved applications under §§12, 13, and 14; hear from individuals requesting an appearance before the committee; review convictions reported by licensees on their 1987 renewal notices; review information relating to Department of Public Safety criminal background investigation reports; review request for surrender of CPA certificates under §12(a) of the Act; review plans for the November 1987, swearing-in ceremony; review licensing statistics; and consider other matters coming before the committee.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752, (512) 451-0241.

Filed: September 9, 1987, 1:36 p.m.
TRD-8707703

Tuesday, September 22, 1987, 9 a.m. The Continuing Education Committee for the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee will review exemption requests and forms which have been submitted to the committee; review CE hours submitted by licensees who have received a board sanction for non-compliance with CE requirements; review requests for additional credit for published articles and books; review sponsor registrations; requests of CE credit from unregistered sponsors; review of TSBPA activity summary, a statistical report; discuss changing substantive rule §523.63, mandatory CE at-

tendance (a public hearing was held August 21, 1987); and discuss other matters coming before the committee.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752, (512) 451-0241.

Filed: September 9, 1987, 1:36 p.m.
TRD-8707704



Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Committees, dates, and agendas follow.

Thursday, September 10, 1987, 8 a.m. The Administrative Board met in emergency executive session to consider AT&T Communications of the Southwest, et al., vs. The Public Utility Commission of Texas, Cause 409,474 (Appeal of Docket 6095). The emergency status was necessary in light of recent filings in the cause captioned above, therefore immediate commission action was required to insure that its interests and desires are represented in the case.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 9, 1987, 2:44 p.m.
TRD-8707710

Wednesday, September 23, 1987, 10 a.m. The Hearings Division will hold a prehearing conference, rescheduled from September 16, 1987, 10 a.m. in Docket 7630—complaint of Canyon Lake Area Citizens Association against Guadalupe-Blanco River Authority regarding the Canyon Dam hydroelectric project in Comal County.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 9, 1987, 1:33 p.m.
TRD-8707702

Monday, December 7, 1987, 10 a.m. The Hearings Division will consider Docket 7489—Application of General Telephone Company of the Southwest for amendment of its 976 tariff.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1987, 2:36 p.m.
TRD-8707676

Monday, December 21, 1987, 10 a.m. The Hearings Division will hold a hearing on Docket 7614, the application of Southwestern Bell Telephone Company for authority to implement rates and regulations for intrastate interim 800 service

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1987, 2:37 p.m.
TRD-8707677



State Committee of Examiners for Speech-Language Pathology and Audiology

Friday, September 25, 1987, 9 a.m. The State Committee of Examiners for Speech-Language Pathology and Audiology will meet in Room T-803, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of the May 1, 1987, meeting; consider election of officers; discuss educational advisory to be sent to the Texas Nurses Association; misleading and/or wrongful advertising; possibility of a three-year span for earning continuing education credit; status of pending complaints and complaint investigations; upcoming contract for newsletter; committee's budget; review information received relating to the title "Certified Hearing Aid Audiologist"; requirements of associates, in particular the letter from the supervisor accepting supervisory responsibility and the records the supervisor should keep; correspondence addressed to committee; hear the executive secretary's report; consider other matters relating to licensing and regulation of speech-language pathologists and audiologists (no committee action required); and set next meeting date.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: September 10, 1987, 8:32 a.m.
TRD-8707720



State Securities Board

Tuesday, September 22, 1987, 9:30 a.m. The Securities Commissioner of the State Securities Board will meet at 312 Stemmons Tower East, 2700 Stemmons Freeway, Dallas. According to the agenda summary, a hearing will be held before the commissioner or his authorized representative for the purpose of determining whether a cease and desist order should be issued prohibiting the sale of securities issued by Quita, Inc. and offered for sale and sold by Quita, Inc.; S&I Financial Investment Company; Robert J. Steele; Rod Lindberg and their agents and representatives.

Contact: Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas 78701, (512) 474-2233.

Filed: September 9, 1987, 4:17 p.m.
TRD-8707714



Select Committee on Tax Equity

Thursday, September 17, 1987, 9 a.m. The Select Committee on Tax Equity will meet in the Joe C. Thompson Conference Center Auditorium, 26th and Red River Streets, Austin. According to the agenda, the committee will discuss the federal and state tax reform; and review the state's major taxes.

