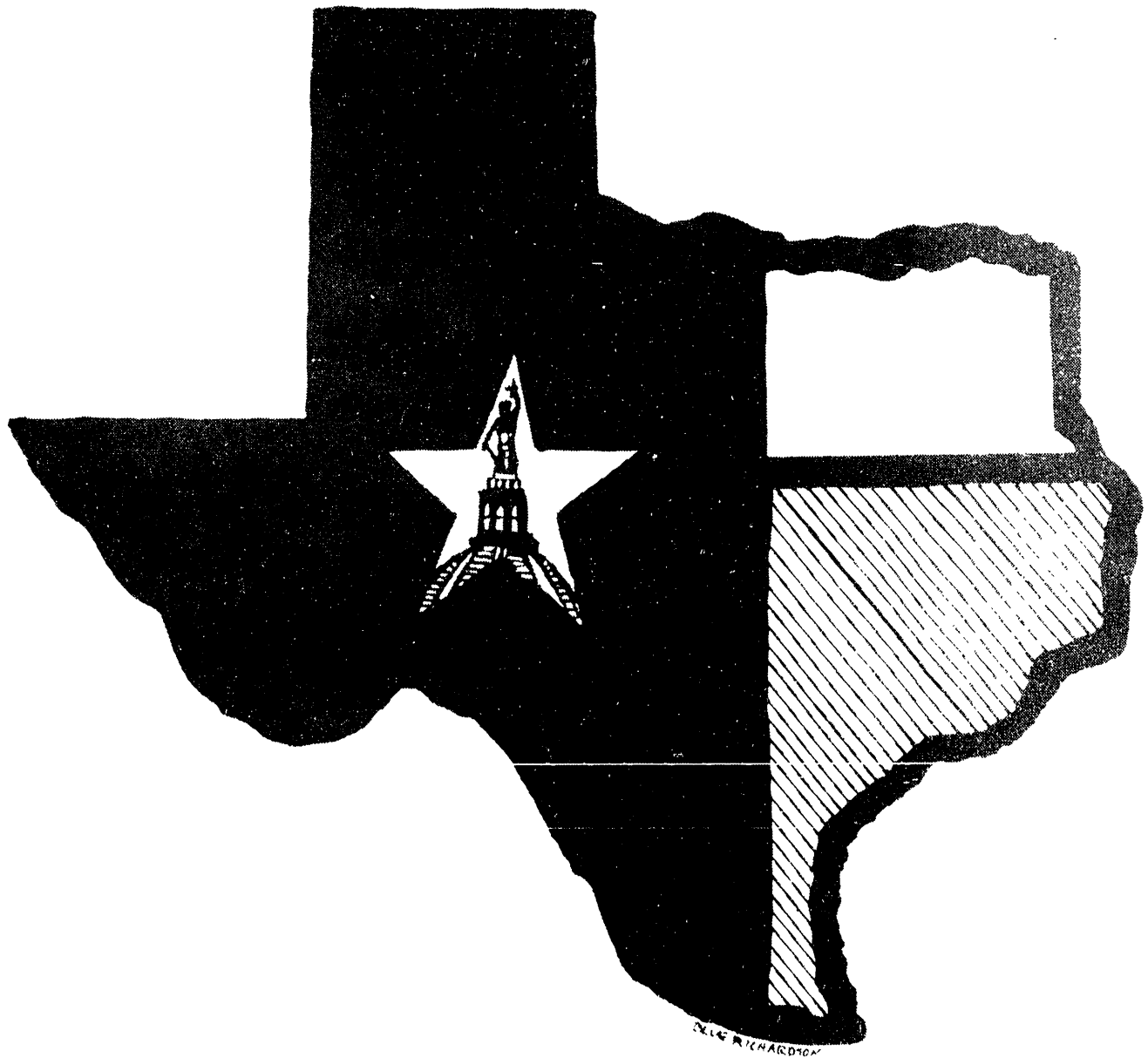


Texas Register

Volume 12, Number 74, October 2, 1987

Pages 3499-3575



Highlights

The **Texas Department of Health** adopts on an emergency basis amendments concerning emergency medical services training program and certification. Effective date - September 25, 1987 **page 3507**

The **Texas Animal Health Commission** proposes amendments conforming with the brucellosis eradication uniform methods and rules concern-

ing ear tagging. Earliest possible date of adoption - November 2, 1987... **page 3514**

The **Texas Department of Health** adopts an amendment and new section providing adequate enforcement to the Hazard Communication Act. Effective date - October 16, 1987... **page 3552**

Office of
the Secretary
of State

Texas Register

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Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

Specific explanations on the contents of each section can be found on the opening page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

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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, it should be written: "12 TexReg 2" (issue date); while on the opposite page, page 12, in the lower right-hand corner, would be written "issue date 12 TexReg 3"

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

TAC stands for the *Texas Administrative Code*;

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The Governor

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

Appointments Made September 10

To be a member of the **Texas Council on Alzheimer's Disease and Related Disorders** (Family Primary Caregiver Position) for a term to expire September 1, 1989:

Dr. John Raleigh Jackson, P.O. Box 429, (Panorama Estates), La Grange, Texas 78945. This is a new council created pursuant to Senate Bill 591, 70th Legislature, 1987.

To be a member of the **Capitol Centennial Committee** pursuant to Senate Concurrent Resolution 105, 70th Legislature, 1987, for terms at the pleasure of the governor:

Rita Clements, P.O. Box 12428, Austin, Texas 78711; Nellie Connally, 8502 Hickory Circle Drive, Austin, Texas 78735; and T. R. Fehrenbach, 131 Marv D Avenue, San Antonio, Texas 78209.

Appointments Made September 15

To be a member of the **Gulf Coast Waste Disposal Authority** for a term to expire August 31, 1989:

Charles T. Ladouls, M.D., 806 Devonport Lane, Taylor Lake Village, Texas 77586. Dr. Ladouls will be replacing Clyde R. Bickham of Houston, whose term expired.

To be a member of the **Texas State Board of Pharmacy** for a term to expire August 31, 1993:

Jerry D. Pyle, 2709 Marquis Circle West, Arlington, Texas 76016. Mr. Pyle is being reappointed.

To be a member of the **Texas Board of Licensure for Nursing Home Administrators** for a term to expire January 31, 1991:

Donnie Hugh Hagan, 508 Aspen Incline, Hewitt, Texas 76643. Mr. Hagan will be filling the unexpired term of Dr. Reuben R. McDaniel of Austin, who resigned.

Appointments Made September 18

To be a member of the **Railroad Commission of Texas** until the next general election

and until his successor shall be duly elected and qualified:

Kent Ronald Hance, Sr., P.O. Box 1, Lubbock, Texas 79408. Mr. Hance will be replacing Mack Wallace of Austin, who resigned.

To be a member of the **Texas State Board of Chiropractic Examiners** for a term to expire April 26, 1993:

James E. Franklin, D.C., 8077 Callaghan Road, San Antonio, Texas 78230. Dr. Franklin will be replacing Dr. Robert E. Hartong of San Antonio, whose term expired.

To be a member of the **Texas State Board of Chiropractic Examiners** for a term to expire April 26, 1993:

David E. Albracht, D.C., 4020 West 50th Street, Amarillo, Texas 79109. Dr. Albracht will be replacing Dr. Tyler A. Baker of Lake Jackson, whose term expired.

To be a member of the **Texas Funeral Service Commission** for a term to expire January 31, 1993:

Percy Parsons, 107 West Bedford, Dimmitt, Texas 79027. Mr. Parsons will be replacing James Broussard of Beaumont, whose term expired.

To be a member of the **Family Farm and Ranch Advisory Council** for a term to expire January 31, 1993:

Leslie Allen Eubank, 4215 88th Street, Lubbock, Texas 79423. Ms. Eubank will be replacing Kenneth Irwin of Gruver, whose term expired.

To be a member of the **Texas Board of Irrigators** for a term to expire January 31, 1993:

William Edward Petty, Sr., P.O. Box 6464, Tyler, Texas 75711. Mr. Petty will be replacing Hugh Rushing, Jr. of Austin, whose term expired.

To be **Firemen's Pension Commissioner** for a term to expire July 1, 1989:

Helen L. Campbell, 2762 Stoutwood Circle, Austin, Texas 78745. Ms. Campbell will be replacing Hal H. Hood of Austin, whose term expired.

To be a member of the **Texas State Board of Pharmacy** effective August 31, 1987, for

a term to expire August 31, 1993:

Charles Lambie Rittenberry, 2610 Hughes, Amarillo, Texas 79109. Mr. Rittenberry will be replacing Virginia Bauman of Irving, whose term expired.

Appointment Made September 21

To be a member of the **Board of Directors of the Texas Department of Commerce** pursuant to House Bill 4, 70th Legislature, 1987, for a term to expire February 1, 1991:

Dian Owen, 400 Pine, Suite 1000, Abilene, Texas 79601.

Appointments Made September 22

To be a member of the **Texas Juvenile Probation Commission** for a term to expire August 31, 1993:

Jane Allman Wetzel, 3311 Beverly Drive, Dallas, Texas 75205. Mrs. Wetzel will be replacing Lois Carpenter of Midland, whose term expired.

To be a member of the **Texas Juvenile Probation Commission** for a term to expire August 31, 1993:

Mary M. Burk, 122 Las Lomas, San Angelo, Texas 76904. Commissioner Burk will be replacing Judge William C. Martin, III of Longview, whose term expired.

To be a member of the **Texas Judicial Council** for a term to expire June 30, 1993:

Judge Ward L. Koehler, 609 City-County Building, El Paso, Texas 79901. Judge Koehler will be replacing Charles W. Barrow of Waco, whose term expired.

To be a member of the **Texas Judicial Council** for a term to expire February 1, 1991:

Justice Bill J. Stephens, 7344 Arbor Oaks, Dallas, Texas 75248. Justice Stephens will be replacing Justice Sam H. Bass, Jr. of Houston, whose term expired.

Issued in Austin, Texas, on September 23, 1987.

TRD-8708189

William P. Clements, Jr.
Governor of Texas



Appointments Made September 22

To be a member of the **West Texas State University Board of Regents** for a term to expire August 31, 1993:

Edward R. Scott, Jr., 500 First National Bank Building, Amarillo, Texas 79101. Mr. Scott will be replacing Jerome Robert Walsh, Jr. of Borger, whose term expired.

To be a member of the **West Texas State University Board of Regents** for a term to expire August 31, 1993:

F. Boone Pickens, Jr., P.O. Box 2009, Amarillo, Texas 79189. Mr. Pickens is being reappointed.

To be a member of the **West Texas State University Board of Regents** for a term to expire August 31, 1993:

H. Edward Toles, 900 Jackson Street, Dallas, Texas 75202. Mr. Toles will be replacing Tom Christian of Claude, whose term expired.

Appointments Made September 24

To be chairman of the **Board of Directors of the Texas Housing Agency** for a term at the pleasure of the governor:

Ken DeJarnett, Rockwell, Texas. Mr. DeJarnett will be replacing Mr. Richard Jordan of Austin.

Executive Order WPC 87-5

Amendment 5

WHEREAS, The Texas Department of Corrections has notified the Texas Attorney General in writing that the inmate population of the Texas Department of Corrections has reached 95% of capacity, as defined by statute and as imposed by the agreed order in Ruiz v. McCotter; and

WHEREAS, the Attorney General has certified, in writing, that the inmate population has reached 95% of the capacity, as defined above, of the Texas Department of Corrections; and

WHEREAS, by S.B. 215, 70th Legislature, Regular Session, amending the Texas Prison Management Act, Article 6184c Texas Revised Civil Statutes, the legislature has required that under these circumstances the Governor shall certify that an emergency overcrowding situation exists and shall take certain steps to resolve the certified overcrowding condition.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, do hereby certify that an emergency overcrowding situation exists among the inmate population of the Texas Department of Corrections.

FURTHERMORE, under the authority vested in me, I do hereby order the Director of the Texas Department of Corrections to credit to all eligible inmates, as defined by Senate Bill 215, 90 total days of administrative good conduct time.

This Executive Order shall be effective immediately and shall be binding as authorized by law. This Executive Order may be modified or amended from time to time, as required to carry out the intent of the legislature, until the emergency overcrowding condition no longer exists.

Given under my hand this 17th day of September, 1987.

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

TRD 8708190

To be a member of the **Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids** for a term to expire December 31, 1987:

Andrew Louis Burns, Jr., 214 West Third, Texarkana, Texas 75501. Mr. Burns will be filling the unexpired term of Ray Jones of Fort Worth, who resigned.

To be a member of the **San Jacinto Historical Advisory Board** for a term to expire September 1, 1991:

Helen Alexander, 510 Hunters Park Lane, Houston, Texas 77024. Mrs. Alexander is replacing Mrs. Ward N. Atkins of Houston, whose term expired.

To be a member of the **Texas Board of Land Surveying** for a term to expire January 31, 1993:

George Henry (Hank) Clements, III, 7012 Midcrest Drive, Dallas, Texas 75240. Mr. Clements will be replacing James D. Johnson of San Angelo, whose term expired.

To be a member of the **Texas Board of Physical Therapy Examiners** for a term to expire January 31, 1993:

Travis B. Cox, 225 East Park Avenue, San Antonio, Texas 78212. Mr. Cox is replacing David Allan Hardison of Fredericksburg, whose term expired.

To be a member of the **Texas Hospital Equipment Financing Council** for a term to expire September 1, 1993:

Richard F. Kiepfer, M.D., 7720 Rocking Horse Lane, Boerne, Texas 78006. Dr. Kiep-

fer will be replacing James E. Bullard of Hereford, whose term expired.

To be a member of the **Texas Board of Physical Therapy Examiners** for a term to expire January 31, 1993:

Lynn Laird, 28 Medical Drive, Amarillo, Texas 79106. Mr. Laird is being reappointed.

To be a member of the **Polygraph Examiners Board** for a term to expire June 18, 1993:

William Joseph Taylor, 801 Timberwood Drive, Round Rock, Texas 78664. Mr. Taylor is being reappointed.

To be a member of the **Texas Planning Council for Developmental Disabilities** for a term to expire February 1, 1993:

E. Darlene Topp, 5627 Verde Circle, Harlingen, Texas 78552. Mrs. Topp will be replacing Dr. James W. Cooper of Corpus Christi, whose term expired.

To be a member of the **Texas Board of Chiropractic Examiners** for a term to expire April 26, 1993:

Raymond G. Wheless, Wheless and Walker, 1400 Preston Road, Suite 300, Plano, Texas 75075. Mr. Wheless will be replacing Dr. Jack D. Christie of Houston, whose term expired.

Issued in Austin, Texas, on September 25, 1987

TRD-8708287

William P. Clements, Jr.
Governor of Texas



Emergency

Rules

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

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

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 149. Education Personnel Development Subchapter C. Appraisal of Certified Personnel

★19 TAC §§149.41, 149.43, 149.44

The Texas Education Agency adopts on an emergency basis amendments to §§149.41, 149.43, and 149.44, concerning general provisions; teacher appraisal procedures; and teacher appraisal instrument, scoring procedures, and forms. The amendments implement House Bill 173, 70th Legislature, 1987. The amendments provide for the reduction in frequency of appraisals for those teachers placed on career ladder levels two, three, and four, whose most recent appraisal was exceeding expectations or clearly outstanding on the most recent overall summary performance score.

The amendments also authorize a classroom teacher who serves as a department or grade level chairperson to conduct appraisals on his or her own campus provided that the individual's job description approved by the district includes appraisal responsibilities.

