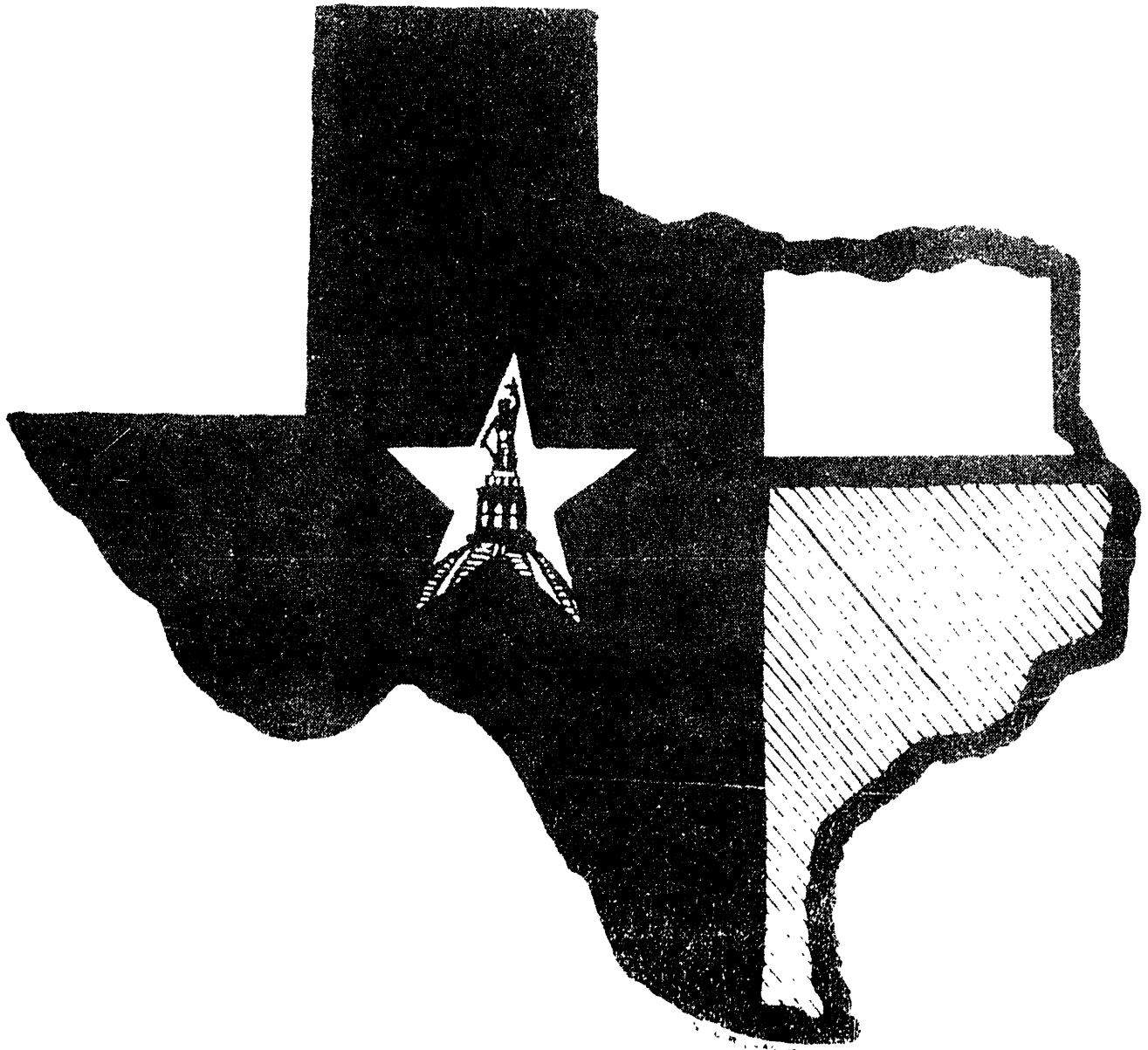


Texas Register

Volume 12, Number 72, September 25, 1987

Pages 3339-3400



Highlights

The Bond Review Board adopted a new procedure for reviewing and approving the issuance of bonds by the State of Texas. **page 3347**

The Comptroller of Public Accounts proposed a new procedure for the adoption of abolishing county, state, and local tax

agencies. **page 3355**

The Texas Education Agency adopted a new procedure for the approval of the State of Texas regarding the TCEM. **page 3369**

Office of
the Secretary
of State

Texas Register

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- Proposed Rules-- rules proposed for adoption
- Withdrawn Rules-- rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
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- 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"

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How To Cite: Under the TAC, each agency rule is designated by a TAC number. For example, in the citation 1 TAC 5.2715:

1 indicates the title order which the agency appears in the *Texas Administrative Code*.

TAC stands for the *Texas Administrative Code*.

2715 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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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 3'. NATURAL RESOURCES AND CONSERVATION Part I. General Land Office Chapter 3. Energy Resources

★31 TAC §3.15

The General Land Office adopts on an emergency basis new §3.15, concerning the temporary reduction of gas royalty rates. The new section is adopted on an emergency basis to conform with an amendment to the Natural Resources Code, Chapters 52 and 91, by House Bill 2056, which went into effect on September 1, 1987. The new section advises lessees of the procedure which must be followed in order to take advantage of the new statute.

The new section is adopted on an emergency basis under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

§3.15. *Temporary Reduction of Gas Royalty Rates.*

(a) Prerequisites. Any lessee who has leased state land through the School Land Board based on a royalty bid and at a royalty rate exceeding 25%; and whose lease covers land that has not been pooled or unitized by the School Land Board; and said land is an island, saltwater lake, bay, inlet, marsh, or reef owned by the state within tidewater limits, or a portion of the Gulf of Mexico within the jurisdiction of the state, may request the School Land Board to temporarily reduce its gas royalty rates if the value of the gas is at or below \$3.00 for each 1,000 cubic feet. The value of the gas is defined as the highest market price paid or offered for gas of comparable quality in the general area where produced or when run, or the gross price paid or offered to the producer, whichever is greater.

(b) Request for reduction. A lessee seeking approval of a temporary reduction in gas royalty rates must make a written request to appear before the School Land Board. This request should be sent to the director of the Royalty Audit Division, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

(1) The applicant must submit an

affidavit and documentation in support of its request in the form and manner required by the Royalty Audit Division. The affidavit will attest to the fact that the statutory requirements have been met and accompanying documentation will state how the value of the gas was determined.

(2) The School Land Board may give approval of the temporary reduction in gas royalty rates based on the lessee's affidavit, documents in support thereof, and the recommendation of the Royalty Audit Division.

(3) The School Land Board's approval shall be for a period of six months. At the end of each six month period, the lessee must reapply for a reduction in gas royalty rates.

(c) Verification of gas valuation. The information submitted by the lessee to the School Land Board will be subject to verification by the Royalty Audit Division. The lessee will be entitled to the presumption stated under §3.10(e) of this title (relating to Basis for Computing Royalties) that proceeds received under a nonaffiliated arms-length contract are equal to market value. However, this presumption is subject to review in accordance with §3.10 of this title (relating to Basis for Computing Royalties).

(d) Reporting requirements. The lessee will be held responsible for making reports and adjusting royalty payments within or outside of the sliding scale set out in the Natural Resources Code, §52.036(b).

(e) Effective dates for reduced royalty rates. The reduced royalty rates will be effective for production during the month in which the approval is given by the School Land Board. Royalty rates on gas produced after the month of August, 1990, will not be subject to reduction under this section.

(f) No retroactive effect. The reduced royalty rates will not be applied retroactively for previous months' production.

Issued in Austin, Texas, on September 17, 1987

TRD-8707967

Garry Mauro
Commissioner
General Land Office

Effective date: September 17, 1987

Expiration date: January 15, 1988

For further information, please call
(512) 463-5009

Part IV. School Land Board Chapter 153. Exploration and Development

★31 TAC §153.71

The School Land Board adopts on an emergency basis new §153.71, concerning the temporary reduction of gas royalty rates. The new section is adopted on an emergency basis to conform with an amendment to the Natural Resources Code, Chapters 52 and 91, by House Bill 2056, which went into effect on September 1, 1987. The new section advises lessees of the procedure which must be followed in order to take advantage of the new statute.

The new section is adopted on an emergency basis under the Natural Resources Code, §32.062, which provides the School Land Board with the authority to make and enforce rules consistent with the law.

§153.71 *Temporary Reduction of Gas Royalty Rates*

(a) Prerequisites. Any lessee who has leased state land through the School Land Board based on a royalty bid and at a royalty rate exceeding 25%, and which lease covers land that has not been pooled or unitized by the School Land Board, and said land is an island, saltwater lake, bay, inlet, marsh, or reef owned by the state within tidewater limits, or a portion of the Gulf of Mexico within the jurisdiction of the state, may request the School Land Board to temporarily reduce its gas royalty rates, if the value of the gas is at or below \$3.00 for each 1,000 cubic feet. The value of the gas is defined as the highest market price paid or offered for gas of comparable quality in the general area where produced or when run, or the gross price paid or offered to the producer, whichever is greater.

(b) Request for reduction. A lessee seeking approval of a temporary reduction in gas royalty rates must make a written request to appear before the School Land Board. This request should be sent to the director of the Royalty Audit Division, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

(1) The applicant must submit an affidavit and documentation in support of its request in the form and manner required

the value of the gas. The affidavits submitted by the lessee in support of the documentation will state how the value of the gas was determined.

(2) The School Land Board may give approval of the temporary reduction in gas royalty rates based on the lessee's affidavit, documents in support thereof, and the recommendation of the Royalty Audit Division.

(3) The School Land Board's approval shall be for a period of six months. At the end of each six month period, the lessee must reapply for a reduction in gas royalty rates.

(c) Verification of gas valuation. The information submitted by the lessee to the School Land Board will be subject to verification by the Royalty Audit Division. The lessee will be entitled to the presumption stated under §3.10(e) of this title (relating to Basis for Computing Royalties) that proceeds received under a nonaffiliated arms-length contract are equal to market value. However, this presumption is subject to review in accordance with §3.10 of this title (relating to Basis for Computing Royalties).

(d) Reporting requirements. The lessee will be held responsible for making reports and adjusting royalty payments within or outside of the sliding scale set out in the Natural Resources Code, §52.036(b).

(e) Effective dates for reduced royalty rates. The reduced royalty rates will be effective for production during the month in which the approval is given by the School Land Board. Royalty rates on gas produced after the month of August, 1990, will not be subject to reduction under this section.

(f) No retroactive effect. The reduced royalty rates will not be applied retroactively for previous months' production.

Issued in Austin, Texas, on September 17, 1987.

TRD 8707968 Garry Mauro
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General Land Office

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TITLE 34. PUBLIC FINANCE

Part IX. Bond Review Board

Chapter 181. Bond Review Board

★ 34 TAC §§181.1-181.10

The Bond Review Board adopts on an emergency basis new §§181.1-181.10, concerning the procedures and standards for

review of the issuance of state bonds, subject to review by the board. The new sections are adopted on an emergency basis to conform with Chapter 1078, 70th Legislature, 1987, (Texas Civil Statutes, Article 717k-7) which prohibits the issuance of certain state bonds after September 1, 1987, without approval of the bond review board. The new sections prevent the eminent peril of the state being unable to secure financing for certain projects authorized by statute.

The new sections are adopted on an emergency basis under Senate Bill 1027, 70th Legislature, 1987, Chapter 1078, §3, (Texas Civil Statutes, Article 717k-7).

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

Board—the Bond Review Board created by the 70th Legislature, 1987, particularly in Senate Bill 1027, 70th Legislature, 1987, Chapter 1078 (Texas Civil Statutes, Article 717k7).

State bond—

(A) A bond or other obligation issued by:

(i) a state agency;

(ii) an entity expressly created by statute and having statewide jurisdiction; or

(iii) any other entity issuing a bond or other obligation on behalf of the state or on behalf of an entity listed in paragraph (i) or (ii) of this subparagraph; or

(B) an installment sale or lease-purchase obligation issued by or on behalf of an entity listed in paragraphs (i), (ii), or (iii) of this subparagraph that has a stated term of longer than five years or has an initial principal amount of greater than \$250,000.

§181.2. *Notice of Intention To Issue.*

(a) An issuer intending to issue state bonds shall submit a written notice as soon as practicable with the division of the governor's office responsible for budget and planning and one copy of the notice with each member of the board other than the governor.

(b) A notice of intention to issue under this section shall include:

(1) a brief description of the proposed issuance including, but not limited to, the purpose, the tentative amount, and a brief outline of the proposed terms;

(2) the proposed timing of the issuance with a tentative date of sale and a tentative date for closing;

(3) a request to have the bond issue scheduled for consideration by the board during a specified monthly meeting;

(4) an agreement to submit the required application set forth herein in §181.3 of this title (relating to Application for Board Approval of State Bond Issuance) no later than two weeks prior to the requested board meeting date.

(c) An issuer may reschedule the date requested for board consideration of the state bonds by submitting an amended notice of intention at any time prior to the application date in the same manner as provided in this section; however, no issuer shall be permitted to submit more than two amended notices of intention to issue pertaining to the same issuance of state bonds.

(d) The requested date for board consideration shall be granted whenever possible; however, if it becomes necessary in the board's discretion to change the date of the board meeting for consideration of the proposed issuance of state bonds, written notice of such change shall be sent as soon as possible to the issuer. Priority scheduling for consideration at board meetings shall be given to refunding issues and to those state bonds which also require a submission to the Department of Commerce to obtain a private activity bond allocation.

§181.3. *Application for Board Approval of State Bond Issuance.*

(a) An officer or entity may not issue state bonds unless the issuance has been approved or exempted from review by the Bond Review Board. An officer or entity that has not been granted an exemption from review by the board and that proposes to issue state bonds shall apply for board approval by filing six copies of an application with the division of the governor's office responsible for budget and planning and one copy of the application with each member of the board other than the governor.

(b) An application under this section must include:

(1) a summary of the information that will be contained in the proposed resolution, order, or ordinance providing for the issuance of state bonds;

(2) a brief description of the program under which the state bonds are proposed to be issued, which may include a reference to a legislative enactment or existing rules if the program is established in accordance with an existing statute or existing rules;

(3) a description of the applicant's plans for use of any state bond proceeds, including, whenever practical, a description of, and statement of the need for, each specific project for which bond proceeds are proposed to be used;

(4) a description of the applicant's investment provisions for bond proceeds including any specific provisions for safety and security and a description of the duties and obligations of the trustee and paying agent/ registrar as applicable;

(5) if an applicant proposes to enter into an installment purchase or lease-purchase agreement qualifying as a state bond, a description of, and statement of the need for, each specific project for which money is proposed to be spent under the agreement;

(6) a statement of the applicant's justification for the estimated principal

amount and the approximate timing of the proposed issuance.

(7) a description of the applicant's plans for the administration and servicing of the state bonds to be issued, including a description of the proposed flow of funds and the sources and methods of repayment;

(8) if the applicant has authority to issue both general obligation and revenue bonds and the proposed issuance is one of these, a statement of the applicant's reasons for its choice of type of state bonds;

(9) a statement of the applicant's estimated costs of issuance, including, as applicable, the estimated cost of legal counsel, financial adviser, underwriter, and other advisers, a description of the criteria used in making the selection, and a statement of prior representation by any such consultants and advisers of any of the parties involved in the issuance;

(10) a description of the applicant's reasons for proposing or not proposing the obtaining of bond insurance or other credit enhancement for the state bonds or for the project for which the issuance of state bonds is proposed;

(11) a statement of any potential liability of the general revenue fund or any other state funds resulting from the issuance; and

(12) a copy of any preliminary written review of the issuance that has been made by the attorney general.

(c) In addition to the information required by subsection (b) of this section, an application under this section may include any other relevant information the applicant wants to submit to the board.

(d) At any time before approval of an application by the board, an applicant may withdraw or revise the application.

§181.4. Meetings.

(a) The board shall meet on the third Tuesday of each month. As chairman of the board, the governor may call additional meetings of the board and is responsible for filing notice of meetings as required by Texas Civil Statutes, Article 6252-17, and giving timely notice of meetings to members of the board. On the petition of three or more members of the board, the governor shall call an additional meeting of the board. On petition of three or more members of the board, the governor shall cancel a meeting required by this subsection to be held on the third Tuesday of a month.

(b) On giving timely notice to the other members of the board, two or more members of the board may call for a planning session regarding applications pending before the board. At a planning session board members, their designated representatives, or their staff representatives may discuss pending applications with the applicants, but may not conduct board business.

(c) At a meeting or planning session,

a board member, designated representative, or staff representative may allow an applicant for approval of an issuance of state bonds to make an oral presentation to the board.

(d) At a meeting, the board may, by order, resolution, or other process adopted by the board, approve an issuance of state bonds as proposed in the application, approve an issuance of state bonds on conditions stated by the board, or fail to act on a proposed issuance. If the board does not act on a proposed issuance during the meeting at which the application is scheduled to be considered, the application is no longer valid on the occurrence of the earlier of the expiration of 45 days from the date of the meeting at which the application was scheduled to be considered or immediately following the board's next meeting if the board fails to act on the proposed issuance at that meeting. If an application becomes invalid under this subsection the applicant may file a new application for the proposed issuance.

(e) If applicable law requires the approval by the attorney general of an issuance of state bonds that are not exempt from review by the board, attorney general approval must be obtained after approval by the board.

(f) If there is a dispute among board members regarding the conduct of board meetings, standard parliamentary rules shall apply.

§181.5. Submission of Final Report.

(a) Within 30 days after delivery of the state bonds and receipt of the state bond proceeds the issuers shall submit a final report by filing in the same manner as set forth in §181.2 of this title (relating to Intention to Issue).

(b) A final report must include:

(1) all actual costs of issuance including, but not limited to, amounts paid to bond counsel, underwriter's counsel, financial advisor, printing costs, underwriter's discount or premium, registrar or paying agency fees, fees for credit enhancements or other credit agreements, rating agency fees, and all other regulatory fees paid as well as all costs for conducting the closing itself; and

(2) a complete bond transcript including the preliminary official statement and the official statement, private placements memorandum, if applicable, or any other offering documents as well as all other executed documents pertaining to the issuance of the state bonds.

(c) Submission of this final report is for the purpose of compiling data and dissemination of information to all issuers. As such, these final reports shall be made available to all parties so requesting, including the reproduction of any and all portions of the final documents at the cost of each requesting party.

§181.6. Official Statement.

(a) The official statement prepared in

connection with the issuance of bonds approved by the board must meet the minimum standards for official statements set by the board. On appointment by the board, the director of the bond finance office shall be responsible for certifying that the preliminary official statement meets the minimum standards, if such standards have been adopted.

(b) The comptroller shall certify the accuracy and completeness of statewide economic and demographic data, as well as revenues, expenditures, current fund balances, and debt service requirements of bonded indebtedness of the state contained in the preliminary official statement. This data shall be used unchanged in the official statement unless changes are approved in writing by the comptroller. The comptroller may execute a waiver of any part of this subsection.

§181.7. Designation of Representative. A member of the board may designate another person to represent the member on the board by filing a designation to that effect with the division of the governor's office responsible for budget and planning. A designation of representation filed under this section is effective until revoked by a subsequent filing by the member with the division. During the time a designation of representation is in effect, the person designated has all powers and duties as a member of the board that are provided to the member, except the authority to make a designation under this section.

§181.8. Assistance of Agencies. A member of the board may request the Legislative Budget Board, the Office of the Attorney General, or any other state agency to assist the member in performing duties as a member of the board.

§181.9. Assumption of Duties by Director. On appointment of a director of the bond finance office, the director shall assume the powers and responsibilities that this chapter assigns to the division of the governor's office responsible for budget and planning.

§181.10. Exemptions. The board may exempt certain bonds from review and approval by the board. The board may from time to time publish in the *Texas Register* a list of state bonds that are exempt.

Issued in Austin, Texas, on September 15, 1987

TRD-8707952 Jerry Sander
Clerk
Bond Review Board

Effective date: September 16, 1987
Expiration date: January 14, 1988
For further information, please call
(512) 463-1778



Proposed

Rules

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

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

TITLE 1. ADMINISTRATION Part VI. Texas Surplus Property Agency Chapter 143. Plan of Operation

*1 TAC §143.1

The Texas Surplus Property Agency proposes an amendment to §143.1, concerning the Texas plan of operation. The amendment inserts a table of contents, numbers pages throughout the plan, and changes the wording in Part X, Continued, Visits, on page 32.

Marvin J. Titzman, 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. Titzman also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Nollie D. Thomas, P.O. Box 8120, San Antonio, Texas 78208-0120, (512) 661-2381.

The amendment is proposed under Texas Civil Statutes, Article 6252-6, which provide the Texas Surplus Property Agency with the authority to make rules.

§143.1. *Texas Plan of Operation.* The Texas Surplus Property Agency adopts by reference the rules contained in the October 17, 1977, Texas Plan of Operation, as amended January, 1984, as amended August, 1985, [and] as amended December, 1986, and as amended September, 1987. This document serves as a guideline for this agency in the administration of the Donation Program within the State of Texas. The plan outlines to the administrator of the General Services Administration the methods by which this agency will implement the rules and regulations as set forth in the *G. S. A. Donation Handbook*. Copies of this docu-

ment are available for public inspection at any Texas Surplus Property Agency office in the state.

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

Issued in San Antonio, Texas, on September 14, 1987

TRD-8707956

Marvin J. Titzman
Executive Director
Texas Surplus Property
Agency

Earliest possible date of adoption
October 26, 1987

For further information, please call
(512) 661-2381



TITLE 16. ECONOMIC REGULATION Part I. Railroad Commission of Texas Chapter 5. Transportation Division Subchapter K. Safety Requirements

*16 TAC §5.171, §5.172

(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 Railroad Commission of Texas, 1124 IH 35 South, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §5.171 and §5.172, concerning safety regulations of the Department of Transportation adopted, and explosives and other dangerous articles. The repeals allow for the simultaneous proposal of new §5.171 and §5.172, which provide a more precise list of the federal motor carrier safety requirements which are applicable to motor carriers and motor bus companies.

Ronald D. Stutes, hearings examiner, 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. Stutes 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 clarification to motor carriers and motor bus companies of which federal safety rules are applicable to their intrastate operations. 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 Ronald D. Stutes, Hearings Examiner, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

The repeals are proposed under Texas Civil Statutes, Article 911b, §4(a)(12), which provide the commission with the authority to promote, encourage, and ensure a safe transportation system; and Texas Civil Statutes, Article 911a, §4(a), which provide the commission with the authority to prescribe the safety of operations of each motor bus company

§5.171. *Safety Regulations of the Department of Transportation Adopted.*

§5.172. *Explosives and Other Dangerous Articles.*

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 14, 1987

TRD-8708047

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption
October 26, 1987

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



Public safety requirements of federal regulations, 49 Code of Federal Regulations, Part 171, except the following: (1) general safety requirements; (2) standards for hazardous materials and motor vehicle safety requirements concerning hazardous materials. The new sections provide a more precise list of the federal motor carrier safety requirements which are applicable to motor carriers and motor bus companies.

Ronald D. Stutes, hearings examiner, 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. Stutes 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 clarification to motor carriers and motor bus companies of which federal safety sections are applicable to their intrastate operations. 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 Ronald D. Stutes, Hearings Examiner, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

The new sections are proposed under Texas Civil Statutes, Article 911b, §4(a)(12), which provide the commission with the authority to promote, encourage, and ensure a safe transportation system, and Texas Civil Statutes, Article 911a, §4(a), which provide the commission with the authority to prescribe the safety of operations of each motor bus company.

§5171 Motor Vehicle Safety Requirements (Other Than Hazardous Materials) The following federal safety requirements governing operations of vehicles are adopted as safety requirements of the Railroad Commission of Texas, applicable to all motor bus companies and motor carriers operating under the jurisdiction of the commission:

- (1) general safety standards codified at 49 Code of Federal Regulations, Part 396, except the following:
 - (A) §396.16;
 - (B) §396.17;
 - (C) §396.33; and
 - (D) §396.40;
- (2) standards for qualifications of drivers codified at 49 Code of Federal Regulations, Part 391, except the following:
 - (A) §391.2(a), and
 - (B) §391.11(b)(1);
- (3) standards for driving of motor vehicles codified at 49 Code of Federal Regulations, Part 392, except §392.1(c);
- (4) standards for parts and accessories codified at 49 Code of Federal Regulations, Part 393, except §393.1(b);
- (5) standards for drivers' hours of

operation codified at 49 Code of Federal Regulations, Part 395, except the following: (1) §395.100(2);

- (B) §395.3(c) and (e);
- (C) §395.8(k)(2) and (d);
- (D) §395.10(b); and
- (E) §396.13(c)(2); and
- (6) standards for inspection, maintenance, and repair codified at 49 Code of Federal Regulations, Part 396, except §396.1(b)(1).

§5172 Motor Vehicle Safety Requirements Concerning Hazardous Materials

The following federal and state safety requirements governing operations of vehicles transporting hazardous materials are adopted as safety requirements of the Railroad Commission of Texas, applicable to all motor bus companies and motor carriers operating under the jurisdiction of the commission:

- (1) standards for driving and parking vehicles transporting hazardous materials, codified at 49 Code of Federal Regulations, Part 397, except §397.1(c);
- (2) general standards for hazardous materials codified in 49 Code of Federal Regulations, Part 171, except the following:
 - (A) §171.10;
 - (B) §§171.15-171.17; and
 - (C) §171.20;
- (3) standards containing tables and communications requirements, codified at 49 Code of Federal Regulations, Part 172, except the following:
 - (A) Subpart C;
 - (B) §172.300(a);
- (4) standards for transporting by public highway codified at 49 Code of Federal Regulations, Part 177, except §177.807, and
- (5) regulations of the commission issued through its Liquefied Petroleum Gas Division (see Liquefied Petroleum Gas Docket Number 1).

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 14, 1987.

TRD/P108048 Walter Earl Little
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption
October 26, 1987
For further information, please call
(512) 463-7149



TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 125. Central Education Agency Fund Allocations, Contracts, and Agreements

The Texas Education Agency proposes amendments to §§125.1-125.3, 125.21-125.23, 125.41, 125.42, 125.81, and 125.82; and the repeal of §125.43 concerning contracts and agreements.

The amendments raise the contract amount for interagency contracts and direct service contracts for which State Board of Education approval is required from \$100,000 to \$150,000. The board is informed of all contracts between \$25,000 and \$149,999. Section 125.82 is revised to clarify the process to be used in obtaining board approval of discretionary program grants. The commissioner of education is authorized to apply for federal funds without prior board approval if the application is due during a time when the board is not scheduled to meet. A program budget would be presented for board approval at the next scheduled meeting. Editorial changes for clarification are also made throughout the sections. The repeal deletes a section which only includes material internal to the agency, which does not need to be included in the Texas Administrative Code.

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

Mr. Moak and Dr. Beverly Bardsley, director for policy development, also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification and streamlining of agency contracting procedures, and the deletion of unnecessary material from agency rules. There is no anticipated economic cost to individuals who are required to comply with the proposed sections and repeal.

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

Subchapter A Interagency
Contracts

★ 19 TAC §§125.1-125.3

The amendments are proposed under the Texas Education Code, §11.30, which authorizes the Texas Education Agency to enter into contracts for grants and §11.24, which authorizes the board to make rules for carrying out the duties placed on it by the legislature

§125.1 General Provisions [Policy]

(a) Interagency contracts shall be prepared on all occasions when legally required to provide for revenue from, or payments to, State of Texas agencies [that are not agencies of public education as named in appropriate Texas law].

(b) The commissioner of education shall submit contracts to the State Board of Education for execution or approval where:

(1) required by statutes or regulations, [;

(2) required by terms of the contract, [;] or

(3) deemed by the commissioner of education to be in the best interests of the Central [Texas] Education Agency.

(c) Prior approval of the State Board of Education is required for all contracts issued for \$150,000 [\$100,000] or more. The State Board of Education shall be informed of all contracts issued from \$25,000 to \$149,999 [\$100,000] by an item entered in the appendix to the agenda of the board meeting following the issuance of the contract. Approval authority for all other interagency contracts shall be vested in the commissioner of education or the commissioner's designee.

§125.2. Requirements for Interagency Contracts.

(a) Interagency contracts shall be prepared and signed [approved] prior to the commencement of the activities for services of employees, materials, or equipment between state agencies.

(b) The planning, description, and conduct of activities to be contracted are done by appropriate associate commissioners or designated staff.

(c) Contracts may designate Texas Education Agency staff members as contract managers, project directors, or project administrators. The direction or supervision of contracted activities is done by the appropriate associate commissioner or designated staff; however, notices required by the contract are mailed to and by the commissioner of education as executive officer of the State Board of Education.

(d) Contracts prepared for signature are submitted by the appropriate Texas Education Agency fiscal division through the legal counsel who reviews and seeks the advice of the state comptroller, attorney general of Texas, or other authority as necessary, prior to informing the commissioner of education of the availability of funds and propriety of the contract. Established

budgetary, auditing, and accounting procedures are followed to assure compliance with state and Federal statutes and regulations.]

§125.3 Restrictions on Interagency Contracts.

(a) All payments of Central [Texas] Education Agency funds to other State of Texas agencies shall, where required by law, be by proper interagency contract [Grants, allocations, or other funding arrangements may be made to other Texas governmental agencies with Texas Education Agency administered funds only if the governmental agency is receiving those funds to carry out an educational activity for a third party or parties.]

(b) (No change.)