Contact: Billy Hamilton, Room 204h 5, Reagan State Office Building, Austin, Texas 78711, (512) 463-1238

Filed: September 8, 1987, 4:57 p.m.
TRD-8707684



Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

Wednesday, September 30, 1987, 9:30 a.m. The commission will meet in Room 118, to consider hearing on TA-5764 of Bell County Road and Bridge for a permit to divert and use 10 acre feet for a three year period from various creeks and rivers of Bell County, all of said streams being tributaries of the Brazos River, Brazos River Basin for industrial purposes in Bell County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898

Filed: September 9, 1987, 11:31 a.m.
TRD-8707698

Wednesday, September 30, 1987, 9:30 a.m. The commission will meet in Room 118, to consider hearing on TA-5794 of S.B. Hayter Trust for a permit to divert and use 30 acre feet of water for a six month period from an unnamed tributary of Mill Creek, tributary of Morral Bayou, tributary of the Angelina River, tributary of the Neches River, Neches River Basin for irrigation purposes in Nacogdoches County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 9, 1987, 11:31 a.m.
TRD-8707699

Wednesday, September 30, 1987, 10 a.m. The commission will meet in Room 118, to consider an order finding substantial non-compliance and requiring certain actions of the City of Nome (Permit 11564-01); Pioneer Concrete of Texas, Inc. (no permit); order assessing administrative penalties and requiring certain action of Howell Hydrocarbons, Inc. (Solid Waste Registration 34356) and E.I. Dupont De Nemours and Company, Inc. (Solid Waste Registration 30079).

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 9, 1987, 4:16 p.m.
TRD-8707715

Wednesday, October 14, 1987, 2 p.m. The commission will meet in Room 118, to consider application by Why Wastewater?, Inc. for Proposed Permit HW-50209-001 to construct and operate commercial/industrial hazardous and non-hazardous solid waste storage facility, El Paso County, Rio Grande Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898
TRD-8707700

Thursday, October 29, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 618, to consider public hearing on rate increase for Mrs. W.A. Matkin, Docket 7318-G.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875

Filed: September 9, 1987, 11:31 a.m.
TRD-8707701



Texas Water Development Board

Thursday, September 17, 1987, 8:30 a.m. The Texas Water Development Board will meet in 1700 North Congress Avenue, Austin. According to the agenda summary, the board will approve minutes of the previous meeting; consider development funds briefing; authorize Texas Water Development bond sale; SRA request for board approval of sale of 3,356 acres; consider applications of Harris County Flood Control WSC (\$7,855,000 flood control), North Texas MWD (City of Wylie, \$1,985,000 water quality and water supply), Webster (\$3,900,000 water supply), South Houston (\$4,740,000 water supply), Magnolia (\$450,000 water supply), and High Plains Underground WCD#1 (\$1,000,000 agricultural conservation pilot loan); adopt lending rate rules and emergency repeal of 31 TAC §§355.101-355.110, and adopt new 31 TAC §355.101 et seq.; authorize contracts or agreements for accounting support, division of responsibilities for underground water conservation districts and Texas Water Commission support services; and present and discuss Underwood, Neuhaus and Company, Inc., resale of board portfolio.

Contact: M. Reginald Arnold, II, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: September 9, 1987, 1:56 p.m.
TRD-8707708



Texas Water Resources Finance Authority

Thursday, September 17, 1987, 10:30 a.m. The Texas Water Resources Finance Authority will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

According to the agenda summary, the authority will select a chairman, vice-chairman, secretary, and treasurer.

Contact: Sue Clabaugh, P.O. Box 13231 Austin, Texas 78711, (512) 463-8415

Filed: September 9, 1987, 1:56 p.m.
TRD-8707709



Texas Youth Commission

Wednesday, September 16, 1987, 9:30 a.m. The Board of the Texas Youth Commission will meet in the Evins Regional Juvenile Center, 3801 East Monte Cristo Road, Edinburg. According to the agenda, the board will amendment the Open Records Act concerning executive session; approve contracts for professional services; approve fiscal year 1988 operating budget; consider transfer of funds for fiscal year 1988; consider request for financing construction projects; hear a report on student population and fiscal year 1987 statistical summary; and hear a report of suspected mistreatment investigations. The board also will meet in executive session.