The amendments are adopted on an emergency basis to ensure that appraisals during the 1987-1988 school year will be in compliance with current law concerning appraisals.

The amendments are adopted on an emergency basis under the Texas Education Code, §13.302, which provides the State Board of Education with the authority to adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder purposes.

§149.41. General Provisions.

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

(c) For professional personnel exempted from the career ladder under §149.71(b)(7) of this title (relating to Assignment to the Teacher Career Ladder), [with the exception of non-degreed teachers,] at least one evaluation conducted by one appraiser is required using the evaluation instrument(s) adopted by the local board of trustees. **Nondegreed**

teachers shall be evaluated once each year by two appraisers.

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

§149.43. Teacher Appraisal Procedures.

(a) Appraiser qualifications.

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

(4) Classroom teachers may not appraise **other classroom** teachers on the same campus, unless there is only one school campus in the district **or unless the appraiser is the department or grade level chairman whose job description includes appraisal responsibilities**. Teachers serving as appraisers must have an assignment on the career ladder at least as high as the teacher being appraised.

(5) (No change.)

(b) Teacher orientation. Each district will provide each teacher with an orientation to the teacher appraisal system prior to the teacher's first appraisal with the system. As early as possible, but no later than the beginning of the orientation, each teacher must receive a copy of the teacher appraisal orientation manual. The **Central Education Agency** [State Board of Education] will provide materials for additional training of teachers as part of the local district's inservice program.

(c) Appraisals, observations, and conferences.

(1) At least two appraisals are required each year for each **probationary teacher, each career ladder level one teacher, and each teacher on career ladder levels two, three, or four, whose performance on the most recent overall summary performance score was less than exceeding expectations. Teachers on levels two, three, or four of the career ladder whose performance was exceeding expectations or clearly outstanding on the most recent overall summary performance score shall be appraised at least once each year.** [A minimum of two formal 45-minute observations, one by each appraiser, comprise one appraisal.]

(2) **One appraisal consists of a minimum of two formal 45-minute observations, one by each appraiser.**

(3)[(2)] All appraisals must be conducted during the required days of instruction for students during one school year. Excluding the first two weeks of instruction, each local district shall establish a calendar which designates the time frame for the [first and second] appraisal periods. **For all**

teachers who are eligible for a single appraisal within a district, that appraisal may be uniformly extended throughout the days of instruction at district discretion. This calendar shall be disseminated to all staff prior to the beginning of formal observations. Formal observations shall not be conducted on the last instructional day before any official school holiday or on any other days deemed in appropriate by the local board of trustees.

(4)[(3)] For formal observations, teachers shall be observed teaching classes in field(s) and teaching assignments for which they are certified whenever possible.

(5)[(4)] During the first appraisal period,] The first formal observation by an appraiser other than the teacher's supervisor must be scheduled. Prior to the scheduled observation, that appraiser must have an informal preobservation discussion with the teacher. All other observations may be scheduled or unscheduled by district policy applied uniformly for all teachers.

(6)[(5)] Before the first observation of the teacher in any appraisal period, the requirement for consecutive minutes for unscheduled formal observations may be waived by mutual consent at the request of that teacher or the appraiser. Under such waiver, each unscheduled formal observation may be comprised of two to three instructional segments of not less than 15 minutes each. Such waiver should be considered only when the nature of the teaching assignment requires shorter instructional segments.

(7)[(6)] Appraisers may not conduct formal observations simultaneously.

(8)[(7)] After a formal observation, each appraiser must complete a written record. **The written record is not to be completed during the observation.** A copy of the written record shall be given to the teacher within seven working days of the formal observation. If there are extenuating circumstances, the seven working day requirement may be extended to a maximum of 15 working days.

(9)[(8)] During an appraisal period, the teacher's supervisor may continually evaluate and document performance specifically related to the performance **criteria and the indicators** subsumed under the criteria in §149.42 of this title (relating to Teacher Performance Criteria). If such documentation would influence the teacher's appraisal, the documentation must be shared in writing

with the teacher within seven working days of the occurrence or, in unusual circumstances, the teacher supervisor's knowledge of the occurrence. This additional documentation shall be combined with, but shall not replace, the formal observation to determine credit for the **criteria** or indicators. Appraisers other than the teacher's supervisor shall have access to Domain V documentation only in the event that the teacher's total score for the year on Domain V determined by the teacher's supervisor is not satisfactory as specified in §149.44(b)(2) of this title (relating to Teacher Appraisal Instrument, Scoring Procedures, and Forms).

(10)(9) Following each formal observation, an appraiser must conduct a post-observation conference with the teacher if the performance is judged less than satisfactory in one or more domains. Appraisers are encouraged to conduct post-conferences after all formal observations. Required post-conferences must be held within 10 working days of the formal observation. If there are extenuating circumstances, the 10 working-day requirement may be extended to a maximum of 15 working days. At the conclusion of the first appraisal period, a conference will be held at the request of either the teacher or the appraiser.

(d)-(f) (No change.)

(g) Summative appraisal.

(1) Each teacher must receive a summative conference at the end of the **teacher's last** [second] appraisal period. In this conference, the teacher's supervisor will review the completed assessment of instructional goals and outcomes, inform the teacher of the domain performance scores and the overall summary performance score for the year, review the teacher's status relating to requirements for advancement and/or maintenance on the teacher career ladder, make recommendations regarding domains needing improvement, and address a professional growth plan as appropriate.

(2) (No change.)

(3) Any documentation collected after the summative conference but before the end of the **required days of instruction for students during one school year** [official second appraisal period] may be considered if it will affect the teacher's domain and overall summary performance scores. Another summative conference shall be held to inform the teacher of the changes.

§149.44. *Teacher Appraisal Instrument, Scoring Procedures, and Forms.*

(a) (No change.)

(b) The State Board of Education shall develop and approve scoring procedures which guarantee that each teacher, at the close of the appraisal process, receives a performance score for each domain and an overall summary performance score.

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

(6) **For teachers qualifying for one appraisal each school year, the teacher's**

supervisor will determine the overall summary performance score at the end of the appraisal period. For teachers receiving two appraisals each school year, the teacher's supervisor will combine the results of the first and second appraisal to determine the overall summary performance score.

(7)(6) Scoring of the teacher's performance is done in accordance with the Texas Education Code, §13.304, and is based on the summary domain credits issued each appraisal period by the teacher's supervisor and the other appraiser(s). The State Board of Education shall establish the standards for conversion of summary domain credits to domain performance scores of:

(A)-(E) (No change.)

(c) (No change.)

Issued in Austin, Texas, on September 22, 1987

TRD-8708211

W. N. Kirby
Commissioner of
Education

Effective date: September 23, 1987
Expiration date: January 21, 1988
For further information, please call
(512) 463-9212.



TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 157. Emergency Medical Care
Emergency Medical Services

★25 TAC §§157.63, 157.77, 157.82

The Texas Department of Health adopts on an emergency basis amendments to §157.63 and §157.77, and new §157.82, concerning certification; emergency medical services training program and course approval; and certification of peace officers and firefighters, respectively. The amendments and new section also are being proposed for permanent adoption in this same issue of the *Texas Register*. The new section provides for the certification at the emergency care attendant (ECA) level of currently employed peace officers and firefighters, provided they meet certain criteria. The amendments clarify the qualification requirements for certification as an ECA and includes automatic external defibrillation (AED) training as an optional skill in current approved EMS training and course curricula. The changes to existing certification requirements will allow the use of AED to be utilized by these individuals only under medical supervision/direction. The department adopts the amendments and new section on an emergency basis for the following reasons. Peace officers and firefighters

are often the first responders to emergency medical situations; however, they must be certified at least at the level of emergency care attendant to use AEDS in emergency situations. An AED is connected to a patient with a cardiac arrest, turned on, and will improve survival in certain instances. Therefore, the amendments and new section are being adopted on an emergency basis in order to enable firefighters and peace officers, as certified emergency care attendants, and under medical supervision/direction, to immediately begin using AEDs in order to save lives in emergency situations.

The department adopts the amendments and new sections on an emergency basis under the Emergency Medical Services Act, Texas Civil Statutes, Article 44470, §§3.02, 3.03, and 3.04, which provide the Texas Board of Health with the authority to adopt rules covering certification of EMS personnel; and Texas Civil Statutes, Article 6252-13a, §5, which authorize the Texas Board of Health to adopt emergency rules.

§157.63. *Certification.*

(a) A candidate shall:

(1) (No change.)

(2) successfully complete a department approved course or submit proof of current EMS personnel certification from another state or National Registry of EMT's or **qualify for emergency care attendant (ECA) certification under §157.82 of this title (relating to Certification of Peace Officers and Firefighters);**

(3)-(6) (No change.)

(b)-(i) (No change.)

§157.77. *EMS Training Program and Course Approval.*

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

(d) Course curricula.

(1) ECA training course.

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

(C) Those objectives pertaining to the use of the automatic external defibrillator shall be an optional skill. The teaching of the optional skill shall be at the discretion of the medical director and may be utilized only under medical direction/supervision.

(2) B-EMT training course.

(A) The minimum curriculum for the B-EMT training course shall be the DOT Basic Training Program for Emergency Medical Technician-Ambulance, as adopted by reference, in subsection (b)(1)(B) of this section, except however, those objectives pertaining to the use of the **automatic external defibrillator**, military antishock trousers, or the pneumatic counter pressure device which shall be [an] optional **skills** [skill]. The teaching of the optional skill shall be at the discretion of the medical director and may be utilized only under medical direction/supervision.

(B)-(D) (No change.)

(3) SS-EMT training course.

(A)-(E) (No change.)

(F) Those objectives pertaining to the use of the automatic external defibrillator or manual defibrillator shall be optional skills. The teaching of the optional skills shall be at the discretion of the medical director and may be utilized only under medical direction/supervision.

(4)-(5) (No change.)

(e) (No change.)

§157.82. Certification of Peace Officers and Firefighters

(a) Purpose. The purpose of this section is to establish the certification requirements for the emergency medical services personnel certification of a peace officer or firefighter that is currently employed by the state or a local government for the emergency care attendant level of certification.

(b) Personnel covered. Peace officers and firefighters may qualify for this section if they are currently employed by the state or a local government and are currently under medical control. They must be in a job position that requires them to serve in the role of a first responder in emergency medical service.

(c) Levels of EMS personnel certification authorized. The peace officer or firefighter may qualify to take the emergency care attendant certification examination under this section.

(d) Certification requirements. The peace officer or firefighter shall:

(1) complete the requirements of §157.63(a)(3) and (4)(B) of this title (relating to Certification) and in addition, send documentation to the department that indicates previous training and experience that are directly related to the knowledge and skill objectives of the emergency care attendant curriculum;

(2) achieve a passing grade on all department skills examinations for the level of certification requested as required in §157.63(a)(5) of this title (relating to Certification); and

(3) achieve a passing grade of 70 on the department's written examination.

(e) Certification period. After verification by the department of the information submitted by the applicant, the applicant who meets the requirements in subsection (d) of this section shall be certified for four years commencing on the date of issuance of a certificate and wallet-sized certificate signed by department officials. A certificate is not transferable. The wallet-size certificate shall be carried by all EMS personnel while on duty.

(f) Examination failure. The applicant who fails either the department skills examination or the written examination may retest one time within 90 days of the initial examination date. A request for retest of the written examination shall be made to the department at least 30 days in advance of the expiration of the 90-day period.

(g) Recertification requirements. The applicant who receives EMS personnel cer-

tification shall comply with the requirements of §157.64 of this title (relating to Recertification) and §157.76 of this title (relating to Continuing Education) to recertify.

(h) Other requirements. The following sections of this title shall be applicable to this section: §157.21 (relating to Criteria for Decertification, Emergency Suspension, Suspension, and Probation of Certificate); §157.22 (relating to Procedure for Decertification and Suspension of Certificate); and §157.25 (relating to Criteria for Denial of Certification and Recertification).

Issued in Austin, Texas, on September 25, 1987.

TRD-8708250

Robert A. Maclean, M.D
Deputy Commissioner
for Professional
Services
Texas Department
of Health

Effective date: September 25, 1987

Expiration date: January 23, 1988

For further information, please call
(512) 465-2601.



TITLE 31. NATURAL RESOURCES AND CONSERVATION

**Part I. General Land Office
Chapter 13. Land Resources**

★31 TAC §13.19

The General Land Office adopts on an emergency basis §13.19, concerning the protection of certain state lands. Emergency action on this section is necessary in order to ensure the protection of certain state-owned lands.

This new section is adopted on an emergency basis under the Natural Resources Code, Title 2, Chapter 31, §31.051, which instructs the commissioner of the General Land Office to execute and perform all acts and other things relating to public land of the state and to make and enforce suitable rules consistent with the law.

§13.19. Protection of Certain State Land. The commissioner of the General Land Office establishes that all of the state owned lands included within the proposed additions to the coastal barrier resources system by the United States Department of the Interior's February, 1987, draft report to congress *Coastal Barrier Resources System, Proposed Recommendations for Additions to or Deletions from the Coastal Barrier Resources System*, Volumes 19 and 20, are areas to be used primarily for wildlife refuge, sanctuary, recreation, or natural re-

sources conservation purposes. Volumes 19 and 20 of the draft report are adopted by reference only for the purpose of specifying which lands are proposed for addition to the coastal barrier resources system. Copies of Volumes 19 and 20 of the draft report can be obtained by sending a written request to the Texas General Land Office, Land Management Division, 1700 North Congress Avenue, Austin, Texas 78701.

Issued in Austin, Texas, on September 28, 1987.

TRD-8708332

Garry Mauro
Commissioner
General Land Office

Effective date. September 28, 1987

Expiration date. January 26, 1988

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



**Part X. Texas Water
Development Board
Chapter 355. Research and
Planning Fund
General Policy**

★31 TAC §355.1

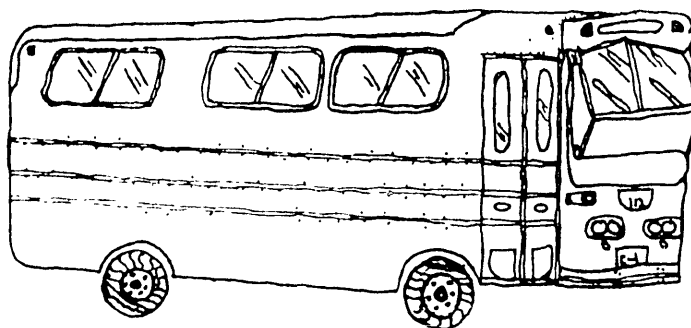
The Texas Water Development Board adopts on an emergency basis new §355.1, concerning general policy for the research and planning fund. The new section establishes the board's policy concerning the allocation of research and planning fund by rule. Senate Bill 1, Article I, Rider Number 16 to the Texas Water Development Board, requires the board to establish through rule a system of prioritizing the use of the research and planning fund, giving first priority to studies required by statute. The new section establishes the allocation of funds between bays and estuaries studies, regional water supply and wastewater planning, flood protection planning, and water research. The board policy gives priority to regional planning along the Rio Grande due to the water problems facing that area. The board also gives priority to board-requested planning efforts in other areas of the state facing severe water supply or water quality problems. The board adopts the new section on an emergency basis to allow the earliest possible processing of research and planning fund applications for fiscal years 1988-1989. The research and planning fund is used for the planning of sewer and water projects by political subdivisions with an immediate need, and without these sections the funds cannot be used which may lead to an imminent threat to public health, safety, and welfare.