(c) Activities conducted by, or at the direction of, the governor of Texas are exempted from the Interagency Cooperation Act as are interagency transactions of less than the dollar value specified by the State Purchasing and General Services Commission [§350]

(d) No agreement or contract may be entered into or performed which will require or permit an agency of the state to exceed its constitutional or statutory duties and responsibilities, or the limitations of its appropriated funds.

(e) The term of the contract shall not span two biennia or two appropriation periods.

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 15, 1987

TED 870801, W N Kirby
Commissioner of Education

Proposed date of adoption
January 9, 1988
For further information please call
(512) 463-9212



Subchapter B. Contracts for
Direct Services to the Central
[Texas] Education Agency

★ 19 TAC §§125.21-125.23

The amendments are proposed under the Texas Education Code, §11.30, which authorizes the Texas Education Agency to enter into contracts for grants; and §11.24, which authorizes the board to make rules for carrying out the duties placed on it by the legislature.

§125.21. General Provisions [Policy]. Contracts for needed products, services, and professional assistance from individuals from private or public firms rendered directly to the Central [Texas] Education

Agency may be issued [obtained] by the Central [Texas] Education Agency for the benefit of public education within the State of Texas through the use of agency funds, in accordance with federal and state law and [program] regulations. [State Textbook Contracts, §81.151 (226-33-36-010) of this title (relating to Preparation and Completion of Form) and §81.152 (226-33-36-020) of this title (relating to Activation of Textbook Contracts)]

§125.22 Preparation of Contracts for Direct Service to the Central [Texas] Education Agency

(a) Authority to execute contracts with private individuals or firms shall be vested in the commissioner of education or his designee under general authority granted [him] by the State Board of Education. This authority covers the execution of contracts which implement projects and services approved by the State Board of Education, and where funds for the projects and services have been included in the Central [Texas] Education Agency budget [as approved by the State Board of Education]

(b) Staff members of the Texas Education Agency may conduct contract negotiations with private individuals and firms in accordance with authority delegated by the commissioner of education.

(c) Before commencing negotiations for the purchase of services, the negotiating staff member must determine that authority for such purchases is included within previously approved budgets, and legislation or other promulgated rules, and must obtain the prior consent of the appropriate associate commissioner.]

(b)(d) The commissioner of education shall submit contracts to the State Board of Education for execution or approval where:

(1) required by statutes or regulations, [;

(2) required by terms of the contract[;] or

(3) deemed by the commissioner of education to be in the best interests of the Central [Texas] Education Agency. Prior approval of the State Board of Education is required for all contracts issued for \$150,000 [\$100,000] or more. The State Board of Education shall be informed of all contracts issued from \$25,000 to \$149,999 [\$100,000] by an item entered in the appendix to the agenda of the board meeting following the issuance of the contract.

(c)(e) Contracts prepared shall contain a clear statement of tasks to be performed by the contractor and shall identify the agency as the "Texas Education Agency, an agency of the State of Texas." Sources of payment shall be described as "state of Texas warrant(s)" and shall [usually] be interpreted according to the laws of the State of Texas. Private contract relationships are to be limited to a transaction between the contractor and the Central [Texas] Education

tion Agency [acting by authority of the State Board of Education].

(d)(9) When like quality goods or services are available from several sources, bids from the several sources shall be taken and the best bid awarded the contract. **Contracts for services in excess of \$10,000 must adhere to the requirements in Texas Civil Statutes, Article 6252-11c.**

(e)(g) Contracts for the performance of services by individuals or firms may provide for payment of [an honorarium or] a fee. **Payments [fees] may include [payments for] travel expenses paid at actual expense or at the rate [as calculated and] applicable to Central [Texas] Education Agency staff members.**

(f)(h) **Individuals and firms shall furnish budgets and accounting records which shall be available for audit** as required by the Central [Texas] Education Agency. All contracts shall contain the assurance clauses that may be required by appropriate laws or regulations including the Civil Rights Act of 1964, executive orders, copyrights and patents, noncollusion clauses, and others necessary to particular fund sources.

(i) Contracts may designate Texas Education Agency staff members as contract managers, project directors, or project administrators. The director or supervision of contracted activities is done by the appropriate associate commissioner or designated staff, however, notices required by the contract are mailed to and by the commissioner of education as executive officer of the State Board of Education.

(j) Contracts prepared for signature are submitted by the appropriate fiscal funding division through the Texas Education Agency legal counsel to the commissioner of education informing the commissioner of the availability of funds and propriety of the contract. Established budgetary, auditing, and accounting procedures are followed to assure compliance with state and federal statutes and regulations. Each fiscal funding division as well as the legal counsel provides assistance and information to other agency staff in the preparation of needed contracts.]

§125.23 *Restrictions on Contracts for Direct Services to the Central [Texas] Education Agency.*

(a) (No change.)

(b) All contracts shall be executed and approved before expenditures of anticipated monies shall be authorized [and shall be subject to required budgetary approval by the State Board of Education].

(c) Contracts may provide only for reimbursement of services performed or goods delivered; advance [payment or] funding shall be prohibited **except where a public educational institution is the contractor and federal funds are the source of funds, in which case the Central Education Agency shall determine the method of payment.** (Reference Texas Civil Statutes, Article 601f [664-3]; Texas Constitution, Article 3, §52.)

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 15, 1987

TRD-8708003 W N Kirby
Commissioner of
Education

Proposed date of adoption
January 9, 1988
For further information, please call
(512) 463-9212



Subchapter C. Funds

Sub-Contracted [Sub-granted] for Public Education [by the Texas Education Agency]

★ 19 TAC §125.41, §125.42

The amendments are proposed under the Texas Education Code, §11.30, which authorizes the Texas Education Agency to enter into contracts for grants; and §11.24, which authorizes the board to make rules for carrying out the duties placed on it by the legislature.

§125.41. *General Provisions [Policy].* **Subcontracts [Contracts] for needed products, services, and professional assistance for the benefit of public education** from individuals and private or public firms under **contracts [subcontracts] or grants [subgrants]** from the Central [Texas] Education Agency may be **issued** [obtained by the subcontractor or subgrantee of the benefit of public education within the State of Texas through the use of the subcontracted or subgranted funds,] in accordance with [the] federal and state law **or regulation** [and program regulations].

§125.42. *Preparation of Subcontracts [Contracts] under Central Education Agency Contracted [Subcontract] and Granted [Subgranted] Funds.*

(a) All **subcontracts [contracts]** prepared shall contain a clear statement of the tasks to be performed by the subcontractor, the product to be delivered, the time schedule such completion will require, and a full description of the services to be rendered. Where like quality goods or services are available from several sources, bids should be taken from the several sources and the best bid awarded the **subcontract [contract]**.

(b) Prior approval of the commissioner of education or the commissioner's designee is required for **subcontracts [contracts]** with individuals, **or organizations or firms** providing a [an honorarium or] fee in excess of \$200 per day or a total [honorarium or] fee in excess of \$1,000. This restriction applies to all **grants [subgrants] and contracts [subgrants]** issued by the Central [Texas] Education Agency. The contracted service

may include payments for travel expenses [in the fee charged], but travel expenses are not to be included in the \$200 per day or \$1,000 total restriction.

(c) **All [Subgrants and] subcontracts [made by the Texas Education Agency] must contain the requirement that subcontractors [and subgrantees] furnish budget [budgets,] and accounting records which shall be available for audit** as required by the Central [Texas] Education Agency. All subcontracts [and subgrants] shall contain the **necessary** assurance clauses that may be required by appropriate regulations including the Civil Rights Act of 1964, executive orders, copyrights and patents, noncollusion clauses, and others necessary to particular funding sources.

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 15, 1987

TRD-8708003 W N Kirby
Commissioner of
Education

Proposed date of adoption
January 9, 1988
For further information, please call
(512) 463-9212.



★ 19 TAC §125.43

(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 Education Agency, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Texas Education Code, §11.30, which authorizes the Texas Education Agency to enter into contracts for grants; and §11.24, which authorizes the board to make rules for carrying out the duties placed on it by the legislature.

§125.43. *Contract Processing.*

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 15, 1987

TRD-8708005 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
January 9, 1988
For further information, please call
(512) 463-9212.



Subchapter F State Board of
Education Responsibility for
Review and Approval of Fund
Allocations

★ 19 TAC §125.81, §125.82

The amendments are proposed under the Texas Education Code, §11.30, which authorizes the Texas Education Agency to enter into contracts for grants, and §11.24, which authorizes the board to make rules for carrying out the duties placed on it by the legislature

§125.81. *Funds Allocated by the Agency on a Formula Basis.* For all federal, state, or other funds which are allocated by the Central Education Agency on a formula basis, the following procedures shall apply.

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

(3) The statewide total of funds to be allocated by formula must be approved by the State Board of Education before allocations may be made by the agency.

(4) Where the funding formula is not established by law or regulation, the funding formula must also be approved by the State Board of Education before allocations may be made by the agency.]

(3)(5) Should funds for a new program become available during the year, before or after program budgets have been approved, the commissioner of education shall request board approval to allocate such funds, including board approval of the formula for allocation where the formula is not established by law or regulation. **If the request for funding is due to the granting agency during the period of time the State Board of Education is not scheduled to meet, then the commissioner may submit the appropriate documents and submit a program budget for approval to the State Board of Education at its next meeting.**

(6) (No change.)

§125.82. *Funds Allocated by the Agency on a Discretionary Basis*

(a) For all federal, state, or other funds which are allocated by the Central Education Agency on a discretionary basis, the following procedures shall apply.

(1) **Funds distributed on a discretionary basis shall be included in the program budgets presented to the State Board of Education for approval each year. If the request for funding is due to the granting agency during the period of time the board is not scheduled to meet, then the commissioner may submit the appropriate documents and submit a program budget for approval to the board at its next meeting.**

(2)(1) Where funds are to be allocated competitively, based on responses to a request for applications or proposals issued by the agency, the **State Board of Education** shall approve the following, **which may be included in the program budget:**

(A) **estimated** statewide total of funds to be allocated;

(B) (No change.)

(C) a concise summary of the criteria and procedures to be used to evaluate applications or proposals received to determine recipients of funds **if the criteria and general procedures are different from those approved by the State Board of Education and contained in the request for proposal model.**

(3)(2) Where funds are to be allocated on other than a competitive basis, the **State Board of Education** shall approve the funds to be allocated and the individual recipients.

(4)(3) The commissioner of education or the commissioner's designee shall carefully supervise the review and approval process for all competitive funds to insure that the funds are awarded in accordance with criteria and procedures approved by the State Board of Education. The commissioner of education or the commissioner's designee, [who must be a deputy commissioner level staff person,] must **approve** [sign approval of] all discretionary funds.

(b) The procedures in this section shall not apply to interagency contracts or to contracts for direct services to the Central Education Agency, which shall be governed by the rules in Subchapter A of this chapter (relating to Interagency Contracts), [and] Subchapter B of this chapter (relating to Contracts for Direct Services to the Central [Texas] Education Agency), **and Subchapter C of this chapter (relating to Funds Sub-Contracted [or Sub-Granted] for Public Education [by the Texas Education Agency]).**

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 15, 1987

TRD 8708006

W. N. Kirby
Commissioner of
Education

Proposed date of adoption
January 9, 1988

For further information, please call
(512) 463 9212



TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 21. Trade Practices Subchapter H. Unfair Discrimination

★ 28 TAC §21.705

The State Board of Insurance proposes new §21.705, concerning nondiscriminatory testing for the presence of the human immunodeficiency virus (HIV). This proposal supersedes an earlier pro-

posal which was published in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3309). A notification of withdrawal of the earlier proposal appears elsewhere in this issue. This new section was previously adopted on an emergency basis and became effective on August 11, 1987, with an emergency amendment effective on August 19, 1987. Notice of emergency adoption of the new section appeared in the August 18, 1987, issue of the *Texas Register* (12 TexReg 2706). Notice of the emergency amendment appeared in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2836). This new section is necessary in order to establish standards for testing for the presence of HIV, so that the standards will provide a reasonable basis for the continuing operation of the life, health, and accident insurance business in this state, and will provide the insurance consuming public with protection against unfair acts and practices. New §21.705 sets nondiscriminatory standards under which an applicant for life or health and accident insurance may be required to be tested for the presence of HIV.

A. W. Pogue, deputy insurance commissioner for life insurance, 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. Pogue 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 regulation of trade practices in the business of insurance so that unfair acts or practices are prohibited. 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 A. W. Pogue, Deputy Insurance Commissioner for Life Insurance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 21.21, §13, which authorizes the State Board of Insurance to promulgate and enforce reasonable rules and regulations to regulate trade practices in the business of insurance so that unfair acts and practices are prohibited.

§21.705. *Nondiscriminatory Testing for Human Immunodeficiency Virus.* An applicant for life or health and accident insurance, or for coverage by a company licensed under the Insurance Code, Chapter 20, or with a licensed health maintenance organization may be required to be tested for the presence of the human immunodeficiency virus (HIV). Requiring such testing is not unfair discrimination provided:

(1) the testing is required on a non-

discriminatory basis for all individuals in the same class, and

(2) no applicant is denied coverage or rated a substantial risk on the basis of such testing unless:

(A) an initial enzyme linked immunosorbent assay (ELISA) blood test is administered to the applicant, and it indicates the presence of HIV antibodies in the blood;

(B) a second ELISA blood test is conducted and it indicates the presence of HIV antibodies in the blood; and

(C) a Western Blot blood test is conducted and it confirms the results of the two ELISA tests.

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

Issued in Austin, Texas, on September 21, 1987

TRD-8708076 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption
October 26, 1987

For further information, please call
(512) 463-6327

✦ ✦ ✦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 3. Energy Resources

★31 TAC §3.15

(Editor's note: The General Land Office 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 General Land Office proposes new §3.15, concerning the temporary reduction of gas royalty rates. The new section brings the General Land Office rules into conformity with statutory changes enacted by the 70th Legislature, 1987, in House Bill 2056, which adds §52.036 to the Natural Resources Code, Title 2, Chapter 52, in House Bill 2056. The new section defines how lessees who meet certain criteria as set out under the new section may apply for the temporary reduction of gas royalty rates. An identical emergency action is filed simultaneously and published elsewhere in this issue.

Dan Miller, deputy commissioner of legal services, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the three year period the section will be in effect is impossible to determine in that the number of lessees who will take advantage of this section cannot be estimated nor can the contract purchase price of the

gas be determined. There will be no effect on local government for the three year period the section will be in effect. The cost of compliance with the section for small and large businesses will be minimal, if any.

Mr. Miller also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased public confidence and governmental efficiency due to increased uniformity between the administrative rule and the applicable statute. There will be minimal, if any, economic cost to individuals who choose to comply with the section as proposed.

Comments may be submitted to Dan Miller, Deputy Commissioner for Legal Services, General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701, (512) 463-5009.

The new section is proposed under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas, on September 17, 1987

TRD-8707969 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption
October 26, 1987

For further information, please call
(512) 463-5009

✦ ✦ ✦

Part IV. School Land Board Chapter 153. Exploration and Development

★31 TAC §153.71

(Editor's note: The School Land Board 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 School Land Board proposes new §153.71, concerning the temporary reduction of gas royalty rates. The new section brings School Land Board rules into conformity with statutory changes enacted by the 70th Legislature, 1987, in House Bill 2056, which adds §52.036 to the Natural Resources Code, Title 2, Chapter 52. The new section defines how lessees who meet certain criteria set out under the new section may apply for the temporary reduction of gas royalty rates. An identical emergency action is filed simultaneously and published elsewhere in this issue.

Dan Miller, deputy commissioner of legal services, 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 for the three year period the section will be in effect is impossible to determine in that the number of lessees who will take advantage of this section cannot be estimated nor can the contract purchase price of the gas be determined. There will be no effect on local government for the three year period the section will be in effect. The cost of compliance with the section for small and large businesses will be minimal, if any.

Mr. Miller also has determined that for each year of the first three years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased public confidence and governmental efficiency due to uniformity between the administrative rule and the applicable statute. There will be minimal, if any, economic cost to individuals who choose to comply with the section as proposed.

Comments may be submitted to Dan Miller, Deputy Commissioner for Legal Services, General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701, (512) 463-5009.

The new section is proposed under the Natural Resources Code, Title 2, Chapter 32, §32.062, which provides the School Land Board with the authority to adopt rules of procedure and rules for the sale and lease of land covered by the chapter which are consistent with the chapter and with the laws.

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 17, 1987

TRD-8707970 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption
October 26, 1987

For further information, please call
(512) 463-5009

✦ ✦ ✦

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter C. Standards Applicable to Generators of Hazardous Waste

★31 TAC §335.69

The Texas Water Commission (TWC) pro-

provision from the regulations of the United States Environmental Protection Agency (EPA) that was inadvertently omitted from the TWC's regulations when recently amended to incorporate revisions to 40 Code of Federal Regulations, §262.34, as published in the July 14, 1986, issue of the *Federal Register* (51 FedReg 25421). The amendment includes a provision concerning the generator's obligations to comply with dating and marking requirements and preparedness and prevention requirements when accumulating waste on-site. This provision was inadvertently omitted when revisions were made to the TWC rules to incorporate the new amendments, additions, and redesignations of the corresponding federal rule (40 Code of Federal Regulations, §262.34) published in the rules governing hazardous waste tank systems in the July 14, 1986, issue of the *Federal Register* (51 FedReg 25421).

William Monroe, chief fiscal officer, 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. Monroe also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of regulations that correspond to the federal regulations governing hazardous waste management. There is no anticipated economic cost to individuals who are required to comply with the proposed section. The amendment merely incorporates a provision that is already effective under federal regulations.

Comments on the proposal may be submitted to Cynthia C. Smiley, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069. Comments will be accepted for 30 days following the publication of this proposal in the *Texas Register*.

The amendment is proposed under the Texas Water Code, §5103 and §5105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state, and to establish and approve all general policy of the commission. The amendment is also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act, and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, in-

cluding rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management by all practical and economically feasible methods consistent with the legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.69. *Accumulation Time.*

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

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

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

(4) **the generator complies with the requirements of subsection (a)(2) and (3) of this section and the requirements of 40 Code of Federal Regulations, Part 264, Subpart C; and**

(5)(4) the generator complies with the following requirements:

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

(g)-(h) (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 18, 1987

TRD-8707996

J. D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption

October 26, 1987

For further information, please call

(512) 463-8087



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter N. County Sales and Use Tax

★ 34 TAC §3.251

The Office of the Comptroller of Public Accounts proposes new §3.251, concerning requirements for adopting or abolishing county tax. The new section responds to action taken by the 70th Legislature, 1987, which makes additions to the Tax Code. For the first time, certain counties may impose a county sales tax to be used for property tax relief if approved by voters of the county. The new section outlines for county officials what

qualifications must be met and the steps necessary to impose the local option sales tax.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or on small businesses as a result of enforcing or administering the section.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the adoption and abolition of the optional county sales tax. 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 Mona Ezell Shoemate, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.251. *Adopting or Abolishing County Tax.*

(a) General

(1) Under the provisions of the County Sales and Use Tax Act, any county not in a metropolitan transit authority (MTA) formed under Texas Civil Statutes, Articles 1118x or 1118y may, by a majority vote of the qualified voters of said county voting at an election held for that purpose, adopt or abolish a county sales and use tax in accordance with the provisions of the County Sales and Use Tax Act. An authority is not considered to be located in any county in which fewer than 250 persons are both residents of the authority and the county. If adopted, the county tax must be used to reduce the county property tax rate.

(2) A county may not adopt the tax if the resulting combined rate of all local sales and use taxes (county, city, and metropolitan transit authority city transit department (MTA/CTD)) imposed by local taxing entities with territory in the county would exceed 2.0%. If a county and other local taxing entities in the county hold elections on the same day to adopt local sales tax, and the resulting combined tax rate in any area of the county exceeds 2.0%, the election held by the MTA/CTD will be without effect first. If the tax rate still exceeds 2.0%, the election held by the county will be without effect. The total combined local tax rate imposed by local taxing entities with territory in the county may not exceed 2.0%.

(b) Notification requirements. Where the majority votes are found to be for the proposition voted on, the county judge shall forward to the Comptroller of Public Ac-

counts by United States registered mail or certified mail a certified copy of the resolution of the commissioners' court at the site the returns and declaring the result of such election. Such resolution shall reflect the date of the election in such county, the proposition voted on, the total number of votes cast for and against the proposition, and the number of votes by which the proposition was approved.

(c) Effective date of adoption or abolition. Upon actual receipt by the comptroller of notification as set forth in subsection (b) of this section, there shall elapse one whole calendar quarter prior to such adoption or abolition becoming effective. Thereafter, the adoption or abolition shall be effective beginning on the first day of the calendar year next succeeding elapsed quarter.

(d) Contested election.

(1) If the validity of any election held under the authority of the Act or the result of such election based on the returns thereon shall be contested, such election contest shall be filed and tried as provided in the Election Code provided that the contestant shall notify the comptroller by United

States registered mail or certified mail within 10 days after filing such contest by mailing a copy of such notice of contest to the comptroller showing the style of the contest, the date filed, the case number, and the court in which the same is pending; and provided further that no such contest shall be heard unless the comptroller is timely notified as provided herein.

(2) Upon receipt of a notice of contest, the date upon which such tax shall become effective in any county or abolished in any county as a result of such election shall be suspended. When a final judgment shall be entered in such election contest, the county judge shall notify the comptroller by United States registered mail or certified mail, and shall enclose a certified copy of such final judgment. If the judgment sustains the validity of such election or the result of such election so that, under the Act, the tax status of such county is changed, the comptroller shall place in effect such tax, or abolish the same, as the case may be, in such county substituting the notice of final judgment and the date on which it is received for the notice of the result of such election

elsewhere provided for in the Act.

(3) No election on a proposition to adopt a county sales and use tax in a county or to abolish such tax in a county shall be held within one year from the date of the last preceding election in the county on any such propositions.

(e) Telecommunications services. Telecommunications services are exempt from county sales tax, but the exemption may be repealed on certain telecommunications services. See §3.344 of this title (relating to Telecommunications Services).

(1) The commissioners court of a county that has imposed the county sales tax may, by a majority vote of the commissioners court, repeal the exemption on telecommunications services. The county judge must forward to the comptroller by United States registered or certified mail a copy of the order repealing the exemption. Upon receipt by the comptroller of notification, one whole calendar quarter shall elapse before county tax applies to telecommunications services. The following illustrates the effective date of adoption or abolition:

Notice received between:	Effective date:
January 1 through March 31	July 1
April 1 through June 30	October 1
July 1 through September 30	January 1
October 1 through December 31	April 1

(2) The commissioners court of a county may exempt telecommunications services from county tax in the same manner in which the tax was imposed.

(3) The county sales tax exemption on interstate long-distance telecommunications services may not be repealed. Notwithstanding any action on the part of the governing body of a county, charges for interstate long-distance telecommunications service will be exempt from county sales and use tax.

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 16, 1987

TRD-8707958 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption
October 26, 1987
For further information, please call
(512) 463-4004



Subchapter O. State Sales and Use Tax

★34 FAC §3.287

The Office of the Comptroller of Public Accounts proposes an amendment to §3.287, concerning exemption certificates. The amendment limits the time a person has in which to obtain exemption certificates after being notified by the comptroller in writing. The amendment provides that certificates must be delivered to the comptroller within 60 days. All sales are presumed taxable unless the seller obtains an exemption certificate from the purchaser in lieu of tax. The seller's name is required on the certificate as well as the purchaser's name.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or on small businesses as a result of enforcing or administering the section.

Mr. Moore 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 provision of new information regarding tax responsibilities under changes made by the legislature. 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 Mona Ezell Shoemate, Tax Policy, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.287. Exemption Certificates.

(a) Definition. Exemption certificate—A document which, when properly executed, allows the tax-free purchase of an item that would otherwise be subject to tax. A purchaser claiming an exemption because the item purchased is for resale must issue a resale certificate to the seller. See §3.285 of

this title relating to [Sales for Resale.] Resale Certificate, **Sales for Resale**). There is no provision in the Sales and Use Tax Act for an exemption number or a tax exempt number to be issued or used in connection with an exemption certificate.

(b) Who may issue an exemption certificate. An exemption certificate may only be issued by one of the following:

(1) an organization that has qualified for exemption under **the Tax Code** [Chapter 151], §151.309 and §151.310 [of the sales tax law]. See §3.322 of this title (relating to Exempt Organizations);

(2) a person purchasing an item which is exempt under **the Tax Code**, [provision of] Chapter 151, Subchapter H [of the sales tax law].

(c) Acceptance of exemption certificate.

(1) **All** [It will be presumed that the] gross receipts of a retailer are subject to sales or use tax unless a **valid and properly completed** [an] exemption certificate is accepted by the seller.

(2) A sale is exempt if the exemption certificate is accepted in good faith **at the time of the transaction** and the seller lacks actual knowledge that the claimed exemption is invalid.

(3) (No change.)

(4) The seller should obtain the properly executed exemption certificate at the time the transaction occurs. **Any certificates obtained after the transaction will be subject to verification by the comptroller.** If the certificates are not obtained at the transaction date, the seller has 60 days from the date

written notice is given by the comptroller to the seller in which to **deliver** [obtain] them **to the comptroller.** Any certificates **delivered** [presented] during the 60-day period will be subject to independent verification before any deductions will be allowed. Certificates **delivered** [presented] after the 60-day limit will not be allowed and the deduction will not be granted.

(5) The exemption certificate will be valid if the seller received it in good faith from a purchaser and if the certificate states **valid** [the] qualifications for an exemption. **A retailer must be familiar with the exemptions that are available for the items the retailer sells.**

(6) **An exemption certificate is not acceptable when an exemption is claimed because tangible personal property is exported outside the United States. For proper documentation required for proof of export, see §3.323 of this title (relating to Imports and Exports).** [The Texas proof of export form may substitute for an exemption certificate when the item is delivered to a customs broker or forwarding agent for shipment outside this country.]

(d) Improper use of items purchased under an exemption certificate.

(1) When an item purchased under a **valid** [an] exemption certificate is used in a taxable manner, **whether the use is in Texas or outside the state**, the purchaser is liable for payment of sales tax based on the fair market rental value of the item for the period of time used. The fair market rental value is the amount the purchaser would pay on the open market to rent the item for use. If the item has no fair market rental value, sales

tax is due on the original purchase price. **If the exemption certificate was invalid at the time of its issuance, the purchaser owes tax on the original purchase price.**

(2) At any time the person using the item **purchased under a valid exemption certificate** may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value.

(3) Sales tax is not due when an item purchased under a valid exemption certificate is donated to an organization exempt from tax under the Tax Code, §151.309 or §151.310(a)(1)[,j or (a)(2) [or (a)(5)].

(4) Contractors using equipment **purchased under a valid exemption certificate** on both taxable and exempt projects must account for tax based upon the provisions in §3.291 of this title (relating to Contractors)

(e) Content of an exemption certificate. An exemption certificate must show:

(1) the name and address of the purchaser;

(2) a description of the item to be purchased,

(3) the reason the purchase is exempt from tax,

(4) the signature of the purchaser and the date, **and**

(5) **the name and address of the seller.**

(f) Form of an exemption certificate. An exemption certificate must be in substantially the form set out as follows

TEXAS CERTIFICATE OF EXEMPTION

PURCHASER'S NAME

STREET ADDRESS

CITY, STATE, ZIP CODE

I claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice:

Description of items (or an attached order or invoice) to be purchased:

I claim this exemption for the following reason:

title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing) is exempt. The removal of field heat from agricultural products is a stage in processing and the use of ice for this purpose represents an exempt use. The exemption covers bunker ice and top icing and any ice loaded by the shipper or grower at the initial loading of the produce on to the transportation facilities. [Subsequent icing after the initial icing for the purpose of preservation prior to sale is not processing within the meaning of the Tax Code. §151.318.]

(3) Ice used as a part of a drink or food product to be sold in the regular course of business is exempt.

(4) Ice exclusively used by commercial fishing boats in the storing of aquatic species, such as shrimp and other crustaceans, finfish, mollusks, and other similar creatures is exempt.

(b) Subsequent icing after the initial icing for the purpose of preservation prior to sale is not processing within the meaning of the Tax Code, §151.318.

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 17, 1987.

TRD-8707990 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
October 26, 1987
For further information, please call
(512) 463-4004.



★ 34 TAC §3.336

The Office of the Comptroller of Public Accounts proposes an amendment to §3.336, concerning gold, silver, coins, and currency. The amendment responds to action taken by the 70th Legislature, 1987, which authorizes the State Purchasing and General Services Commission to designate and arrange for the production of official state coins to be minted of pure gold or silver in various weights. The coins may not be produced, sold, or otherwise distributed by any person except under a contract with the State Purchasing and General Services Commission. The legislature also amended the Tax Code by adding §151.340, which exempts from sales tax coins designated as official state coins; and during the special session, repealing §151.334, the lone star medalion exemption, and §151.336, an exemption for certain coins and precious metal.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or small

businesses as a result of enforcing or administering the section.

Mr. Moore 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 recognition in the administrative rules of the exempt status of official state coins and the taxable status of other coins and precious metals. 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 Mona Ezell Shoemate, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Tax Code, Title 2.

§3.336. [Sales of] Gold, Silver, Coins, and Currency.

(a) Sales tax is due on the sale in Texas of gold, silver, or numismatic coins or gold, silver, or platinum bullion [unless sold to a purchaser in a single transaction of \$10,000 or more]. **Sales tax is not due on the sale of official State of Texas coins produced under the State Purchasing and General Services Act, §11.05, when sold by a person under contract with the State Purchasing and General Services Commission.** Sellers of gold, silver, platinum, or numismatic coins are required to hold a Texas sales or use tax permit and to collect sales tax on all taxable sales within the state. See §3.286 of this title (relating to Seller's Responsibilities).