Contact: Ron Jackson, 8900 Shoal Creek Boulevard, Austin, Texas 78766, (512) 452-8111.

Filed: September 8, 1987, 11:10 a.m.
TRD-8707639



Regional Agencies

Meetings Filed September 8

The Atascosa County Appraisal District, Appraisal Review Board, met at 1010 Zanderson, Jourdanton, on September 14, 1987, at 8 a.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas 78026, (512) 769-2730.

The Bastrop County Appraisal District, Board of Directors, met at 1200 Cedar Street, Bastrop, on September 10, 1987, at 8 p.m. Information may be obtained from Lorraine Perry, 801 Pine Street, Bastrop, Texas 78602, (512) 321-3925.

The Bexar Appraisal District, Appraisal Review Board, met at 535 South Main, San Antonio, on September 11, 1987, at 9 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Deep East Texas Private Industry Council, Inc., will meet in the Rodeway Inn, Highway 59 South, Lufkin, on September 16, 1987, at 2 p.m. Information may be obtained from Don E. Boyd, 109 Ratcliff Circle, Lufkin, Texas 75901, (409) 634-4432.

The Erath County Appraisal District, Board of Directors, met in the Boardroom, 1390 Harbin Drive, Stephenville, on September 9,

1987, at 10 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Jack County Appraisal District, Board of Directors, will meet in the Los Creek Office Building, 216-D South Main, Jacksboro, on September 15, 1987, at 7 p.m. Information may be obtained from Doris G. Ray 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Liberty County Central Appraisal District, Board of Directors, will meet at 1820 Sam Houston, Liberty, on September 23, 1987, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722.

The Nortex Regional Planning Commission, General Membership Committee, will meet in the Bounty Room, Trade Winds Motor Hotel, 1212 Broad Street, Wichita, on September 17, 1987, at 12 p.m. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76307, (817) 322-5281.

The Swisher County Appraisal District, Appraisal Review Board, will meet at 130 North Armstrong, Tulia, on September 16, 1987, at 9:30 a.m. Information may be obtained from Rose Lee Powell, Box 8, Tulia, Texas 79088, (806) 995-4118.

The Swisher County Appraisal District, Board of Directors, will meet at 130 North Armstrong, on September 17, 1987, at 7 p.m. Information may be obtained from Rose Lee Powell, Box 8, Tulia, Texas 79088, (806) 995-4118.

The Wise County Appraisal District, Appraisal Review Board, will meet at 206 South State Street, Decatur, on September 24,

1987, at 9:30 a.m. Information may be obtained from Freddie Dempsey, 206 South State Street, Decatur, Texas 76234, (817) 627-3081.

TRD-8707638



Meetings Filed September 9

The Education Service Center, Region VII, Board of Directors, will meet in the Holiday Inn, Henderson, on September 17, 1987, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main Street, Kilgore, Texas 75662, (214) 984-3071.

The Golden Crescent Regional Review Committee, will meet in the GCPC Boardroom, Regional Airport, Building 102, Victoria, on September 15, 1987, at 9:30 a.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Grayson Appraisal District, Board of Directors, will meet at 205 North Travis, Sherman, on September 16, 1987, at noon. Information may be obtained from Deborah Reneau, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Guadalupe-Blanco River Authority, Industrial Development Corporation and Board of Directors, will meet at 933 East Court Street, Seguin, on September 17, 1987, at 9:30 a.m. and 10 a.m., respectively. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 79156-0271, (512) 379-5822.

The Harris County Appraisal District, Board of Directors, met and will meet on the Eighth Floor, 2800 North Loop West, Houston, on September 14 and 16, 1987, at 10 a.m. and 1:30 p.m., respectively. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Hickory Underground Water District, Board and Advisors, met at 2005 Nine Road, Brady, on September 10, 1987, at 7 p.m. Information may be obtained from Rick Illgner, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785.

The Lampasas County Appraisal District, Board of Directors, will meet at 109 East Fifth Street, Lampasas, on September 16, 1987, at 2 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76650, (512) 556-8058.