The new section is adopted on an emergency basis under the Texas Water Code, §6 101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§355.1. Fund Allocation.

(a) Pursuant to Senate Bill 1, the General Appropriations Act, 70th Legislature, 1987, Article I, Rider Number 16 to the Texas Water Development Board, the board hereby allocates research and planning funds in the amount of \$2.3 million for fiscal year 1988 as follows:

Local Bus



<u>Purpose</u>	<u>Quantity</u>	Name: Adriana Lopez
Bays and Estuaries Studies	\$800,000	Grade: 6
Regional Water Supply and Regional Wastewater Planning	1,250,000	School: Clifton Middle School, Houston
Flood Protection Planning	150,000	
Water Research	100,000	
Total	\$2,300,000	

(b) The board specifies that of the \$1.25 million allocation for regional water supply and regional wastewater planning, \$500,000 shall be for solicited (board-requested) proposals and \$750,000 shall be for unsolicited (open-competition) proposals. The board further specifies that proposals from political subdivisions in counties located within and adjacent to the Rio Grande Basin shall be given the highest priority for funding of regional water supply and regional wastewater planning using \$300,000 of the solicited category of funding, with the remaining \$200,000 of solicited category funding allocated to other areas of the state where severe water supply or water quality problems exist.

Issued in Austin, Texas, on September 28, 1987

TRD-8708347 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date. October 15, 1987
Expiration date February 12, 1988
For further information, please call
(512) 463-7850



Regional Water Supply and Wastewater Planning

★31 TAC §§355.10-355.19

The Texas Water Development Board adopts on an emergency basis new §§355.10-355.19, concerning regional water supply and wastewater planning. The new sections consist of the new application

requirements and evaluation criteria for regional water supply and wastewater planning projects for the limited amounts of funds in the board's research and planning fund under Texas Water Code, §15.40. Section 355.10 defines the terms used in these sections, and §355.11 states the purpose of the sections. Section 355.12 outlines that the board will provide not to exceed 50% of the planning costs with the applicant supplying the remainder in cash or limited in-kind services. Additionally, new §355.12(b) states that for unsolicited proposals, applicants must follow the *Texas Register* to find out when unsolicited proposals will be accepted. The method for board solicitation of proposals in areas of the state where there is a need for regional water supply or wastewater facilities is outlined in new §355.13. The board will publish the areas and type and scope of the project in the *Texas Register*. In the *Texas Register* notice, deadlines for submission will be established. In new §355.14, the criteria for eligibility is designed to insure that appropriate applicants apply and that all other political subdivisions in the area are given notice.

New §355.15 identifies the information that must be contained in any application. The form published in the Uniform Grants and Contract Management Act (UGCMA), Texas Civil Statutes, Article 4413(32g), does not have to be used because the board has been given certain statutory requirements in the Texas Water Code, §15.405, for the content of the applications. The UGCMA form does not include the information needed by the board so that form does not need to be used. To assure the board that all local political subdivisions in the planning area are aware of the project, notice under new

§355.16 must be given Section 355.17 outlines the evaluation criteria which will be used by the board to choose which applications will be funded out of the limited amount of funds available. Important considerations such as the immediacy and urgency of the need, the probability that the planning proposal will be implemented, and the ability of the applicant to provide its matching share are described in this section. The applicant is responsible for supplying information which addresses each of these criteria in the applications. The method of contracting with the board is described in new §355.18. The board will contract with the local political subdivision. Any subcontracts that the political subdivision enters into for professional services must be approved by the executive administrator. Also, no subcontracts can be entered into until the board approves the application because the board intends to negotiate the project budgets to insure that the fees charged by professionals are fair and reasonable. The definitions of direct costs, fringe costs, overhead, travel, and subsistence are included in new §355.18 and are designed to provide the applicant and the subcontractors guidance in putting together their proposed budget for their application.

New §355.19 states that the results of a regional water supply or wastewater planning study are public information and will be made available to the public, and that the board will contract with the applicants regarding copyrights and patents.

The new sections are intended to insure fairness in selecting planning proposals for funding, and that contracts entered into by the board achieve the most benefit for the planning of state water resources.

The new sections are adopted on an emergency basis to allow the earliest possible processing of research and planning fund applications for fiscal years 1988-1989. The research and planning fund is used for the planning of sewer and water projects by political subdivisions with an immediate need, and without these sections the funds cannot be used which may lead to an imminent threat to public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

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

Applicant—Political subdivision(s) that apply(ies) for financial assistance from the research and planning fund.

Fund—The research and planning fund authorized and described in the Texas Water Code, Chapter 15, Subchapter F.

Planning—

(A) For regional water supply and wastewater facilities studies and analyses to:

(i) determine and describe problems relating to water supply and/or water quality protection;

(ii) determine the views and needs of the affected public;

(iii) identify potential solutions;

(iv) estimate benefits and costs of potential solutions;

(v) evaluate environmental, social, and cultural factors, including the preparation of environmental assessments and environmental impact statements; and

(vi) recommend feasible solutions to water supply and/or wastewater problems. All proposed solutions must be consistent with appropriate regional or statewide plans and relevant laws and regulations;

(B) Does not include those activities directly related to the preparation of applications for state or federal permits or other approvals, nor does it include activities associated with administrative or legal proceedings by regulatory agencies;

(C) Activities comparable to comprehensive basin studies, reconnaissance and feasibility grade studies, and other phases of pre-construction planning of the United States Army Corps of Engineers, but including advanced engineering and design, which involves the preparation of final project plans and specifications for construction bids.

(D) Likewise, planning, as herein defined, would be the equivalent to Stage I planning of the United States Bureau of Reclamation, but not including most activities

associated with Stage II activities, which involve the preparation of final engineering plans and specifications for construction of the selected project or projects;

(E) For the development of publicly-owned wastewater treatment works generally equivalent to Step I facility planning as defined by the United States Environmental Protection Agency, but not including the preparation of final construction design drawings, specifications, and bidding documents.

Political subdivision—A city, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XIV, §59; any other political subdivision of the state; any interstate compact commission to which the state is a party; and any non-profit water supply corporation created and operating under Texas Civil Statutes, Article 1434a.

Reconnaissance-level or feasibility investigation—The level of investigations and studies which normally can be carried out using existing data, with the basic objective of formulating an implementable solution or alternative solutions to existing or potential water supply and/or wastewater treatment problems. Such investigations should be sufficient in scope to support the preparation of cost estimates for recommended or alternative solutions within a reasonable degree of accuracy.

Regional facility—A water supply, wastewater collection and treatment, or other public system which incorporates multiple service areas or drainage areas into an areawide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state with a specified size which is determined by any one or combination of population, number of governmental entities served, and/or service capacity.

§355.11. Purpose. It is the intent of the board to establish a general policy for processing applications to fund planning for regional water supply and wastewater collection and treatment facilities by political subdivisions. Because of the limited supply of funds, each applicant will have 90 days from board approval to enter into the contract and to demonstrate to the executive administrator that it has its matching share committed and available. Finding of regional planning projects shall be at the discretion of the board from funds in the research and planning fund created in the state treasury, and in accordance with §355.1 of this title (relating to General Policy).

§355.12. Applicability.

(a) The board will consider applications and may enter into contracts with political subdivisions to provide funding from the research and planning fund for the development of regional water supply or

wastewater collection and treatment facility plans.

(b) The board will provide funding not to exceed 50% of planning costs.

(c) Subject to board approval, an applicant may substitute in-kind services for any part of the required local share of planning costs if such services are related to the proposed planning project and reimbursement by any other party does not occur.

§355.13. Solicitation Procedures.

(a) Solicited proposals.

(1) The board may solicit planning proposals for areas of the state where there is a perceived need for regional water supply or regional wastewater collection and treatment facility planning.

(2) The board will specify the planning area and the type and scope of project for which planning proposals are being solicited. The board will publish information on the solicitation in the *Texas Register*, including appropriate schedules for submission of planning proposals by applicants. Proposal solicitations for water supply or wastewater collection and treatment facility planning will include the following:

(A) a description of planning objectives;

(B) a description of funding considerations;

(C) an explanation of review criteria and procedures;

(D) a deadline and address for proposal submission;

(E) a target date for contract award;

(F) guidelines for proposal contents; and

(G) the designation of a contact person for additional information.

(3) Publication of a solicitation does not obligate the board to make an award if an appropriate or adequate proposal is not received.

(b) Unsolicited proposals.

(1) The board will consider unsolicited proposals for water supply and wastewater collection and treatment facility planning provided the proposals satisfy the eligibility criteria in §355.14 of this title (relating to Criteria for Eligibility). Unsolicited proposals will receive appropriate consideration within time and funding limitations.

(2) The board will periodically publish notices in the *Texas Register* that unsolicited proposals will be accepted. The announcement will indicate the period during which proposals may be submitted for consideration.

§355.14. Criteria for Eligibility. To be eligible for funding from the research and planning fund, the applicant must demonstrate:

(1) the legal authority to plan, develop, and operate regional facilities, with specific reference to its legal authority;

(2) a need for funds;

(3) an indication that the proposed planning does not duplicate previously completed plans or on-going planning, with the exception that updating regional water supply or wastewater facility plans, if needed, would be eligible;

(4) all cities, counties, nonprofit water supply corporations, regional planning agencies, and all districts and authorities created under the Texas Constitution, Article III, Chapter 52, or Article XVI, Chapter 59, in the planning area have been notified by certified mail that an application for planning assistance to develop regional water supply or wastewater facility plans for the area is being filed with the board. The notice shall include: the name and the address of the applicant and the name of the applicant's manager or official representative; a brief description of the planning area; the purposes of the planning project; the board's name, address, and the name of a contact person with the board; a statement that any comments must be filed with the board and the applicant within 30 days of the date on which the notice is mailed. With its application to the board, the applicant must provide one copy of the notice sent to affected political subdivisions, a list of the political subdivisions to which notice was sent, and the date on which the notice was sent; and

(5) in the case of wastewater planning, information on the designation of a lead water quality management planning agency.

§355.15. *Submission of Proposals.*

(a) The application need not be in the form prescribed by the Uniform Grants and Contract Management Act, Texas Civil Statutes, Article 4413(32g).

(b) The following information shall be included in a regional water supply or wastewater facility planning application:

(1) the legal name and address of the applicant;

(2) the type of facility or facilities (regional water supply, regional wastewater collection and treatment, or both) being investigated;

(3) a citation of the laws under which the applicant was created and has authority to plan, develop, and operate regional facilities;

(4) the geographic area to be included in the plan, justification for specific area boundary selection, and the need for the planning area and the applicant to receive state financial assistance in order to develop the proposed plan;

(5) a description of the existing facilities, the existing or projected water supply or wastewater problem which the planning is intended to address, and the way in which the proposed plan will address the problem;

(6) a description of the relationship to, and effect of, any proposed water supply or wastewater planning project(s) on other water supply or wastewater collection and treatment plans or facilities in the planning area, the surrounding region, and the

state, if any;

(7) assurances that a water conservation plan will be developed as a part of the overall planning project, that the proposed project does not duplicate existing studies or plans, and, with respect to regional wastewater planning, that the proposed alternatives developed in, and recommended by, the plan will conform to a certified water quality management plan or will be submitted for certification in a conforming amendment;

(8) a list of work tasks and a time schedule for the tasks to be completed;

(9) a detailed object class cost budget, as defined in §355.18(h) of this title (relating to Disbursement of Contracted Funds and Cost Accounting), and a detailed task budget for all aspects of the planning project;

(10) the total planning cost, the source of the local matching share, and the total amount of money requested from the fund;

(11) potential sources and amounts of funding for implementation of all projects proposed in the plan;

(12) assurance by the applicant that if a viable solution is formulated, implementation of the solution will be diligently pursued;

(13) if the plan is to be prepared through subcontracts, a list of the staff qualifications and direct experience that potential subcontractors must demonstrate;

(14) all information required by §355.14 of this title (relating to Criteria for Eligibility);

(15) all information necessary to evaluate the application under §355.17 of this title (relating to Evaluation Criteria); and

(16) any other pertinent information deemed necessary by the executive administrator.

§355.16. *Comments from Affected Political Subdivisions.*

For regional water supply or wastewater planning applications, the board will allow 30 days from the date notice is sent to affected political subdivisions to receive comments from affected political subdivisions. However, the board may act on an application before the end of the 30-day period if all political subdivisions to which notice is required to be mailed agree in writing to waive the notice period.

§355.17. *Evaluation Criteria.* Regional water supply or wastewater planning proposals will be evaluated and selected according to the following criteria:

(1) an indication that the planning will not duplicate previously completed or on-going water supply or wastewater planning within the proposed planning area;

(2) the probability that the planning will result in implementation of viable regional water supply or wastewater systems for the planning area;

(3) a history of raw water availability, water supply, or water quality problems,

including violation of public drinking water standards, ambient water quality criteria, or wastewater effluent limitations;

(4) the urgency of addressing water supply or water quality problems;

(5) the potential cost-effectiveness of a regional system, including controlling utility service charges, compared to individual or separate facilities;

(6) the potential elimination of redundant facilities and a reduction in the need to upgrade or replace individual or separate facilities;

(7) the extent to which the plan would promote conversion from groundwater to surface water supply sources;

(8) the ability of a regional water supply system to substantially extend the life of existing or planned supply sources;

(9) the number of political subdivisions participating in the planning project;

(10) the population and population density within the proposed service area;

(11) the contribution of the regional planning proposal to the area's general economic welfare, including income, earnings, and employment;

(12) the potential for preventing water supply or water quality problems that are being or could be caused by rapid or high growth;

(13) the need for the planning area and the applicant to receive state financial assistance in order to conduct needed water supply or wastewater planning; and

(14) the ability of the applicant to provide the required matching funds for planning.

§355.18. *Disbursement of Contracted Funds and Cost Accounting.*

(a) Contracts. A contract between the applicant (contractor) and the board will be used. Contracts entered into shall contain terms and conditions considered appropriate to protect the interests of the state and the contractor. The applicant has 90 days from the date of board approval to execute the contract and to provide written evidence acceptable to the executive administrator that the applicant has available its matching share of funds.

(b) Subcontracts. The applicant may not enter into a subcontract until after the date of board approval. Professional service contracts shall be selected and awarded in accordance with the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4. All subcontracts between the contractor and subcontractors must be approved in writing by the executive administrator.

(c) Method of payment. State of Texas contractors will be paid on an actual cost reimbursement basis provided for in the State Purchasing and General Services Commission's rules and regulations and board policies and procedures. Contractor billings must be submitted on a State of Texas purchase voucher and be accompanied by sufficiently detailed invoice information from

the contractor and subcontractors to verify the authenticity of billing charges and amounts. All contracts shall provide that 10% of the contract amount be retained for final payment until after receipt and acceptance of all required reports and documentation. All contract payments shall be made in accordance with the Prompt Payment Act, Texas Civil Statutes, Article 601f, unless otherwise noted in the contract.

(d) Records. Contractors and subcontractors shall maintain satisfactory financial accounts, documents, and records and shall make all records available for examination and audit by the staff of the board and the state. Accounting by contractors and subcontractors shall be in a manner consistent with generally accepted accounting procedures.

(e) Uniform grants and contract management. The contractor will be subject to the Uniform Grants and Contract Management Act, Texas Civil Statutes, Article 4413(32g).

(f) Capital equipment. Capital equipment may not be purchased with regional water supply or regional wastewater planning grant funds.

(g) Computer programs. All computer programs and models that are acquired or developed as a part of the planning project are to be provided to the board for use by board staff and other state agencies, as appropriate.