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

(d) [Unless exempted as provided by subsection (a) of this section,] Sales or use tax is due on the sale of coins and currency when sold above face value or without a face value. The face value of United States coins and currency must be subtracted from the sales price before the tax is computed. Tax must be collected on the total sales price of foreign coins and currency. The face value of foreign coins and currency may not be subtracted from the sales price. The exchange of foreign currency at face value is not a taxable transaction.

(e) The sales tax exemption on the sale of gold, silver, or numismatic coins or gold, silver, or platinum bullion in a single transaction of \$10,000 or more does not include jewelry or other items of adornment.]

(e)[(f)] At the time an item which was purchased in a single transaction for \$10,000 or more and previously exempted under the Tax Code, §151.336(a), [exempted by subsection (a) of this section] is transferred to a different owner, use tax is due from the original purchaser on the original purchase price. **Section 151.336 was repealed in 1987 by the second called session of the Texas Legislature.**

(f)[(g)] The purchase of commodity contracts of gold or silver will not be taxable.

(g)[(h)] Persons who use gold, silver, or other precious metals or diamonds or other precious stones in lieu of currency in acquiring taxable items for use will be considered to be bartering. Persons who use gold, etc., for bartering owe tax based upon the sales of the taxable item.

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 17, 1987.

TRD-8707991 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
October 26, 1987
For further information, please call
(512) 463-4004.



Subchapter Q. Franchise Tax

★ 34 TAC §3.399

(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 Comptroller of Public Accounts, 111 East 17th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.399, concerning franchise tax exemptions. This section is being repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. This repeal is promulgated under Title 2 of the Tax Code, and no statement of the fiscal implications for small businesses is required.

Mr. Moore 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 provision of new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Teresa Van De Walle, Supervisor of Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax

Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

§3.399. Franchise Tax Exemptions.

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 21, 1987.

TRD-8708083

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
October 26, 1987

For further information, please call
(512) 463-4004.



The Comptroller of Public Accounts proposes new §3.399, concerning franchise tax exemptions. The new section incorporates a change made to the Franchise Tax Act by the 70th Legislature, 1987. Corporations exempt under the provisions of the Internal Revenue Code, §501(c)(2) and (25), are exempt for reports due on or after January 1, 1988. Existing §3.399 is proposed for repeal and published elsewhere in this issue. The new section differs from the existing section proposed for repeal as follows. Two parts were deleted because the exemption was previously repealed concerning transportation companies and banks. The effective date of an exemption was clarified and the effective date of a revocation of an exemption was changed to the date the corporation no longer qualified for exemption, rather than the April 30th following notification of revocation.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or on small businesses as a result of enforcing or administering the section.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the franchise tax exemption process. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Teresa Van De Walle, Supervisor, Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.399. Franchise Tax Exemptions.

(a) Application for exemption.

(1) It is the responsibility of each corporation that believes it is exempt from payment of franchise tax to furnish to the comptroller sufficient evidence to establish its exempt status. It is the duty of the taxpayer to place itself clearly within the exempt status desired. Doubts regarding exempt status are interpreted against the granting of the exemption.

(2) Except as indicated in subsection (e) of this section, each corporation must submit to the comptroller:

(A) a request for exemption in writing, indicating the particular provision of the Tax Code, Chapter 171, Subchapter B, under which exemption is claimed;

(B) a detailed statement of the corporation's past activities, if any, and its future plan of activities, both in relation to the manner in which the corporation proposes to implement the purposes clause in its articles of incorporation or certificate of authority;

(C) a copy of the articles of incorporation and, for a foreign corporation, a copy of the application for a certificate of authority; and

(D) any additional information the comptroller may require to make a determination whether the corporation is eligible for a franchise tax exemption.

(b) Actions by comptroller. Upon receipt of an application for exemption, the comptroller's representative will review the application and send the taxpayer a notification either granting the exemption, denying the exemption, or requesting additional information.

(1) If the exemption is granted, the exemption will be effective from the first date the corporation was eligible for exemption. However, refunds will not be made if the statute of limitations for issuing refunds has run. Also, if the first date the corporation was eligible for exemption was not the beginning of a tax period, the corporation must pay through the end of such tax period.

(2) If the exemption is denied or revoked, the corporation may contest the denial or revocation by filing all reports due as though the corporation is not exempt and:

(A) paying all amounts of tax, penalty, and interest due and requesting a refund hearing pursuant to the Tax Code, §111.105;

(B) paying all amounts of tax, penalty, and interest due, accompanying the payment with a written protest, and filing suit for the recovery of amounts paid pursuant to the Tax Code, §112.052; or

(C) requesting that a deficiency determination be issued. If a deficiency determination is issued, a redetermination hearing may be requested pursuant to the Tax Code, §111.009.

(c) Qualification for exemption.

(1) All insurance, surety, guaranty, or fidelity companies that are subject to the

annual gross premiums tax levied by the Insurance Code, §4.10 or §4.11, or the additional taxes on gross premiums levied under the Insurance Code, and that have not been exempted from the gross premiums taxes, are exempt from payment of the franchise tax regardless of whether any gross premiums taxes are actually paid in any given year. No other franchise tax exemption is allowed for any insurance company or surety, guaranty, or fidelity company.

(2) Those corporations organized for the exclusive purpose of promoting the public interest of any county, city, town, or other area within the state must show that promotion of the public interest is the exclusive purpose of the corporation and not merely an incidental result. A corporation will not be considered to be promoting the public interest if it engages in activities to promote or protect the private, business, or professional interests of its members or patronage.

(3) A nonprofit corporation organized for the purpose of religious worship is an incorporated group of people associating for the primary purpose of holding, conducting, and sponsoring, according to the rites of the sect, religious worship. A corporation supporting and encouraging religion as an incidental purpose or an organization with the general purpose of furthering religious work or instilling its membership with a religious understanding does not qualify for a franchise tax exemption under the Tax Code, §171.058, unless all of its other purposes and activities are exempt under other provisions of the Tax Code, Subchapter B, or this section.

(4) A nonprofit corporation seeking a franchise tax exemption as organized for purely public charity will be required to supply evidence that the substantial portion of the corporation's activities are devoted to supplying aid and assistance to indigent or similarly deserving members of society. If a corporation engages in any substantial activity other than public charity, it will not be considered as having been organized for purely public charity. A corporation also will not be considered as having been organized for purely public charity if the public derives only an indirect benefit from the corporation's activities. A corporation is presumed to satisfy this definition if it devotes substantially all of its activity to the alleviation of poverty, disease, pain, and suffering by providing foods, drugs, treatment, shelter, clothing, or counseling to needy persons with funds derived at least in part from sources other than fees or charges for its services.

(5) A nonprofit corporation seeking a franchise tax exemption on the basis of having been organized for strictly educational purposes must show that it is devoted solely to systematic instruction with a regularly scheduled curriculum, a regular faculty, and regularly enrolled student body or students in attendance at a place where the educational activities are regularly car-

ried on; or has activities consisting solely of presenting public discussion groups, forums, panels, lectures, or other similar programs. A corporation will not be considered as having been organized for strictly educational purposes if education is incidental to some other facet of the corporation's activities.

(d) Revocation of exemptions.

(1) Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt corporation no longer qualifies for exemption, the comptroller's representative will notify the taxpayer that its exempt status is under review. The comptroller's representative may request additional information necessary to ascertain the continued validity of the corporation's exempt status. If the comptroller determines that a corporation is no longer entitled to its exemption, notification to that effect will be sent to the corporation. The effective date of revocation is the date the corporation no longer qualified for the exemption.

(2) For nonprofit corporations granted an exemption under the Tax Code, §171.063, the revocation of the federal income tax exemption will automatically terminate the franchise tax exemption as of the April 30 following the effective date of the revocation of the federal tax exemption.

(e) Federal exemption. If a nonprofit corporation has been exempted from the federal income tax under the provisions of the Internal Revenue Code, §501(c)(3), (4), (5), (6), or (7), as it existed on January 1, 1975, or, for reports due on or after January 1, 1988, of the Internal Revenue Code of 1986, §501(c)(2) and (25), if the entity for which it holds title to property is either exempt from or not subject to the franchise tax, the corporation may establish its exempt status merely by furnishing to the comptroller a copy of the exemption letter which it received from the Internal Revenue Service.

(f) Solar energy device. For purposes of the Tax Code, §171.056, the term "solar energy device" includes, but is not limited to:

(1) devices used in the conversion of solar thermal energy into electrical or mechanical power;

(2) devices used in the photovoltaic (solar cell) generation of electricity;

(3) systems used in the heating of water and the heating and cooling of structures by use of solar collectors to gather the sun's energy; and

(4) heat pumps used as an integral part of a system designed to make the best combined use of solar energy and conventional heating.

(g) Exemption for certain trade show participants. See §3.414 of this title (relating to Exemption for Certain Trade Show Participants) for information concerning exemption under the Tax Code, §171.084.

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 21, 1987.

TRD-8708082 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
October 26, 1987
For further information, please call
(512) 463-4004.



★ 34 TAC §3.406

The Office of the Comptroller of Public Accounts proposes an amendment to §3.406, concerning foreign corporations doing business in Texas: liability for franchise tax. The amendment cross-references §3.414 of this title, and the Tax Code, §171.084, which give the requirements for exemption of certain trade show participants.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or on small businesses as a result of enforcing or administering the section.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of the trade show exemption process. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Teresa Van De Walle, Supervisor, Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Tax Code, Title 2.

§3.406. *Foreign Corporations Doing Business in Texas: Liability for Franchise Tax.*

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

(d) See §3.414 of this title (relating to Exemption for Certain Trade Show Participants) for information concerning exemption under the Tax Code, §171.084.

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 17, 1987.

TRD-8707993 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
October 26, 1987
For further information, please call
(512) 463-4004.



★ 34 TAC §3.414

The Office of the Comptroller of Public Accounts proposes new §3.414, concerning exemption for certain trade show participants. The new section explains the franchise tax exemption for certain trade show participants which was added to the Tax Code, §171.084.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or on small businesses as a result of enforcing or administering the section.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of the trade show exemption process. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Teresa Van De Walle, Supervisor, Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Tax Code, Title 2.

§3.414. *Exemption for Certain Trade Show Participants.*

(a) Trade show exemption. This section is concerned only with the exemption under the Tax Code, §171.084. See the Tax Code, §171.084, for the requirements for exemption for certain foreign corporations which participate in trade shows in Texas.

(b) Other exemptions. Section 3.399 of this title (relating to Franchise Tax Exemptions) does not apply to the exemption under the Tax Code, §171.084.

(c) Notification to comptroller. Corporations need not apply for an exemption under the Tax Code, §171.084.

(1) If a foreign corporation has obtained a certificate of authority or has already notified the comptroller that it is doing business in Texas, the corporation must notify the comptroller in writing by the due date of the first report for which the corporation is exempt that the report and pay-

ment are not due because the corporation is exempt under the Tax Code, §171.084. After such notification, the corporation must notify the comptroller in writing only when the corporation no longer qualifies for exemption.

(2) If a foreign corporation has not obtained a certificate of authority and if the corporation has not notified the comptroller that it is doing business in Texas, the corporation must notify the comptroller in writing only when the corporation no longer qualifies for exemption under the Tax Code, §171.084. There is no need to apply for exemption as long as the corporation qualifies for the exemption.

(d) Solicitation periods. If the solicitation of orders is conducted during more than five periods during the business period of the corporation upon which a tax report is based as set out in the Tax Code, §171.153, the corporation does not qualify for exemption. For example, assume the following corporations meet the requirements of the Tax Code, §171.084, except possibly the number of periods during which they solicit orders.

(1) A corporation with its fiscal year ending December 31, 1987, which filed a 1987 annual report, will not have to file and pay a 1988 annual report if it did not solicit orders for more than five periods during 1987.

(2) Assume a foreign corporation participated in its first trade show in Texas on April 1, 1987, and had not previously obtained a certificate of authority. It also participated in trade shows in 1988 on January 1, March 1, May 1, June 1, August 1, and October 1. The corporation's fiscal year ends are December 31, 1987 and 1988. The corporation would be exempt for its initial report and payment (covering the tax periods from April 1, 1987-April 30, 1989) because it only solicited for three periods from April 1, 1987-March 31, 1988 (i.e., the period upon which the initial period is based). The corporation would be required to file a 1989 annual report and pay tax, however, because it solicited for six periods from January 1, 1988-December 31, 1988 (i.e., the period upon which the 1989 annual report is based).

(e) One hundred twenty hours. A solicitation period may not exceed 120 consecutive hours. If the solicitation of orders is conducted during a single period of more than 120 consecutive hours, the corporation does not qualify for exemption. For example, a corporation which meets the other requirements of the Tax Code, §171.084, will meet the 120 hours requirement if the solicitation occurs Monday-Friday, but will not meet the 120 hours requirement if the solicitation occurs Monday-Saturday.

(f) Effective dates. The exemption provided by the Tax Code, §171.084, is effective for 1988 annual reports and initial reports originally due on or after January 1, 1988.

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 17, 1987.

TRD-8707994 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
October 26, 1987

For further information, please call
(512) 463-4004.



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Objective, Mission, and Program

★ 37 TAC §1.4

The Texas Department of Public Safety proposes an amendment to §1.4, concerning programs under the Traffic Law Enforcement Division. The amendment changes the section title to more accurately describe the programs of the department that are under the Traffic Law Enforcement Division, which also includes the regional commands. The amendment also adds subsection (h), which identifies the sections of the Motor Carrier Bureau as the Motor Carrier Safety Section and the Motor Carrier Lease Section.

Melvin C. Peebles, assistant chief of fiscal affairs, 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.

Dudley M. Thomas, chief of traffic law enforcement, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification to the public of the organization of the Motor Carrier Bureau and its supporting operating sections. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Government Code, §§411.004(3), 411.006(4), and 411.015, which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the

department's work. The director, subject to the approval of the commission, shall have the authority to adopt rules considered necessary for the control of the department.

§1.4. Programs Under Traffic Law Enforcement Division [Regional Commands].

(a)-(g) (No change.)

(h) **Motor carrier bureau. The program of the motor carrier bureau is to provide administrative support applicable to the license and weight service relative to safety and lease. This program consists of the following sections.**

(1) **The motor carrier safety section will provide the support to administer the motor carrier safety requirements.**

(2) **The motor carrier lease section will administer the lease law and provide record administrative support to license and weight service.**

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 16, 1987.

TRD-8707963 Leo E. Gossett
Director
Texas Department of
Public Safety

Earliest possible date of adoption:
October 26, 1987

For further information, please call
(512) 465-2000.



Professional Conduct

★ 37 TAC §1.114

The Texas Department of Public Safety proposes new §1.114, concerning major infractions applicable to any member. The new section complies with recently enacted legislation and lists major infractions which may be deemed sufficient cause for the discharge, suspension, demotion, or removal of any member of the Department of Public Safety.

Melvin C. Peebles, assistant chief of fiscal affairs, 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.

John C. West, general counsel, 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 to the public that proper action will be taken against any member of the department committing a major infraction which is not considered professional conduct. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new section is proposed under the Government Code, §411.004(3); Texas Civil Statutes, Article 4413(9), as amended by House Bill 1938, 70th Legislature, 1987, Chapter 361, which provides the Public Safety Commission with the authority to adopt rules considered necessary for carrying out the department's work. The director shall adopt rules, subject to commission approval, considered necessary for the control of the department.

§1.114. Major Infraction Applicable to Any Member.

(a) In compliance with the mandate of the legislature in House Bill 1938, 70th Legislature, 1987, Chapter 361, the Public Safety Commission adopted the rule set out in subsection (b) of this section, which said rule shall be applicable in all cases of the discharge, suspension, or demotion of any member of the department.

(b) Any of the major infractions listed as follows may be deemed sufficient cause

for the discharge, suspension, demotion, or removal of any member of the Department of Public Safety:

- (1) failure to abide by the Code and Canons of Ethics;
- (2) violation of one or more of the ten general orders;
- (3) violation of any rule, order, requirement, or failure to follow instructions contained in department manuals;
- (4) willful disobedience to any legal order properly issued to him by any superior officer to the department;
- (5) willful neglect of duty;
- (6) making public any investigation or proposed movement or business of the department to any unauthorized person;
- (7) unnecessary and unwarranted violence to a citizen or person under arrest;
- (8) use of indecent, profane, or harsh language while on duty or in uniform;
- (9) unauthorized attendance while on duty at official legislative sessions;
- (10) willful or inexcusable destruction or loss of state property;
- (11) violations of law which are willful or inexcusable;

(12) acceptance of fees, gifts, or money contrary to the rules of the department and/or laws of the state; or

(13) any act on or off duty which reflects discredit to the Department of Public Safety.

(c) The terms contained herein are those which appear in §§1.111-1.113 of this title (relating to Professional Conduct) and are intended by the Public Safety Commission to reflect and refer to those provisions.

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 14, 1987.

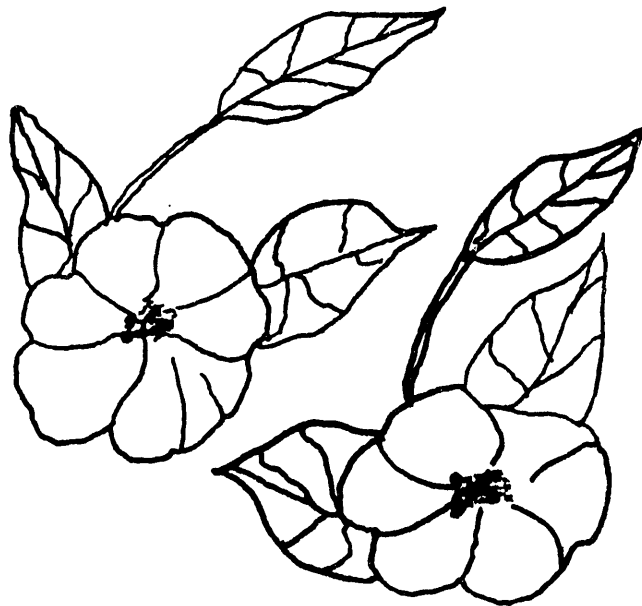
TRD-8707961

Leo E. Gossett
Director
Texas Department of
Public Safety

Earliest possible date of adoption:
October 26, 1987
For further information, please call
(512) 465-2000.



Flower



Name: Adriana Lopez
Grade: 6
School: Clifton Middle School, Houston

Morning Glories

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 9. Liquefied Petroleum Gas Division

Subchapter A. General

Applicability and Requirements

★ 16 TAC §9.15

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.15, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March 17, 1987, issue of the *Texas Register* (12 TexReg 879).

TRD-8708016
Filed: September 18, 1987



Subchapter D. Division II

★ 16 TAC §9.99

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.99, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March 17, 1987, issue of the *Texas Register* (12 TexReg 879).

TRD-8708017
Filed: September 18, 1987



Subchapter E. Division III

★ 16 TAC §9.130

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.130, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March

17, 1987, issue of the *Texas Register* (12 TexReg 880).

TRD-8708018
Filed: September 18, 1987



Subchapter F. Division IV

★ 16 TAC §9.155

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.155, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March 17, 1987, issue of the *Texas Register* (12 TexReg 880).

TRD-8708019
Filed: September 18, 1987



Subchapter K. Division IX

★ 16 TAC §9.261

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.261, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March 17, 1987, issue of the *Texas Register* (12 TexReg 881).

TRD-8708020
Filed: September 18, 1987



★ 16 TAC §9.265

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.265, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March

17, 1987, issue of the *Texas Register* (12 TexReg 882).

TRD-8708021
Filed: September 18, 1987



Subchapter M. Division XI

★ 16 TAC §9.301

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §9.301, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective September 18, 1987. The amendment as proposed appeared in the March 17, 1987, issue of the *Texas Register* (12 TexReg 883).

TRD-8708022
Filed: September 18, 1987



TITLE 19. EDUCATION

Part II. Texas Education Agency

Agency

Chapter 141. Teacher Certification

Subchapter N. Emergency Teaching Permits, Special Assignment Permits, and Temporary Classroom Assignment Permits

★ 19 TAC §141.294, §141.295

The Texas Education Agency has withdrawn the emergency effectiveness of amendment to §141.294 and §141.295, concerning the emergency teaching permits, special assignment permits, and temporary classroom assignment permits. The text of the emergency amendment appeared in the July 24, 1987, issue of the *Texas Register* (12 TexReg 2404). The effective date of this withdrawal is October 9, 1987.

Issued in Austin, Texas, on September 18, 1987.

TRD-8708011
Beverly J. Bardsley
Director for Policy
Development
Texas Education Agency

Filed: September 18, 1987
For further information, please call
(512) 463-9212.

**TITLE 28. INSURANCE
Part I. State Board of
Insurance**

**Chapter 21. Trade Practices
Subchapter H. Unfair
Discrimination**

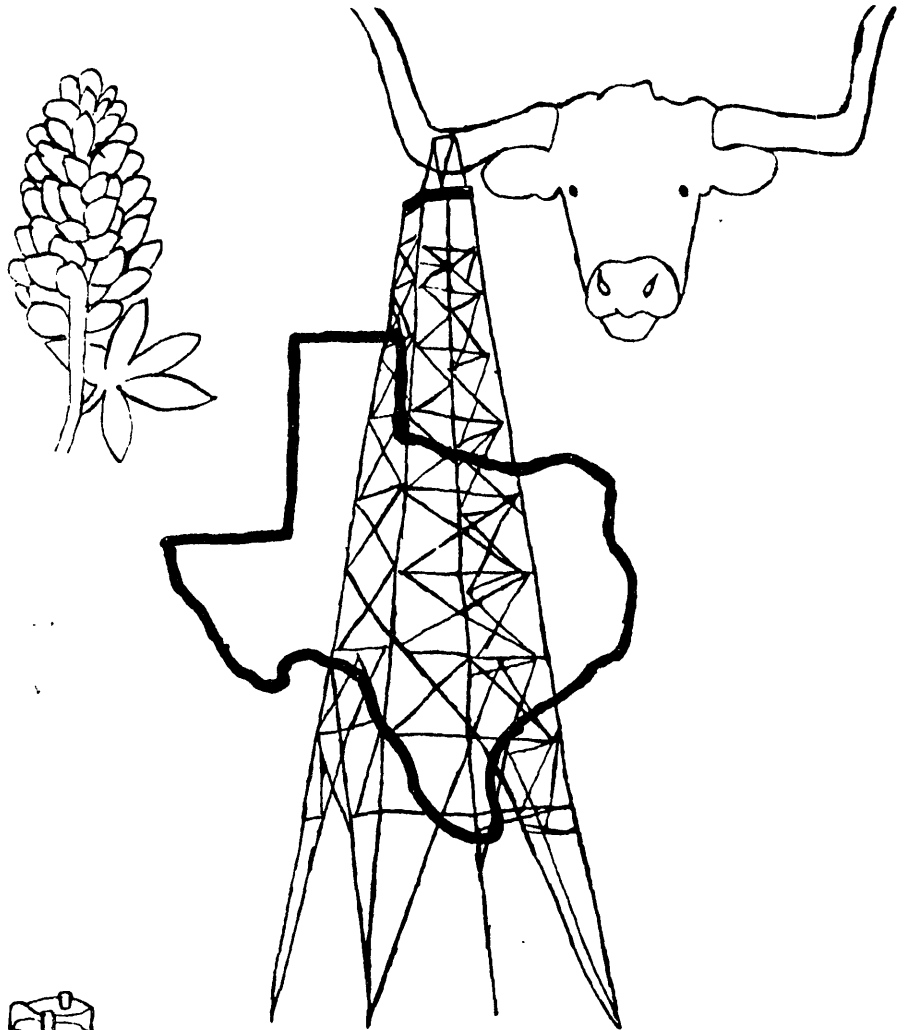
★28 TAC §21.705

The State Board of Insurance has withdrawn from consideration for permanent adoption proposed new section §21.705, concerning unfair discrimination. The text of the proposed new section appeared in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3309). The effective date of this withdrawal is September 18, 1987.

Issued in Austin, Texas, on September 18, 1987.

TRD-8708077 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Filed: September 18, 1987
For further information, please call
(512) 463-6327.



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

**Chapter 291. Water Rates
Subchapter I. Certificates of
Convenience and Necessity**

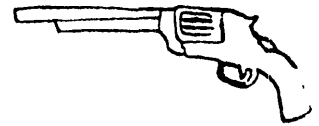
★31 TAC §291.116

The Texas Water Commission has withdrawn the emergency effectiveness of new §291.116, concerning the certificates of convenience and necessity. The text of the emergency new section appeared in the March 27, 1987, issue of the *Texas Register* (12 TexReg 1025). The effective date of this withdrawal is September 18, 1987.

Issued in Austin, Texas, on September 18, 1987.

TRD-8707997 J. D. Head
 Director
 Texas Water
 Commission

Filed: September 18, 1987
For further information, please call
(512) 463-8087.



Darla Stein

Name: Darla Stein
Grade: 8
School: Burnet Jr. High, Burnet

Adopted

Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

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

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 9. Agricultural and Environmental Sciences Division

Nursery and Floral Products

★ 4 TAC §9.6

The Texas Department of Agriculture adopts an amendment to §9.6, without changes to the proposed text published in the August 14, 1987, issue of the *Texas Register* (12 TexReg 2669).

The amendment to §9.6 is adopted in order to comply with the directive of the 70th Legislature, 1987, for the department to set and collect nursery floral inspection fees in the amount of not less than \$25, and not more than \$150; and to bring the cost of certification of nursery floral stock closer to the cost to the state for administering the nursery floral stock certification.

The amendment increases inspection fees for all classes of nursery and floral certificates issued by the department.

The department conducted a public hearing on the proposed increases on September 1, 1987. In attendance were individuals representing the Texas Association of Nurserymen and the Texas Retailers Association. In addition, the department received two letters from representatives of Kroger Food Stores. Comments are summarized as follows. The Texas Association of Nurserymen approves the increase of fees on the condition that part of the fees be used towards more inspections, better quality of inspections, and better service from inspectors. The Texas Retailers Association (TRA) opposed the increases in fees stating that the fees are not justified especially in light of an increase in fees in January, 1987. Further, the TRA commented that the increase looks more like a tax than a user fee because the quality of service has not increased with the increase in fees. Kroger Food Stores commented opposing the fees stating that the increases are unjustified and will cause an undue burden to retailers when added to increases in other state fees and state taxes.

Groups making comments against the amendments are the Texas Retailers Association and Kroger Food Stores. The Texas Association of Nurserymen made comments in favor of the amendments with the condition that fees be applied towards better quality of inspections and an increase in the number of inspections.

The department disagrees that the increase in nursery floral inspection fees is unjustified. The department is increasing fees at the directive of the 70th Legislature, 1987, to increase the percentage of the programs covered by fees. While TDA could have established a \$150 fee for all classes, the department instead has used different fees for different classes to reduce the burdens. The fees collected will go back into the nursery floral and related pest management programs and are necessary in order to continue the present level of service.

The department does recognize that there is a need for improvement in the program with high quality inspections followed by enforcement efforts to create proper incentive for compliance. Such changes are currently being evaluated.

The amendments are adopted under the Texas Agriculture Code, §71.056, which provides the Texas Department of Agriculture with the authority to set by rule and collect nursery floral stock inspection fees; and the Appropriations Act, Senate Bill 1, 70th Legislature, 1987, which directs the department to set and collect fees for nursery and floral inspection in an amount from \$25 to \$150.

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 18, 1987.

TRD-8708054

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Effective date: October 9, 1987
Proposal publication date: August 14, 1987
For further information, please call
(512) 463-7583.



TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 75. Curriculum Subchapter E. Well-Balanced Curriculum

★ 19 TAC §75.142

The Texas Education Agency adopts an amendment to §75.142, without changes to the proposed text published in the June 26, 1987, issue of the *Texas Register* (12 TexReg 2040). The amendment allows students to earn high school graduation credit for high school level courses completed in grades seven and/or eight. This change will give students who complete such courses in grades seven and eight more flexibility in their high school curriculum.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the public school curriculum.

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-8708007

W. N. Kirby
Commissioner of
Education

Effective date: October 9, 1987
Proposal publication date: June 26, 1987
For further information, please call
(512) 463-9212.



Subchapter G. Other Provisions

★ 19 TAC §§75.167, 75.169, 75.170

The Texas Education Agency adopts amendments to §§75.167, 75.169, and 75.170. Section 75.170 is adopted with changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2082). Section 75.167 and §75.169 are adopted without changes and will not be republished.

In §75.170, references to subsections (a) and (b) have been added to subsection (c) for clarification. The requirement that districts have policies including criteria for entry into high school courses has been retained.

The amendment to §75.167 authorizes high school credit for college courses from institutions of higher education which are accredited by one of the regional accrediting associations listed in this section. Currently, the section lists only the Southern Association of Colleges and Schools. This limitation works a hardship on students in West Texas, who may take college courses in New Mexico, as well as students who may attend university summer programs in other regions of the United States.

The amendment to §75.169 requires school districts to ensure that records or transcripts of transfer students are evaluated and that such students are promptly placed in appropriate classes.

The amendment to §75.170, concerning placement of students, requires school districts to have policies that include specific criteria for placement, to ensure that students in need of remedial instruction are placed in appropriate courses and that all students are placed in academically challenging courses. The principal or his or her designee must ensure that criteria for placement in remedial courses have been met before a student is placed in such a course or courses.