The Lavaca County Central Appraisal District, Appraisal Review Board, will meet at 113 North Main, Hallettsville, on September 15, 1987, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Nolan County Central Appraisal District, Board of Directors, will meet in the Sunflower Room, Holiday Inn, Sweetwater, on September 15, 1987, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The West Central Texas Council of Governments, Texas Community Development Program Regional Review Committee, will meet at 1025 East North 10th Street, Abilene, on September 23, 1987, at 10 a.m. Information may be obtained from James K. Compton, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-8707688

In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Commerce

Private Activity Bond Allocation Report

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

As a result of Senate Bill 1382, the aggregate amount for qualified mortgage bond subceiling is \$302,376,642, with \$201,584,428 available to the local housing authorities and \$100,792,214 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$226,782,481, and the amount for all other bonds requiring an allocation is \$377,970,802.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period August 31, 1987, through September 4, 1987.

Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of state ceiling remaining unreserved for the \$302,376,642 subceiling for qualified mortgage bonds under Senate Bill 1382 through September 4, 1987: \$302,376,642.

Total amount of state ceiling remaining unreserved for the \$226,782,481 subceiling for state-voted issues under Senate Bill 1382 from August 31, 1987, through September 4, 1987: \$226,782,481

Total amount of state ceiling remaining unreserved for the \$377,970,802 subceiling for all other bonds under Senate Bill 1382 from August 31, 1987, through September 4, 1987: *\$272,670,802.

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of September 4, 1987: *\$801,829,925

Comprehensive listing of bond issues which have received

a reservation date per Senate Bill 1382 from August 31, 1987, through September 4, 1987, in order of issuer, user, description, and amount. Montgomery County Industrial Development Corporation, medical manufacturing partners. (a) Surgimedics, Inc.; (b) Texas Medical Products, Inc., manufacturer of medical supplies, \$4,000,000; Sabine River Authority, Texas Utilities Electric Company (Martin Lake Steam Electric Station), solid-waste disposal facility, \$6,000,000; Sabine River Authority, Texas Utilities Electric Company (Monticello Steam Electric Station), solid-waste disposal facility, \$49,000,000; Harris County Health Facilities Development Corporation, Texas Medical Center Central Heating and Cooling Services, local district heating or cooling facility, \$4,000,000.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from August 31, 1987, through September 4, 1987: None.

*NOTE: Reservation for C-Line Products, Inc. Project was cancelled (\$1,600,000).

Issued in Austin, Texas, on September 8, 1987

TRD-8707685 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: September 9, 1987
For further information, please call (512) 472-5059



Texas Education Agency Request for Proposals

This request is filed pursuant to Texas Civil Statutes, Article 6252-11c. The Texas Education Agency invites proposals for funding for three model projects that will encourage parental involvement in local schools. Applications from public school districts, education service centers, institutions of higher learning, and private sector individuals will be considered for funding through the Education Consolidation and Improvement Act, Chapter 2. The model projects to be funded include a parent service center (pre-K—Grade 6), a parental involvement handbook (pre-K—Grade 8), a parent tutorial program (pre-K—Grade 8), and a parent tutorial program (pre-K—Grade 6).

The general goals of each project are: for the parent service center (RI A-701-88-002), to promote the intellectual, social, and emotional development of children through the facilitation of parental involvement in the educational process, and to help parents establish and maintain communication with the school system and effectively use available instructional resources; for the parental involvement handbook (RFP-701-88-003), to help Texas school districts

develop a handbook that will encourage parental involvement programs, and to assist parents in focusing on the significant role they play in the educational process, and for the parent tutorial programs (RFA-701-88-004), to provide parents with knowledge and skills for developing the physical, emotional, social, and intellectual aspect of the child, and to foster parents' independence and self-confidence through the promotion of academic and self-help skills.

Each project will be completed within a 16-month timeframe (February 1, 1988-June 30, 1989). The level of funding allocated to the various projects is \$75,000 for the parent service center (RFA-701-88-002); \$25,000 for the parental involvement handbook (RFP-701-88-003); and \$50,000 for the parental tutorial program.