(h) Project budgets. Budgets of applications shall be based upon fair and reasonable rates for all cost items. The board reserves the right to require specific information to explain and justify each cost element, including salary rates for professional staff, fringe benefits, overhead, and profits.

(1) Direct costs are defined to include the cost of salaries for professional staff, draftsmen, stenographers, surveyors, clerks, and laborers, etc., for time directly chargeable to the planning project; computer services, communication expenses travel expenses, and expendable supplies.

(2) Fringe costs are defined to include social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, and sick leave, vacation, and holiday pay applicable thereto.

(3) Overhead costs are those costs incurred in maintaining a place of business

and performing professional services. In all cases, overhead rates are to be reasonable and are subject to negotiation. Overhead or indirect cost rates developed for federal projects may be acceptable.

(4) Travel and subsistence expenses are limited to those amounts authorized for state employees by the Senate Bill 1, General Appropriations Act, 70th Legislature, 1987, Article V, §13 and §14, or as amended.

(5) Profit may be included in applications in which all or a part of the work is to be done by private sector contractors or subcontractors. In all cases, profit rates are to be reasonable and are subject to negotiation.

§355.19. Dissemination of Results.

(a) Reports. Results of all planning completed under contract with the board will be submitted by the applicant in the form of a written report, which will then become public information. A minimum of 12 copies of all final reports shall be delivered to the board. The applicant and subcontractors shall be available for brief presentations of results as required by the board. Specific provisions will be included in each contract to establish eventual ownership of results and potential patents, copyrights, and licenses at the conclusion of the planning project.

(b) Patents. In the absence of statutory or contractual limitations, the contractor may apply for patents on any discoveries made through the planning project. If the contractor does not wish to make the application, the state may request and receive title to the discovery. If the contractor receives a patent, the State of Texas and its political subdivisions shall be entitled to an irrevocable, nonexclusive, royalty-free license to use the discovery(ies) for governmental purposes.

Issued in Austin, Texas, on September 28, 1987

TRD-8708348 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: October 15, 1987
Expiration date: February 12, 1988
For further information, please call
(512) 463-7850.



Research and Planning Fund

★ 31 TAC §§355.101-355.110

The Texas Water Development Board adopts on an emergency basis the repeal of §§355.101-355.110, concerning the research and planning fund. The sections cover the various requirements for applications for grants from the research and planning fund. The repeals allow a consolidated and revised set of research and planning rules can be adopted. The repeals are adopted on an emergency basis to allow the earliest possible processing of research and planning fund applications for fiscal years 1988-1989. The research and planning fund is used for the planning of sewer and water projects for political subdivisions with an immediate need, and without these sections the funds cannot be used which may lead to an imminent threat to public health, safety, and welfare.

The repeals are adopted on an emergency basis under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties

§355.101. Definitions.

§355.102. Purpose.

§355.103. Applicability.

§355.104. Criteria for Eligibility.

§355.105. Procedures, Priorities, and Criteria for Selection of Candidate Projects.

§355.106. Request for Submission of Proposals.

§355.107. Evaluation and Selection of Proposals.

§355.108. Contract Project Reporting.

§355.109. Disbursement of Contracted Funds and Cost Accounting.

§355.110. Dissemination of Results

Issued in Austin, Texas, on September 28, 1987

TRD 8708349 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: October 15, 1987
Expiration date: February 12, 1988
For further information, please call
(512) 463-7850

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 V. State Purchasing and General Services Commission

Commission

Chapter 111. Executive Administration Division

Administration Division

Parking

★ 1 TAC §111.37

The State Purchasing and General Services Commission proposes an amendment to §111.37, concerning short term parking authorization. The amendment allows temporary permits to be issued for 15 days, instead of five. The amendment allows state employees a longer period of time to arrange for a permanent permit, and reduces administration and paperwork for the parking and traffic office.

John R. Neel, general counsel, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated reduction in cost of \$1,000 each year from 1988-1992. There are no fiscal implications for local government or small businesses as a result of enforcing or administering the section.

Mr. Neel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in administration and paperwork for the parking and traffic office and a sufficient time period for state employees to arrange for permanent parking permits. 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 R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Ser-

vices Commission with the authority to adopt regulations necessary for the administration and enforcement of the Act.

§111.37. Short Term Parking Authorizations.

(a) (No change.)
(b) Types of short term parking permits.

(1) Temporary permits may be issued for two to **15** [five] days.

(2) (No change.)

(c) Temporary permit.
(1) May be issued for a period of two to **15** [five] days.

(2) If the need for a temporary permit continues to exist after **15** [five] working days, a new temporary permit may be obtained.

(3) (No change.)

(d) (No change.)

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

Issued in Austin, Texas, on September 25, 1987.

TRD-8708272

John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption:

November 2, 1987

For further information, please call
(512) 463-3446.



Chapter 113. Central Purchasing Division

★ 1 TAC §113.5

The State Purchasing and General Services Commission proposes an amendment to §113.5, concerning unsigned bids. The amendment eliminates the requirement for mailing unsigned bids back to the sender. The amendment eliminates the necessity of making photocopies of disqualified bids, and saves the commission on postage costs.

John R. Neel, general counsel, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state

government for the first five-year period the section will be in effect is an estimated reduction in cost of \$1,000 each year from 1988-1992. There are no fiscal implications for local government or small businesses as a result of enforcing or administering the section.

Mr. Neel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in unnecessary paperwork and a resultant savings in reproduction and postage costs. 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 R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to adopt regulations necessary for the administration and enforcement of the Act.

§113.5. Public Bid Opening and Tabulation, Conditions Applicable to Both Open Market and Contract.

(a)-(h) (No change.)

(i) Unsigned bids. Any bid [received] which is not signed is not a valid bid and is **disqualified** [returned to the sender].

(j)-(n) (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 25, 1987

TRD-8708270

John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption

November 2, 1987

For further information, please call
(512) 463-3446.



Chapter 115. Building and
Property Services Division
State Leased Property

★1 TAC §§115.31-115.33, 115.36

The State Purchasing and General Services Commission proposes amendments to §§115.31-115.33, and 115.36, concerning general, definitions, receipt and processing of requisitions for leased space, and negotiation with a private source, respectively. The proposed amendments allow the commission, where it is determined that adequate time for the acquisition of space pursuant to the provisions of Texas Civil Statutes, Article 601b, Article 6, does not exist, to negotiate an emergency lease for a term necessary to subsequently permit such an acquisition, but not to exceed 12 months. The amendments permit greater efficiency, reduce paper work, and provide the commission with more control and flexibility over emergency leases.

John R. Neel, general counsel, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated reduction in cost of \$15,000 each year from 1988-1992. There are no fiscal implications for local government or small businesses as a result of enforcing or administering the sections.

Mr Neel 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 greater efficiency, reduced paperwork, and more control and flexibility in negotiating emergency leases. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to adopt regulations necessary for the administration and enforcement of the Act.

§115.31. *General.*

(a) The authority for obtaining leased space for state agencies or departments rests with the commission by virtue of Texas Civil Statutes, Article 601b, Article 6, [, and the responsibility for exercising this authority is in the State Leased Property Section of the Building and Property Services Division.]

§115.32. *Definitions.*

[Emergency—An emergency arises

when the commission receives a requisition for needed lease space too near the specified occupancy date to allow for adequate competitive bidding. (See §115.33(a) of this title (relating to Receipt and Processing of Requisitions for Leased Space).]

Emergency lease—A lease negotiated with a private source for a term not to exceed 12 months, as determined by the commission, adequate to allow for the subsequent acquisition of space pursuant to the provisions of Texas Civil Statutes, Article 601b, Article 6.

§115.33. *Receipt and Processing of Requisitions for Leased Space.*

(a) Requests. All requests from a state agency for leased space shall [should] be submitted to the commission, on forms prescribed by the commission, sufficiently in advance of the required occupancy date to allow for the acquisition of the required space pursuant to the provisions of Texas Civil Statutes, Article 6 [at least 180 days prior to the required occupancy date on forms prescribed by the commission]. Upon receiving [If] a requisition, [is received by] the commission shall determine whether adequate time for the acquisition of space pursuant to the provisions of Texas Civil Statutes, Article 601b, Article 6, exists, and if not, it may enter into an emergency lease. In making this determination and in establishing the term of the emergency lease, the commission shall consider the amount and type of space required, the market conditions of the area in which space is needed, the governmental responsibilities of the agency, and the potential impact on the public [under emergency conditions, the commission may fill the requisition temporarily by negotiating a short-term lease not to exceed six months].

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

§115.36. *Negotiation with a Private Source.* Negotiation with a private source to secure a state lease shall be utilized only in cases where competition is not considered by the commission to be available. Such cases shall include, but not be limited to, the following:

(1) (No change.)

(2) **emergency leases entered into under §115.33(a) of this title (relating to Receipt and Processing of Requisitions for Leased Space)** [requests for space in emergency situations];

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

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

Issued in Austin, Texas, on September 25, 1987

TRD-8708271

John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption:
November 2, 1987
For further information, please call
(512) 463-3446.

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TITLE 4. AGRICULTURE
Part II. Texas Animal
Health Commission
Chapter 35. Brucellosis
Subchapter A. Eradication of
Brucellosis

★4 TAC §§35.1, 35.2, 35.4

The Texas Animal Health Commission (TAHC) proposes amendments to §§35.1, 35.2, and 35.4, concerning definitions, general requirements, and entry and change of ownership requirements.

The amendment to §35.1 revises the definition for an official eartag. The amendment conforms with the brucellosis eradication uniform methods and rules (UM&R's), which allow the tag to be made of a material other than metal, and clarifies other parts of the definition.

The definition of a permit is amended to provide for an "AV" permit. The "AV" permit would allow nonvaccinated designated females over 12 months of age to enter the state from Class Free, A, and B states under stated conditions.

The amendment to §35.2(e) requires all cattle tested at livestock markets to be identified with an official eartag rather than having the option of identification with a backtag. Other language clarifies the point that seller information is to be provided by the market veterinarian prior to the veterinarians conducting the card test, and that this information is to be placed on the 4-54 test record after test results are known

New language in §35.2(i) provides for the VS Form 1-27 to be used as an "S" permit and issued by a TAHC representative; signed by the owner/shipper; and a copy accompanying the shipment when moving exposed cattle.

New language in §35.4(a) allows entry into the state for nonvaccinates over 12 months of age, provided the buyer co-signs a herd plan agreeing to adult vaccinate the cattle being brought into the state. The shipment must be granted an adult vaccination permit prior to entry.

Ken Welch, director of administration, 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. Welch also has determined that for each year of the first five years the sections are in effect the public benefit anti-

culated as a result of enforcing the sections will be the provision of additional options for allowing cattle to enter the State of Texas, better identification of cattle being tested at the markets, and the assurance that exposed cattle are accompanied by properly issued permits. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendments are proposed under the Agriculture Code, Chapters 161 and 163, Texas Civil Statutes, which provides the commission with authority to propose rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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

Official eartag—A veterinary services approved identification eartag (metal, plastic, or other) that conforms to the nine-character alpha-numeric national uniform eartagging system. It uniquely identifies each individual animal with no duplication of the alpha-numeric identification, regardless of the materials or colors used. The term includes the special orange-colored eartag series used to identify calfhood vaccinates. [A metal identification eartag conforming to the nine character alpha-numeric national uniform eartagging system, using a color (e.g. orange for vaccination) which provides unique identification for each individual animal.]

Permit—A document adopted by the commission with specified conditions relative to movement, [and] testing, and vaccinating of cattle which is required to accompany the cattle entering, leaving, or moving within the State of Texas.

(A) "E" and "AV" permits [permit]—[A] Premovement authorizations for entry of cattle into the state [or between areas within the state] by the Texas Animal Health Commission. The "E" permit states [shall state] the conditions under which movement may be made, and restrictions and test requirements after arrival. The "AV" permit states the conditions for entry of designated nonvaccinated female cattle born after January 1, 1983, and over 12 months of age from other states. Designated female cattle are: female beef and dairy cattle from Class Free and A states and only female beef cattle from Class B states. In addition, the designated cattle must be from a herd which has been established for at least 120 days.

(B)-(C) (No change.)

§35.2. General Requirements.

(a)-(d) (No change.)

(e) Requirements of a market test.

(1) All test-eligible cattle in each consignment to the market shall be tested. Such tested animals shall be identified by official eartag [and or backtag except that cattle going back to the country shall be identified by an official metal eartag, or other permanent identification]. All cattle from the same herd shall be considered as one consignment.

(2) [Prior to testing.] The market shall supply the following information to the accredited veterinarian prior to conducting the card test for inclusion [to be included] on the VS Form 4-54 after results of the test are known:

(A) full name, street address and/or route address, and zip code of the owner of the cattle at the time cattle are delivered to the market; and

(B) backtag number, with prefix, for each head of cattle;

(3) The veterinarian shall not conduct the card test prior to receiving the name and address of the owner from the market.

(4)[(3)] At time of testing of the cattle, the following additional information is required to be included on the VS Form 4-54:

(A) eartag number (list all nine characters);

(B) date of test;

(C) full name and address of the market;

(D) tester's card test permit number; and

(E) signature of the person who tested the cattle.

(5)[(4)] The veterinarian interpreting the card test results shall, at the time of testing, immediately report any and all positive test results to the state/federal market inspector by means of the completed VS Form 4-54.

(6)[(5)] Cattle which show a positive reaction to the card test shall have another blood sample collected from them by an inspector. The sample shall be submitted to a state/federal laboratory in a vacuumainer for supplemental testing and accompanied by another completed VS Form 4-54 which lists only the card positive cattle.

(f) (h) (No change.)

(i) Movement of cattle classified as reactors, exposed, or suspects. There shall be no diversion from the permitted destination. When moved, the cattle must be maintained separate and apart from all other classes of livestock in designated pens reserved for this purpose at livestock in designated pens reserved for this purpose at livestock markets or trucking facilities. These pens must be thoroughly cleaned and disinfected before reuse.

(1) (No change.)

(2) Exposed cattle. All exposed cattle moving from a premise of origin or from a livestock market to a quarantined pasture, quarantined feedlot, or to immediate slaughter shall remain on the premise where disclosed until an "S" permit (VS Form 1-27) for movement to a quarantined premise

has been prepared by a TAHC representative and signed by the owner/shipper. The completed "S" permit shall accompany the shipment of cattle to the permitted destination. Movement for immediate slaughter must be to a slaughtering establishment where federal or state meat inspection is maintained or to livestock for sale to such slaughtering facility.

(3) (No change.)

(j) (v) (No change.)

§35.4. Entry and Change of Ownership.

(a) Requirements for cattle entering Texas.

(1) Vaccination.

(A) (E) (No change.)

(F) Nonvaccinated female cattle over 12 months of age may enter on an international permit or on an adult vaccination permit to the destination stated in the permit, where they shall remain quarantined until released. Prior to the permit being granted, the buyer will co-sign a herd plan with a state/federal veterinarian to acknowledge the requirements following adult vaccination of cattle. Within 14 days of reaching the destination stated in the permit, such cattle shall [either be]:

(i) if entering on an international permit, either be:

(I)(i) adult vaccinated; or

(II)(ii) "S" branded and under "S" permit be consigned to a quarantined feedlot or to slaughter; or

(ii) if entering on an adult vaccination permit, be adult vaccinated.