Several individuals from school districts expressed concern about the proposed deletion of the requirement that districts specify criteria for entry into high school courses (including prerequisites) as opposed to just for remedial courses. The requirement has been retained in the adopted section.

These amendments are adopted under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the public school curriculum.

§75.170. School District Policy on Grading, Promotion, Retention, Remediation, and Placement.

(a) Each school district board of trustees shall establish policies on grading, promotion, retention, remediation, and placement of students based upon mastery of prerequisite essential elements as required by §75.193(a) of this title (relating to Grade Level Advancement and Course Credit). Each board of trustees shall be charged with the responsibility of providing a policy ensuring mastery of the essential elements of each subject or course of study. In addition, each board shall establish an acceptable procedure to reteach nonmastering students.

(b) (No change.)

(c) Districts are expected to set levels of mastery to ensure that each student is challenged to perform at a level commensurate with his/her ability.

The policies adopted pursuant to subsections (a) and (b) of this section shall identify all alternative programs available and the criteria for placement in each alternative program. The principal or his or her designee shall determine that such criteria have been met prior to the student's being placed in an alternative program. For these purposes, alternative programs shall be deemed to be lower level or remedial courses including: Correlated Language Arts I-IV; Fundamentals of Mathematics; Consumer Mathematics; Introductory Biology; and Introductory Physical Sciences. The identified alternative program shall have the probability of meeting academic needs of students based upon achievement data and ongoing evaluation. The policies adopted pursuant to subsections (a) and (b) of this section shall include specific criteria for entry into high school courses. Students shall be placed in academically challenging courses.

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

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

Issued in Austin, Texas, on September 15, 1987.

TRD-8708001

W. N. Kirby
Commissioner of
Education

Effective date: October 9, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 463-9212.

Chapter 137. Teacher Education

Subchapter M. 1984 Program Requirements for Preparation of School Personnel for Provisional Certificates and Endorsements

★ 19 TAC §137.560

The Texas Education Agency adopts the repeal of §137.560, without changes to the proposed text published in the June 26, 1987, issue of the *Texas Register* (12 TexReg 2040).

The effective date for these requirements are now contained in §137.41, concerning general provisions.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §13.032(a), which directs the State Board of Education to make rules for issuance of teacher certificates and the standards and procedures for the approval or disapproval of colleges and universities offering programs of teacher education.

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

Issued in Austin, Texas, on September 15, 1987.

TRD-8708008

W. N. Kirby
Commissioner of
Education

Effective date: October 9, 1987
Proposal publication date: June 26, 1987
For further information, please call
(512) 463-9212.

Chapter 141. Teacher Certification

Subchapter N. Emergency Teaching Permits, Special Assignment Permits, and Temporary Classroom Assignment Permits

★ 19 TAC §141.294, §141.295

The Texas Education Agency adopts amendments to §141.294 and §141.295. Section 141.295 is adopted with changes to the proposed text published in the June 26, 1987, issue of the *Texas Register* (12 TexReg 2041). Section 141.294 is adopted without changes and will not be republished.

In §141.295(i)(2)(B), a clause (iv) has been added to require evidence of successful performance on the Texas Examination of Current Administrators and Teachers (TECAT) prior to the first renewal of a vocational education emergency teaching permit, beginning with the 1988-1989 school year.

The amendments remove from the Central Education Agency the responsibility for review and approval or disapproval of work experience required of individuals seeking certification to teach in certain vocational programs. The responsibility is transferred to an employing school district or a teacher preparation institution, effective with the 1987-1988 school year.

Comments on the proposed amendments were received from the Texas Vocational Consortium, which expressed concern that the new procedure for approval of work experience includes insufficient quality control.

The 69th Legislature's reduction of appropriations for the Central Education Agency included the elimination of 10 positions in the Division of Vocational Finance and Compliance, which means the agency is no longer able to evaluate individual statements of qualifications. Staff will briefly review each statement of qualifications before an emergency permit is issued and will review statements of qualifications in local school districts as part of monitoring efforts. This is the

best approach possible within resources available.

The amendments are adopted under the Texas Education Code, §13.032(a), which directs the State Board of Education to make rules concerning the issuance of teacher certificates.

§141.295. *Vocational Education Emergency Teaching Permits: Requirements and Procedures.*

(a)-(g) (No change.)

(h) Application procedure for original vocational emergency teaching permit.

(1) A statement of qualifications verifying appropriate work experience as specified in this section must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate sought prior to placement of a teacher in a vocational assignment.

(2) (No change.)

(3) The superintendent of the employing school district shall submit within 30 days of employment an application for the permit, copy of the deficiency plan, copy of the approved statement of qualifications, official transcripts (if applicable), and fee to the Division of Teacher Certification.

(4) If, upon receipt and review of the documents by the Division of Teacher Certification, it is determined that the permit cannot be authorized, the superintendent will be notified within 30 days.

(i) Application procedures for renewal of a vocational emergency teaching permit.

(1) One emergency teaching permit renewal is available for vocational education areas, provided that all requirements for renewal are completed. Two permit renewals are available in areas requiring the completion of an approved teacher education program.

(2) The superintendent of a public school district is authorized to renew emergency teaching permits for vocational education areas, provided that the following renewal requirements and procedures are met.

(A) The permit is renewed for the same assignment in the same school district as the initial permit.

(B) An emergency teaching permit for vocational education areas is renewed by placing the following items in the teacher's personnel file in the local district office:

(i) verification of one year of successful teaching in the vocational program for which renewal is activated;

(ii) appropriate renewal form completed on reverse side of the original emergency teaching/special assignment permit form prior to beginning date of teaching duties;

(iii) official transcript(s) showing a minimum of six semester hours or 1/2 of the deficiencies, whichever is greater, for the target certificate have been completed each year; and

(iv) effective with the beginning of the 1988-1989 school year, evidence of successful performance on the Texas Examination of Current Administrators and Teachers (TECAT) prior to the first renewal of the permit.

(3) Request for renewal for emergency teaching permits for vocational education areas must be submitted to the Division of Teacher Certification when:

(A) all renewal requirements have not been completed;

(B) the renewal is for a change of assignment or school district or both; or

(C) the renewal is for nonconsecutive years.

(4) The following items must be submitted with the renewal request:

(A) a duplicate of an emergency teaching/special assignment permit form completed prior to the date the individual's teaching duties began;

(B) designated fee;

(C) deficiency plan for completion of certificate requirements; and

(D) official transcripts of credits completed after issuance of initial permit.

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-8708009

W. N. Kirby
Commissioner of
Education

Effective date: October 9, 1987

Proposal publication date: June 26, 1987

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

Subchapter S. Testing Program Tests Required for Initial Certification and/or Continued Certification

★19 TAC §141.442

The Texas Education Agency adopts an amendment to §141.442, with changes to the proposed text published in the June 26, 1987, issue of the *Texas Register* (12 TexReg 2042). The changes are editorial only and do not affect the substance of the amendment.

The amendment requires an individual to wait approximately one year (two test administrations) before retaking the Texas Examination of Current Administrators and Teachers (TECAT) after two unsuccessful attempts.

The amendment was adopted on an emergency basis in June and will be effective for the October administration of the test. Notice of the requirement has been given to all examinees who failed the test given in June.

The amendment is adopted under the Texas Education Code, §13.047, which directs the State Board of Education to require satisfactory performance on an examination prescribed by the board as a condition for continued certification.

§141.442. *Reading and Writing Examination for Continued Certification for Teachers and Administrators.*

(a)-(g) (No change.)

(h) A person will be allowed two opportunities to perform satisfactorily on the reading and writing examination specified in §141.421(d) of this title (relating to Testing Requirements). After the second unsuccessful attempt, a person is not eligible for the next two administrations of the test. A person who has not performed successfully on the test prior to June 30, 1987, may attempt the test one additional time before the limitation is applied.

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-8708010

W. N. Kirby
Commission of
Education

Effective date: October 9, 1987

Proposal publication date: June 26, 1987

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

TITLE 22. EXAMINING BOARDS

Part X. Texas Funeral Service Commission

Chapter 201. Licensing and Enforcement-Practice and Procedure

★22 TAC §201.5

The Texas Funeral Service Commission adopts the repeal of §201.5, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2216).

The repeal allows the agency to adopt a new more conclusive section.

A new section is promulgated to require the appealing party to bear the cost of transcripts and appeals of board rulings.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

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

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

Issued in Austin, Texas, on September 18, 1987.

TRD-8708061

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987
Proposal publication date: July 10, 1987
For further information, please call
(512) 834-9992.



The Texas Funeral Service Commission adopts new §201.5, with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 Tex-Reg 2216).

Savings to the taxpayer resulting from imposing the cost of obtaining transcripts on the defendant. The change made to this section is to show that the section applies to contested disciplinary cases.

This new section defines who shall be responsible for the cost of transcripts in contested disciplinary cases.

The Consumer Union commented, stating that the section should be changed to show it applies in disciplinary cases.

The commission agrees and the changes are made.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§201.5. Transcripts and Cost. A party who appeals a final decision in a contested disciplinary case shall pay all of the cost of preparation of any original or certified copy of the record of the agency proceedings that is required to be transmitted to the reviewing court.

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 18, 1987.

TRD-8708062

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987
Proposal publication date: July 10, 1987
For further information, please call
(512) 834-9992.



★22 TAC §201.7

The Texas Funeral Service Commission adopts the repeal of §201.7, without changes to the proposed text published

in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2217).

This section is repealed and resubmitted as a new section since much of the contents of the repealed section are overruled by the Administrative Procedure and Texas Register Act.

The section is repealed and resubmitted as a new section which will be a more concise section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

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

Issued in Austin, Texas, on September 18, 1987.

TRD-8708063

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987
Proposal publication date: July 10, 1987
For further information, please call
(512) 834-9992.



The Texas Funeral Service Commission adopts new §201.7, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 Tex-Reg 2217).

This new section results in more clear identification, within the agency's rules, of the steps involved in filing a complaint.

The new section sets the guidelines for the filing of charges of violations of the laws and rules.

The Consumers Union recommended that complainants should not have to file a complaint under oath.

The new section does not require that a complaint be under oath. Therefore, the agency disagrees with the comment.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

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

Issued in Austin, Texas, on September 18, 1987.

TRD-8708064

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987
Proposal publication date: July 10, 1987
For further information, please call
(512) 834-9992.



★22 TAC §201.8

The Texas Funeral Service Commission adopts an amendment to §201.8, with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2217).

The name of the agency was changed by new legislation. Subsection (e) is not changed, except for this name change.

The amendment correctly shows the agency's name change.

The Consumers Union commented, pointing out the contradiction with the Administrative Procedure and Texas Register Act.

The agency agrees with the comments, and changes are made.

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§201.8. Procedures for the Petition for Adoption of Rules.

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

(1) Commission—Texas Funeral Service Commission

(2) Person—Any individual; partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(3) Rule—Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule. It does not include statements concerning only the internal management or organization of the commission not affecting the private rights or procedures.

(b) Any interested person may submit a petition to the commission requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in printed or typewritten form by the executive director.

(c) (No change.)

(d) The executive director will advise the commission of all requests submitted by interested persons for the adoption, amendment, or repeal of a rule when submitted in accord with this procedure.

(e) The commission will consider within 60 days after the submission of a peti-

tion and may either deny the petition or instruct the executive director to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act, §5. In the event a petition is denied, the executive director will advise the interested person in writing of the denial and will state the reason for the denial of the commission.

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

Issued in Austin, Texas, on September 18, 1987.

TRD-8708065
Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987
Proposal publication date: July 10, 1987
For further information, please call
(512) 834-9992.



★22 TAC §201.11

The Texas Funeral Service Commission adopts new §201.11, with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2219).

The new section provides the commission with guidelines to be used when assessing administrative penalties against individuals and establishments. After receiving comments, some of the range of administrative penalties have been adjusted and subsection (b) is changed to show disciplinary action in addition to the penalties. Also, subsection (b)(4) is changed to show complaints previously found justified instead of filed.

This new section gives the commission guidelines to follow when disciplinary action is taken against apprentices, licensees, and establishments.

The Consumers Union stated that the range of administrative fines needs adjusting, as well as disciplinary action taken in addition to penalties (subsection b) and complaints previously found justified instead of filed (subsection (b)(4)).

After reviewing the comments, the section is changed to incorporate the comments.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§201.11. *Disciplinary Guidelines.*

(a) When the commission finds that an apprentice, individual licensee, or licensed funeral establishment has committed any of the acts or violated any of the provisions of Texas Civil Statutes, Article 4582b, §3(H) or §4(D), or any of the provisions of the rules

and regulations promulgated by authority of that Act, it shall issue a final order imposing appropriate penalties that include the placing on probation, suspension, or revocation of a license and/or administrative penalties ranging from \$100-\$5,000 that are in accordance with the following guidelines:

- (1) §3(H)(1)-(3)—none;
- (2) §3(H)(4)—\$500 to \$5,000;
- (3) §3(H)(5)-(9)—\$1,000 to \$5,000;
- (4) §3(H)(10)—\$100 to \$500;
- (5) §3(H)(11)—\$250 to \$5,000;
- (6) §3(H)(12)—\$500 to \$2,000;
- (7) §3(H)(13)—\$1,000 to \$5,000;
- (8) §3(H)(14)—\$100 to \$500;
- (9) §3(H)(15)—none;
- (10) §3(H)(16)—\$1,000 to \$5,000;
- (11) §3(H)(17)—\$250;
- (12) §3(H)(18)—\$250 to \$1,000;
- (13) §3(H)(19)—\$500 to \$2,000;
- (14) §3(H)(20)—\$1,000 to \$5,000;
- (15) §3(H)(21)-(24)—\$500 to \$5,000;
- (16) §3(H)(25)—\$250 to \$2,000;
- (17) §3(H)(26) and (27)—\$500 to \$5,000;
- (18) §4(D)(1)(a)—\$250 to \$3,000;
- (19) §4(D)(1)(b)—\$500 to \$5,000;
- (20) §4(D)(1)(c)—\$500 to \$3,000;
- (21) §4(D)(1)(d)—\$250 to \$3,000;
- (22) §4(D)(1)(e)—\$250;
- (23) rules—\$250 to \$5,000.

(b) Based upon consideration of the following factors, the commission may impose disciplinary action in addition to the penalties recommended in subsection (a) of this section:

- (1) the severity of the offense;
- (2) the danger of the public;
- (3) the number of repetition of offenses;
- (4) the number of complaints previously found justified against the licensee;
- (5) the length of time the licensee has practiced;
- (6) the actual damage, physical or otherwise, caused by the violations;
- (7) the deterrent effect of the penalty imposed;
- (8) attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations;
- (9) penalties imposed for related offenses;
- (10) any other mitigating or aggravating circumstances.

(c) Penalties imposed by the commission pursuant to subsections (a) and (b) of this section may be imposed for each violation, but may not exceed the following limitations:

- (1) imposition of an administrative penalty not to exceed \$5,000 for each count or separate offense;
- (2) placement of the licensee on probation for a period of time and subject to such conditions as the commission may specify;
- (3) suspension or revocation of a license;

(4) denial of an application for licensure.

(d) The provisions of subsection (a)-(c) of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws.

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 18, 1987.

TRD-8708066
Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987
Proposal publication date: July 10, 1987
For further information, please call
(512) 834-9992.



Chapter 203. Licensing and Enforcement—Specific Substantive Rules

★22 TAC §203.14, §203.16

The Texas Funeral Service Commission adopts new §203.14 and §203.16. Section 203.16 is adopted with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2221). The other section is adopted without changes and will not be republished

The new sections ensure that establishments have the minimum facilities required to operate a proper and sanitary preparation room and have a minimum facility for services as required by law. Section 203.16(1) is deleted.

These new sections clearly define the minimum standards regarding preparation rooms and facilities for funeral services which must be met by funeral establishments for licensure.

The Consumers Union did not feel paragraph (1) should be included, as many small funeral establishments could not comply.

The commission agrees with the comments.

The new section is adopted under Texas Civil Statutes, Article 4582b, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.16. *Clarification of Facilities in Which Funeral Services May Be Conducted.* For the purpose of these sections and Texas Civil Statutes, Article 4582b, §4(C)(1), the facilities in which funeral services may be conducted must meet the following criteria:

- (1) must have reasonable access by the public;

(2) must contain a pulpit, podium, lectern, or table from which a sermon, eulogy, or speech can be given;

(3) must have sufficient space for display and viewing of a casket;

(4) must have seating for a minimum of 10 people.

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 18, 1987.

TRD-8708067

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987

Proposal publication date: July 10, 1987

For further information, please call
(512) 834-9992.



★22 TAC §203.15

The Texas Funeral Service Commission adopts new §203.15, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2222).

This new section clarifies responsibilities, thereby ensuring better service to the consumer. An error as published incorrectly referenced the Prepaid Funeral Benefits Act. The cite should be Article 548b.

This new section specifically defines duties which can only be done by licensees or apprentices and states when the licensee's responsibility ends.

The only comment received from the Consumers Union stated that the reference to the Prepaid Funeral Benefits Act was incorrect. The agency agrees.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

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

Issued in Austin, Texas, on September 18, 1987.

TRD-8708068

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987

Proposal publication date: July 10, 1987

For further information, please call
(512) 834-9992.



★22 TAC §203.17, §203.18

The Texas Funeral Service Commission adopts new §203.17 and §203.18, with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 222).

The new sections better protect the consumer by clarifying what is on a price list and when the price list and contract must be presented. The changes include changing "prospective customer" to "consumer" in §203.18, and changing "such as" to "including, but not limited to" in §203.17.

The new sections clarify items which must be listed on the retail price list and when the price lists and written memorandum or purchase agreements must be presented.

The consumers union recommended changing "such as" to "including, but not limited to," and "prospective customer" to "consumer."

The agency agrees with the comments and changes are made.

The new sections are adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.17. Clarification of Other Itemized Services Provided by Funeral Home Staff. Other itemized services provided by the funeral home staff in Texas Civil Statutes, Article 4582b, §1(S), shall include services of the funeral director and staff which are not included in the prices of other categories on the retail price list or written memorandum which may be furnished by a funeral provider in arranging and supervising a funeral, including, but not limited to, conducting the arrangement conference, planning the funeral, obtaining necessary permits, placing obituary notices, and any other services offered by the funeral establishment.

§203.18. Presentation of Required Price Lists and Written Memorandum or Purchase Agreements. In order to provide the maximum protection to the consuming public, the presentation of required price lists and purchase agreements will be as follows.

(1) The retail price list, which includes the general price list, casket price list, and outer burial enclosure price list, will be presented for retention to any consumer who inquires in person about any funeral service, cremation, or merchandise and prior to the consumer viewing or selecting any merchandise or service.

(2) The written memorandum or funeral purchase agreement must be presented for retention to each person who arranges a funeral, cremation, or other disposition of a dead human body upon the conclusion of the discussion of arrangements.

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 18, 1987.

TRD-8708069

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Effective date: October 9, 1987

Proposal publication date: July 10, 1987

For further information, please call
(512) 834-9992.



★22 TAC §203.19, §203.20

The Texas Funeral Service Commission adopts new §203.19 and §203.20, with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2223).

These new sections improve the ability of the agency to inspect establishments to discover violations of the law. The title of §203.19 is changed. Also, subsection (a) is changed to subsection (b) and a new subsection (a) is added. A provision is added to §203.20 that records must be made available to the next of kin.

These new sections require the retention of documentation of methods taken to gain permission for embalming when permission is oral or cannot be obtained, and where this and all other records required for retention must be physically located.

The Consumers Union recommended changing the title of §203.19 and adding guidelines on documentation when oral permission is received, and amending §203.20 to show records must also be made available to next of kin.

The agency agrees with the comments and changes are made.

The new sections are adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.19. Required Documentation for Embalming.

(a) If oral permission is obtained, specific documentation as to the time permission was obtained and from whom it was obtained should be retained by the funeral establishment.

(b) When oral or written permission to embalm cannot be obtained from persons authorized to make funeral arrangements, methods taken to document reasonable effort over a period of at least two hours to obtain permission must become part of the file on the deceased and retained for a period of two years with the price list, written notices, and memorandum of agreement, subject to inspection by the commission.

§203.20. *Location of Retained Records.* All records required for retention by Texas Civil Statutes, Article 4582b, §3(H) (23) and (25) and §203.13 of this title (relating to Minimum Standards for Embalming), will be maintained for a minimum of two years within the physical confines of the licensed establishment where the funeral arrangements were made. The records must be made available to the Texas Funeral Service Commission through its staff and members or to the next of kin or person authorized for the making of funeral arrangements, during regular business hours and copies must be provided upon request to the commission.

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

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Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

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For further information, please call
(512) 834-9992.



★ 22 TAC §203.21

The Texas Funeral Service Commission adopts new §203.21, with changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2223).

The new section provides better definition of the professional standards of conduct expected of funeral professionals, which will allow better enforcement of the law. In subsection (b)(1), the word "and" is changed to "or."

This new section defines unprofessional conduct for which the commission may take disciplinary action against an apprentice, licensee, or funeral establishment.

The Consumers Union felt that the commission, in enforcing this section, could choose a lesser disciplinary action and continue to provide poor enforcement.

After a meeting with the Consumers Union, the only change indicated was the one submitted.

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.21. *Professional Conduct.*

(a) The commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the commission, and may probate any license suspension if the commission finds that the applicant or licensee has engaged in un-

professional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Texas Civil Statutes, Article 4582b, the adopted rules of the Texas Funeral Service Commission, and applicable health and vital statistic laws and rules;

(2) refusing or failing to keep, maintain, or furnish any record or information required by law or rule;

(3) operating a funeral establishment in an unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a commission employee in the lawful performance of such employee's duties of enforcing Article 4582b and commission rules or instructions;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the commission;

(7) physically abusing or threatening to physically abuse a commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact.

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 18, 1987.

TRD-8708071

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

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Proposal publication date: July 10, 1987

For further information, please call
(512) 834-9992.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IV. School Land Board Chapter 155. Land Resources

★ 31 TAC §155.10

The School Land Board adopts the repeal of §155.10 and new §155.10 is adopted with changes to the proposed text published in the July 24, 1987, issue of the *Texas Register* (12 TexReg 1241). The repeal is adopted without changes and will not be republished.

The new section better enables the board to receive a fair rate of return on coastal public land and to eliminate the inequities created by exclusive use of a fixed fee schedule. By using a fixed fee schedule and adding a subparagraph addressing alternate commercial and industrial rate formulas, the revenues to the permanent school fund will be increased while providing a more equitable fee structure.

The rate schedule for coastal easements is divided into two parts. The section assesses fees based either on a fixed fee schedule or alternate commercial and industrial rate formulas. The previous fixed fee rate structure is preserved for all activity on coastal public lands but commercial or industrial activity. In these two situations, the fee will either be assessed based on the fixed fee schedule or a rate formula as set forth in the subparagraph addressing alternate commercial and industrial rate formulas. Any coastal easement which involves filling state coastal public lands will be assessed under the fill formula set forth in the subparagraph addressing alternate formulas.

The board held four public hearings throughout the state in the month of June, 1987, to receive comments regarding adoption of the repeal and new section. Thereafter, an industry task force was formed and all participants at the public hearings were invited to be part of that task force with the stated purpose of reconciling the various perspectives to the repeal and new section.

A significant number of individuals and groups supported the section reformation and submitted comments stating that the repeal and new section would increase the level of funding to the state educational system; would inhibit development along, and thereby protect, state coastal public lands; and was justified as insuring equity.

The comments opposing implementation of the repeal and new section can be grouped into essentially two categories: concern regarding the economic impact of any rate increase, and concern regarding the viability of implementing the rate formulas as proposed. With regard to the former, comments were received that stated an increase was inopportune dur-

ing the current economic situation in the state and would work as a financial hardship on small marinas, homeowners, and yacht brokers, and cause a ripple effect throughout the boat and tourism industries. Concern regarding the viability of a rate formula was expressed in comments stating the rate formula would give an unfair advantage to new easement holders, give an unfair advantage to old easement holders, introduce financial unpredictability, could not accurately reflect true land values, and should address occupancy factors. Finally, it was suggested that adoption of the repeal and new section should be indefinitely postponed and that private enterprise, if allowed to function, would provide a greater public benefit than the public sector.

The Texas Associations of Classroom Teachers, the Sierra Club (Coastal Bend), and the Texas Federation of Teachers commented in favor of adoption of the repeal and new section. The Gulf Yacht Brokers, the Marina Association of Texas, the Boating Trades Association of Texas, the Clear Lake Chamber of Commerce, and the Rockport Chamber of Commerce commented against adoption of the repeal and new section.

After working with the industry task force, the board has adopted the repeal and a new section addresses the concerns raised by the comments. While any rule which is intended to bring a fair rate of return to the permanent school fund will result in an increase in the rates for coastal easements, the new section only affects easements involving commercial activity. Compared to the proposed version of the new section, the new section, as adopted, significantly reduces the financial impact to those easements. Additionally, the variables that existed in the rate formula, as proposed, are set (i.e. no longer variable) in the new section, as adopted, thus eliminating most of the unpredictability in the formula's application. The appraisals to be relied upon in evaluating coastal public land in the new section are those assessed by the local tax appraisal district. This further reduces uncertainty in the appraisal process. With these changes, the board has addressed the concerns raised by those commenting and the new section, as adopted, provides the greatest public benefit. The board is willing to take additional comments regarding the language of the new section to insure that the true intent of the board is achieved.

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

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 18, 1987.

TRD-8708056 Garry Mauro
Commissioner
General Land Office

Effective date: October 9, 1987
Proposal publication date: July 24, 1987
For further information, please call
(512) 463-5009.



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

§155.10. Coastal Public Land Fees.

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

(1) Adjacent littoral property—The property, specified in the easement application as owned by the easement applicant, that is contiguous and borders the coastal public land upon which the easement is sought.

(2) Appraised market value of adjacent littoral property—Fair market value of the unimproved adjacent littoral property. This value is the appraised value as determined by the appropriate tax appraisal district unless the School Land Board determines that such an appraisal is not reasonable after consultation with the appraisers of the General Land Office.

(3) Average regional slip rate—The average annual per linear foot slip rental rate expressed in dollars as determined by the commissioner of the General Land Office and established October 1 of each year for the year following.

(4) Basin—A structure used for commercial or industrial activity that consists of the area of the state land encumbered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.

(5) Basin formula—The state land encumbered multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

(6) Channel—A structure on coastal public lands that enhances access to littoral property. This definition applies only to commercial and industrial activity and ex-

cludes any structure that would be included in the definition of fill area or basin.

(7) Channel density formula—Total linear feet of the applicant's marina boat slips multiplied by the average regional slip rate multiplied by the regional slip occupancy multiplied by the rate of return.

(8) Commercial activity—Activity which is designed to enhance or accommodate a profit-making venture or is associated with a revenue generating activity. This definition excludes industrial activity and the marina and channel activities of a homeowners association.

(9) Evaluation fee—A one time easement evaluation fee assessed upon the granting of the initial easement not to exceed 1.5% of the value of the state land encumbered. The value of the state land encumbered equals the state land encumbered multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount.

(10) Fill area—A structure that permanently and fully encumbers, and entirely displaces the water covering, the coastal public land. This activity includes the construction and maintenance of breakwaters, jetties, groins, and bulkheads.

(11) Fill formula—State land encumbered multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

(12) Homeowner association—An association whose individual members hold full and exclusive legal title to residential dwellings within an adjacent littoral property area specifically defined in the easement application and are thereby entitled to sole and exclusive use of the rights and privileges of an easement for coastal public land granted by the State of Texas.

(13) Industrial Activity—A use of coastal public land unassociated with private activity that facilitates and is ancillary to a manufacturing, processing, or gathering facility.

(14) Industrial activity formula—Industrially encumbered state land multiplied by the appraised market value of the unimproved adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

(15) Industrially encumbered state land—The state coastal public land encumbered by industrial activity expressed in square feet as determined by General Land Office appraisers after consultation with the user.

(16) Mineral interest holder—Holder of a state mineral lease who plans to dredge on state-owned coastal lands outside the state leasehold tract to obtain access to the state leasehold tract.

(17) New dredging—Dredging which is not under current permit with the General Land Office. If the fixed rate schedule is used, the new dredging rate is charged for the first year, and the maintenance dredging fee is charged for each subsequent

year of the easement term.

(18) Private activity—Activity which is not performed by a public entity, is not designed to enhance or accommodate a profit making venture, and is not associated with a revenue generating activity. This definition specifically includes the marina and channel activities of a homeowners association.

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

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

(21) Rate of return—6.0%.

(22) Regional slip occupancy—The percentage of actual marina boat slips rented in relation to the total number of commercially available slips in the given region as determined by the commissioner of the General Land Office and established October 1 of each year for the year following.

(23) Return on investment—A five year average of the return on investments of the permanent school fund. This figure is currently 9.0% (an average of the return on investments for the period 1981-1986) and will be adjusted annually on October 1 of each year for the year following.

(24) State land encumbered—The amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

(25) Structure—As defined in the Natural Resources Code, §33.004.

(26) Submerged land discount—40% when the easement is a basin, and 30% when the basin formula is applied to a commercial channel.

(b) Coastal fees. The School Land Board will charge the following fees for coastal leases, coastal easements, and structure registrations. On coastal easement fees, the School Land Board will charge a fee based on either the fixed fee schedule or the alternate commercial and industrial formulas as delineated in paragraphs 1(A) and (B) of this subsection. In the event that the fixed fee schedule is applied on a coastal easement, the alternate commercial and industrial formulas will not be applied to the same coastal easement. Only one easement will be issued for each project. The alternate commercial and industrial formulas may only be applied to commercial or industrial activity. The fill formula will be applied to any fill activity.