The products of each project should be replicable or adaptable for use by school districts and institutions. Upon completion of the projects, each project sponsor will submit a summary document describing the project and indicating recommendations for implementation.

Selection of a project sponsor will be based on the proposed sponsor's previous experience with Texas public school systems, knowledge of appropriate methods for promoting parental involvement in local schools, and ability to meet the requirements of each project.

For a copy of the complete request for application or request for proposal, call or write the Document Control Center, Room 6-108, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Applications may be delivered by mail or in person to the Document Control Center. To be considered for funding, applications must be received before 5 p.m. on Tuesday, November 10, 1987.

For additional information, contact Dr. Leroy Psencik, director, Division of General Education, Texas Education Agency, (512) 463-9581.

Issued in Austin, Texas, on September 8, 1987

TRD-8707691 W N Kirby
 Commissioner of Education

Filed September 9, 1987

For further information, please call (512) 463 9212



Texas Department of Health Emergency Cease and Desist and Impoundment Order

Notice is hereby given that D&K Wireline, Upper Mission Valley Road, Route 10, Box 503, Victoria, Texas, holder of Radioactive Material License 8-3886, is ordered to cease and desist from any use of radioactive material authorized by the license that is for the purpose of conducting wireline service operations. Further, the licensee is ordered to surrender for impoundment in place all radioactive material and associated shielded storage shipping containers.

The order was issued because the individual identified on the license as radiation safety officer is not employed by the licensee or performing the function of radiation safety officer, the licensee did not have documentation to indicate that a test for leakage of radioactive material had been performed on a three-curie americium-beryllium sealed source; the licensee did not have documentation to

verify that the sealed source had passed the pressure testing criteria specified in the American National Standard (ANSI) N542; the licensee did not have available film badges, thermoluminescent dosimeters, or radiation survey instruments with which to conduct the required radiation surveys; and the container in which the sealed source was stored had no labels nor other useful information displayed on the exterior surfaces.

Issued in Austin, Texas, on September 4, 1987

TRD-8707692 Robert A. MacLean
 Deputy Commissioner
 Professional Services
 Texas Department of Health

Filed September 9, 1987

For further information, please call (512) 835-7000.

Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to *Texas Regulations for Control of Radiation* Part 13.8, has revoked the following certificates of registration. Listed following is the registrant, registration number, location, and date of action: David L. Montgomery, 7-14588, Tyler, August 18, 1987; Timothy R. Oesch, M.D., 6-14184, Dripping Springs, August 18, 1987; Custom Dental Supply Corp., 11-08085, Houston, August 18, 1987; International X-Ray, Inc., 11-11132, Houston, August 18, 1987; Inwood Forest Chiropractic Center, 11-12711, Houston, August 18, 1987.

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. to 5 p.m. (except holidays).

Issued in Austin, Texas, on September 4, 1987

TRD-8707693 Robert A. MacLean, M.D.
 Deputy Commissioner
 Professional Services
 Texas Department of Health

Filed September 9, 1987

For further information, please call (512) 835-7000.



State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for incorporation of Acceptance Lloyds Insurance Company, a domestic lloyds insurance company. The home office is in Houston.

(2) Application for a name change by ISL Life Insurance Company, a domestic life insurance company. The home office is in Dallas. The proposed new name is American Citizens Life Insurance Company.

(3) Application for admission to do business in Texas of American Freedom Insurance Company, a foreign fire and casualty insurance company. The home office is in Grand Rapids, Michigan.

(4) Application for admission to do business in Texas of Commonwealth General Insurance Company, a foreign fire and casualty insurance company. The home office is in Kansas City, Missouri.

(5) Application for a name change by Provident Mutual

Variable Life Insurance Company, a foreign life insurance company. The home office is in Philadelphia, Pennsylvania. The proposed new name is Fidelity Investments Life Insurance Company.

(6) Application for a name change by Knighton Life Insurance Company, a domestic stipulated premium insurance company. The home office is in Beaumont. The proposed new name is Golden American Life Insurance Company.

(7) Application for incorporation of Independent Distributors Assurance Company, a domestic casualty insurance company. The home office is to be in Dallas.