(2) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on September 18, 1987

TRD 8708201

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption

November 2, 1987

For further information, please call
(512) 479 6697

Chapter 47. Requirements and Standards for Approved Personnel

★4 FAC §47.1, §47.2

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Animal Health Commission, 210 Barton Springs Road, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Animal Health Commission proposes the repeal of §47.1 and §47.2, concerning definitions and general requirements. These sections are proposed for repeal because they do not clearly set forth the standards for veterinarians, technicians employed by veterinarians, or Texas Animal Health Commission (TAHC) personnel concerning collecting of blood samples, use of the brucellosis card test, and reporting test results and violations.

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

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

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711, (512) 479-6697.

The repeals are proposed under Chapter 161, Agriculture Code. This statute provides the commission with authority to propose rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

§47.1. *Definitions.*

§47.2. *General Requirements.*

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

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

TRD-8708198 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption
November 2, 1987

For further information, please call
(512) 479-6697



★ 4 TAC §§47.1-47.6

The Texas Animal Health Commission proposes new §§47.1-47.6, concerning general; definitions; general requirements; requirements for conducting the field card test on cattle for brucellosis; brucellosis calfhood vaccination requirements; and suspension or revocation of status of approved personnel. These new sections provide standards for approved personnel and set requirements for conducting the brucellosis card test and reporting test results. These standards also include pro-

cedures for collection and identification of blood samples and set forth procedures for suspending or revoking the permit of approved personnel to conduct the brucellosis card test. Approved personnel are composed of inspectors and veterinarians of the commission; animal health technicians and veterinarians of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) Veterinary Services; accredited Texas veterinarians; and brucellosis technicians approved by the commission who are employed by accredited veterinarians to do assigned duties in the brucellosis control and eradication program.

Ken Welch, Director of Administration, 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. Welch, 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 reduction of the illegal practices of testing cattle and failing to report positive results of the brucellosis test. 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 Jo Anne Conner, P.O. Box 12966, Austin, Texas 78744.

The new sections are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161. These statutes provide the commission with authority to propose rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

§47.1. *General.* These regulations define and set the standards for personnel who are approved by the commission to do work in the Texas Bovine Brucellosis Program pursuant to the Agriculture Code, Chapter 163, §163.064. Only those persons approved by the commission and issued a card test permit are authorized to draw blood and conduct brucellosis tests in Texas.

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

Accredited veterinarian—A veterinarian recommended by the commission and approved under provisions of 9 Code of Federal Regulations Part 161, to perform specified functions required by cooperative state-federal disease control eradication programs.

Approved personnel—Inspectors and veterinarians of the commission; animal health technicians and veterinarians of Veterinary Services; accredited Texas veterinarians and Brucellosis technicians ap-

proved by the commission who employed by accredited veterinarians to do assigned duties as described in these regulations for brucellosis control and eradication.

Card test—A rapid field test and a laboratory test for detecting brucellosis.

Card test kit—A kit issued by Veterinary Services which contains components necessary to conduct the card test. These include a box of 500 stirrers, four vials of capillary tubes, 12 rubber bulbs to use on capillary pipettes, six vials of buffered *Brucella* antigen, and cards.

Card test permit—A permit issued to approved personnel certifying that satisfactory card test training has been completed at a state-federal laboratory and that these personnel are authorized to conduct the card test according to the card test standards and the brucellosis laws and regulations.

Commission—The Texas Animal Health Commission.

Discrepancy—Differing result between the card test performed by approved personnel in the field or at a livestock market and the confirmation results performed by the State-Federal Laboratory.

Fraudulent blood samples—Samples that were collected from animals or species of animals other than the animals represented on the test chart.

Official eartag—A Veterinary Services approved identification eartag (metal, plastic, or other) that conforms to the nine-character alpha-numeric national uniform eartagging system. It uniquely identifies each individual animal with no duplication of the alpha-numeric identification, regardless of the materials or colors used. The term includes the special orange-colored eartag series used to identify calfhood vaccinates.

Official vaccinate—

(A) Calfhood vaccinate—Female cattle of a dairy breed vaccinated between 120 and 365 days of age with an approved *Brucella* vaccine. Female cattle of a beef breed vaccinated between 120 and 365 days of age with an approved *Brucella* vaccine.

(B) Adult vaccinate—Female cattle over 12 months of age that have been administered the standard dose of vaccine by state/federal personnel in accordance with applicable regulations.

Veterinary services—An agency of the United States Department of Agriculture, Animal and Plant Health Inspection Service.

§47.3. *General Requirements.*

(a) No test shall be made the basis for compliance with these regulations except a test which has been confirmed by a state-federal laboratory; however, test-eligible cattle may be moved intrastate based upon the card test results. Confirmation of test results shall be made prior to shipment when cattle are moving interstate from points other than livestock markets.

(b) Blood samples are collected and submitted by approved personnel only.

(c) Individual blood collection devices will be used for each animal that has blood drawn.

(d) Individual identification of each animal will be made by approved personnel. The individual identification must be used on the test record to identify the corresponding blood sample.

(e) Tubes containing blood samples collected during a day's collection must be numbered in sequence. There must be a gap of one or more numbers between the last number assigned to a herd or unit and the first number assigned to the next herd or unit.

(f) Blood samples must be mailed or delivered to a state federal laboratory within 48 hours after collection. Blood samples shall be placed in a mail depository Monday-Saturday. Samples to be mailed on weekends in which a national holiday is on Friday or Monday shall be refrigerated and mailed the following work day.

(g) Pursuant to the requirements of the Agriculture Code, Chapter 161, on reporting brucellosis, the accredited veterinarian shall record results of the field card test on the appropriate test document (4-54, 4-33) or Texas Animal Health Commission health certificate and shall record actual test results for all cattle tested at the time of test. (Blood samples submitted to a state federal laboratory without prior field card testing fulfills the requirements for reporting disease as set forth in the Agriculture Code.)

§47.4. *Requirements for Conducting the Field Card Test on Cattle for Brucellosis.*

(a) Approved personnel shall be trained at a state/federal laboratory and receive a card test permit to conduct the field card test.

(b) When conducting the card test, a clean pipette and stirrer shall be used for each sample to prevent cross-contamination; keep positive and negative check samples available at all times to check antigen being used; keep antigen refrigerated; and do not use antigen past expiration date shown on the bottle.

(1) Mechanical rockers shall be used to rotate the card and timers to accurately read results of the card test at four minute intervals.

(2) The card test shall be run in an area where the sample is protected from wind and blowing dust to avoid affecting the results of the test; livestock market card tests shall be conducted in a designated area which has sufficient lighting and is located away from chutes.

(3) The veterinarian shall not conduct the card test at a livestock market if complete ownership information and backtag identification have not been provided by the market prior to conducting the test.

(c) All animals tested at livestock markets shall be identified with an official eartag at the time of blood collection. Prior to conducting the card test, the livestock

market shall provide the veterinarians with the full name, street address and/or route address, and zip code of the owner of the cattle at the time cattle are delivered to the market along with the backtag number of each animal delivered. At time of test, the veterinarian will record the official eartag number on the 4-54 market test record.

(d) When test results are reported, approved personnel must indicate on the test record or health certificate whether each animal tested reacted positive or negative to the card test.

(e) Blood samples must be mailed or delivered to a state federal laboratory within 48 hours after collection. Blood samples shall be placed in a mail depository Monday-Saturday. Samples to be mailed on weekends in which a national holiday is on Friday or Monday shall be refrigerated and mailed the following work day.

(f) The hemolysis rate of samples or insufficient serum submitted to the state/federal Laboratory for confirmation testing shall not exceed 5.0% during the previous six-month period nor more than 30% in any one submission. There shall be no more than three discrepancies in confirmation test results disclosed over a six-month period.

§47.5. *Brucellosis Calthood Vaccination Requirements.*

(a) Vaccinations shall be conducted by approved personnel only.

(b) Brucellosis vaccine shall be refrigerated until administered in accordance with the label. Vaccine shall not be used beyond the expiration date shown on the bottle.

(c) Heifers from noninfected herds between the ages of four and 12 months shall be calthood vaccinated. Heifers in infected herds shall be vaccinated between the ages of four and eight months.

(d) Vaccinated heifers shall be identified by tattoo and by official vaccination eartag. Vaccination tattoos will be applied to the right ear. The tattoo will include the United States. Registered Shield and the letter "V", which will be preceded by a number indicating the quarter of the year and will be followed by a number corresponding to the last digit of the year in which the vaccination was done. Official vaccination eartags will be applied to the right ear. The eartag will include the state prefix and the letter "V", followed by two letters and four numbers. Individual animal registration tattoos or brands may be substituted for official eartags. Vaccinations shall be immediately recorded on a properly completed vaccination certificate.

§47.6. *Suspension or Revocation of Status of Approved Personnel.*

(a) Automatic termination of the status of approved personnel occurs with any one of the following events:

(1) approved personnel are separated from employment with the commission, Veterinary Services, or a technician who had been employed by an accredited veterinarian;

(2) the license of an accredited veterinarian issued by the Texas Board of Veterinary Medical examiners is revoked or suspended by that board for the period not probated; or

(3) the veterinarian's accreditation is suspended or revoked by Veterinary Services.

(b) Suspension or revocation of approved personnel status may be made upon a determination that violations including, but not limited to, the following are found to have occurred.

(1) submitting fraudulent blood samples for animals not shown on test chart;

(2) failing to report positive field card test results;

(3) providing card test kits or antigen for use by persons or entities not approved by the commission;

(4) distributing vaccine for use by persons or entities not approved by the commission;

(5) calthood vaccination of over age heifers;

(6) using out-of-date vaccine;

(7) failing to identify heifers vaccinated as required by regulation;

(8) failing to submit vaccination or test charts immediately following vaccination or testing;

(9) identifying and reporting animals that have not been vaccinated as official vaccinates;

(10) excessive hemolysis rates or insufficient serum to conduct necessary confirmation testing.

(11) repeated discrepancies following technical assistance and conferences;

(12) falsifying official test documents; and

(13) submitting fraudulent claims for reimbursement for testing or vaccinating for brucellosis.

(c) The executive director may, upon written notice and pending final determination of the suspension or revocation in the interim, summarily suspend approved personnel when it is deemed necessary to protect the safety, health, and interest of the public if such personnel make false test results or certifications; submit fraudulent blood samples; and/or fail to report the results of tests to the commission.

(d) The executive director of the commission, upon the completion of an investigation for an alleged violation, shall by written notice sent by certified mail, inform approved personnel of specific instances when violations of statutes or regulations appear to have occurred that may warrant suspension or revocation of the status of approved personnel.

(e) Approved personnel shall have 20 days from the date of receipt of the notice to respond to the executive director and request a meeting to discuss the purported violations. The executive director will, at the conclusion of the meeting, decide the appropriate action to be taken. Such action

may include a warning notice, proposal for suspension or revocation. The affected party will be notified of the decision by the executive director in writing.

(f) Failure on the part of approved personnel to timely respond to the notice may cause an order of revocation to be issued by the executive director. The revocation of approved personnel status may be in effect for a period up to one year. At the expiration of that period, application for renewed approved status may be made.

(g) Approved personnel who receive an adverse decision from the executive director have 15 days from date of the decision notice to file written notice of appeal to the chairman of the commission in Austin pursuant to provisions of the Administrative Procedures and Texas Register Act, Article 6252-13a. The administrative hearing for the appeal will be held in Austin pursuant to Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(h) In the absence of a written notice of appeal to the chairman of the commission, the commission shall be deemed to have adopted the proposed decision of the executive director as its own.

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-8708199

John W. Holcombe
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption:
November 2, 1987

For further information, please call
(512) 479-6697

◆ ◆ ◆
TITLE 19. EDUCATION
Part I. Texas Higher
Education Coordinating
Board

Chapter 25. Administrative
Council

Subchapter B. Administration of
the Texas State College and
University Employees Uniform
Insurance Benefits Program

★ **19 TAC §25.33**

The Texas Higher Education Coordinating Board proposes an amendment to §25.33, concerning basic coverage standards. The amendment brings the rules and regulations into conformance with legislation enacted during the 70th Legislature, 1987.

James McWhorter, executive secretary to the administrative council, 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. McWhorter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be provision of coverage in health insurance policies for certified social worker's services for treatment of mental illness, licensed dieticians services if such services are scheduled in the policy, low-dose mammography screening for women 35 years and older, and crisis stabilization units and residential treatment centers for children and adolescents as alternative mental health treatment. 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 James McWhorter, Executive Secretary to the Administrative Council, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.33. *Basic Coverage Standards.*

(a) Each institution shall provide in its program of group insurance a basic plan for active employees and retired employees that includes at least the following minimum coverage standards.

(1) (No change.)

(2) Other medical expense. The plan shall cover the reasonable charges for the following items of services or supplies furnished by or at the direction or prescription of a physician. If any of the following services or supplies are used while the participant is confined as a hospital bedpatient, other than professional services of a physician, psychologist, or certified registered nurse-anesthetist, the charges will be considered as hospital care expenses rather than other medical expenses:

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

(Q) services of a psychologist, [or] a doctor of psychiatry, **or a certified social worker—advanced clinical practitioner** during the first 90 days of hospital confinement for mental illness and during the first 30 days of hospital confinement for drug abuse. **The institution may require a professional recommendation from a doctor of medicine or doctor of osteopathy for services provided by a certified social worker—advanced clinical practitioner; [.]**

(R) **annual screening by low-dose mammography for the presence of occult breast cancer for women 35 years or older.**

(3) Out-Patient expenses of psychiatrist, [or] psychologist, **or certified social worker—advanced clinical practitioner.** The plan shall provide for the services of a psychologist, [or] services of a doctor of psychiatry, **or services of a certified social worker—advanced clinical practitioner** for the treatment of mental illness while the participants are not hospital confined. **The institution may require a professional recommendation from a doctor of medicine or doctor of osteopathy for services provided by a certified social worker—advanced clinical practitioner.** Benefits may not be limited to less than \$1,200 per benefit year. The benefit percentage may not be less than 50% of usual, customary, and reasonable charges. The plan may require that the deductible be satisfied prior to availability of benefits.

(4)-(8) (No change.)

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

(A) (No change.)

(B) Hospital—A legally constituted institution for the care and treatment of sick and injured persons, with 24-hour nursing service and organized facilities for diagnosis and major surgery, except that the requirement for a major surgery facility will be waived in a hospital established for the treatment of mental illness or nervous disorders, and shall include obstetrical centers, surgi-centers, and radiation therapy centers. The term shall also include Veterans Administration hospitals and public health hospitals, provided the patient is legally obligated to pay for the services received. It does not include one which is used principally as a facility for nursing, convalescence, the aged, or remedial education or training. **The term shall also include a crisis stabilization unit and a residential treatment center for children and adolescents as prescribed under the Texas Insurance Code, Article 3.72, Chapter 3, Subchapter E.** Furthermore, this term shall include hospitals and hospital-based or free-standing alcohol and other drug dependency treatment centers, provided, however, the treatment centers meet the following criteria:

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

(C) Physician—A person (other than a hospital resident or intern) who is a Doctor of Medicine, Doctor of Osteopathy, Doctor of Podiatry, Doctor of Dentistry, Doctor of Optometry, [or a] Doctor of Chiropractic, **certified social worker—advanced clinical practitioner or a licensed dietician** and who is a member of his or her county medical society, State Osteopathic Association, State Podiatry Association, State Dental Association, State Optometric Association, or State Chiropractic Association, or eligible for membership in such society or association; the term shall not include a Doctor of Medicine, Osteopathy, Podiatry, Dentistry, Optometry, or Chiropractic ineligible

for membership in his respective society or association. The terms Doctor of Medicine, Doctor of Osteopathy, Doctor of Podiatry, Doctor of Dentistry, Doctor of Optometry, [and] Doctor of Chiropractic, **certified social worker—advanced clinical practitioner, and licensed dietician**, as used herein, shall have the meaning assigned to them by the Insurance Code of Texas.