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

(A) Private activity:

(i) filing fee—\$5.00;

(ii) annual fee—\$5.00 mini-

mum or negotiable.

(B) Commercial activity:

(i) filing fee—\$50;

(ii) annual fee—\$100 minimum or negotiable.

(C) Public activity:

(i) filing fee—\$5.00;

(ii) annual fee—no charge.

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

(A) Filing fee—\$5.00.

(B) Annual Fee—no charge.

(3) Coastal easement fees.

(A) Fixed Fee Schedule.

(i) Piers and Docks.

(I) Private activity less than or equal to 300 feet long and less than 2,500 square feet in area:

(-a-) filing fee—\$5.00;

(-b-) annual fee—no

charge.

(II) Private activity greater than 300 feet long and/or greater than 2,500 square feet in area:

(-a-) filing fee—\$50;

(-b-) annual fee—\$.10 per

square foot for all area greater than 300 feet long and/or greater than 2,500 square feet in area/\$100 minimum.

(III) Public activity:

(-a-) filing fee—\$5.00;

(-b-) annual fee—no

charge.

(IV) Commercial:

(-a-) filing fee—\$50;

(-b-) annual fee—\$.20 per

square/\$100 minimum.

(ii) Marinas.

(I) Clear Lake:

(-a-) filing fee—\$50;

(-b-) annual fee—\$4.00

per boat slip linear foot.

(II) Other:

(-a-) filing fee—\$50;

(-b-) annual fee—\$3.00

per boat slip linear foot.

(iii) Wharf.

(I) Filing fee—\$50.

(II) Annual fee—\$.30 per square foot/\$100 minimum.

(iv) Breakwaters, jetties,

groins.

(I) Private activity involving a structure less than 30 feet long:

(-a-) filing fee—\$5.00;

(-b-) annual fee—no

charge.

(II) Private activity involving a structure greater than 300 feet in length:

(-a-) filing fee—\$50;

(-b-) annual fee—\$.10 per

square foot/\$25 minimum.

(III) Public activity:

(-a-) filing fee—\$5.00;

(-b-) annual fee—no

charge.

(IV) Commercial activity:

(-a-) filing fee—\$50;

(-b-) annual fee—\$.20 per

square foot/\$100 minimum.

(v) Dredging.

(I) Mineral interest holder:

(-a-) filing fee—\$50;

(-b-) annual fee:

(-1-) first year fee for new dredging—\$.02 per square foot/\$100 minimum;

(-2-) maintenance dredging after first year of easement—\$.005 per square foot.

(II) Private activity:

(-a-) filing fee—\$50;

(-b-) annual fee:

(-1-) first year fee for new dredging—\$.03 per square foot/\$100 minimum;

(-2-) maintenance dredging after first year of easement—\$.005 per square foot/\$100 minimum.

(III) Public activity:

(-a-) filing fee—\$5.00;

(-b-) new or maintenance

dredging—no charge.

(IV) Commercial activity:

(-a-) filing fee—\$50;

(-b-) annual fee:

(-1-) first year fee for new dredging—\$.05 per square foot/\$100 minimum;

(-2-) maintenance dredging after first year of easement—\$.01 per square foot/\$100 minimum.

(B) Alternate commercial and industrial rate formulas.

(i) Channel: commercial activity.

(I) Filing fee—\$50;

(II) Annual fee—channel density formula, or, if channel does not provide access for marina, basin formula.

(III) Evaluation fee—as defined.

(ii) Basin: commercial and industrial activity.

(I) Industrial activity:

(-a-) filing fee—\$50;

(-b-) annual fee—indus-

trial activity formula;

(-c-) evaluation fee—as defined.

(II) Commercial activity:

(-a-) filing fee—\$50;

(-b-) annual fee—basin

formula;

(-c-) evaluation fee—as defined.

(iii) Fill area: all activity.

(I) Private activity/public activity:

(-a-) filing fee—\$50;

(-b-) annual fee—\$.10 per

square foot, \$25 minimum, or fill formula;

(-c-) evaluation fee—as defined.

(II) Commercial/industrial:

(-a-) filing fee—\$50;

(-b-) annual fee—\$.20 per square foot, \$100 minimum, or fill formula;

(-c-) evaluation fee—as defined.

(4) Cabin permits.

(A) Fees:

(i) refundable deposit—\$200;

(ii) annual fee, per square foot of floor space (roofed and unroofed) excluding piers, docks, and walkways—\$.60;

(iii) contract renewal—\$175;

(iv) assignment—\$125;

(v) permit reissuance—\$325;

(iv) late payment penalty—10% of annual rent.

(B) Term—not to exceed five years.

(C) The permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.

(c) Term. The term for all coastal leases and coastal easements not previously specified is negotiable. School Land Board approval is required prior to construction.

(d) Rental adjustments.

(1) Methods.

(A) Fill area and basin. At every five-year interval in the term of the easement, the rental fees determined by either the basin formula, industrial activity formula, or fill formula will be adjusted by redetermining the appraised market value of the adjacent littoral property. The rental payment will be determined by the applicable rate formula used in determining the original rate.

(B) Channel.

(i) Five year adjustment. At every five year interval in the term of a channel easement, the rental fee for the easement will be adjusted. If the basin formula was used to determine the original easement fee, the fee will be adjusted by redetermining the appraised market value of the adjacent littoral property, and inserting the new value into the basin formula. If the channel density formula was used to determine the original easement fee, the fee will be adjusted by redetermination of the average regional slip rate and the regional slip occupancy, effective on the date of the readjustment, and recomputation of the channel density formula with the new values and the channel maintenance discount.

(ii) Channel maintenance discount. The first year fee for channel easements, determined by either the channel density formula or the basin formula, will be 100% of the value determined by the applicable formula and for the second and all subsequent years of the easement, the rental fee will be 75% of the value determined by the applicable formula including any readjustments.

(2) Minimum and maximum adjustment. All rental adjustments determined by reappraisal of the adjacent littoral property can increase by no more than 40% of the previous five years' rental nor by less than 20% of the previous five years' rental. This subsection is subject to School Land Board's discretionary authority.

(e) Discretionary authority. The School Land Board may reduce or waive any fee set forth herein if such action would be in the best interest of the permanent school fund as determined by the School Land Board.

(f) Implementation.

(1) Graduated payment schedule. A graduated payment schedule shall be implemented with regard to the applicable rate formula such that upon granting a new or upon renewal of a coastal easement the School Land Board shall charge 20% of the fee rate for the first year after the effective date hereof, 40% of the fee rate for the second year after the effective date hereof, 60% of the fee rate for the third year after the effective date hereof, 80% of the fee rate for the fourth year after the effective date hereof, and 100% of the fee rate for the fifth year after the effective date hereof and all subsequent years of the coastal easement. The graduated payment schedule for the applicable rate formula shall not apply to any coastal easements granted after September 30, 1992, or to any state encumbered land which the graduated payment schedule provided in this subsection has previously been applied. Notwithstanding anything to the contrary in this subsection, the graduated payment shall not be less than any annual payment for the same easement at the applicable fixed fee.

(2) New residential developments.

Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to private use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the General Land Office, may pay a conversion fee not to exceed 5.0% of the appraised market value of the unit and have the easement fee reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the private activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a private activity rate will be granted without the payment of the conversion fee.

(3) Additional terms. The commissioner of the General Land Office may re-

quire, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.

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 18, 1987.

TRD-8708057

Garry Mauro
Commissioner
General Land Office

Effective date: October 9, 1987

Proposal publication date: July 24, 1987

For further information, please call

(512) 463-5009.



Part X. Texas Water Development Board Chapter 363. Rules Relating to Financial Programs Introductory Provisions

★ 31 TAC §363.2

The Texas Water Development Board adopts an amendment to §363.2 without changes to the proposed text published in the August 14, 1987, issue of the *Texas Register* (12 TexReg 2671). The amendment removes the definition of the term "lending rate" from the section because it is inaccurate after the passage of Senate Bill 259 by the 70th Legislature, 1987, which removes the statutorily set lending rate and allows the board to establish a lending rate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §6.101, and Senate Bill 259, 70th Legislature, 1987, which authorizes the board to adopt rules necessary to carry out its powers and duties.

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

Issued in Austin, Texas, on September 18, 1987.

TRD-8708050

Nancy Matchus
Assistant General
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Texas Water
Development Board

Effective date: October 9, 1987

Proposal publication date: August 14, 1987

For further information, please call

(512) 463-7850.



Policy Declarations

★31 TAC §363.38

The Texas Water Development Board adopts new §363.38, with changes to the proposed text published in the August 14, 1987, issue of the *Texas Register* (12 Tex-Reg 2671). This new section adopts a new board policy concerning its lending rate.

Senate Bill 259, passed by the 70th Legislature, 1987, removes the statutorily set lending rate and allows the board to establish a lending rate for its loans. The new section establishes the policy for determination of such lending rate, which may vary with individual loans based on the loan maturity and type of loan, among other factors. The board enacted a similar section on May 21, 1987, on an emergency basis. In the second sentence in subsection (c), the word "will" is changed to the word "may" in order to afford the board full discretion in setting lending rates for special projects.

No comments were received regarding adoption of the new section.

The new section is adopted under the Water Code, §6.101, which authorizes the board to adopt rules necessary to carry out its powers and duties; and Senate Bill 259, 70th Legislature, 1987.

§363.38. *Lending Rate.*

(a) Policy. It is the policy of the board through the implementation of the lending rate to serve the communities of the state by passing on the credit of the state to political subdivisions in the form of loans with interest rates which reflect the state's cost of funds. The board will establish rate scales for each maturity of loans to political subdivisions. In establishing the lending rate scales, the board will take into account the true interest cost of the money to the state, including issuance costs and the risks associated with the operation of the financial assistance program. The board will continuously review the lending rate scale, in light of current market conditions, and should there be substantial changes in market conditions, alter the scale if changes are necessary.

(b) Implementation. The rate scale applied may be determined by the type of project and/or the type of pledge received. The projects will be divided into three groups: the first group will include water development projects; the second includes water quality enhancement projects; and the third includes flood control projects. Within these groups, scales may be categorized by the type of pledge received. The board reserves the right to determine the lending rate scale applied and maturity schedule for each loan.

(c) Special projects. The board may, from time to time, be approached by political subdivisions with proposed projects which may require special financing by the board. Because of the special and unusual characteristics of these projects, separate

lending rates for these projects may be established to fit the special circumstance that may be applicable to these projects.

(d) Two hundred seventy-day commitment. The board, from time to time, finds itself in a position of investing idle bond proceeds at a rate substantially below the cost of bond proceeds. For this reason, financial assistance commitments will remain in effect for no longer than 270 days; however, the applicant may request that the board extend this commitment beyond the original 270 days. If the board extends the loan commitment beyond the 270 days, it reserves the right to assess a fee for these extensions. Each fee will be established on a case-by-case basis after board consideration and approval.

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 18, 1987.

TRD-8708051 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: October 9, 1987
Proposal publication date: August 14, 1987
For further information, please call
(512) 463-7850.



Formal Action by the Board

★31 TAC §363.72

The Texas Water Development Board adopts an amendment to §363.72, without changes to the proposed text published in the August 14, 1987, issue of the *Texas Register* (12 TexReg 2672). This section had indicated that the board's commitment for financial assistance expires 360 days after the board's action making the commitment, unless extended. The amendment changes the 360-day commitment period to 270 days, and indicates that the development fund manager could recommend that the board assess a fee of the applicant for any extension.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §6.101; and Senate Bill 259, 70th Legislature, 1987, which authorizes the board to adopt rules necessary to carry out its powers and duties.

§363.72. *Action of the Board on Application.* At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of the application. If the board commits itself to participate in the project, such commitment for financial assistance shall expire 270 days after the board's action making the commitment, un-

less another time for expiration of the commitment is stated by the board or the period of time for expiration of the commitment is extended by the board. Any extension must be requested of the board by application filed with the development fund manager. Prior to referring such request to the board for consideration, the development fund manager may require the refiling of or updating of information contained in the original application. After such information is provided, the development fund manager will refer the request to the board along with his recommendation, including whether a fee should be assessed the applicant for the extension, and amount of any such fee. Notice of the time and place of board consideration will be given to the applicant's designated representative.

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 18, 1987.

TRD-8708052 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: October 9, 1987
Proposal publication date: August 14, 1987
For further information, please call
(512) 463-7850.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter W. Medicare Benefits and Buy-In

★40 TAC §15.2203

The Texas Department of Human Services (DHS) adopts an amendment to §15.2203 without changes to the proposed text published in the July, 17, 1987, issue of the *Texas Register* (12 TexReg 2332).

The amendment is necessary to help ensure that private insurance, tort settlements, and other third party resources (TPRs) pay for their share of clients' medical services, thereby saving Medicaid dollars.

The amendment will function by specifying that public law requires individuals to cooperate in reporting TPR information and to assign TPR benefits to the department, and that this cooperation is a condition of Medicaid eligibility.

No comments were received regarding the adoption of the amendment.

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 17, 1987.

TRD-8707981

Marlin W. Johnston
Commissioner
Texas Department
of Human Services

Effective date: November 1, 1987

Proposal publication date: July 17, 1987

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



Part IX. Texas Department on Aging Chapter 267. Nutrition Services Standards

★ 40 TAC §§267.1-267.12

The Texas Department on Aging adopts new §§267.1-267.12. New §§267.1-267.11 are adopted with changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1739). New §267.12 is adopted without changes and will not be republished.

The new sections detail the quality of service expected from service providers who provide meals prescribed by the Older Americans Act, Titles III C1 and C2, and govern the minimum level of quality of service for these meals, requirements for staff, training, and facilities. The new sections also detail the responsibilities of area agencies on aging and grantees regarding these services; and the responsibilities of the Texas Department on Aging in overseeing the operation of nutrition services funded under the Older Americans Act and the Omnibus Hunger Act of 1985.

The new sections provide the standardization of nutrition services by service providers to establish comparable levels of services for the elderly throughout the state and improvement of existing services through uniform review of service providers.

A number of comments were received regarding adoption of the new sections. Many of the comments were related to the same paragraph. Consequently, a summation of these comments is provided by paragraph commented upon. The department has indicated instances where wording is altered based on these comments.

Regarding the definition of the word "homebound" in §267.1, it was suggested that the definition not address the existence of support systems. The department feels that the existence of support systems, however subjective, can and must be considered. As to the question about whether the presence of a homemaker constitutes a part of the support system to be considered in determining eligibility, the department recommends that it be considered. The department recommends that when case managers are developing a case plan, they keep in mind that it is usually more cost-effective to have a meal delivered than to pay a homemaker to prepare a meal in the home. If the homemaker is required to prepare meals, the client is considered ineligible for delivered meals on those days, unless, according to a needs assessment, both meals are needed, and the delivered meal is stored properly. The same individual evaluation should be applied when the client has intermittent support of family or neighbors.

Regarding the definition of nutrition services coordination, that component of service has been renamed nutrition consultation services so that it will not be confused with the rules for supportive services coordination. Nutrition Technical Assistance Memorandum Number 87-1 provides guidelines for the application of this section.

Regarding the definition of qualified dietary consultant, the department will continue to define qualified dietary consultant to include state-approved dietary consultants as eligible under the definition until it can be demonstrated that use of such consultants compromises these standards.

Regarding the definition of a qualified dietary manager, the addition of "completion of a dietary managers course" has been included in the definition since this is a component of the certification process of dietary managers.

In §267.2(a), units of service are provided for meals, nutrition outreach, nutrition education, and nutrition consultation services separately. They can be budgeted or contracted separately, but do not have to be budgeted or contracted separately. All references are changed from nutrition services coordination to nutrition consultation services to coincide with the definition given in §267.1.

In §267.2(d), age eligibility criteria or any other changes that may result from reauthorization of the Older Americans Act will be addressed when any such amendments are passed. A suggestion to restrict guests to those of participants is in contradiction to the Older Americans Act. The department has changed the wording in this paragraph to indicate that it agrees that participants of adult day care facilities that receive Title III funds may receive Title III meals. The purpose of the

section is to prevent double payment for services purchased with federal funds.

The department determines that meals sold as a part of fundraising activities and the recovery of full meal cost should be in accordance with an area wide policy of the area agencies and thus deleted from the state standards.

In §267.2(d) and §267.8(w) the department agrees with the comment that it is the responsibility of those producing the food to taste the food. However, it is a federal law that ineligible staff under 60 cannot be served a meal purchased with Title III funds. Requirements for recovery of meal costs were clarified. Alternative funding for these meals can be sought. Technical assistance is available in accounting for cost recovery.

In §267.2(e) and §267.5(e), the department defines economic need in the same terms as it defines low-income for purposes of targeting services under the Omnibus Hunger Act. Low income (or economic need) is defined as income at or less than 125% of the federal poverty guidelines. This definition is to be used strictly for reporting of participant characteristics and in no way implies a means test that would be used to deny service to eligible individuals. The inclusion of minorities in the target group was questioned. The department's response is that it has adopted a formal policy to increase minority participation in conjunction with a nationwide initiative by the Administration on Aging. This is justified by evidence that minority elderly in Texas tend also to be economically needy. The wording has been clarified for the home delivered meals preferred target group to reflect the definition given for homebound elderly.

In §267.3(a) and §267.6(a), the schedule of service for both congregate and home delivered is required by the Older Americans Act to be at least one meal per day at least five days per week. The department agrees to allow area and local discretion regarding provision of service on holidays. However, as a means of assuring a minimum standard, the requirement has been amended to assure a minimum provision of service 250 days per year. If a service provider wishes to be open fewer than 250 days, it may serve multiple meals for consumption during a three-day weekend.

In §267.3 the words "provisioning of" have been changed to "providing". Change in the wording was also made pertaining to assistance of participants to broaden scope.

In §267.3, the department has made a clarification regarding the policy for handling leftover food.

In §267.3(e) and §267.6(m), the requirement related to nutrition education materials has been amended to state that materials do not need to be approved for a particular provider's use, but need to be



distributed by an approved source. The department will provide updated lists of approved sources by memorandum. The purpose is to assure that nutrition sites do not disseminate fraudulent guidance or misinformation. Appropriate resources for materials for the homebound may be available from the department. The department maintains that the minimum frequency can be achieved through combined use of a variety of resources such as site managers, volunteers, and other community resources. With regard to frequency of nutrition education, the requirement for monthly programs of 15 minutes is interpreted by the department to be the minimum to meet the requirements of the OAA. The heading was also changed from education to nutrition education to identify scope.

In §267.4(e)(1), the term "walkers" has been added to define adequate aisle space needed.

In §267.4(f), the requirement to post a Texas Department on Aging funded site poster has been added.

In §267.5(d), the wording for the eligibility for home delivered meals has been reworded to coincide with the Older Americans Act definition.

In §267.6(b), the wording has been clarified and shortened. A reference to 267.8(d) also has been added.

In §267.6(d), the department maintains that home delivered meals must be handed to the participants as proposed because it is viewed as an essential minimum step toward meeting the AoA requirements for monitoring the participant's condition. Wording was also clarified.

In §267.6(e), the definition and requirement for sealed meal packaging is a Texas Department of Health rule. The purpose of sealing meals is to protect the meal from contamination and to minimize heat losses during transportation. The department interprets this to mean that the following meal packaging materials satisfy health department requirements: cardboard or foam containers with snap-on or heat-sealed lids, aluminum trays with crimped-on lids, and permanent trays with tight-fitting lids. Foam trays with hinged-lids must be wrapped in plastic film or foil to satisfy this requirement. Availability of appropriate packaging for blind and disabled participants is a requirement of the Older Americans Act. Other funding resources may be sought to help defray costs.

In §267.6(f), wording and temperatures have been clarified.

In §267.6(h), the four-hour limit on holding time for hot foods has been maintained for two reasons: current meal delivery systems do not generally assure consistently safe holding temperatures, and the nutritional and aesthetic quality of the food deteriorates the longer the food is

held. Some states use a two or three hour limit. If compliance requires substantial investment in decentralization of meal packaging, a long-range proposal should accompany a waiver request.

In §267.6(j), temperature has been clarified to indicate less than 0°.

In §267.6(k), in-house monitoring of home-delivered meal routes can be done by distribution site supervisors or drivers after training. Project management staff are only necessary to spot-check for accuracy and review documentation to identify problems.

In §267.6(l), the heading has been changed from outreach for clarification.

In §267.7(b), with regard to standards for fat and sodium in the menus, the proposed section requiring maintenance of optimal nutritional status will begin to place emphasis on the reduction of salt, fat, and simple sugars in the menus. Guidelines for implementation will be available by technical assistance memorandum.

In §267.7(c), the waiver process for menu approval in the proposed standards has been omitted. Approval by the area agency on aging may be possible as an alternative in accordance with guidelines to be distributed by memo.

In §267.7(d), the department agrees that the provision of a cold food source for vitamin C at each meal may increase meal cost and may cause repetitive use of certain menu items. The department therefore deletes this requirement from the standards. Number of nutrients for documentation has been changed to six to reflect content of the paragraph.

In §267.7(e), it should be noted that the quick checklist method is an allowable method of nutrient analysis documentation that will demonstrate adequacy for most, if not all, menus.

In §267.7(g), the department maintains that the limit of three high starch items per meal allows for menu planners to control calories and still plan complex carbohydrate/high fiber meals suitable for diabetics.

In §267.7(h), the use of selective menus and salad or dessert bars has been clarified. The second meal per day may not deviate from the standard menu pattern.

In §267.7(i), the requirement that a daily menu will not be repeated more than one time per month has been added.

In §267.8(b), the heading has been changed from service changes to parallel meal provider responsibilities.

In §267.8(d), wording has been clarified.

In §267.8(m) and (n), the department agrees to omit limits on salaries from Title III of directors and site managers.

In §267.8(g), the allowable food sources paragraph has been rewritten to provide

that donated fresh produce is permitted under the specified conditions.

In §267.8(h), as to whether the cost for provision of special diets is reasonable, the criteria for making such an evaluation should be included in performance-based contract specifications and reflected in the bid price. The heading also has been changed from special diets to modified diets to describe the scope more in depth.

In §267.8(i), the department suggests that the evaluation for adequate availability of interpreters must be addressed according to each situation and in consultation with experts in the area of compliance with the Rehabilitation Act, §504.

In §267.8(j) and §267.9(h), the proposed requirement concerning weather-related emergencies is intended to assure compliance with the Older Americans Act. It states that a plan is required to meet needs of needy regular participants. Such a plan may or may not require the availability of all provider facilities. The department recognizes that existing lease agreements may preclude inclusion of certain facilities in the plan and that the severity of the disaster has a great bearing on the issue, but feels that communities should discuss every contingency as it affects older citizens.

In §267.8(k), the term "readily" has been deleted.

Regarding §§267.8(m), 267.9(k), and 267.10(j), the justification for requiring key supervisory staff to take the 15-hour course in food protection is that the Texas Department of Health has identified this as the most effective of all preventive measures. Recent legislation will assure increasing availability of the course. The course is available by mail if travel costs are a problem. Responsibility for cost lies primarily with the employee since this is a basic qualification for employment. However, state and area agency funds have been and may be used to supplement local training efforts. The department also agrees to delete the requirement for the director of a meal provider agency to have a high school diploma or a GED.

In §267.8(n) and §267.9(m), the sections specifying staff training have been renamed staff orientation and training to help clarify that the burden of this requirement is strictly on the service provider. This is to differentiate essential orientation to the job from other types of staff development training which have been and may be provided by the department or the area agency. Specialized training to meet job qualifications, such as the 15-hour course in food protection, is the responsibility of the individual or of the individual's employer. The definition used for volunteers is that required by the Administration on Aging (AoA) for program performance reports, and cannot be changed. Volunteers working less than eight hours per month in a quarter do

qualify under other definitions, including RSVP. The proposed requirements for training of volunteers have been maintained only for those meeting the AoA definition.

In §267.8(o) and §267.9(n), wording has been clarified to make service provider and meal provider responsibilities identical.

In §267.8(q) and §267.9(o), the requirement for supplies inventory has been deleted as a part of the financial records required by the service provider or meal provider. Wording has been clarified to replicate service and meal provider responsibilities.

In §267.8(r) and §267.9(p), wording has been clarified to make service provider responsibilities and meal provider responsibilities identical.

In §267.8(t) and §267.9(r), wording has been clarified to make service provider and meal provider responsibilities identical.

In §267.8(v), the Administration on Aging requires that nutrition programs be willing to receive food stamps as a form of contribution. A project is advised to survey the interest in this option annually. If the interest warrants, application must be made to the Texas Department of Human Services. The department maintains that the recovery of cost can be interpreted as a charge and may be subject to sales tax.

In §267.8(w), wording has been clarified.

In §267.9(f), temperature range and wording has been clarified.

In §267.9(g), wording has been changed to alert the area agency on aging and the Texas Department on Aging immediately of any food borne illness complaints. A written report of the investigative and corrective action would then follow within 24 hours.

In §267.9(j), wording has been clarified.

In §267.9(i)(8), the words "meal pattern requirements" have been deleted for clarification.

In §267.9(q), wording has been revised. The department agrees that kitchen inspections (rather than licensing of kitchens) should be the required activity. Compliance can be documented by efforts to obtain inspections and/or descriptions of an alternative activity that provides the same benefit.

In §267.10(o), wording has been clarified to present two methods of reimbursement for USDA cash.

In §267.11(f), wording has been clarified.

In addition to the extensive changes mentioned previously, review by the TDoA staff resulted in changes in order of subparagraphs in §§267.7-267.10. The subparagraphs were realigned to improve readability of the text.

Finally, comments were received which

took issue with the statements that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections and there is no economic cost to individuals who are required to comply with the proposed section.

The Texas Department on Aging views any costs to the department as a result of promulgation of the new sections to be a routine cost of administration of Title III programs. No new facilities, equipment, or personnel costs were incurred due to promulgation of these standards.

The effect on local government (meaning regional councils and other grantees), likewise, should be minimal or non-existent, since administrative funds are included in Title III grants and facilities, personnel, and equipment are currently available. In the case of service providers or small businesses, there may be some additional costs. However, it is extremely difficult for the Texas Department on Aging to forecast these costs. Each service provider has staff, equipment, and facilities in place and operates under guidelines either developed or adapted from requirements currently in existence. Cost of conversion to these standards should be nil or minimal since many of the service providers have procedures in place which parallel or conform to many of the requirements promulgated. In any event, the TDoA could not develop realistic state-wide service provider cost factors without time consuming, difficult, and expensive surveys—many of which would have been of doubtful accuracy. Because of this and the need to move expeditiously for implementation of performance based contracting as mandated by the Legislative Budget Board, the department anticipated, correctly, that few comments on economic impact would be received.

The Texas State Board of Examiners of Dietitians, Austin; and Dietary Consultant—Health Care Facilities, Austin, commented in favor of adoption of the new sections. The Collin County Committee on Aging, McKinney; Concho Valley Council of Governments, San Angelo; Experienced Citizens Center, Haskell; Hedley Senior Citizens Association, Hedley; Kent County Senior Citizens, Jayton; Lamb County Senior Citizens Club, Littlefield; Meals on Wheels, Inc., of Tarrant County, Fort Worth; Meals on Wheels of Smith, Wood, and Camp Counties, Tyler; Dietary Consultant, Memphis; North Dickens County Senior Citizens Association, Dickens; Panhandle Regional Planning Commission, Amarillo; Permian Basin Regional Planning Commission, Midland; the City of San Antonio: Human Resources and Services, San Antonio; Seagraves Senior Center, Seagraves; Senior Citizens Services, Fort Worth; Slaton Senior Citizen Service Center, Slaton; South Plains Association of Governments, Lubbock; South Texas Development Council, Laredo; Texoma

Regional Planning Commission, Denison; Tri-County Community Action, Inc., Center; Tri-County Nutrition, Junction; Throckmorton Senior Citizens Inc., Throckmorton; West Central Texas Council of Governments, Abilene; and Yoakum County Senior Citizen Association, Denver City, comment against adoption of the new sections. In addition the Texas Association of Regional Councils commented on the department's spirit of cooperation in considering all recommendations and the action taken to either modify or provide insight into the necessity of certain provisions of this title.

The new sections are adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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

Congregate meal—A hot or other appropriate meal served to an eligible person which meets Title III nutrition service standards and which is served at a congregate meal site.

Congregate meal site—The generic term for a facility and/or a minimum level of service within a facility that may be either a nutrition site, a senior center, or a multi-purpose senior center according to Texas Department on Aging definitions. As a minimum level of service, it refers to the provision of meals, nutrition education, and nutrition outreach to eligible persons and their spouses, the cost of which is supported in whole or in part by Title III-CI funds.

Congregate nutrition service provider—An agency that is awarded a subgrant or subcontract from an area agency on aging to provide congregate nutrition services and which may include meal preparation.

Congregate nutrition services—The provision of services at a congregate meal site in accordance with standards established in this chapter.

Consultant—An individual on contract full-time or part-time to perform professional services.

Contact—A unit for measuring the provision of services. One contact is recorded each time a participant receives a service. For group activities, each participant counts as one contact.

Elderly—Those persons age 60 and over and their spouses, regardless of age.

Greatest economic need—Needs that are the result of income levels near or below the poverty threshold.

Greatest social need—Needs that are associated with noneconomic factors which include physical and mental disabilities, language barriers, or cultural or social isolation, including that caused by racial or ethnic status, which restrict an individual's ability to perform normal tasks or threaten one's ca-

capacity to live independently.

Homebound—Confined to the home and unable to prepare one's own nutritious meals and whose isolation may be demonstrated by lack of support to obtain nutritious meals from family, friends, or other resources.