(8) Application for admission to do business in Texas of the Insurance Company of Florida, a foreign fire and casualty insurance company. The home office is in Fort Lauderdale, Florida.

(9) Application for name change by Knighton Life Insurance Company, a domestic stipulated premium insurance company. The home office is in Beaumont. The proposed new name is International American Life Insurance Company.

(10) Application for admission to do business in Texas of International Life Investors Insurance Company, a foreign life insurance company. The home office is in New York.

(11) Application for a name change by Mid-South Life Insurance Company, a foreign life insurance company. The home office is in Jackson, Mississippi.

(12) Application for admission to do business in Texas of National Dental Health Insurance Company, a foreign accident and health insurance company. The home office is in Tempe, Arizona.

(13) Application for admission to do business in Texas of Quinet Life and Casualty Insurance Company, a foreign life insurance company. The home office is in Chicago, Illinois.

Issued in Austin, Texas, on September 1, 1987

TRD-8707620 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed September, 1987

For further information, please call (512) 463-6327



Railroad Commission of Texas Public Notice

An application for authority to charge a toll by the Long Island Bridge Company, Inc., John R. Freeland, president, P.O. Box 2587, McAllen, Texas 78502, was filed on July 21, 1987, before the Railroad Commission of Texas in Docket 003620ZZCW pursuant to Texas Civil Statutes, Article 1473. This causeway corporation seeks authority to charge all users of the Long Island Swing Bridge (located over, through, and across the intercoastal canal at the northern tip of Long Island and the City of Port Isabel, Cameron County) as follows: \$1.00 for pedestrian traffic; \$3.50 for passenger motor vehicles, including mobile homes, R.V.'s and motorcycles; and \$4.50 for all trucks in excess of two tons.

All interested persons affected by this toll application that wish to participate in the commission consideration of this application may do so only by filing a written protest, intervention in opposition, or intervention in support, at or before, 10 a.m. on Monday, October 26, 1987, by writing

Docket Services, Transportation Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

Please include in the written pleading the Docket (003620ZZCW) in all responses.

Issued in Austin, Texas, on August 26, 1987

TRD-8707598 Walter Earl Lillie
Special Counsel
Railroad Commission of Texas

Filed, September 4, 1987

For further information, please call (512) 463-7149



Texas Water Commission Application for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of August 31-September 4, 1987.

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 August 31-September 4, 1987

Hughes Tool Company, Houston; wastewater treatment facilities; at 17015 Aldine-Westfield Road, at a point approximately 500 feet north of Rankin Road in Harris County; 12118-01; renewal

North Belt Forest Utility District, Inc., Humble; wastewater treatment facilities; on Wilson Road approximately ¼ mile south of the intersection of Atascocita Road and Wilson Road in northern Harris County; 12571-01; renewal

Ameripol Synpol Company, Division of Uniroyal Goodrich Tire Company, Port Neches; synthetic rubber plant; at 1215 Main Street, immediately east of the City of Port Neches, Jefferson County; 02487; renewal

Texas Utilities Mining Company, Fairfield; lignite mine; within a 20 mile radius of the Big Brown Reservoir (Fairfield Lake) which is approximately one mile east of FM Road 1124 and 11 miles northeast of the City of Fairfield, Freestone County; 02700; renewal

Issued in Austin, Texas, on September 4, 1987

TRD-8707634 Mary Ann Hefner
 Chief Clerk
 Texas Water Commission

Filed: September 4, 1987
For further information, please call (512) 463-7898



Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th

day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to H. B. Zachry Company, on September 2, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Patricia Barnhard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 4, 1987.

TRD-8707633 Mary Ann Hefner
 Chief Clerk
 Texas Water Commission

Filed: September 4, 1987
For further information, please call (512) 463-7898



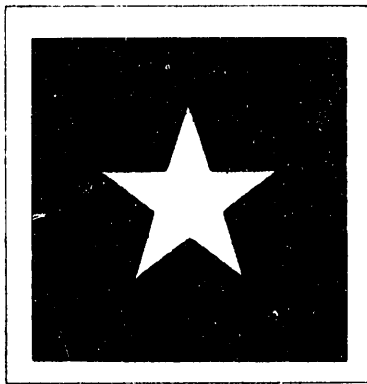




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