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

(b) (No change.)

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

Issued in Austin, Texas, on September 23, 1987

TRD-8708334 James McWhorter
Assistant Commissioner
for Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption
November 2, 1987

For further information, please call
(512) 462-6420

Part II. Texas Education Agency

Chapter 149. Education Personnel Development Subchapter C. Appraisal of Certified Personnel

★ 19 TAC §§149.41, 149.43, 149.44

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

The Texas Education Agency proposes amendments to §§149.41, 149.43, and 149.44, concerning general provisions; teacher appraisal procedures; and teacher appraisal instrument, scoring procedures, and forms. The amendments implement House Bill 173, 70th Legislature, 1987. The amendments provide for the reduction in frequency of appraisals for those teachers placed on career ladder levels two, three, and four whose most recent appraisal was exceeding expectations or clearly outstanding on the most recent overall summary performance score.

The amendments also authorize a classroom teacher who serves as a department or grade level chairperson to conduct appraisals on his or her own campus, provided that the individual's job description approved by the district includes appraisal responsibilities.

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. There will be some savings for local school districts because of the reduced number of appraisals for certain teachers, but such savings will vary from district to district and there is no way they can be quantified.

Mr. Moak and Beverly Bardsley, director for policy development, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvement of the Texas teacher appraisal system. 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 Beverly Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing 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*.

The amendments are proposed under the Texas Education Code, 813.302, which provides the State Board of Education with the authority to adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder purposes.

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 22, 1987

TRD-8708212 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:

January 9, 1988
For further information, please call
(512) 463-9212

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 218. Delegation of Nursing Tasks

★ 22 TAC §§218.1, 281.5-218.12

The Board of Nurse Examiners proposes amendments to §§218.1, 218.5, 218.6, and 218.7-218.10, and new §218.7 and §218.8, concerning delegation of selected nursing tasks by registered nurses to unlicensed personnel. The amendments to §§218.7-218.10 consist of a redesignation of section numbers to §§218.9-218.12. The

text of §§218.7-218.9 remains the same. Existing §218.10, redesignated as §218.12, contains an amendment to the text. An emergency adoption of these sections appeared in the September 8, 1987, issue of the *Texas Register*.

Louise Sanders, R.N., Ph.D., executive secretary, has determined that there will be fiscal implications as a result of enforcing or administering the section. However, it is the opinion of the Ad Hoc Advisory Committee on Delegation Rules as well as the members of the Board of Nurse Examiners that these amendments and new sections will alleviate the fiscal impact and address concerns expressed through oral and written testimony. To assist in measuring the fiscal impact on state government, a questionnaire was mailed to a variety of organizations and institutions, including state health programs and state supported health care facilities and related state agencies. Two returned questionnaires indicate a fiscal impact of \$347,000 and \$46,000. These are facilities which use unlicensed persons to administer medications. One state supported hospital indicated the cost of replacing 21 medication technicians with 21 registered nurses would be \$347,058, including difference in base salaries, recruitment, and cost of orientation. (See projected cost estimate following). For fiscal year 1989 and beyond, cost estimates are based on salary differential between registered nurses and medication technicians.

The estimated additional cost of using RNs to replace medication technicians will be \$347,000 in 1988, and \$168,558 each year in 1989-1992.

However, replacing medication technicians with registered nurses exceeds the requirements of the sections. If LVNs were used to replace the medication technicians, the difference in base salaries between the medication technicians and licensed vocational nurses would be minimal, if any. There will be no effect on local government for the first five-year period the section will be in effect.

The cost of compliance with the section for small businesses will be as follows. One small business indicated that the costs of implementing the amended sections would be in a range of \$33,280-\$46,000 per year. This is the salary of two LVNs; however, if the two LVNs were to replace the two unlicensed technicians, then the difference in salary would be nominal.

Ms. Sanders also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be cost savings generated by reduced turnover of registered nurses secondary to increased job satisfaction; and the potential for decreased exposure to liability due to consumer satisfaction.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be as follows. In some of the facilities who employ unlicensed personnel, there may be minimal costs of implementing the rules during the initial period if the facility does not presently have a protocol in place for instructing and training unlicensed personnel as specified in §218.6(b)(5)

Comments on the proposal may be submitted to Louise Sanders, R.N., Ph.D., Executive Secretary of the Board of Nurse Examiners, 1300 East Anderson Lane, Building C, Suite 225, Austin, Texas 78752

The amendments are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

§218.1. Purpose. The registered professional nurse is responsible for the nature and quality of all nursing care that a patient/client receives under his/her direction. Assessment of the nursing needs of a patient/client, the plan of nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the functions of the registered professional nurse. The full utilization of the services of a registered professional nurse may require him/her to delegate selected nursing tasks to unlicensed personnel. Although unlicensed personnel may be used to complement the registered professional nurse in the performance of nursing functions, such personnel cannot be used as a substitute for the registered professional nurse. The following sections govern [are guidelines to assist] the registered professional nurse in delegating nursing tasks to unlicensed personnel.

§218.5. Specific Nursing Tasks Which May Be Delegated. By way of example, and not in limitation, the following nursing tasks are ones that are within the scope of sound professional nursing practice to be delegated, provided the delegation is in compliance with §218.3 of this title (relating to General Criteria for Delegation):

- (1) non-invasive and non-sterile treatments unless otherwise prohibited by §218.6 of this title (relating to Nursing Tasks that May Not be Routinely Delegated),
- (2)-(8) (No change.)

§218.6. Nursing Tasks that May Not be Routinely Delegated.

(a) By way of example, and not in limitation, the following are nursing tasks that are not usually within the scope of sound professional nursing judgment to delegate[:] and may be delegated only in accordance with subsection (b) of this section.

[1)] Treatments which include:

(1)[(A)] sterile procedures—those procedures involving a wound or an anatomical site which could potentially become infected;

(2)[(B)] non-sterile procedures, such as dressing or cleansing penetrating wounds and deep burns;

(3)[(C)] invasive procedures—inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube, unless allowed in §218.5(5) of this title (relating to Specific Nursing Tasks Which May be Delegated);

(4)[(D)] care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatment;

(2) physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

(3) formulation of the plan of nursing care and evaluation of the patient's/client's response to the care rendered;

(4) specific tasks involved in the implementation of the plan of care which require professional nursing judgment or intervention.]

(b) **The nursing tasks listed in subsection (a) of this section may be delegated to an unlicensed person only:**

(1) **under circumstances where a reasonably prudent registered professional nurse would find that the delegation does not jeopardize the patient's/client's safety and/or welfare;**

(2) **if, in the judgment of the registered professional nurse, the unlicensed person has the appropriate knowledge and skills to perform the nursing task(s) in a safe and effective manner;**

(3) **if the delegation is in compliance with §218.3 of this title (relating to General Criteria for Delegation);**

(4) **if the registered professional nurse delegating the task is directly responsible for the nursing care given to the patient;**

(5) **if the agency, facility, or institution employing unlicensed personnel follows a current protocol for the instruction and training of unlicensed personnel performing nursing tasks under this subsection and that said protocol is developed with input by registered nurses currently employed in the facility and includes:**

(A) **the manner in which the instruction addresses the complexity of the delegated task;**

(B) **the manner in which the unlicensed person demonstrates competency of the delegated task;**

(C) **the mechanism for reevaluation of the competency; and**

(D) **an established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated; and**

(6) **if the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the registered professional nurse's professional judgment.**

§218.7. Nursing Tasks That May Not be Delegated. By way of example, and not in limitation, the following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:

(1) physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

(2) formulation of the plan of nursing care and evaluation of the patient's/client's response to the care rendered;

(3) specific tasks involved in the implementation of the plan of care which require professional nursing judgment or intervention;

(4) administration of medications except as permitted by §218.9 of this title (relating to Administration of Medications).

§218.8. Nursing Students Working as Unlicensed Personnel. Consistent with §218.6 of this title (relating to Nursing Tasks that May Not be Routinely Delegated) and §218.7 of this title (relating to Nursing Tasks That May Not be Delegated), certain nursing tasks may be delegated to professional nursing students working as unlicensed personnel in organized job programs sponsored by agencies, facilities, or institutions, provided the students are currently enrolled in accredited professional nursing programs or are on semester breaks from such programs, and their course of study has included appropriate instruction to prepare them to perform the tasks which will be delegated.

§218.9. [§218.7] Administration of Medications. The administration of medications may be delegated only in accordance with this section.

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

§218.11. [218.9.] Supervision of Tasks Delegated to Unlicensed Personnel by Other Licensed Practitioners. (No change.)

§218.12. [§218.10.] Exclusion from Rules. These sections shall not be construed to apply to [Nothing in this section shall be applicable nor restrict or limit]:

(1) the delegatory functions of other health care practitioners who are authorized delegatory powers under their respective acts;]

(1)[(2)] the gratuitous nursing [provision of] care of the sick by [self, family, or] friends;

(2) the furnishing of nursing care where treatment is by prayer or spiritual means alone;

(3) the practice of licensed vocational nurses;

(4) the practice of registered tuberculosis nurses previously certified under Texas Civil Statutes, Article 4528b;

(5) acts done by persons licensed by any board or agency of the State of Texas if such acts are authorized by such licensing statutes;

(6)(3) nursing tasks performed by nursing students enrolled in accredited nursing programs while practicing under the direct supervision of qualified faculty or preceptors;

(7)(4) the instruction and or supervision of unlicensed persons by registered professional nurses in the proper performance of tasks as part of a state approved training education course designed to prepare persons to obtain a state license or state certification that authorizes the person to perform such tasks; [and]

(8)(5) performance in the school setting of nursing procedures necessary for handicapped students to achieve activities of daily living as cited in the **Education of the Handicapped Act, 20 United States Code 1400-1485**, [Public Law 94-142] and which are routinely performed by the student or the student's family in the home setting;[.]

(9) the performance of nursing tasks or procedures, under the direction of a handicapped person, that are required for the handicapped person to perform the physical functions required for independent living which would be routinely performed by the handicapped person but for the functional limitation of his or her handicap;

(10) the acts of unlicensed persons responding to an emergency. Emergency care is unanticipated care provided to a person who is unconscious, ill, or injured, when the reasonable apparent circumstances require prompt decisions and actions and when the necessity of immediate care is so apparent that any delay would seriously worsen the physical condition or endanger the life of the person. This exclusion shall not be construed as permitting registered professional nurses to delegate routinely to unlicensed persons;

(11) the performance of nursing tasks for persons with mental and/or developmental disabilities living in home or home like settings such as surrogate family care, in which at least one state agency maintains regulatory responsibility, e.g., registration, licensing, certification.

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 23, 1987

TRD-8708196

Louise Sanders
Executive Secretary
Board of Nurse
Examiners for the
State of Texas

Earliest possible date of adoption

November 2 1987

For further information please call
(512) 835 4880

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 13. Health Planning and Resource Development Data Collection

★ 25 TAC §§13.11-13.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Health proposes the repeal of existing §§13.11-13.15, and new §§13.11—13.17, concerning data collection. The existing data collection sections, promulgated under the authority of Texas Civil Statutes, Article 4418h, September 12, 1987, are proposed for repeal and replacement by the proposed new sections. The new sections define terms commonly used in the data collection process, identify the types of data to be reported by hospitals, set out procedures for collection and verification of these data, describe sanctions for non-compliance with these reporting requirements, and establish the statutory confidentiality of certain data collected. Patient data collected under these sections will be limited to the demographic data currently collected from hospitals.

Stephen Seale chief accountant III has determined that for the first five-year period the repeals as proposed will be in effect there will be fiscal implications as a result of administering or enforcing the repeals. The cost of compliance with the sections for small businesses will not increase, but will remain at the current estimated cost of approximately eight hours administrative time, at an average of \$8 00 per hour. A large business would have more data to gather and report. On a per-hour basis, the cost would be similar. There will be no fiscal implications for state or local governments.

Mr Seale also has determined that for each year of the first five years that the proposed repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the improved delivery of acute care hospital services through the determination of the impact of the provision of uncompensated care on hospitals in the state; improved availability of information on hospitals;

services and the utilization of those services; and clarification of the requirements for hospitals in reporting uncompensated care costs. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Carol S. Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7261. Comments will be accepted for 30 days after the publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 4418h, §4.03, and Article 4438e, §2, which provide the Texas Board of Health with the authority to adopt rules to implement these respective Acts. Article 4418 mandates the collection and dissemination of data from health care facilities necessary to facilitate health planning and resource development. Article 4438e concerns the collection and reporting of hospital financial, utilization, and patient discharge data required to determine the impact of the provision of indigent care on hospitals in the state

§13.11. *Introduction.*

§13.12. *Description of State Health Planning and Development Agency*

§13.13. *Criteria for Determining Necessary Data.*

§13.14. *Necessary Health Planning and Resource Development Data*

§13.15. *Data Collection and Dissemination.*

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 25, 1987

IRD-8708247

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

Proposed date of adoption

December 5, 1987

For further information please call
(512) 458 7261

★ 25 TAC §§13.11-13.17

The new sections are proposed under Texas Civil Statutes, Article 4418h, §4.03, and Article 4438e, §2, which provide the Texas Board of Health with the authority to adopt rules to implement these respective Acts. Article 4418 mandates the col-

to collect and disseminate data from health care facilities necessary to facilitate health planning and resource development. Article 4438c concerns the collection and reporting of hospital financial, utilization and patient discharge data required to determine the impact of the provision of indigent care on hospitals in the state.

§13.11 Purpose and Scope

(a) Purpose—The purpose of the sections in this chapter is to implement the provisions of two related Texas Civil Statutes as follows: Article 4418h, concerning the collection and dissemination of data from health care facilities to facilitate health planning and resource development, and Article 4438e, concerning the collection and reporting of hospital financial, utilization, and patient discharge data.

(1) Texas Civil Statutes, Article 4418h, §4.03, says that the department shall adopt rules covering the collection of data from health care facilities, such as hospitals, and the dissemination of data to facilitate health planning and resource development.

(2) Texas Civil Statutes, Article 4438e, §2, says that the department shall adopt rules covering the collection and reporting of hospital financial, utilization, and patient discharge data.

(b) Scope—The scope of the sections is to describe the criteria and procedures which the department will use in implementing data collection, dissemination, and reporting requirements. These sections will cover the collection and dissemination of data from the public or private hospitals that are included in the definition of the term "health care facilities" in Texas Civil Statutes, Article 4418h, §1.03(9). The remaining entities included in the definition of the term "health care facilities" are not covered by these sections. If data covered by these sections will be collected from a public or private hospital that is a general or special hospital licensed under Texas Civil Statutes, 4437i, the data will be collected under authority of and in compliance with the requirements of Texas Civil Statutes, Article 4418h and Article 4438e.

§13.12. *Definitions*—The following words and terms shall have the following meanings indicated unless the context clearly indicates otherwise:

Article 4418h—The Texas Health Planning and Development Act, Texas Civil Statutes, Article 4418h.

Article 4438e—The Hospital Reporting Act, Texas Civil Statutes, Article 4438e.

Board—The Texas Board of Health

Department—The Texas Department of Health

Health care facility—Regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative

clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

Hospital—A general or special hospital licensed under the Texas Hospital Licensing Law, Texas Civil Statutes, Article 4437f.