Home-delivered meal—A meal delivered to a homebound person.

Home-delivered nutrition service provider—An agency that is awarded a subgrant or subcontract from an area agency on aging or nutrition service provider to provide home-delivered nutrition services and which may include meal preparation.

Home-delivered nutrition services—The provision of services to a homebound elderly person in his/her place of residence in accordance with standards established in this chapter.

Information and referral—The provision of specific information to an older person or provider about available public and voluntary services and resources (including name, address, and telephone number of service or resource) and/or linkage with appropriate community resource(s) to ensure necessary service will be delivered to the older person. Referral must include contact and follow-up with the provider and/or older person, and may accompany advocacy.

Meal—Food provided in accordance with the standard established in this chapter.

Meal carrier—A container designed and used to transport bulk containers of food or individually packaged meals, to include picnic chests with lids, thermal envelopes, and thermal bags if they meet performance criteria. National Sanitation Foundation approval is not required.

Meal cost—For purposes of minimum recovery of costs for ineligible meals, the total service unit cost, including administrative cost, minus the proportion of unit cost allocated to overmatch and in-kind match.

Meal packaging—Permanent or disposable trays or cups with lids or seals, and bags or boxes which are designed and used for delivery of individual servings of food for a meal.

Meal provider—An agency or organization that is awarded a subgrant or contract from the area agency on aging or a congregate or home delivered nutrition service provider to provide meals. A meal provider does not have to be the same entity as a service provider.

Menu cycle—A preplanned written sequence of daily menus for a minimum of four weeks.

Multipurpose senior center—A facility open to older persons at least six hours per day, five days per week, that provides meals or nutritious foods at least once per week, programs in nutrition and health education, exercise, and physical fitness at least once per month, and access to other services including information and referral, transportation, health screening, and volunteer ac-

tivities.

Nutrition consultation services—Activities usually performed by a service provider that may be either contracted separately or provided as a direct service by the area agency on aging. Such activities do not include area agency on aging responsibilities for site monitoring, menu monitoring, and technical assistance as established in this chapter. Nutrition consultation services is limited to nutrition education, centralized or cooperative menu planning and/or purchasing, and communication and problem resolution when the service provider is different from the meal provider.

Nutrition education—The provision of information by which individuals gain understanding, skill, and motivation necessary to promote and protect nutritional well-being through better food choices.

Nutrition outreach—An activity designed to seek out and identify, on an ongoing basis, the maximum number of the hard-to-reach, isolated, and withdrawn target group eligible individuals throughout the program area.

Nutrition site—A type of congregate meal site that offers a minimum level of services and does not necessarily meet the minimum standards for senior centers or multipurpose senior centers.

Participants—Those older persons age 60 years or older and their spouses who receive one or more services as defined here.

Participant-day—A unit of service for reporting attendance of one participant for any part of one day for receipt of one or more services. When participant-day is used to measure congregate nutrition services, one of the services received will be a meal.

Performance based unit rate contract—A contract for service which reimburses the service provider at a contractually negotiated fixed rate for a unit of service provided according to specified performance standards.

Performance standards—The minimum standards under which aging services may be contracted with Older Americans Act funds, as published in this chapter.

Potentially hazardous food—Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.5 or below or a water activity (Aw) value of 0.85 or less.

Qualified dietary consultant—An individual who is one or more of the following: a registered dietitian with the Commission on Dietetic Registration, or a licensed or provisionally licensed dietitian with the Texas State Board of Examiners of Dietitians, or state-approved by the Texas

Department of Health Bureau of Long Term Care.

Qualified dietary manager—An individual who is certified by the Dietary Managers Association to have completed a dietary managers course and a minimum of 100 hours of on-the-job training in a supervisory position in the food service department of a health care facility.

Sealed—Free of cracks or other openings that permit the entry or passage of moisture or other foreign matter.

Senior center—A facility open to older persons that provides meals or nutritious foods at least once per week and programs on nutrition and health education, exercise, and physical fitness at least once per month. A unit of service is a participant-day.

Service provider—An entity that is awarded a subgrant or contract from an area agency on aging or another service provider to provide services under the area plan. A service provider that only provides meals is a meal provider for purposes of these standards.

Shelf-stable—Packaged dry food, or food processed in anaerobic containers, such as cans, retort pouches, or ultra-high-temperature pasteurized cartons, that are safe for months without refrigeration.

Staff—Those persons employed part or full-time and paid to perform duties related to services for older persons.

Therapeutic diet—Meals that are altered to meet the specific requirement of a diagnosed disease or metabolic disorder, to correct nutritional deficiencies, and/or to support attainment of ideal body weight.

Unit of service—A meal served as part of congregate nutrition services or as part of home-delivered meal services.

Volunteers—Those persons working at least eight hours during one month of the quarter without pay.

§267.2. Congregate Nutrition Services Program Description.

(a) Unit of service. The unit of service is one meal served in accordance with Title III nutrition service standards. Exceptions will be permitted only when the area agency on aging contracts for congregate nutrition services, nutrition education, nutrition outreach, or nutrition consultation services with one or more agencies other than the meal provider. In such cases, the following units of service will be used.

(1) The unit for congregate nutrition services will be a participant-day. The meal-related costs for congregate nutrition services will be combined with meal costs for reporting purposes.

(2) The unit for nutrition education will be one contact for a minimum of 15 minutes.

(3) The unit for nutrition outreach will be one contact by telephone, written communication, or in person.

(4) The unit for nutrition consultation services will be a meal served as part of congregate nutrition services, or one contact

of nutrition education. For reporting purposes, meal-related costs for nutrition consultation services will be combined with meal costs.

(b) Service objective. The service objective is to promote better mental and physical health for older people through nutritious meals and socialization.

(c) Service activities. Service activities include provision of meals and nutrition education in a group setting in a nutrition site, senior center, or multipurpose senior center with ongoing nutrition outreach. Other services, including information and referral, access to congregate meal sites, health and educational programs, or recreational activities may also be provided by resources other than Title III C1.

(d) Eligibility. Any person age 60 years or over, and the spouse of that person regardless of age is eligible for participation. Eligibility is further described by the following criteria.

(1) Disabled persons under 60 years of age may receive services in accordance with a uniform and consistent areawide policy if they reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided.

(2) Volunteers under 60 years of age who work during the meal service may receive meals in accordance with a uniform and consistent areawide policy.

(3) Guests under 60 years of age may receive meals if doing so will not deprive an older person of a meal and if the full meal cost is recovered.

(4) Residents of long-term care facilities and participants of adult day care centers are not eligible for Title III meals if other federal or state entitlement programs such as Title XIX or Title XX of the Social Security Act are funding those meals.

(e) Preferred target group. The preferred target group consists of eligible persons with the greatest economic or social needs, and particularly low-income minority elderly and others who cannot afford to eat adequately or who lack the knowledge, skills, mobility, or motivation to obtain adequate food.

§267.3. Congregate Nutrition Service Standards of Performance.

(a) Schedule of meal service. The service provider agency will serve hot or other appropriate meals at least one meal per day, five or more days per week, and a minimum of 250 days per year.

(b) Meal service procedures. These procedures will include:

(1) welcoming participants to site, keeping attendance records and encouraging contributions;

(2) setting up serving and dining areas;

(3) providing of wrapped straws or sanitary cups or glasses for milk;

(4) insuring correct portion sizes and utensils;

(5) insuring sanitation procedures for staff and volunteers who serve food;

(6) taking food temperatures at beginning of service;

(7) assisting participants with trays who have physical difficulties; and

(8) insuring cleanup after meals, washing non-disposable items, and disposal of garbage.

(c) Leftover food.

(1) Unserved leftover food will be minimized by accurate production forecasting and will not include a margin for oversized portions or second servings. Unserved leftover food may be served to participants at the site if proper food handling and storage techniques have been maintained. See §267.9(f) of this title (relating to Meal Provider Responsibilities) referring to food handling.

(2) Foods served to the participant as a part of the meal that may be taken from the site are cake, cookies, breads, rolls, and fresh fruit. These foods, other than whole citrus fruits and bananas, will be wrapped before being taken. Entrees, vegetables, canned fruit, milk, margarine, or butter will not be taken from the site by the participant.

(d) Nutrition outreach. Nutrition outreach will be performed as needed to assure that the maximum number of eligible persons may have an opportunity to participate.

(e) Nutrition education. Nutrition education will be provided at each congregate nutrition site through at least one monthly program of not less than 15 minutes. The presenter and/or the content of all programs will be developed or distributed by a qualified dietary consultant, county extension agent, or other sources approved by Texas Department on Aging. Written documentation will be kept of programs presented including date, topic, source, presenter, and number in attendance.

(f) Abuse, neglect, and exploitation. Reports of suspected cases of abuse, neglect, and exploitation will be made to the Texas Department of Human Services hotline (1-800-252-5400) within 24 hours of awareness.

§267.4. Congregate Meal Site Requirements.

(a) Location. Location of congregate meal sites will be as close as possible to the majority of eligible persons in the preferred target group in the service area. Approval for changes or additions of locations will be obtained in writing from the area agency on aging.

(b) Discrimination prohibited. Non-discriminatory practices will be observed for participation. Facilities operated by specific groups will not restrict participation to their own membership nor show discriminating preference for such membership.

(c) Site maintenance. Procedures will assure that the facility is clean, safe, and comfortable.

(d) Safety. Safety in congregate meal sites will be assured through compliance with

all applicable federal, state, and local health, fire, safety, building, zoning, and sanitation laws, ordinances, or codes. The service provider agency is responsible for correcting any safety, health, and fire hazards on an ongoing basis as well as the following requirements.

(1) Evacuation procedures will be practiced annually.

(2) A basic first aid kit will be on the premises at all times.

(3) A fire extinguisher will be on the premises at all times with a current inspection tag.

(e) Facility access. Accessibility for all participants, including blind and disabled individuals, will be assured in accordance with the Rehabilitation Act, §504. Special needs of participants will be addressed as follows.

(1) Tables and chairs will be available for all participants and will be sturdy and appropriate for older persons. Adequate aisle space will be provided between tables for persons with crutches, walkers, or wheelchairs.

(2) Blind or disabled persons and those with limited mobility will have special provisions as necessary for the service of meals and will have available, on request and with a physician's order, appropriate food containers and utensils.

(f) Posting of notices. Information to be posted in a conspicuous location will include:

(1) the rights of all eligible persons to equal opportunity and access to services;

(2) the full cost of the meal to be recovered from ineligible persons who are served a meal;

(3) the recommended amount for contributions for participants and how contributions are used;

(4) menus for a minimum of one week in advance;

(5) grievance procedures for participants;

(6) an evacuation plan;

(7) the Texas Department on Aging information and referral toll-free number (1-800-252-9240) and Texas Department of Human Services hotline (1-800-252-5400); and

(8) a poster prepared and distributed by the Texas Department on Aging which identifies Texas Department on Aging as a funding source and includes the department's telephone number and address.

(g) Designation of smoking areas. Areas will be designated in conformity with local ordinances and will comply with the following minimum requirements.

(1) Smoking will not be permitted in meeting rooms, classrooms, auditoriums, restrooms, elevators, food preparation areas, and food serving areas.

(2) Smoking in dining rooms and offices or other work spaces will be permitted in designated areas based on the estimated number of smokers and only with adequate ventilation.

(3) Smoking in corridors and lobbies may be permitted.

(4) No-smoking signs will be posted in all nonsmoking areas and ashtrays will be removed from those areas.

§267.5. Home-Delivered Nutrition Service Program Description.

(a) Unit of service. The unit of service is one meal delivered in accordance with Title III Nutrition Service Standards.

(b) Service objective. The service objective is to promote better health for older persons who are eligible for nutritious home-delivered meals.

(c) Service activities. Service activities include provision of meals and nutrition education in the home, with ongoing nutrition outreach, assessment of needs, and appropriate referral to other services. Other in-home services may also be provided by resources other than Title IIIC.2.

(d) Eligibility.

(1) A person age 60 years or over who is homebound by reason of illness, incapacitating disability, or is otherwise isolated is eligible to receive home delivered meal services.

(2) The spouse of an eligible client, regardless of age or condition, may receive a home-delivered meal if, according to the criteria, determined by the nutrition services provider and approved by the area agency on aging, receipt of that meal is in the best interest of the homebound older person.

(e) Preferred target group. The preferred target group consists of eligible persons with the greatest economic or social needs, and particularly low-income minority elderly and others who may not eat adequate and nutritious meals because they are incapacitated or disabled due to accident, illness, or frailty; unable to prepare meals due to their limited mobility, psychological or mental impairment, inability to safely prepare meals, and/or lack of knowledge to select and prepare nourishing and well-balanced meals; and without resources such as family, friends, or other community services to provide them with meals.

§267.6. Home-Delivered Service Standards of Performance.

(a) Schedule of meal service. The service provider agency will provide home delivered meals at least one meal per day, five or more days per week and for a minimum of 250 meals per year. If a needs assessment indicates that other resources are available on one or more serving days, then less than five meals per week may be delivered.

(b) Assessment of need. The service provider agency will develop and implement procedures for determination of eligibility and assessing the need for service to assure that meals are delivered only to eligible persons. See §267.8(d) of this title (relating to Administrative Responsibilities for Service Providers) referring to participant intake, assessment and reassessment procedures.

(1) A home visit for assessment of need for service will be documented within two weeks of beginning service.

(2) Reassessment will be done at no greater than six month intervals.

(c) Conditions for referral to other services. Participants will be screened for need and assisted in taking advantage of other services. Conditions of the participant will be referred to appropriate agencies according to established procedures as follows.

(1) The meal delivery driver, other staff, or volunteers will report to a designated person at the service provider agency when the previous day's food is found uneaten and/or where it was left the previous day, the participant cannot be found, and suspension of services has not been authorized. The service provider agency will investigate and carry out appropriate action the same day of awareness.

(2) The meal delivery driver, other staff, or volunteers will report to the service provider agency significant changes in the participant's physical or mental condition or environment. The service provider agency will investigate and carry out appropriate action by the first working day after awareness.

(3) With the consent of the older person, or his or her representative, the service provider agency will bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person or the household in imminent danger the same day of awareness.

(4) Reports of suspected cases of abuse, neglect, and exploitation will be made within 24 hours of awareness to the Texas Department of Human Services hotline (1-800-252-5400).

(d) Meal delivery. Delivery of each meal will be in accordance with the following procedures.

(1) The meal will be handed directly to the participant or permission will be received to enter the home and conveniently place the meal with direction from the participant or an authorized caregiver. The authorized caregiver will be designated by both the participant and the service provider agency.

(2) Frozen or chilled meals not intended for immediate use will be placed in the freezer or refrigerator as appropriate.

(3) The meal delivery driver or a supervisor of volunteer drivers will assure daily recording of delivery of each meal to each participant.

(e) Meal packaging. Supplies and carriers will be used that assure that hot foods are packaged and transported in separate carriers from cold foods.

(1) Meal carriers used to transport trays or containers of potentially hazardous food and other hot or cold food will be enclosed and equipped with insulation and supplemental hot or cold sources as needed to maintain appropriate temperatures.

(2) Meal carriers will be cleaned and sanitized daily. If not sanitized, they must

have a sanitized inner liner.

(3) Meal packaging will be sealed to prevent spillage, will not have food spills or be damaged, and will be easy for the participant to open. Appropriate packaging and utensils for blind and disabled participants will be available on request and with a physician's order.

(f) Refrigeration. Refrigeration of potentially hazardous food will be such that foods are prechilled in less than four hours and held at 45°F or below throughout transport. Fruit or vegetable salads that do not contain potentially hazardous foods will be prechilled and held at 55°F or below during transport.

(g) Hot storage. Hot storage of potentially hazardous foods will be such that foods are held until delivery at 140°F or above except during necessary periods of preparation. Hot foods that are not potentially hazardous will be held until delivery at 110°F or above.

(h) Holding time. Holding time for hot food will not exceed four hours from the time when the food is taken from the equipment in which cooking or reheating is completed until it is delivered.

(i) Dried, acidic, or canned foods. Foods that are not potentially hazardous will be packaged and transported in covered containers protected from contamination, crushing, or spillage. Instructions for rehydration or heating of shelf-stable meals will be provided with each meal.

(j) Frozen or chilled meals. These meals will be used only under the following conditions.

(1) The service provider agency and the participant are able to provide safe conditions for storage, thawing, and reheating.

(2) Frozen food is packaged and kept at 0°F or below until it is thawed for use.

(3) Instructions for proper storage and reheating are provided with each meal.

(4) Provisions are made, in accordance with assessed needs, for telephone calls or personal visits by volunteers, staff, neighbors, friends, or family members.

(k) In-house monitoring. Monitoring by the meal provider agency will be documented for each route annually, or more often as needed, as follows:

(1) the temperature of a test meal or the ambient temperature in the meal carrier when the last meal is removed;

(2) the number of hours and minutes from the time the first hot food item is taken from the equipment in which cooking or reheating is completed until the last meal is delivered; and

(3) delivery procedures and condition of the meals.

(l) Nutrition outreach. Nutrition outreach will be performed to assure that the maximum number of eligible individuals may have an opportunity to participate.

(m) Nutrition education. Nutrition education will be available at a minimum

through materials sent to the home, a home visit, or a telephone contact once per month. The content of all programs will be developed or distributed by a qualified dietary consultant, county extension agent, or other sources approved by the Texas Department on Aging. Documentation will be kept by date, topic, source, presenter, and method of presentation.

§267.7. Standards of Performance for Meals.

(a) One-third of the RDA. Each meal served will contain at least 1/3 of the current dietary allowances (RDA's) for persons 60 years and older in accordance with the most recent edition of the *Recommended Dietary Allowances* by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

(b) Optimal nutrition status. Maintenance of optimal nutritional status through menu planning will be reflected by menus moderate in fat, salt, and simple sugars, and high in fiber.

(c) Menu approval. Each menu cycle which may include a list of allowable substitutions will be approved as meeting standards established in this chapter by a qualified dietary consultant or an individual authorized by the Texas Department on Aging to approve menus. Documentation of menu approval will include the following on each menu page:

(1) the consultant's name and registration or license number, or the name of the individual authorized by the Texas Department on Aging to approve menus;

(2) the meal provider agency name(s); and

(3) the dates, including the year, menu will be served.

(d) Menu documentation. Documentation of nutritional adequacy will accompany each menu. It will reflect, at a minimum, adequate provision of the following six nutrients: protein, calcium, iron, thiamin, vitamin A, and vitamin C. Documentation will also show that each meal provides at least 600 and not more than 1,000 calories (the recommended level being between 750 and 850 calories).

(e) Nutrient analysis. Methods of nutrient analysis documentation may be any one or a combination of the following:

(1) a computer (or manual) analysis based upon United States Department of Agriculture Handbook Number 456, Number 8, or Number 72;

(2) a nutrient standard method; and

(3) checklist methods or food group methods approved by the Texas Department on Aging.

(f) Menu patterns. The standard menu pattern will be as follows:

(1) an entree to include meat and/or meat alternate, such as cheese, cottage cheese, legumes, or eggs;

(2) two one-half cup servings drained weight or volume of different vegetable or fruit menu items. A 1/2 cup serv-

ing of vegetable or fruit may be mixed with the entree or as part of a soup or salad;

(3) one serving of whole grain or enriched bread or alternate;

(4) eight ounces fortified milk or calcium-equivalent food; and

(5) whole fruit, 1/2 cup or standardized portion of dessert.

(g) Prohibitions related to the standard menu pattern. The following prohibitions relate to the standard menu pattern.

(1) Dried beans, peas, or lentils, in a half-cup serving or in combination with other foods, should be counted either as meat alternate for the entree or as a vegetable, but not both.

(2) Fruit or juice used as a dessert may not be counted toward the two servings of vegetable/fruit.

(3) Fruits and vegetables in gelatin may be counted as only 1/4 cup of the fruit/vegetable requirement.

(4) No meal will include more than three high starch items.

(h) Menu deviations. Deviations from the standard menu pattern that are nutritionally adequate may be planned as necessary and appropriate provided that there is the equivalent of standard serving sizes of at least five different food items. Such deviations may be planned as follows.

(1) Ethnic, cultural, religious, and regional menus may deviate from the standard menu pattern once per week.

(2) Therapeutic diets may deviate from the standard menu pattern as appropriate. See §267.8(h) of this title (relating to Administrative Responsibilities for Nutrition Services Providers) referring to modified diets for requirements.

(3) Emergency meals may deviate from the standard menu pattern as necessary.

(4) Holiday and weekend meals may deviate from the standard menu pattern as necessary.

(5) A second meal per day may not deviate from the standard menu pattern. The combined nutrient content of both meals to a participant will provide 2/3 of the RDA's and a minimum of 1,200 calories.

(6) Selective menus or selective salad (or dessert) bars may be allowed if 1/3 of the RDA is provided in each meal. Documentation of the least nutritious possible combination of selections will be approved and monitored.

(i) Menu frequency. Menu cycles will not be repeated more than six times per year. Daily menus will not be repeated more than one time per month.

(j) Menu monitoring. Each menu, as served, will be available on request to the area agency on aging at least 15 days after the end of each quarter for monitoring.

§267.8. Administrative Responsibilities for Nutrition Service Providers.

(a) Nutrition objectives. Objectives will be adopted by providers which are specific, verifiable, and achievable concerning

number and frequency of meals to be served, number of people to be served, percent of minority participation, and number of units of nutrition outreach and nutrition education.

(b) Notice of changes. Cancellation of services by closing a site or reducing the days a site is open requires written approval of the area agency on aging.

(c) Change notices. Notice of changes will be sent in writing to the area agency on aging within 10 calendar days of any of the following:

(1) a change in director or administrator;

(2) a change in the location or mailing address of the agency's office or service delivery site(s); or

(3) a change in hours of operation.

(d) Participant intake, assessment, and reassessment procedures. The service provider agency will maintain official files containing information which identifies regular participants, documents eligibility, and gives procedures for emergency care.

(1) Participant files should contain the date that each participant is provided oral or written procedures for contributions and for complaints.

(2) Participant files for home-delivered meal applicants should contain documentation of assessment visits which include reason for homeboundness and any resources, such as family, friends, and neighbors. The date of each assessment and reassessment visit and the name of the individual doing the assessment will be recorded. The dates of initiation and termination of meal delivery and the name of the individual authorizing them will be recorded. If an application for service is denied, the reasons will be recorded with the name of the responsible individual.

(3) The confidentiality of such files will be protected.

(e) Policies and procedures. Policies and procedures for nutrition services that state how and by which staff or volunteer position regular activities of the agency are completed will be adopted by the provider agency and available to all staff, volunteers, and participants on request.

(f) Participant grievances. The service provider agency will:

(1) establish written procedures through which participants can communicate aspects of the service which impact negatively upon them; and

(2) inform participants of such procedures on or before initiation of service.

(g) Food and meal sources. Sources of food and meals will be limited to the following.

(1) All food shall be obtained from sources that comply with all laws relating to food and food labeling.

(2) All home prepared or home-canned food is prohibited.

(3) Commercially packaged food will be in its original container with label,

and, will have been stored at all times at appropriate temperatures.

(4) Fresh or frozen meat, poultry, or fish will be processed at an establishment that complies with all laws relating to food safety.

(5) Fresh produce purchased or donated will be in sound condition, free from spoilage, filth or other contamination, and will be safe for human consumption.

(h) Modified diets. Therapeutic diets for individual, specific diagnoses will only be served under the following conditions:

(1) if a written diet order, signed by the physician, is on file;

(2) if meal preparation and service are under the supervision of a qualified dietary consultant, or a qualified dietary manager;

(3) if assessment of the participant by a qualified dietary consultant at least once every six months validates the need and capacity to remain on the diet for meals not supplied by the provider;

(4) if there are enough participants with assessed needs to make the service practical; and

(5) if the meal provider agency has or can obtain at reasonable cost the necessary food and skills to prepare therapeutic meals.

(i) Interpreters. Individuals can be reached as needed who are able to communicate with participants who are hearing-impaired or are speakers of non-English languages predominant in the community.

(j) Weather-related emergencies, fire, and other disasters.

(1) Facilities and equipment of the service provider agency will be available in emergencies and disasters according to a plan that puts needy regular elderly participants as a priority.

(2) The service provider agency will adopt written procedures to try to assure availability of food to participants in emergencies and disasters.

(k) Job descriptions. Current job descriptions for all staff and volunteers of the provider agency will be available.

(l) Employment records. Employment records will be maintained which will include names of paid and volunteer staff who work for the service provider agency.

(m) Qualifications for director of the nutrition service provider agency. The service provider agency will identify an individual as director who is responsible for the overall management of nutrition services and who will ensure compliance with performance standards.

(1) The director or another employee responsible for food service management will complete the 15-hour course in food protection approved by the Federal Food and Drug Administration or the Texas Department of Health.

(2) The food protection course will be successfully completed within one year of final publication of this section, or within

one year of employment, and be renewed every five years, or as needed to be current.

(3) The director of the meal provider agency may be the same person as the director of a nutrition service provider agency in which case standards for qualifications for both types of director will apply.

(n) Staff orientation and training.

(1) Training of staff, including volunteers, as defined, will consist of at least one hour prior to assuming duties to cover the following:

(A) participant confidentiality;

(B) procedures used in handling emergency situations involving participants, recognition of abuse, and referral to appropriate agencies;

(C) sanitary methods used in the serving and delivery of meals; and

(D) general knowledge and basic techniques of working with aged and disabled individuals.

(2) Staff, including volunteers, as defined, who have contact with participants for outreach, assessment, or supportive services will receive at least one additional hour of orientation on area agency on aging and Texas Department on Aging standards, policies, and procedures.

(o) Documentation of delivery of services. The service provider agency will maintain daily logs and other such records, and submit to the area agency timely, complete, and accurate reports, in such form, and containing such information as may be necessary to enable determination of compliance with the Older Americans Act, federal regulations, and Texas Department on Aging nutrition service standards, policies, and procedures.

(p) Performance reports. The service provider agency will keep such records and submit to the area agency timely, complete, and accurate reports at such times, in such form, and containing such information as may be necessary to enable determination of compliance with the Older Americans Act, federal regulations, and Texas Department on Aging nutrition services standards, policies, and procedures.

(q) Financial records. The service provider agency will maintain records in accordance with Texas Department on Aging reimbursement requirements. The following records will be available on request:

(1) daily report of participant contributions, program income, and in-kind contributions;

(2) inventories of all equipment and United States Department of Agriculture commodities;

(3) equipment maintenance records;

(4) documentation of cash and in-kind match; and

(5) receipts for purchases of meals, food, and supplies.

(r) Retention of records. All records are required to be retained for a minimum of three years after termination of contract with the area agency or until any litigation,

claim, or audit involving these records is resolved.

(s) Insurance coverage, licenses, and certifications. The service provider agency will maintain fire and casualty, workman's compensation, and general liability insurance.

(t) Chart of accounts. Chart of accounts, when funds are received from more than one source, will be combined for similar costs. A proportion of the combined costs will be posted to each funding source according to the number of meals served.

(u) Cost analysis reports. Cost analysis reports will be available on request.

(v) Contributions. The service provider agency will inform each participant of his or her opportunity to contribute voluntarily to the cost of the service.

(1) The privacy of the participant with respect to his or her contributions will be protected.

(2) Appropriate procedures will be established to safeguard and account for all contributions.

(3) A suggested contribution schedule may be adopted which takes into consideration the income ranges of the participants and the provider agency's other sources of income. However, no eligible person will be denied a service because he or she will not or cannot contribute to the cost of the service.

(4) Contributions will be used only to expand nutrition services, including outreach and nutrition education, or transportation services that will increase attendance at nutrition sites.

(5) The service provider agency and its employees will not solicit or accept personal gifts or favors of monetary value from a participant or his family members as a reward or payment for tasks or services provided to the participant.

(6) The service provider agency will accept food stamps as contributions for meals.

(w) Other program income. The provider agency will recover at a minimum the meal cost as defined for ineligible meals for staff and guests under 60 and for other meals to be sold. Additional recovery of local in-kind plus profit is permitted. Payment for ineligible meals will be receipted separately from contributions and handled the same as program income. The meal cost for purposes of cost recovery from staff and guests under 60 will be posted in a prominent location for guests.

§267.9. *Meal Provider Responsibilities.*

(a) Service changes. Cancellation of services by closing a kitchen or reducing the days a kitchen is open requires written approval of the area agency on aging.

(b) Notice of changes. Notices will be sent in writing to the area agency on aging within 10 calendar days of any of the following:

(1) a change in director or administrator;

(2) a change in location or mailing address of the agency's office or kitchen(s); or

(3) a change in hours of operation.

(c) Meal production and delivery. Policies and procedures for meal production and delivery will state how and by which staff or volunteer position regular activities of the agency are completed will be adopted by the provider agency and available to all staff, volunteers, and participants on request.

(d) Compliance with laws and regulations. The meal provider agency will use procedures that are in compliance with all applicable state and local fire, health, sanitation, and safety laws and regulations. All food served will comply with Texas Department of Health Division of Food and Drug *Rules for Food Service Sanitation*.

(e) Food production. Food production will be planned and managed through use of standardized recipes adjusted to yield the number of servings needed, and to assure consistency in quality and documented nutrient content of food prepared.

(f) Food handling. Food handling will conform to Texas Department of Health *Rules for Food Service Sanitation* with particular attention to the following.

(1) Food purchased or prepared in excess of needs will be covered or wrapped, labeled, and dated.

(2) Excess food may be held at 45°F or below for a maximum of 48 hours. Excess foods which are frozen and held at 0°F may be retained for one month.