Hospital Data Advisory Committee—An advisory group, appointed by the Texas Board of Health, which assists the department in carrying out its responsibilities under Texas Civil Statutes, Article 4438e.

Patient data—Information derived from individual, acute care, inpatient discharge abstract records.

Survey—The annual data collection effort conducted by the department to implement the provisions of Texas Civil Statutes, Articles 4418h and 4438e.

§13.13. *Types of Data to be Reported to the Department*—The types of data which hospitals must report to the department are as follows:

(1) reporting period data reflecting the 12 month period covering the hospital's most recent fiscal year;

(2) organizational structure data reflecting the type of organization that is responsible for establishing policy for the overall operation of the hospital, the type of organization that owns the hospital's physical plant, and the type of service provided to the majority of admissions;

(3) data reflecting services provided on the hospital site or through a formal contractual arrangement with another hospital or provider;

(4) personnel data covering full-time and part-time personnel including trainees who were on the hospital's payroll as of September 30 of survey year and whose payroll expenses are reported on the survey form;

(5) medical staff data covering practitioners on the active and associate medical staff as of September 30 of the survey year;

(6) financial data about a facility's revenues, and expenses. This information may include items relating to patient revenue, deductions from revenue, total assets, and total liabilities. Financial data is based on the *American Institute of Certified Public Accountants Hospital Audit Guide* and on generally accepted accounting principles for hospitals, and is extracted from the hospital's most recent annual financial statements; as follows:

(A) revenue by type;
(B) patient revenue by type and by payor source;

(C) contractual allowances, bad debt, and other deductions from revenue;

(D) charity which reflects services provided to persons unable to pay all or part of the hospital's full established charges for services and who meet some formal eligibility criteria for such care, e.g., hospital indigency criteria, hospital district criteria, Hill-Burton criteria;

(E) expenses by type;

(F) total assets and liabilities;

(G) local tax support, which is revenue from tax appropriations specifically or generally designated for use in the operation of the hospital;

(H) charitable contributions, which are donations from charitable sources included as a portion of total nonoperating revenue; and

(I) total cost of reimbursed and unreimbursed medical education which includes direct and indirect medical education costs to be taken from hospital's most recent Medicare cost report;

(7) utilization data about the use of a facility and/or its services which may include items relating to inpatient admissions and discharges, patient days, average length of stay, and outpatient activity. Utilization data covers the following:

(A) total admissions, which covers the formal acceptance by the hospital of patients who are to receive inpatient care;

(B) Medicare admissions, which are the hospital admissions where the major payor source is Medicare;

(C) Medicaid admissions, which are the hospital admissions where the major payor source is Medicaid;

(D) admissions under a local government program, which are the hospital admissions where the major payor source is a city or county;

(E) charity admissions, which are the hospital admissions of persons qualified upon some formal eligibility criteria for such care, e.g., hospital indigency criteria, hospital district criteria, Hill-Burton criteria;

(F) any other type of admission, which covers any category of admission not included in one of the previous categories;

(G) total discharges;

(H) total patient days; and

(I) total outpatient visits, which are visits to an organized outpatient care program or the emergency service area by a person(s) who is not lodged in the hospital overnight while receiving medical or dental services.

§13.14. Survey Forms.

(a) The hospital shall use the survey form developed by the department for reporting purposes. The department shall mail the survey forms to each hospital on an annual and staggered basis according to the common fiscal reporting periods used by the hospitals. For example, the department may use the following mailout schedule: for fiscal year ending January 1—September 30 the mailout date will be October 15; and for fiscal year ending October 1—December 31 the mailout date will be January 15.

(b) The hospitals shall complete all requested sections on the survey form and return it to the department within 60 days of receipt. The hospitals shall report data for the hospitals' most recently completed fiscal year. A copy of the hospitals' charity eligibility policy shall be submitted as Attachment A to the survey form.

(c) The department shall review returned survey forms for completeness of reporting within 15 days of receipt. When it is determined that a survey form contains incomplete data, the department shall return the survey form to the hospital. The hospital shall complete in writing all requested items and return the completed survey form to the department within 15 days of receipt of notification. The department may also request missing or incomplete data by telephone request. Hospitals shall complete all requested follow-up in the timeframe specified by the department.

§13.15. Data Verification Report. The department shall send each reporting hospital a copy of its data verification report prior to the publication of the results of the survey. The hospital shall review the contents of the computer generated report. If modifications to the report are necessary, the appropriate changes shall be made on the report, the data verification report shall be signed by the hospital's administrator, and the report shall be returned to the department within 31 days of receipt of the report. If no changes are reported to the department within the 31 days, the department shall consider the hospital's report to be verified.

§13.16. Noncompliance with Reporting Requirements.

(a) A hospital that does not timely submit requested data to the department according to the requirements and procedures established in these sections is subject to a civil penalty of not more than \$500 for each day of noncompliance, under the provisions of Texas Civil Statutes, Article 4418hm §4.03.

(b) If a hospital does not submit a completed survey form to the department within the 60 days reporting period established in §13.14 of this title (relating to Survey Forms), the department may institute the following procedures.

(1) The department shall notify the entity in writing by certified mail, return receipt requested, that the entity is in non-compliance with department reporting requirements and may be in violation of Texas Civil Statutes, Article 4418h. The written notification shall also state the commissioner of health will request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital fails to submit the requested data to the department within 30 days of the postmark of the notification letter.

(2) If the department does not receive the requested data from the non-responding hospital within the timeframe

specified, the commissioner of health shall notify the attorney general in writing of the entity's noncompliance. The department shall send a copy of the written notification to the hospital.

§13.17. Confidentiality.

(a) Data received by the department under these sections from any public or private hospital that contains information relating to a specific patient or any financial information that relates to a provider or hospital is confidential under authority of Texas Civil Statutes, Article 4418h, §4.03(f), and Article 4438e, §7. The department will establish appropriate internal controls to maintain confidentiality.

(b) The department will disclose confidential patient information to a third party only upon receipt of appropriate written consent from the patient. The department will disclose confidential hospital financial information only upon receipt of appropriate written consent from the hospital administrator.

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

Issued in Austin, Texas, on September 25, 1987.

TRD-8708248 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department
of Health

Proposed date of adoption
December 5, 1987
For further information, please call
(512) 458-7261



**Chapter 157. Emergency
Medical Care
Emergency Medical Services**

★ 25 FAC §§157.63, 157.77, 157.82

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

The Department of Health proposes amendments to §157.63 and §157.77, and new §157.82, concerning certification; emergency medical services training program and course approval; and certification of peace officers and firefighters; respectively. The new section provides for the certification at the emergency care attendant (ECA) level of currently employed firefighters and peace officers provided they meet certain criteria. The amendments clarify the qualification requirements for certification as an ECA and includes automatic external defibrillation (AED) training as an optional skill in cur-

rent approved Emergency Medical Services training and course curricula. The changes to existing certification requirements will allow the use of AED to be utilized by these individuals only under medical supervision/direction.

Stephen Seale, chief accountant III, has determined that for each year of the first five years the 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. Seale, Chief Accountant III, 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 that by allowing peace officers and firefighters to become certified at the ECA level, there will be more certified emergency medical personnel available to use AEDs under medical supervision/direction, which will improve survival in certain instances. Peace officers and firefighters are often the first responders to emergency medical situations, therefore the proposed amendments and new section will enable them to immediately administer emergency medical care in order to save more lives in emergency situations.

Comments on the proposal may be submitted to Eugene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 465-2601. Comments will be accepted for 90 days after the publication of the sections in the *Texas Register*.

The amendments and new section are proposed under the Emergency Medical Services Act, Texas Civil Statutes Article 4447c, §3.02, §3.03, and §3.04 which provides the Texas Board of Health with the authority to adopt rules covering certification of EMS personnel.

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 25, 1987.

TRD-878249 Robert A. MacLean,
Deputy Commissioner
Professional Services
Texas Department
of Health

Earliest possible date of adoption
January 2, 1988
For further information, please call
(512) 465-2601



TITLE 28. INSURANCE

Part 1. State Board of Insurance

Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas

★28 IAC §9.1

The State Board of Insurance proposes an amendment to §9.1, concerning adoption by reference of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (the manual). The amendment to the section itself is necessary to reflect the amendment which the board is proposing to the manual, which the section adopts by reference. The amendment to the manual is necessary to expand and standardize policy coverage, provide additional information to consumers in connection with their real estate transactions, and permit greater scrutiny of the handling by title companies of escrow funds. The amendment incorporates by reference certain changes to the manual which were originally submitted as individual agenda items at the annual hearing of the State Board of Insurance on rates and rules concerning title insurance. The board held the annual hearing on December 17 and 18, 1986 and on January 12 and 13, 1987. The amendment to the manual modifies currently existing promulgated rate rules and adds or expands other rules and forms. Agenda Item 86-5 at the annual hearing was a proposed amendment to the manual which would amend procedural Rule P-18 to provide that each proposed insured will receive a commitment within a reasonable time after the order for insurance has been placed. Agenda Item 86-6 would amend rate Rule R-8 in order to clarify the mortgagee policy credit rule to assure uniformity in its application. Agenda Item 86-12 would amend the manual at Section II, page 1, to require that all policies and commitments contain or have affixed the name, address, and telephone number of the issuing agent. Agenda Item 86-13 would amend procedural Rule P-20 to allow the same protection against roll-back taxes in owner policies of title insurance as is now available in mortgagee policies. Agenda Item 86-14 would amend rate Rule R-19 to provide a fee for the protection afforded by Agenda Item 86-13. Agenda Item 86-16 proposes a new Form T-22 to provide advance disclosure of estimated tax liability for the current year and to provide the buyer with a list of all taxing authorities likely to make assessments. Agenda 86-17 would amend Section V, page 21, of the manual, the specific instructions for completion of the annual escrow audit report which is filed by title companies, to require additional disclosure of escrow

shortages. Agenda Item 86-19 would amend procedural Rule P-9(b) to permit endorsement of mortgage policies after foreclosure to Jown date the policy coverage. Agenda Item 86-20 would amend rate Rule R-11 to provide a premium charge for the new foreclosure endorsement proposed in Agenda Item 86-19. Agenda Item 86-21 proposes a new form to be used in connection with the foreclosure endorsement. Agenda Item 86-22, would amend procedural Rule P-21 to require additional disclosure of the licensed status of the issuing agent for the purposes of lenders' reliance on insured closing service letters issued by that agent. Agenda Item 86-27 would amend Procedural P-10 to prescribe issuance of the 1985 facultative reinsurance agreement form. Agenda Item 86-28 proposes the 1985 facultative reinsurance agreement form now in common use throughout the United States. The board has filed with the Office of the Secretary of State copies of the proposals for the amendment to the manual under the agenda items. Persons desiring copies of the proposals can obtain copies from the Title Insurance Section of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

James Mark Gentle, assistant director of title 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 as a result of enforcing or administering the section. The cost of compliance with the amendment for small businesses will be a minimal increase of no more than \$25 in expenses for completion of any form as required by the amendment. On the basis of cost per hour of labor, there will be no difference between the cost of compliance for small businesses and the cost of compliance for large businesses affected by the amendment.

Mr. Gentle 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 and standardization of rules and forms in the regulation of title insurance and more informative disclosure to title insurance policyholders. The anticipated economic cost to persons who are required to comply with the proposed amendment will be a minimal increase of no more than \$25 in expenses for completion of any form as required by amendment of the manual.

Comments on the proposal may be submitted to James Mark Gentle, Assistant Director of Title Insurance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Articles 104.907 and 9.21, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 104, authorizes the State Board of In-

surance to determine policy and rules. The Insurance Code, Article 9.07, authorizes and requires the board to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents, to promulgate or approve forms for policies of title insurance, and to require title insurance companies and agents to submit information material for the board's consideration. The Insurance Code, Article 9.21, authorizes the board to promulgate and enforce rules and regulations prescribing underwriting standards and practices, and to promulgate and enforce all other rules and regulations necessary to accomplish the purposes of the Insurance Code. Chapter 9, concerning regulation of title insurance, Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and §5 prescribe the procedure for adoption of rules by any state administrative agency.

§9.1. *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.* The State Board of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended, effective **December 1, 1987** [May 1, 1987]. This document is published by and is available from Hart Graphics, P.O. Box 968, Austin, Texas 78767, and is available from and on file at the State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 28, 1987

TRG 8708343 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earmest possible date of adoption:
November 2, 1987

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 1. General Land Office

Chapter 13. Land Resources

★31 IAC §13.19

(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 §13.19, concerning the protection of cer-

tain state lands. The new section sets out which state lands will be used primarily for wildlife refuge, sanitary, recreation or natural resources conservation purposes. Identical emergency action is published elsewhere in this issue.

Frank Morgan, deputy commissioner for land management, 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. Morgan 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 greater availability of resources to protect and maintain the state's valuable natural resources. 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 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 31, §31.051, which instructs the commissioner of the General Land Office to execute and perform all acts and other things relating to public land of the state and to make and enforce suitable 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 28, 1987.

TRD 870833 Gary Mauro
Commissioner
General Land Office

Earliest possible date of adoption
November 2, 1987
For further information, please call
(512) 463 5009

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Part III. Texas Air Control Board

Chapter 101. General Rules

★31 TAC §101.1

The Texas Air Control Board (TACB) proposes an amendment to §101.1, concerning definitions. The amendment adds new definitions for architectural coating, automobile refinishing, and consumer-solvent products; and revises the definition for surface coating processes to include miscellaneous wood and plastics parts and products coating, architectural coating, automobile refinishing, and

wood and plastics parts and products coating are proposed to properly identify materials and sources affected by concurrently proposed amendments to §§115.191-115.194, concerning surface coating processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. Consumer-solvent products are proposed to properly identify materials affected by concurrently proposed new §§115.291-115.294, concerning specified consumer-solvent products in Dallas and Tarrant Counties.

These new definitions are necessary provisions in conjunction with concurrently proposed revisions to the state implementation plan (SIP) for ozone in Dallas and Tarrant Counties and associated changes to TACB Regulation V, Control of Air Pollution from Volatile Organic Compounds (Chapter 115) required by the United States Environmental Protection Agency.

Bennie L. Engelke, director of management and staff services, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Les Montgomery, director, Technical Support and Regulation Development Program, 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 improved understanding and more consistent application of TACB regulations where the proposed definitions are used. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Public hearings on this proposal are scheduled for the following times and places:

October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

Copies of the proposed amendment are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed change is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m. on November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Con-

trol Board, 6330 Highway 290 East, Austin, Texas 78723.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§101.1. Definitions. Unless specifically defined in the Act or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by Texas Civil Statutes, Article 4477-5, the following terms, when used in this part (31 TAC Part III), shall have the following meanings, unless the context clearly indicates otherwise:

Architectural coating—Any protective or decorative coating for the interior or exterior of a building or structure.

Automobile refinishing—The recoating of individual automobiles and light-duty trucks by someone other than the manufacturer to repair, restore, or alter the exterior finish, including primer, topcoat, and clear-coat application.

Consumer-solvent products—Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain volatile organic compounds, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.

Surface coating processes—Continuous or assembly line surface coating operations using solvent-containing liquids.

(A)-(I) (No change.)

(J) Miscellaneous metal, wood, and plastic parts and products coating. The coating of miscellaneous metal, wood, and plastic parts and products in the following categories:

(i) (v) (No change.)