(3) Potentially hazardous foods left between 45°F and 140°F longer than four hours will be discarded.

(4) Potentially hazardous frozen foods will be thawed under refrigeration at a temperature less than 45°F.

(g) Foodborne illness complaints. The provider agency will promptly initiate investigation by local health authorities of complaints involving two or more persons with symptoms of foodborne illnesses within a similar time frame after consuming food from the meal provider agency. Providers will notify the area agency on aging, who will notify the Texas Department on Aging immediately of the investigation. A written report of the investigative and corrective action taken will be submitted to the area agency on aging and the Texas Department on Aging within 24 hours.

(h) Weather-related emergencies, fire, and other disasters.

(1) The facility and equipment of the meal provider will be available in emergencies and disasters according to a plan that puts needy regular elderly participants as a priority.

(2) The meal provider agency will coordinate with the nutrition service provider agency to assure availability of food to participants in emergencies and disasters.

(i) Job descriptions. Current job descriptions for all staff of the meal provider

agency will be available.

(j) Employment records. Employment records will be maintained which will include names of paid and volunteer staff who work for the meal provider agency.

(k) Qualifications for director of the meal provider agency. The meal provider agency will identify an individual as director who is responsible for the overall management of meal production and who will ensure compliance with performance standards.

(1) The director or another employee responsible for meal production will complete the 15-hour course in food protection approved by the Federal Food and Drug Administration or the Texas Department of Health.

(2) The food protection course will be successfully completed within one year of final publication of this section, or within one year of employment, and every five years thereafter, or as needed to be current.

(3) The director of the meal provider agency may be the same person as the director of a nutrition service provider agency in which case standards for qualifications for both types of directors will apply.

(l) Director orientation and training. Orientation and training of meal provider director or food preparation supervisor will consist of at least eight hours within 30 days of assumption of duties to cover the following areas:

(1) personal hygiene;

(2) food storage, inventory methods, preparation, and service;

(3) selection of proper utensils and equipment for transporting and serving food;

(4) dishwashing procedures, both automatic and manual;

(5) practical procedures for food preparation, storing, and serving to preserve nutritional quality of food;

(6) portion control of food in appropriate containers;

(7) quality control of flavor, consistency, texture, temperature, and appearance;

(8) nutritional needs of elderly adults to be served;

(9) menu planning, menu substitution, and nutrient documentation; and

(10) United States Department of Agriculture commodity programs.

(m) Staff orientation and training. Training of staff, including volunteers as defined, will consist of at least one hour prior to assumption of duties to cover the following areas:

(1) personal hygiene;

(2) food storage, preparation, and service;

(3) sanitation procedures;

(4) portion control of food in appropriate containers; and

(5) quality control of flavor, consistency, texture, temperature, and appearance (to include use of garnishes).

(n) Documentation of delivery of meals. The meal provider agency will maintain daily logs and other such records and submit to the area agency timely, complete, and accurate reports, in such form, and containing such information as may be necessary to enable determination of compliance with the Older Americans Act, federal regulations, and Texas Department on Aging nutrition service standards, policies, and procedures.

(o) Financial records. The meal provider will maintain records in accordance with the Texas Department on Aging reimbursement requirements. The following records will be available on request:

(1) daily report of participant contributions, program income, and in-kind contribution;

(2) inventories of all equipment and United States Department of Agriculture commodities;

(3) equipment maintenance records; and

(4) documentation of cash and in-kind match; and

(5) receipts for purchases of meals, food, and supplies.

(p) Retention of records. Records retention is required for a minimum of three years after termination of the contract with the area agency on aging or its contractor, or until any litigation, claim, or audit involving these records is resolved.

(q) Insurance coverage, licenses, and certifications.

(1) At a minimum, the meal provider agency will maintain workmen's compensation insurance and general liability.

(2) All kitchens where food is prepared will be inspected by the Texas Department of Health or the local health department.

(r) Chart of accounts. Chart of accounts, when funds are received from more than one source, will be combined for similar costs. A proportion will be posted to each funding source according to the number of meals served.

(s) Cost analysis reports. These reports will be made available as requested.

(t) United States Department of Agriculture assistance. United States Department of Agriculture assistance for meals served in the form of cash, commodities, or items processed with commodities will be used to the maximum extent feasible in accordance with regulations of USDA, the Texas Department of Human Services, and the Texas Department on Aging. All eligible meals, regardless of the funding source, will be reported for USDA cash or commodity reimbursement.

§267.10. Area Agency on Aging Responsibilities.

(a) Assess needs. The area agency will assess or review prior assessments and revise as needed to reflect the level of need for congregate and home-delivered meals within the area and allocate resources accordingly.

(b) Area plan for services. The area agency will develop an area plan that addresses the need for nutrition services. Measurable objectives that address prioritized needs for nutrition services will be included.

(c) Notice of changes. Notice will be sent in writing to the Texas Department on Aging at the end of each quarter when the following changes occur:

(1) cancellation of services at a congregate meal site or a home-delivered meal area;

(2) change in director or administrator of the area agency on aging or a nutrition service provider, and

(3) change in the location or mailing address of the office of the area agency on aging or a nutrition service delivery office or congregate nutrition site.

(d) Policies and procedures. The area agency will adopt or develop and distribute written policies and procedures. Included will be procedures designed to assure that:

(1) only persons who are eligible receive nutrition services;

(2) the provision of services is documented and reported;

(3) all meals provide at least 1/3 of the recommended dietary allowances (RDA);

(4) providers comply with all applicable laws and regulations;

(5) there is a uniform and consistent policy for service of meals to volunteers and to disabled persons under 60 living in housing projects designed for the elderly;

(6) uniform and consistent procedures for waiting lists are used;

(7) providers comply with minimum required procedures for collecting and accounting for participant contributions;

(8) client confidentiality is protected in recordkeeping and service delivery; and

(9) service provider agencies have appropriate arrangements for availability of meals in weather-related emergencies or disasters.

(e) Performance based contracting. Performance based unit rate reimbursement contracts will be used for nutrition services.

(f) Competitive process for selection of service providers. The area agency will award nutrition service and meal contracts through procedures that assure full and open competition. Requests for proposals will contain a scope of work consistent with standards established in this chapter and will not contain unnecessary specifications that discourage competition.

(g) Evaluation of proposals. The area agency will award nutrition service and meal contracts to responsible agencies capable of providing cost-effective services. Evaluation criteria will include, but not be limited to:

(1) unit cost;

(2) a service plan, including days and locations;

(3) necessary staff experience and training, accounting and operational controls and technical skills, or ability to obtain them;

(4) a management plan;

(5) a satisfactory performance record, including service delivery and fiscal accounting procedures;

(6) necessary facilities or ability to obtain them;

(7) adequate financial resources to perform the contract or ability to obtain them;

(8) coordination and resource development plan; and

(9) minority ownership.

(h) Profit-making providers. The area agency will secure prior written approval from the TDoA for any proposed contracts with a profit-making nutrition service or meal provider. Requests for approval must allow 20 working days from the date of receipt by TDoA until the date a written decision is provided to the grantee which submitted the request. When a service provider wants to award a subcontract to a profit-making entity, the area agency on aging must approve the contract using the same criteria. The following criteria will be addressed in such requests:

(1) that a consistent solicitation process was available to all potential bidders; and

(2) that consistent and equal technical assistance was available to all potential bidders.

(i) Right to appeal. Any service provider or applicant to provide services whose application under an area plan is denied or whose contract or subgrant is terminated or not renewed (except as provided in 45 Code of Federal Regulations Part 74, Subpart M) has a right to appeal such an action in accordance with §§257.71-257.79 of this title (relating to Appeal Procedures for Service Providers and Applicants).

(j) Staffing for nutrition contract management duties. One or more staff or consultants will be designated by the area agency to manage nutrition service contract. The minimum qualification for the nutrition contract management staff or consultant will be:

(1) completion of a 15-hour course in food protection approved by the Food and Drug Administration or the Texas Department of Health, or a certificate course having an equivalent curriculum;

(2) completion of a course in nutrition services contract management provided by the Texas Department on Aging which will cover needs assessment, service delivery systems, contracting, analysis of unit costs, reporting, monitoring, and training; and

(3) successful completion of the courses within one year of final publication of these sections, or within one year of employment, and every three years thereafter.

(k) Nutrition contract management duties. The following duties will be assigned in one or more job descriptions or professional services contracts:

(1) on-site monitoring of nutrition service providers;

(2) monitoring menus and nutrient analysis; and

(3) technical assistance related to nutrition services.

(l) Site monitoring. Site monitoring by designated nutrition contract management staff or consultants will include the following components:

(1) documentation of performance indicators which indicate compliance with Texas Department on Aging nutrition service standards;

(2) a minimum of one monitoring visit to each congregate meal site and to each kitchen at least once per year, or more often as needed. Site monitoring may be delegated to a qualified dietary consultant employed by the area agency on aging or the service or meal provider. A designated area agency on aging staff or consultant will, at a minimum, provide the format and procedures for monitoring and documentation, review reports, and assure corrective action. Documentation of compliance with all standards will be completed at least annually;

(3) documentation of problems and recommendations with completion dates for corrective action made in writing and copies given to the service provider within 30 working days of monitoring visit; and

(4) follow-up contacts and documentation until corrective action is completed.

(m) Monitoring of menus and nutrient analysis. Monitoring of menus and nutrient analysis by designated nutrition contract management staff or consultants will include assurance that menus meet performance standards for meals as established in this chapter. Comparisons between approved menus, actual meals served, and receipts for foods purchased by each meal provider will be made during each monitoring visit, or more often as needed.

(n) United States Department of Agriculture assistance. United States Department of Agriculture assistance in the form of cash, commodities or items processed with commodities for meals served will be used to the maximum extent feasible in accordance with regulations of USDA, the Texas Department of Human Services, and the Texas Department on Aging. Any meal served by a Title IIIC-funded agency to eligible persons and providing one-third of the recommended dietary allowances, regardless of the funding source for that meal, will be reported for either United States Department of Agriculture cash or commodity assistance.

(o) United States Department of Agriculture direct reimbursement.

(1) United States Department of Agriculture cash distribution to meal providers will be based on a direct reimbursement for meals served. Annual settlements will be calculated at the final United States Department of Agriculture reimbursement rate times the total number of reported eligible meals served during the fiscal year.

(2) An alternative distribution

method may be submitted by the area agency on aging for advance approval by the Texas Department on Aging. Approval will be based on whether those providers to receive a higher proportion of USDA cash meet the following criteria.

(A) A comparative assessment of needs shows that those providers have a significantly higher need for more meals.

(B) A comparison of local resources shows that those providers have relatively less resources.

(C) A comparison of unit costs shows that those providers are using limited resources effectively to serve more meals.

(p) Reports. Area agencies on aging will keep such records and submit to the Texas Department on Aging timely, complete, and accurate reports at such times, in such form, and containing such information as may be necessary to enable determination of compliance with the Older Americans Act, federal regulations, and Texas Department on Aging nutrition services standards, policies, and procedures.

(q) Accounting. Area agencies on aging will account for and report costs in accordance with recognized procedures for accounting of the Texas Department on Aging and 45 Code of Federal Regulations Part 74, Administration of Grants.

(r) Copyrights. Copyright of works developed with Title III funds will be in accordance with federal regulations in permitting the area agency and the Texas Department on Aging to reproduce, publish,

or otherwise use, and to authorize others to use, the work for federal government and State of Texas purposes.

§267.11. State Agency Responsibilities.

(a) Coordination. TDoA will coordinate in the inclusion of goals and objectives for nutrition services into the state plan to provide the basis for prioritizing state agency activities. Such coordination will include other state agencies, area agencies on aging, nutrition service providers, and the TDoA Citizens Advisory Council.

(b) Cooperation. Linkages with other agencies will be sought and maintained which may have an impact on nutrition services.

(c) Model development. Identification of models for nutrition services will be an ongoing activity, such as policies and procedures manuals, needs assessment instruments and comparative data, food service management training manuals and materials, methods for meal cost analysis and comparative data, nutrition education materials, model menus, recipes, and product specifications. Dissemination of such information about models for nutrition services to area agencies and service providers will be accomplished through departmental publications, technical assistance memorandums, conferences, workshops, and by informal communications.

(d) Training. Identification and prioritization of training needs and coordination with area agencies and other resources to

provide needed training related to nutrition services will be accomplished in conjunction with training objectives in the state plan.

(e) Technical assistance. Technical assistance will be provided by such methods as developing manuals and interpretations which address policies, procedures, program guidelines, fiscal mandates, and sound management practices for nutrition services.

(f) Monitoring, assessment, and program review. Area agencies administrative performance will be monitored, assessed, and reviewed to ensure that nutrition service standards are planned that meet priority needs in the area, that nutrition services standards are being met and that adequate progress is being made in implementing the nutrition service objectives of the area plans.

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-8708012

O. P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Effective date: October 9, 1987
Proposal publication date: May 24, 1987
For further information, please call
(512) 444-2727.



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Board of Architectural Examiners

Friday, October 2, 1987, 9 a.m. The Rules Committee of the Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek Boulevard, Austin. According to the agenda, the committee will review rules and regulations.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1363.

Filed: September 17, 1987, 4:04 p.m.
TRD-8707986



Automated Information and Telecommunications Council

Friday, September 25, 1987, 10 a.m. The Council of the Automated Information and Telecommunications Council will meet in emergency session rescheduled from September 18, 1987, in Room 106, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the council will approve minutes, discuss automated information and telecommunications rules, and future business. The emergency status is necessary to adopt rules.

Contact: Tina J. Turner, 510 South Congress, Room 216, Austin, Texas 78701, (512) 463-5530.

Filed: September 18, 1987, 8:30 a.m.
TRD-8707995



Monday, September 28, 1987, 2 p.m. The Automated Information and Telecommunications Council will meet in Room 106, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the council will approve minutes of the previous meeting, and consider rules and future business.

Contact: Tina J. Turner, 510 South Congress Avenue, Austin, Texas 78701, (512) 463-5530.

Filed: September 18, 1987, 3:55 p.m.
TRD-8708072



State Board of Barber Examiners

Tuesday, October 6, 1987, 8 a.m. Board members of the State Board of Barber Examiners will meet in Suite C-275, 1300 East Anderson Lane, Austin. According to the agenda, the board will consider minutes of the previous meeting; interview out-of-state applicants; sign teacher and school certificates; consider examination schedule for 1988; and discuss letters and reports to the board by the executive director. The board also will meet in executive session.

Contact: Jo King McCrorey, 1300 East Anderson Lane, Suite C-175, Austin, Texas 78752, (512) 835-2040.

Filed: September 18, 1987, 2:58 p.m.
TRD-8708058



Texas Education Agency¹

The Test Updating Conference for ExCET (Examination for the Certification of Educators in Texas) of the Texas Education Agency will meet in the Capitol Ballroom, Austin Marriott Hotel at the Capitol, 701 East 11th Street, Austin. Dates, times, and agendas follow.

Thursday, October 1, 1987, 8:30 a.m. The following committees will review test items and passing standards: Professional Development, Physical Education, Elementary Comprehensive, Secondary History, and English

as a Second Language. The portion of the meeting at which actual test items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9592.

Filed: September 18, 1987, 8:54 a.m.
TRD-8707998

Friday, October 2, 1987, 8:30 a.m. The following committees will review test items and passing standards: Professional Development, Physical Education, Elementary Comprehensive, English, and Bilingual Education. The portion of the meeting at which actual test items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: September 18, 1987, 8:54 a.m.
TRD-8707999

Monday, October 5, 1987, 8:30 a.m. The following committees will review test items and passing standards: Generic Special Education, Mathematics, Kindergarten, and Biology. The portion of the meeting at which actual test items will be reviewed will be closed in accordance with Attorney General Opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: September 18, 1987, 8:54 a.m.
TRD-8708000



Texas Department of Health

Friday, September 25, 1987, 9 a.m. The Advisory Council of Massage Therapy of the Texas Department of Health will meet in Room T-703, 1100 West 49th Street, Austin.

According to the agenda, the department will approve minutes from the July 6, 1987, emergency meeting; consider public comments on proposed rules; hear comments and consider rules relating to massage therapy instructor approval and schools; discuss investigation of complaints and possible amendments to rules; discuss massage therapy fees and department budget; act on applications; elect officers; discuss other matters relating to the registration and regulation of massage therapists (not requiring advisory council action); and set the next meeting date.

Contact: Maurice Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7538.

Filed: September 17, 1987, 1:46 p.m.
TRD-8707980



State Department of Highways and Public Transportation

Tuesday-Wednesday, September 29-30, 1987, 10 a.m. and 9 a.m., respectively. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet in Room 101 and 101-A, First Floor, Auditorium, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. According to the agenda summary, the commission will hear presentations for various highway, bridge, and FM road requests in Hartley, Polk and San Jacinto, Tarrant and Denton, and Jeff Davis Counties. Docket is available in the second floor commission office. Upon completion of hearings the commission will meet to execute contract awards and routine minute orders. The commission will consider decisions on presentations from public hearing dockets and review staff reports relative to planning and construction programs and projects.

Contact: Louis Jean Turner, Dewitt C. Greer State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: September 21, 1987, 3:09 p.m.
TRD-8708101



Texas Department of Human Services

Tuesday, September 29, 1987, 1:30 p.m. The CEAPP Steering Committee of the Texas Department of Human Services will meet in Conference Room 5W, Fifth Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the committee will discuss current initiatives, APS conference in San Antonio, November 17-20, 1987, at

the Hyatt Regency Hotel; hear the progress report on regional seminars conducted by Family Eldercare; discuss gatekeeper training in Amarillo and Lubbock and progress statewide; hear the progress report on implementation of memorandums of understanding; and discuss the long range plan and draft of objectives.

Contact: John L. Robinson, P.O. Box 2960, Austin, Texas 78769, (512) 450-3214.

Filed: September 17, 1987, 4:03 p.m.
TRD-8707987



Texas Industrial Accident Board

Monday, September 28, 1987, 9:30 a.m. The Texas Industrial Accident Board will meet in Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board will approve minutes of the previous meeting; hear the crime victims annual report and logo for adoption; consider pharmaceutical arbitration by-laws for adoption, proposed rules and procedures for handling medical examination orders, board policy regarding awarding of medical charges prior to an award on the merits, procedures for handling medical charges in awards on controverted claims, and pre-employment record checks, Article 8307, §9a; and review and discuss board activities. The board will also meet in closed session pursuant to workers' compensation statute to review board files.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7960.

Filed: September 22, 1987, 9:27 a.m.
TRD-8708136



State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Tuesday, September 21, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9663—Application of RSL Holding Company, Inc., Rosenkranz and Company, and General Electric Credit Corporation to acquire control of Coronado Life Insurance Company, El Paso.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 21, 1987, 3:44 p.m.
TRD-8708121

Tuesday, September 29, 1987, 10 a.m. The board will meet in Room 414, to consider filings by the Texas Insurance Company of professional liability programs for not-for-profit and governmental nursing homes and not-for-profit blood banks; proposed amendments to 28 TAC §§5.2004(b)(2), 5.4001(a)(2), 5.4001(a)(1)(I)(i), 1.301, 7.65, 7.1301 concerning regulatory fees; proposed rule under 28 TAC Chapter 7, Subchapter N, concerning fees for service of process; board orders on several different matters, personnel matters concerning Fire Marshal and Research and Information Services; proposal for decision on appeal of Donald Sternberg from action of Texas Catastrophe Property Insurance Association; personnel and litigation matters concerning the commissioner; and proposed amendments to rules respecting the Insurance Holding Company System Regulatory Act.

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

Filed: September 21, 1987, 3:58 p.m.
TRD-8708124

Tuesday, September 29, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9669—Reinsurance agreement whereby Vidor Memorial Funeral Insurance Company, Vidor, will be reinsured by Mission National Life Insurance Company, Houston.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 21, 1987, 3:44 p.m.
TRD-8708122

Wednesday, September 30, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9673—Proposed plan of merger of American-Amicable Life Insurance Company, Houston, into American General Life Insurance Company, Houston.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: September 21, 1987, 3:44 p.m.
TRD-8708123



Texas Board of Irrigators

Wednesday, September 30, 1987, 9 a.m. The Texas Board of Irrigators will meet in Room 513-F, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider approval of minutes; consider certification of licensed irrigator/installers; announce site and dates for future exams; consider refer-

ring complaint against David Young and William Leggett to the Texas Water Commission for revocation of license; consider referring complaint against Keith Ryan to the Texas Water Commission for revocation of license; take action concerning increase of annual fees; discuss rules of evidence with the Attorney General's office; meet with medical examiner's office to address board on techniques and procedures of investigations; meet with Williamson County Health Department to address board on areas of mutual concern; review procedure and distribution of annual roster; hear legal counsel report on opinion of attorney general regarding sales tax charged by irrigators; and hear the chairman's report on the status of various matters of interest to the board.

Contact: Joyce Watson, 1700 North Congress Avenue, Stephen F. Austin Building, Room 647, Austin, Texas 78701, (512) 463-7992.

Filed: September 18, 1987, 11:54 a.m.
TRD-8708049



Texas Department of Labor and Standards

Friday, October 16, 1987, 11 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E. O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Hanzen and Jones Mobile Home Sales for alleged violation of the department's manufactured housing rules and regulations.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 18, 1987, 1:52 p.m.
TRD-8708053

Friday, October 23, 1987. The Texas Department of Labor and Standards will meet in Room 105, 920 Colorado, E.O. Thompson Building, Austin. Times and agendas follow.

9 a.m. The Manufactured Housing Division will consider suspension or revocation of the manufactured housing registration of Redman Homes, Inc. and Varco Homes, Inc. for alleged violation of the department's manufactured housing rules and regulations.

Contact: Orlando S. Mata, Staff Attorney, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 21, 1987, 3:32 p.m.
TRD-8708119

10 a.m. The Manufactured Housing Division will consider revocation or suspension

of the manufactured housing registration of Sunrizon Homes, Inc. and Tawakoni Mobile Homes, Inc. for alleged violation of the department's manufactured housing rules and regulations.

Contact: Orlando S. Mata, Staff Attorney, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 21, 1987, 3:32 p.m.
TRD-8708120

10:30 a.m. The Labor/Licensing and Enforcement Division will consider suspension or revocation of the auctioneer license of James Warren Davis for alleged violation of the department's auctioneer rules and regulations.

Contact: Orlando S. Mata, Staff Attorney, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 21, 1987, 3:32 p.m.
TRD-8708118

11 a.m. the Labor/Licensing and Enforcement Division will consider a decision rendered at a boxing match (Stoner) regarding the department's accidental head butt rule.

Contact: Orlando S. Mata, Staff Attorney, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 21, 1987, 3:33 p.m.
TRD-8708115

1:30 p.m. The Manufactured Housing Division will consider suspension or revocation of the manufactured housing registration of Palm Harbor Homes and Desirable Homes for alleged violation of the department's rules and regulations.

Contact: Orlando S. Mata, Staff Attorney, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 21, 1987, 3:32 p.m.
TRD-8708116

3 p.m. The Manufactured Housing Division will consider suspension or revocation of the manufactured housing registration of Fleetwood Homes and Texan Manufactured Homes also known as Lone Star Housing Inc. for alleged violation of the department's manufactured housing rules and regulations.

Contact: Orlando S. Mata, Staff Attorney, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 21, 1987, 3:32 p.m.
TRD-8708117



Texas Motor Vehicle Commission

Wednesday, September 30, 1987, 9:30 a.m. The Texas Motor Vehicle Commission will meet in Suite 302, 815 Brazos, Austin. According to the agenda summary, the commission will adopt minutes of commission meetings of August 5 and 6, 1987; hear

report and order in 87-084 and in Lemon Law cases; consider agreed orders for approval and entry by commission, orders of dismissal, and orders of license revocation; and discuss proposed rule amendments, agency budget, and financial statutes.

Contact: Russell Harding, 815 Brazos Street, Suite 301, Austin, Texas 78701, (512) 476-3587.

Filed: September 18, 1987, 12:39 p.m.
TRD-8708043



Board of Pardons and Paroles

Monday-Friday, September 28-October 2, 1987, 1:30 p.m. daily, except Friday at 11 a.m. A three member board panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will receive, review, and consider information and reports concerning prisoner/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: September 18, 1987, 10:30 a.m.
TRD-8708014

Tuesday, September 29, 1987, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: September 18, 1987, 10:30 a.m.
TRD-8708015



Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Friday, September 25, 1987, 9 a.m. The Hearings Division will consider the following dockets: 7596, 5610, 7122, 7123, 7124, 7152, 7484, 6668, 6753, 7433, 7636, 6588, 7288, 7368, 7369, 7022, 7541, 7362, 7365, 7621, 7625, 7513, 7409, and 7469.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 17, 1987, 2:36 p.m.
TRD-8707984

Friday, September 25, 1987, 11 a.m. The Administrative Division will approve minutes of the previous meeting; hear reports, discuss, and act on budget and fiscal matters; consider the link-up America certification proposal and Public Utility Regulatory Act, §43A, proposed application; consider matters discussed in executive session; and set time and place for next meeting. The division will also meet in executive session to consider personnel and litigation matters.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 17, 1987, 2:37 p.m.
TRD-8707983

Monday, September 28, 1987, 10 a.m. The Extended Area Service (EAS) Advisory Committee will meet in emergency session in Hearing Room A. The emergency status is necessary because deadlines imposed by H.R. 733 require prompt action for timely completion of EAS recommendations.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 21, 1987, 3:18 p.m.
TRD-8708102

Monday, October 5, 1987, 1:30 p.m. The Hearings Division will consider Docket 7623—Application of EDC One, Inc. and Texas Utilities Electric Company for certification of cogeneration agreement.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 21, 1987, 3:18 p.m.
TRD-8708103

Tuesday, October 6, 1987, 1:30 p.m. The Hearings Division will consider Docket 7708—Application of General Telephone Company of the Southwest, Inc. for waiver of P.U.C. Substantive Rule 23.68(c) and for extended amortization of embedded CPE.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 23, 1987, 3:17 p.m.
TRD-8708104

Thursday, October 8, 1987, 10 a.m. The Hearings Division will consider comments filed in response to proposed substantive rules 23.26 and 23.27 (published in the July 3, 1987, issue of the *Texas Register*) and whether to take final action on these proposed rules. It will also consider publication of rule amendments relating to fees and assessments as provided in PURA §18(i).

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 21, 1987, 3:17 p.m.
TRD-8708106

Thursday, October 8, 1987, 1:30 p.m. The Hearings Division will consider Docket 7619—Application of Texas Utilities Electric Company for a proposed transmission line and associated substation within Anderson County.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 21, 1987, 3:17 p.m.
TRD-8708105

Wednesday, October 21, 1987, 2 p.m. The Hearings Division will consider Docket 7361—Application of Rayburn Country Electric Cooperative, Inc. for approval of wholesale rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 18, 1987, 2:55 p.m.
TRD-8708059

Tuesday, January 19, 1988, 10 a.m. The Hearings Division will consider Docket 7652—Application of General Telephone Company of the Southwest for tariff revision to offer centranet sm service.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 18, 1987, 3:18 p.m.
TRD-8708060



Railroad Commission of Texas

Monday, September 21, 1987, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division considered Oil and Gas Docket 1-90,495—Application of Acme Petroleum Company to discharge produced water in the Little New York Field, Gonzales County. The emergency status was necessary because this item must be taken on less than seven days notice as a matter of urgent public necessity. This item was properly noticed for the meeting of September 14, 1987, and was passed.

Contact: Margaret Allen, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6887.

Filed: September 18, 1987, 11:27 a.m.
TRD-8708023

Monday, September 28, 1987, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters, including but not limited to discussion, consideration and/or action on the following: management study, oil and gas general counsel, and oil field investigator personnel and their operations.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: September 18, 1987, 11:27 a.m.
TRD-8708024

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: September 18, 1987, 11:27 a.m.
TRD-8708025

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: September 18, 1987, 11:27 a.m.
TRD-8708026

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: September 18, 1987, 11:28 a.m.
TRD-8708027

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: September 18, 1987, 11:28 a.m.
TRD-8708028

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: September 18, 1987, 11:28 a.m.
TRD-8708029

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: September 18, 1987, 11:28 a.m.
TRD-8708030

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978,

§§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: September 18, 1987, 11:28 a.m.
TRD-8708032

The Oil and Gas Division submitted a revised agenda to consider the investigation of cementing practices of Western Company of North America.

Contact: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: September 18, 1987, 11:28 a.m.
TRD-8708031

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: September 18, 1987, 11:29 a.m.
TRD-8708033

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: September 18, 1987, 11:29 a.m.
TRD-8708034

The Office of the Special Counsel director's report relating to pending litigation, including but not limited to discussion and/or decision in Docket 500 amendment, Hufo Oils, et al v. Railroad Commission, C-5937 in the Supreme Court of Texas, Walker Operating Corporation, et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698, et al, in relation to Oil and Gas Docket 10-87,017, and Railroad Commission of Texas v. Concerned Citizens to Protect the Edwards Aquifer, et al, Cause 17,674, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: September 18, 1987, 11:29 a.m.
TRD-8708035

Various matters falling within the Surface Mining and Reclamation Division's regulatory jurisdiction.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: September 18, 1987, 11:29 a.m.
TRD-8708036

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: C. Tom Clowe, P.O. Drawer

12967, Austin, Texas 78711, (512) 463-7122.

Filed: September 18, 1987, 11:29 a.m.
TRD-8708037



Texas Rehabilitation Commission

Thursday, October 1, 1987, 1 p.m. The Governor's Committee for Disabled Persons of the Texas Rehabilitation Commission will meet in Ballroom D, Wyndham Southpark Hotel, 4140 Governor's Row, Austin. According to the agenda summary, the committee will approve minutes of the previous meeting; hear chairperson's remarks; review purposes, structure, and activities of Governor's Committee for Disabled Persons (GCDP); hear reports from invited mayor's committees, reports from fiscal year 1988-1989 implementation plan objectives, and GCDP projects; hold a briefing on employment awards conference; and on October 2, 1987, at 8 a.m., hold the employment awards conference.

Contact: Virginia Roberts, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8272.

Filed: September 18, 1987, 12:33 p.m.
TRD-8708044



Texas Savings and Loan Department

Tuesday, September 29, 1987, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the applications of Hardin Savings and Loan Association, Silsbee, Hardin County, for a branch office at the following locations:

130 West First Street, Humble, Harris County; 10301 South Post Oak, Houston; 6614 South Main, Houston; 13640 FM Road 149, Houston; 2424 Bay Area Boulevard, Houston; 1708 Loop 610 (at West 18th), Houston; 3623 Southwest Freeway, Houston, to 6200 Savoy, Suite 100, Houston, Harris County; and to change the name to Meritbanc Savings Association, from which record the commissioner will determine to grant or deny the applications.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 17, 1987, 1:24 p.m.
TRD-8707972-8707979



State Securities Board

Tuesday, September 29, 1987, 10 a.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto, Austin. According to the agenda, the commissioner will hold a hearing to determine whether a cease and desist order should be issued prohibiting the sale or offer for sale of securities by Trust Company Bank, through its agents, Susan Winslow Callender and Carol L. Culpepper, to Texas residents.

Contact: Sue B. Roberts, 1800 San Jacinto, Austin, Texas 78711, (512) 474-2233.

Filed: September 17, 1987, 10:37 a.m.
TRD-8707965



Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, room numbers, and agendas follow.

Tuesday, September 29, 1987, 10 a.m. The commission will meet in Room 118 to consider water district bond amendment, use of surplus funds, release from escrow requirements, water rate increase matters, proposal on order assessing administrative penalties, water quality proposed permits, amendments and renewals, amendments to certificates of adjudication and executive director's petition for order revoking agricultural permit 01416 held by Charles Pilat.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 18, 1987, 11:30 a.m.
TRD-8708038

Tuesday, September 29, 1987, 2 p.m. The commission will meet in Room 118 to consider executive director's preliminary enforcement report and petition for an order requiring certain actions of the City of China (Permit 12104-01); substantial noncompliance and requiring certain actions of the City of Strawn (Permit 10326-01); discuss examiners proposal for decision on application by Seabrook Seafoods, Inc. for renewal of Permit 02078 and application by Harris-Fort Bend Counties Municipal Utility District 1 for renewal of Permit 12805-01.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 17, 1987, 3:57 p.m.
TRD-8707985

Wednesday, September 30, 1987, 9:30 a.m. The commission will meet in Room 118 to consider TA-5807 of Hunt Investment Corporation for a permit to divert and use 195 acre-feet of water for a four-month period from Fossil Lake on Smithfield Creek, tributary of Big Fossil Creek, tributary West Fork Trinity River, tributary of Trinity Riv-

er, Trinity River Basin, for irrigation purposes in Tarrant County.

Contact: Karen A. Phillipa, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 18, 1987, 4:06 p.m.
TRD-8708078

Wednesday, September 30, 1987, 2 p.m. The commission will meet in Room 118 to consider executive director's motion to amend the commission's order of June 5, 1986, concerning the City of Dallas, Central Wastewater Treatment Plant (Permit 10060-01).

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (513) 463-7898.

Filed: September 18, 1987, 4:06 p.m.
TRD-8708075

Thursday, October 1, 1987, 10 a.m. The commission will meet in Room 119 to consider the executive director's report on agency administration, policy, budget, procedures, and personnel matters.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 18, 1987, 4:06 p.m.
TRD-8708079

Friday, October 2, 1987, 10 a.m. The commission will meet in Room 618 to consider F. E. Appling Interests. (5141).

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 18, 1987, 11:30 a.m.
TRD-8708039

Friday, October 16, 1987, 10 a.m. The commission will meet in Room 618 to consider an application filed by Parkerville East Water System, Docket 7252-C, for a water certificate of convenience and necessity.

Contact: Ann F. MacMurray, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7875.

Filed: September 18, 1987, 11:31 a.m.
TRD-8708040

Wednesday, October 28, 1987, 10 a.m. The commission will meet in Room 118 to consider a petition for creation of San Marcos Municipal Utility District 1, containing 634.59 acres of land.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 18, 1987, 11:30 a.m.
TRD-8708041

Wednesday, October 28, 1987, 10 a.m. The commission will meet to consider a petition for creation of San Marcos Municipal Utility District 2, containing 702.90 acres of land.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 18, 1987, 11:30 a.m.
TRD-8708042

Thursday, November 12, 1987, 10 a.m. The commission will meet in Room 618 to consi-

der an application for a rate change in Hidalgo County by Monte Alto Water and Sewer Company (Docket 7338-R).

Contact: Carl X. Forrester, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7875.

Filed: September 18, 1987, 11:31 a.m.
TRD-8708045



Regional Agencies Meetings Filed September 17

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on September 25, 1987, at 9 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Cass County Appraisal District, Board of Directors, met at 400 North Main, Linden, on September 21, 1987, at 6:30 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Central Plains Mental Health and Mental Retardation Center, Board of Trustees, met at 715 Houston, Plainview, on September 24, 1987, at 7 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

The Education Service Center, Region XI, Board of Directors, will meet at 3001 North Freeway, Fort Worth, on September 30, 1987, at noon. Information may be obtained from R.P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311, ext. 102.

TRD-8707966



Meetings Filed September 18

The Austin-Travis County Mental Health and Mental Retardation Center, Financial and Control Committee and Board of Trustees, met in Suite 107, 611 South Congress Avenue, Austin, on September 23, 1987, at noon, and on September 24, 1987, at 7 a.m. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Suite 107, Austin, Texas 78704, (512) 447-4141.

The Central Counties Center for Mental Health and Mental Retardation Services, Board of Trustees, met at 304 South 22nd Street, Temple, on September 24, 1987, at 7:45 p.m. Information may be obtained from Steven B. Schnee, P.O. Box 518, Temple, Texas 76503.

The Dallas Area Rapid Transit, Minority Affairs Committee and Board, met at the DART Office, 601 Pacific Avenue, Dallas, on September 22, 1987, at 2:30 p.m. and 4 p.m., respectively. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The East Texas Council of Governments, East Texas Regional Review Committee, will meet on the Second Floor, Community Inn-Inn Club, Kilgore, on September 30, 1987, at 2 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Gulf Bend Mental Health and Mental Retardation Center, Board of Trustees, met at the Horizon Club, 1902 East North, Victoria, on September 24, 1987, at noon. Information may be obtained from Bill Dillard, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611.

The Houston-Galveston Area Council, Regional Review Committee, met in the Fourth Floor Boardroom, 3555 Timmons, Houston, on September 23, 1987, at 9 a.m. Information may be obtained from Jack Steele, 3555 Timmons, Houston, Texas 77027, (713) 627-3200.

The Lamar County Appraisal District, Regular Board, met at the District Office, 1523 Lamar Avenue, Paris, on September 22, 1987, at 4 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The Lower Colorado River Authority, Audit and Budget, Energy Operations, Finance and Administration, Natural Resources, and Planning and Public Policy Committees, met at 3700 Lake Austin Boulevard, Austin, on September 23, 1987, at 9 a.m. The Board of Directors met at the same location, on September 24, 1987, at 9 a.m. Information may be obtained from John E. Bagalay, Jr., 3700 Lake Austin Boulevard, Austin, Texas 78703, (512) 473-3200.

The Texas Panhandle Mental Health Authority, Board of Trustees, met in the Killgore Atrium, 1200 Wallace Boulevard, Amarillo, on September 24, 1987, at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Red River Authority of Texas, Board of Directors, will meet in Room 215, Activity Center, 1001 Indiana, Wichita Falls, on September 25, 1987, at 9:30 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

The Texas Association of Regional Councils, Board of Directors, will meet in the Ballroom, Second Floor, Westin Paso del

Norte, El Paso, on September 25, 1987, at 2 p.m. Information may be obtained from Katherine B. Ray, 508 West 12th Street, Austin, Texas 78701, (512) 478-7415.
TRD-8708013



Meetings Filed September 21

The Bosque County Appraisal District, Appraisal Review Board, will meet at 104 West Morgan, Meridian, on September 25 and 28, 1987, at 9 a.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665, (812) 435-2305.

The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees, met in the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, on September 22, 1987, at 2 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

The Education Service Center, Region XVIII, Board of Directors, will meet at 2811 LaForce Boulevard, Midland, on October 1, 1987, at 7:30 p.m. Information may be obtained from Vernon Stokes, P.O. Box 6020, Midland, Texas 79711, (915) 563-2380.

The Edwards County Appraisal District, Appraisal Review Board, met in the New County Annex Building, Rocksprings, on September 23, 1987, at 9 a.m. Information may be obtained from Sondra Madden, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189.

The Lamb County Appraisal District, Board of Directors, will meet in the Boardroom, 330 Phelps Avenue, Littlefield, on September 29, 1987, at 7:30 p.m. Information may be obtained from Murlene J. Bilbrey, 330 Phelps Avenue, Littlefield, Texas 79339, (806) 385-6474.

The Mason County Appraisal District, will meet at 206 Fort McKavitt Street, Mason, on October 3 and 5, 1987, at 1 p.m. and 6:30 p.m., respectively. Information may be obtained from Ann Stapp, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

The Northeast Texas Municipal Water District, Board of Directors, will meet at Highway 250 South, Hughes Springs, on September 28, 1987, at 7 p.m. Information may be obtained from Homer Tanner, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

The Parmer County Appraisal Office, Board of Directors, will meet at 305 Third Street, Bovina, on October 8, 1987, at 8 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405.

The San Patricio County Appraisal District, Board of Directors, met in the Courthouse Annex, Sinton, on September 24, 1987, at 2 p.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The Texas Municipal Power Agency (TMPA), Board of Directors, met in the Boardroom, Second Floor, College Station Hilton, 801 University Drive East, College Station, on September 24, 1987, at 7:30 p.m. and will meet in the Auditorium, Brazos Center, 3232 Briarcrest, Bryan, on September 25, 1987, at 9:30 a.m. Information may be obtained from Jim Bailey, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

The Wise County Appraisal District, Board of Directors, met in the Boardroom, 206 South State Street, Decatur, on September 24, 1987, at 8:15 a.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3082.

TRD-8708080



Meetings Filed September 22

The Education Service Center, Region XIII, Board of Directors, will meet in Room 205, 5701 Springdale Road, Austin, on September 28, 1987, at 7 p.m. Information may be obtained from Joe Parks, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300.

The Erath County Appraisal District, Appraisal Review Board, will meet in the Boardroom, 1390 Harbin Drive, Stephenville, on September 28, 1987, at 9:30 a.m. Information may be obtained from Treacia Perales, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Lubbock Mental Health and Mental Retardation Center, Board of Trustees, will meet at 3801 Avenue J, Lubbock, on September 28, 1987, at 11:30 a.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

The Middle Rio Grande Development Council, Area Advisory Council on Aging, will meet in the McNelly Room, Uvalde First State Bank, Uvalde, on September 29, 1987, at 10 a.m. Information may be obtained from Estella Hernandez, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

TRD-8708130



In **Addition**

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board **Applications for Construction Permits**

The Texas Air Control Board gives notice of applications for construction permits received during the period of August 24-September 4, 1987.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Naval Facilities Engineering, Ingleside; steam boilers one, two, and three; Ingleside, San Patricio County; 18292; new

Dixie Chemical Company, Inc., Pasadena; specialty chemical facility; Pasadena, Harris County; 18294; new

Union Oil Company of California, doing business as Unocal, Nederland; loading facilities for Tank; Nederland, Jefferson County; 18295; new

Riverside Press of Houston, Inc., Houston; heatset web offset printing; Houston, Harris County; 18299; new

Rio Grande Oil Mill, Harlingen; cottonseed oil solvent extract; Harlingen, Cameron County; 18302; new

J. I. Hailey, Inc., Corpus Christi; pipe reclamation facility; Corpus Christi, Nueces County; 18317 new

Exxon Company USA, Baytown; cleu 2 prefractor facility; Baytown, Harris County; 18318; new

Texaco Refining and Marketing, Inc., Port Arthur; HF alkylation unit; Port Arthur, Jefferson County; 18319; new

Issued in Austin, Texas, on September 16, 1987.

TRD-8707982

Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: September 17, 1987

For further information, please call (512) 451-5711, ext. 354.

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 September 7, 1987 through September 11, 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 11, 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 September 7, 1987, through September 11, 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 September 7, 1987, through September 11, 1987: \$272,670,802.

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of September 11, 1987: \$801,829,925.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from September 7, 1987, through September 11, 1987: None.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from September 7, 1987, through September 11, 1987, in order of issuer, user, description, and amount: Harris County Industrial Development Corporation, Exxon Capital Ventures, Inc., pollution control, \$15,300,000.

Issued in Austin, Texas, on September 15, 1987.

TRD-8707954 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: September 16, 1987
For further information, please call (512) 472-5059.



Request for Proposals

This request for proposal is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Texas Department of Commerce (TDoC) invites proposals from qualified individuals to serve under contract as the administrative assistant, State of Texas Office, Mexico City, D.F. The services requested are a continuation of services being performed by Graciela Letayf under contract expiring August 31, 1987.

The individual selected for the position of administrative assistant must possess the minimum qualifications and will be required to perform the various services as follows.

Qualifications. Each individual submitting an offer must present evidence or otherwise demonstrate to the satisfaction of TDoC that such individual is a Mexican citizen or is a resident of Mexico; is bilingual in the English and Spanish languages; has a minimum of five years of experience in administration as an executive secretary with management experience, accounting, and international trade background; has an in-depth knowledge of the organization and function of the government of Mexico and its agencies, and the United States Embassy and its sections; has a working knowledge of international finance, reverse investment, joint venture, acquisition, trade missions, trade show and trade fair activities, industrial development activities, and the general conduct of business in Mexico and Latin America; and is insurable for use of automobile in Mexico.

Scope of Services. The individual serving as administrative assistant will be required to render the following services as the same may from time to time be required advise and assist Texas manufacturers and businessmen in making contacts and appointments with Mexican government officials, United States Embassy officials, and Mexican, Central, and South American industry importers who may be interested in products, services, and/or materials offered by Texas businesses; conduct or assist in conducting an on-going public relations program within Mexico, Central, and South America to promote the sale, lease, or rental of products, services, and/or materials offered by Texas businesses; advise and assist or participate in the advising and assisting Texas businessmen in displaying their products, services, and/or materials at trade fairs, trade shows, or otherwise, to enhance and encourage the rental, lease, or sale thereof to users in Mexico, Central, and South America; research and locate, or assist in the research and location of Mexican, Central, and South

American suppliers of products, services, and/or materials, on request, for Texas businessmen; assist Mexican, Central, and South American exporters, manufacturers, and suppliers in making contact with Texas businessmen who inquire about the importation of manufactured products, raw materials, or services, or who inquire about joint ventures, licensing agreements, and transfers of technology; when requested, to advise and assist State of Texas officials in the conduct of their duties in Mexico, Central, and South America, including the making and monitoring of appointments; and supervise and provide all necessary support for Texas state agencies as may be required under existing or future interagency agreements between TDoC and other state agencies.

Hiring Procedure. Based on the previously mentioned requirements, the executive director will make the final hiring decision. TDoC reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. TDoC is under no legal obligation to enter into a contract with any offeror on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested. Further, TDoC will not reimburse any offeror for expenses incurred by such offeror in the preparation and/or submission of an offer. Any contract entered into by TDoC pursuant to this request will be subject to the availability of appropriated funds, will contain a cancellation clause giving either party to such contract the right to terminate all obligations thereunder upon 30 days written notice to the other party, and will be for a period of 10 months beginning November 1, 1987, and ending August 31, 1988.

Offer Submission. Offers must be submitted to the Texas Department of Commerce, P.O. Box 12728, Austin, Texas, 78711, Attention: International Development Section, by 5 p.m., C.S.T., October 31, 1987.

Contact. Further information may be obtained by contacting the International Department of TDoC, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

Issued in Austin, Texas, on September 18, 1987.

TRD-8708073 J. William Lauderback
Executive Director
Texas Department of Commerce

Filed: September 18, 1987
For further information, please call (512) 472-5059.



This request for proposal is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Texas Department of Commerce (TDoC) requests offers from qualified individuals to serve under contract as the manager of the State of Texas Office, Mexico City, D.F. The services requested are a continuation of services being performed by Luis A. Morales under contract expiring August 31, 1987.

The individual selected for the position of manager must possess the minimum qualifications listed in the qualifications section and will be required to perform the various services listed in the scope of services section.

Qualifications. Each individual submitting an offer must present evidence or otherwise demonstrate to the satisfac-

tion of TDoC that such individual:

- (a) is a United States citizen and preferably a resident of Texas;
- (b) is bilingual in the English and Spanish languages;
- (c) has a minimum of two years business experience in management, accounting, and international trade;
- (d) possesses Mexican working papers with FM-2 visa status for self, personal property, and automobile in Mexico;
- (e) must be insurable for use of automobile in Mexico;
- (f) has an in-depth knowledge of the organization and function of:
 - (1) the government of Mexico and its agencies, and
 - (2) the United States Embassy and its sections; and
- (g) has a working knowledge of international finance, reverse investment, joint venture, acquisition, trade missions, trade show and trade fair activities, industrial development activities, and the general conduct of business in Mexico and Latin America.

Scope of Services. The individual serving as manager will be required to render the following services as the same may from time to time be required:

- (a) management of the day-to-day operations of the State of Texas office, including the supervision of other contract personnel and employees of such office, simple accounting functions and the translation and composition of correspondence concerning trade and foreign investment in Mexico, Central, and South America;
- (b) advising and assisting Texas manufacturers and businessmen in making contacts and appointments with Mexican government officials; United States Embassy officials; and Mexican, Central, and South American industry importers who may be interested in products, services, and/or materials offered by Texas business;
- (c) conducting or assisting in conducting an on-going public relations program within Mexico, Central, and South America to promote the sale, lease, or rental of products, services, and/or materials offered by Texas businesses;
- (d) advising and assisting or participate in the advising and assistance of Texas businessmen in displaying their products, services, and/or materials at trade fairs, trade shows, or otherwise, to enhance and encourage the rental, lease, or sale thereof to users in Mexico, Central, and South America;
- (e) researching and locating, or assisting in the research and location of Mexican, Central, and South American suppliers of products, services, and/or materials, on request, for Texas businessmen;
- (f) assisting Mexican, Central, and South American exporters, manufacturers, and suppliers in making contact with Texas businessmen who inquire about the importation of manufactured products, raw materials or services/ or who inquire about joint ventures, licensing agreements and transfers of technology;
- (g) when requested, advising and assisting State of Texas officials in the conduct of their duties in Mexico, Central, and South America, including the making and monitoring of appointments; and
- (h) supervision and provision of all necessary support for Texas state agencies as may be required under existing or future interagency agreements between TDoC and other state agencies.

TDoC reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost ef-

fectiveness of any offer received. TDoC is under no legal obligation to enter into a contract with any offeror on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested. Further, TDoC will not reimburse any offeror for expenses incurred by such offeror in the preparation and/or submission of an offer. Any contract entered into by TDoC pursuant to this request will be subject to the availability of appropriated funds, will contain a cancellation clause giving either party to such contract the right to terminate all obligations thereunder upon 30 days written notice to the other party, and will be for a period of 10 months beginning November 1, 1987, and ending August 31, 1988.

Hiring Procedures. Based on the previously mentioned requirements, the executive director will make the final hiring decision.

Offer Submission. Offers must be submitted to the Texas Department of Commerce, P.O. Box 12728, Capitol Station, Austin, Texas, 78711, Attention: International Development Section; by 5 p.m., C.S.T., October 31, 1987.

Contact. Further information may be obtained by contacting the International Department of TDoC, P.O. Box 12728, Capitol Station, Austin, Texas 78711, (512) 472-5059.

Issued in Austin, Texas, on September 18, 1987.

TRD-8708074 J. William Lauderback
Executive Director
Texas Department of Commerce

Filed: September 18, 1987
For further information, please call (512) 472-5059.



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricul- tural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 09/21/87-09/27/87	18.00%	18.00%
Monthly Rate— Article 1.04(c)(1) 09/01/87-09/30/87	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11(3) 10/01/87-12/31/87	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d)(3) 10/01/87-12/31/87	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2) ⁽²⁾ 10/01/87-12/31/87	18.00%	18.00%

Retail Credit Card
Annual Rate—
Article 1.11⁽³⁾
10/01/87-12/31/87 18.00% N/A

Annual Rate Applicable
to Pre-July 1, 1983,
Retail Credit Card and
Lender Credit Card
Balances with Annual
Implementation Dates
from
10/01/87-12/31/87 18.00% N/A

Judgment Rate—Article
1.05, §2
09/01/87-09/30/87 10.00% 10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
- (3) Credit for personal, family, or household use.
- (4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on September 14, 1987.

TRD-8707964 Al Endsley
Consumer Credit
Commissioner

Filed: September 17, 1987
For further information, please call (512) 479-1280.

Texas Department of Health Correction of Error

Adopted sections by the Texas Department of Health contained errors as published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2922-2963).

In §145.12 the second sentence to the definition of medical advisor should read: "This definition shall become effective at such time as the requirements of Rider No. 17, II-22, General Appropriations Act for the fiscal 1988-89 biennium and/or Texas Human Resources Code, §22.014 are met, and written notice of same is provided to licensed facilities at least sixty days prior to its effective date."

In §145.280(2), subparagraph (B) should read: "(B) Heating, ventilating, and air-conditioning systems shall meet the requirements of the Life Safety Code, including NFPA 90A. The plans shall have a statement verifying that the systems are designed to conform to NFPA 90A. Reference §145.276 of this title (relating to Smoke Compartmentation (Subdivision of Building Spaces)) for conditions related to smoke compartmentation."

A proposed amendment submitted by the Texas Department of Health contained an error as submitted and published in the August 11, 1987, issue of the *Texas Register* (12 TexReg 2613).

In §61.3(d)(G), the second sentence should read: "The RCC will be applied to the total charges, excluding personal items, before deducting the third party payment."

The correction of error to §61.3(d)(a) in the September 8, 1987, issue of the *Texas Register* (12 TexReg 3109) should be disregarded.

Texas Judicial Council Announcement of Meeting

The Texas Judicial Council will meet Friday, September 25, 1987, at 10 a.m., at the Texas Law Center, 1414 Col-

orado, Austin, to consider salaries of presiding judges of administrative judicial regions; a report on state appropriations for the judiciary; monthly reports from courts of appeals; and the election of officers. For further information contact C. Raymond Justice, Executive Director, Texas Judicial Council, 1414 Colorado, Austin, Texas 78701, (512) 463-1625.

Issued in Austin, Texas, on September 17, 1987.

TRD-8708055 Jim Hutcheson
General Counsel
Texas Judicial Council

Filed: September 18, 1987
For further information, please call (512) 463-1625.

Austin Travis County Mental Health Mental Retardation Bid Announcement

Pursuant to Texas Civil Statutes, Article 5547, §203 and §204, and the Texas Administrative Code, Austin Travis County Mental Health and Mental Retardation invites both private and public service care providers to submit bids for residential services for 30 mentally retarded clients. All requests for bid packets must be submitted in writing to Ron Manns, Austin Travis County Mental Health and Mental Retardation, P.O. Box 3548, Austin, Texas 78764-3548. Closing date for submission of bids is October 9, 1987. All bids will be reviewed by center staff to determine that server eligibility criteria are met. Contracts will be awarded on November 2, 1987, to those who propose the type of service delivery system which best meets clients' needs and provides the highest quality of care.

Issued in Austin, Texas, on September 16, 1987.

TRD-8707941 Sharon Taylor
Executive Assistant
Austin Travis County Mental Health
Mental Retardation

Filed: September 16, 1987
For further information, please call (512) 447-4141.

Railroad Commission of Texas Extension of Comment Period

The Railroad Commission of Texas, Surface Mining and Reclamation Division, has proposed an amendment to 16 TAC §11.221, concerning miscellaneous revisions to the coal mining regulations.

The proposed amendment was announced in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2546). The comment period regarding adoption of the proposed amendment is extended until 5 p.m. on Friday, October 16, 1987.

Comments may be submitted to Charles E. Evans, Hearings Examiner, Surface Mining Section, Hearings and Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6719.

Issued in Austin, Texas, on September 28, 1987.

TRD-8708046 Ron Reeves
Director
Surface Mining Section
Hearings and Legal Division
Railroad Commission of Texas

Filed: September 18, 1987
For further information, please call (512) 463-7149.



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 Lille
Special Counsel
Railroad Commission of Texas

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



Texas Water Commission Correction of Error

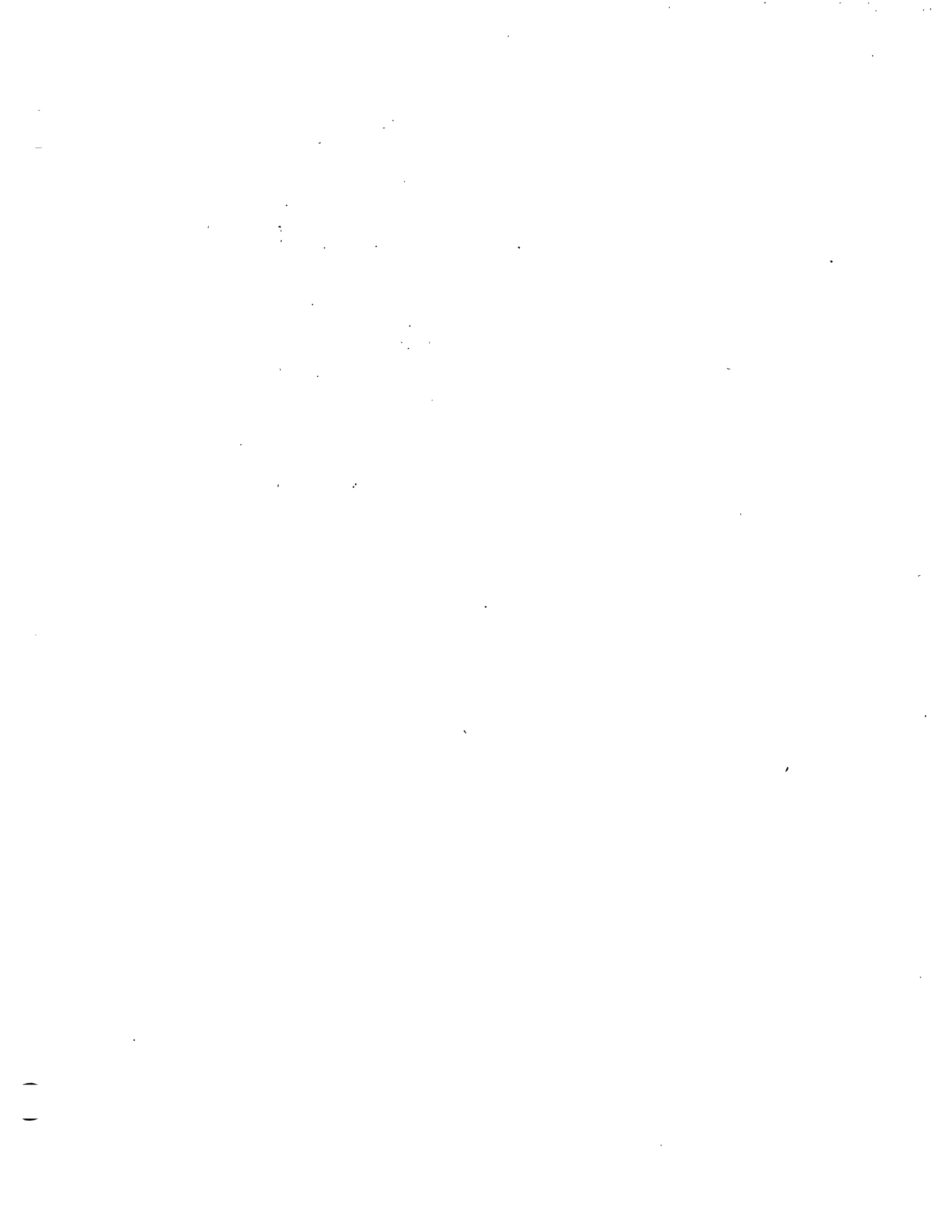
New sections adopted on an emergency basis submitted by the Texas Water Commission contained errors as published in the September 11, 1987, issue of the *Texas Register* (12 TexReg 3119).

Sections 275.51-275.59, 291.41-291.44, 291.51-291.56, and 335.321, 335.323-335.325, 335.328, 335.329, and 335.332, should read the following effective and expiration dates:

Effective date: September 2, 1987.

Expiration date: December 31, 1987.



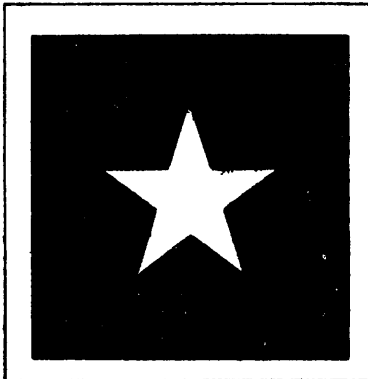


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