(vi) Fabricated metal, wood, and plastic products (metal, wood, or plastic-covered doors, frames, etc.) and

(vii) any other category of coated metal, wood, and plastic products, except the specified list in subparagraphs (A)-(I) of this definition of surface coating processes, which are included in the Standard Industrial Classification Code Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (nonelectrical machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), and Major Group 39 (miscellaneous manufacturing industries).

(K) (No change.)

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

Issued in Austin, Texas, on September 23, 1987.

TRD-8708186 Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption:
December 18, 1987

For further information, please call
(512) 451-5711, ext 354

Chapter 115. Volatile Organic Compounds

Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Brazoria, Dallas, El Paso, Galveston, Harris, and Tarrant Counties

★ 31 TAC §§115.131-115.135

The Texas Air Control Board (TACB) proposes amendments to §§115.131-115.135, concerning filling of gasoline storage vessels (Stage I) for motor vehicle fuel dispensing facilities in Brazoria, Dallas, El Paso, Galveston, Harris, and Tarrant Counties. The amendments change the title of the undesignated head to read "Motor Vehicle Fuel Dispensing Facilities in Brazoria, Dallas, El Paso, Galveston, Harris, and Tarrant Counties." The amendment to §115.131 adds a new subsection (b) to require gasoline dispensing facilities in Dallas and Tarrant Counties with a nominal storage capacity of greater than 1,000 gallons to install devices on all pumps, hoses, nozzles, and other components as described in a new §115.133, such that emissions of volatile organic compounds (VOC) from the refueling of motor vehicles shall not exceed 0.9 pounds per 1,000 gallons of gasoline dispensed. The amendment to §115.132 changes the title of the section and the referenced subsection of §115.131 to limit the applicability of the rule to the filling of gasoline storage vessels (Stage I). New §115.133 describes the design and performance criteria of an approved vapor collection system for vehicle refueling (Stage II). The amendment to §115.134 makes existing exemptions applicable to the dispensing of gasoline from a storage container, as well as the transferring of gasoline to the storage container. The amendment to §115.135 requires all sources in Dallas and Tarrant Counties affected by §§115.131-115.133 to be in final compliance no later than December 31, 1990.

The amendments are part of a series of proposed revisions to Chapter 115 to provide the additional VOC emission reductions needed to provide for a demonstration of attainment in the state implemen-

tation plan (SIP) revisions for ozone in Dallas and Tarrant Counties required by the United States Environmental Protection Agency (EPA). The amendments will only be adopted as necessary to ensure demonstration of attainment after analysis of testimony regarding all the proposed revisions to Chapter 115 has been completed.

Senate Bill 1360, passed by the legislature in 1987, prohibits the adoption of rules requiring use of Stage II vapor controls unless required by EPA. Accordingly, the proposal in this respect is conditioned on such a requirement, which must precede adoption by the board. Technical work performed prior to proposal of these amendments would indicate that Stage II vapor controls may not be needed to meet EPA requirements for a demonstration of attainment; however, a final determination in this regard can not be made until all EPA comments regarding technical procedures to be followed in determining emissions and emission reduction requirements are received and evaluated. In addition, the emission reduction benefits of Stage II vapor controls beyond 1992 will be reduced or eliminated by proposed new federal rules which would require the installation of improved carbon canisters on all new vehicles for the capture of refueling emissions.

Bennie L. Engelke, director of management and staff services, has determined that for the first five-year period the sections as proposed are in effect there would be the following fiscal implications for the state and local units of government resulting from activities necessary to adequately enforce the proposed sections. The effect on state and local government will be an estimated additional cost of \$0.00 in 1988 and 1989, \$100,000 in 1990, \$50,000 in 1991, and \$17,000 in 1992. There are no fiscal implications to small businesses.

Les Montgomery, PE., director, Technical Support and Regulation Development Program, 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 improved air quality as a result of a reduction of VOC emissions in Dallas and Tarrant Counties after December 31, 1990. In addition, these controls may be necessary to satisfy the EPA requirements for approval of the SIP revisions for Dallas and Tarrant Counties to avoid the imposition of growth sanctions in those counties. The possible economic cost to individuals who are required to comply with the sections as proposed will be a cost/ton of \$0.00 in 1988 and 1989, and \$2,929 each year in 1990-1992, and a total cost ($\times 10^6$) of \$0.00 in 1988 and 1989, and \$13.8 each year in 1990-1992. The estimated cost to a typical gasoline dispensing facility (service station) with a monthly throughput of 25,000 gallons of gasoline may be \$2,500 per year, including an

\$11,000 capital expense amortized over a 10-year period and operating costs of approximately \$1,300 per year. The cost-effectiveness of Stage II controls also may be reduced beyond 1990 if EPA promulgates the proposed federal rules limiting gasoline volatility and requiring improved carbon canisters on new vehicles.

Public hearings on this proposal are scheduled for the following times and places:

October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

Copies of the proposed amendments and new section are available at the central office of the Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m. on November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

The amendments and new section are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.131. Control Requirements.

(a) No person shall transfer, or allow the transfer of, gasoline from any delivery vessel into a stationary storage container with a nominal capacity greater than 1,000 gallons (3,785 liters) which is located at a motor vehicle fuel dispensing facility unless the following conditions are met.

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

(b) No person shall transfer, or allow the transfer of, gasoline into a motor vehicle from any stationary storage container with a nominal capacity of greater than 1,000 gallons (3,785 liters) which is located at a motor vehicle fuel dispensing facility in Dallas or Tarrant Counties unless the following conditions are met.

(1) The pumps, hoses, nozzles, and other components of the gasoline dispensing system at the facility comply with the provisions of §115.133 of this title (relating to Approved Vapor Collection Systems for Vehicle Refueling (Stage II)).

(2) The displaced vapors from the fuel tank on the vehicle are collected and returned to a storage container at the fuel dispensing facility which satisfies the provisions of subsection (a) of this section, such that emissions of volatile organic compounds to the atmosphere do not exceed 0.9 pounds per 1,000 gallons (110 mg/liter) of gasoline dispensed.

§115.132. *Approved Vapor Collection [Balance] System for Filling of Gasoline Storage Vessels (Stage I).* When a vapor balance system is used to comply with the provisions of §115.131(a) of this title (relating to Control Requirements), the balance system will be assumed to meet the specified emission limitations if the following conditions are met:

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

§115.133. *Approved Vapor Collection System for Vehicle Refueling (Stage II).* When a vapor balance system is used to comply with the provisions of §115.131(b) of this title (relating to Control Requirements), the balance system will be assumed to meet the specified design criteria and emission limitations only if the following conditions are met.

(1) The fuel dispensing nozzle and hose have a vapor return line which must form and maintain a vapor-tight seal with the vehicle fuel inlet pipe while gasoline is being dispensed.

(2) The fuel dispensing nozzle automatically shuts off the flow of gasoline when the fuel tank is full.

(3) The gauge pressure in the vehicle fuel tank does not exceed 10 inches of water (3.0 kPa) while fuel is being dispensed.

(4) No gasoline leaks exist anywhere in the liquid transfer system.

(5) The vapor return line's cross-sectional area is at least one-half of the product dispensing line's cross-sectional area.

(6) The only atmospheric emission during gasoline transfer into the vehicle fuel tank is through a vent line on the storage container at the dispensing facility which is equipped with an orifice no greater than 3/4 inch (1.9 cm) internal diameter or a pressure-vacuum relief valve set to open at a pressure of no less than eight ounces per square inch (3.4 kPa).

(7) The storage container at the dispensing facility is kept vapor-tight at all times (except when gauging).

(8) Readings of less than 100% of the lower explosive limit (LEL, measured as propane) at one inch (2.5 cm) from potential leak sources are ensured when measured with a combustible gas detector.

§115.134. *Exemptions.* The transferring of gasoline to and the dispensing of gasoline from [Transfers to] the following stationary storage [receiving] containers at fuel dispensing facilities are exempt from the requirements of §115.131 of this title (relating to Control Requirements):

(1)-(4) (No change.)

§115.135. *Compliance Schedule and Counties.* All affected persons in the counties shown in the following table will be in compliance with the provisions of §115.131 of this title (relating to Control Requirements), [and] §115.132 of this title (relating to Approved Vapor Collection [Balance] System for Filling of Gasoline Storage Vessels (Stage I)), and §115.133 of this title (relating to Approved Vapor Collection System for Vehicle Refueling (Stage II)) as soon as practicable but no later than the dates shown:

Rule Paragraphs	Counties Where Applicable	Final Compliance Date
All except §115.131(a)(3), §115.132(4), §115.132(7), [and] §115.132(7), §115.131(b), and §115.133	Brazoria Galveston, Harris	Aug. 31, 1978
§115.132(4)	Dallas, Tarrant	Feb. 29, 1980
§115.132(4)	Brazoria Dallas, Galveston Harris, Tarrant	Dec. 31, 1981
§115.131(a)(3), §115.132(6), and §115.132(7)	Harris	Dec. 31, 1982
§115.132(4)	Dallas, Tarrant	Dec. 31, 1987
All except §115.131(b), and §115.133	El Paso	Dec. 31, 1987
§115.131(b), and §115.133	Dallas, Tarrant	Dec. 31, 1990

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 23, 1987

TRD-8708185 Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption
December 18, 1987
For further information please call
(512) 451-5711, ext. 354

✚ ✚ ✚
**Vent Gas Control in Brazoria,
Dallas, El Paso, Galveston,
Harris, Jefferson, Nueces,
Orange, Tarrant, and Victoria
Counties**

★ 31 TAC §115.163, §115.164

The Texas Air Control Board (TACB) proposes amendments to §115.163 and §115.164, concerning vent gas control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. The amendment to §115.163 adds a subsection (c) to lower the exemption limit for vent gas streams in Dallas and Tarrant Counties after December 31, 1990. The new limit exempts only those vent gas streams having a combined weight of volatile organic compounds (VOC) greater than 100 pounds in any consecutive 24-hour period but less than 250 pounds per hour averaged over a 24-hour period and having a true partial pressure of VOC less than 0.003 psia. The amendment to §115.164 adds a new subsection (c) to require sources affected by the proposed changes to §115.163 to be in compliance no later than December 31, 1990, and to submit a control plan to the TACB no later than December 31, 1988. The existing exemption limit of 0.009 psia shall remain in effect until final compliance is achieved.

The amendments are part of a series of proposed revisions to Chapter 115 to provide the additional VOC emission reductions needed to provide for a demonstration of attainment in the state implementation plan (SIP) revisions for ozone in Dallas and Tarrant Counties required by the United States Environmental Protection Agency (EPA). These revisions will only be adopted as necessary to ensure demonstration of attainment after analysis of testimony regarding all the proposed revisions to Chapter 115 have been completed.

Bennie L. Engelke, director of management and staff services, 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, as identified in the 1982 *Texas Small*

Business Directory, which are not expressly required to comply with the rule as proposed.

Les Montgomery, P.E., director, Technical Support and Regulation Development Program, 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 improved air quality as a result of a reduction of VOC emissions in Dallas and Tarrant Counties after December 31, 1990. In addition, these controls may be necessary to satisfy the EPA requirements for approval of the SIP revisions for Dallas and Tarrant Counties to avoid the imposition of growth sanctions in those counties. The possible economic cost to individuals who are required to comply with the rule as proposed will be a cost/ton of \$0.00 in 1988 and 1989, and \$9,000 each year in 1990-1992, and a total cost (x10⁶) of \$0.00 in 1988 and 1989, and \$1.2 each year in 1990-1992. The annual cost of control at individual facilities affected by the proposed amendments is estimated to be \$112,000, including an annualized capital expense of \$50,000 and operating costs of approximately \$62,000 per year.

Public hearings on this proposal are scheduled for the following times and places:

October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

Copies of the proposed amendments are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m. on November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a) which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.163. General Vent Gas Streams in Dallas, Harris, and Tarrant Counties.

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

(c) **The following vent gas streams are exempt from the requirements of this section:**

(1) through December 31, 1990, a vent gas stream having a combined weight of volatile organic compounds greater than 100 pounds (45.4 kg) in any consecutive 24-hour period but less than 250 pounds (113.4 kg) per hour averaged over a 24-hour period and having a true partial pressure of volatile organic compounds less than 0.009 psia (0.06 kPa); or

(2) after December 31, 1990, a vent gas stream having a combined weight of volatile organic compounds greater than 100 pounds (45.4 kg) in any consecutive 24-hour period but less than 250 pounds (113.4 kg) per hour averaged over a 24-hour period and having a true partial pressure of volatile organic compounds less than 0.003 psia (0.02 kPa).

§115.164. Compliance Schedule and Counties.

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

(c) **The provisions of §115.163(c) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties) shall apply in Dallas and Tarrant Counties.**

(1) **All persons in Dallas and Tarrant Counties affected by the provisions of §115.163(b) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties) shall submit a final control plan to the Texas Air Control Board no later than June 30, 1986, and shall be in compliance with this section as soon as practicable but no later than December 31, 1987.**

(2) **All persons in Dallas and Tarrant Counties affected by the provisions of §115.163(b) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties) shall remain in compliance with the provision of §115.162 of this title (relating to General Vent Gas Streams) until compliance is achieved with the provisions of §115.163(b) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties).**

(3) **All persons in Dallas and Tarrant Counties affected by the provisions of §115.163(c) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties) shall submit a final control plan to the Texas Air Control Board no later than December 31, 1988, and shall be in compliance with this section as soon as practicable but no later than December 31, 1990.**

(4) **All persons in Dallas and Tarrant Counties affected by the provisions of §115.163(c) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties) shall remain in compliance with the provisions of §115.163(b)(3)(A) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties) until compliance is achieved with the provisions of §115.163(c) of this title (relating to General Vent Gas Streams in Dallas, Harris, and Tarrant Counties).**

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 23, 1987

TRD-8708184 Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption:
December 18, 1987

For further information, please call
(512) 451-5711, ext 354



Specified Solvent-Using Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★31 TAC §§115.171, 115.176

The Texas Air Control Board (TACB) proposes amendments to §§115.171 and 115.176, concerning specified solvent-using processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. The amendment to §115.171 prohibits the use, application, sale, or offering for sale of cutback asphalt in Dallas and Tarrant Counties during the period from April 16-September 15 of each year. This prohibition, however, would not be applied to cutback asphalt stored in long-term stockpiles or used as a penetrating prime coat. The amendment to §115.176 requires affected sources in Dallas and Tarrant Counties to be in compliance no later than December 31, 1990.

These amendments are part of a series of proposed revisions to Chapter 115 to provide the additional volatile organic compound (VOC) emission reductions needed to provide for a demonstration of attainment in the state implementation plan (SIP) revisions for ozone in Dallas and Tarrant Counties required by the United States Environmental Protection Agency (EPA). These revisions will only be adopted as necessary to ensure demonstration of attainment after analysis of testimony regarding all the proposed revisions to Chapter 115 have been completed.

Bennie L. Engelke, director of management and staff services, 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.

Les Montgomery, PE, director, Technical Support and Regulation Development Program, 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

improved air quality as a result of a reduction of VOC emissions in Dallas and Tarrant Counties after December 31, 1990. In addition, these controls may be necessary to satisfy the EPA requirements for approval of the SIP revisions for Dallas and Tarrant Counties to avoid the imposition of growth sanctions in those counties. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Public hearings on this proposal are scheduled for the following times and places: October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

Copies of the amendments are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed change is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m., November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.171. *Cutback Asphalt (As Defined under Specified Solvent-Using Processes in the General Rules).*

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

(c) **After December 31, 1990, no person shall allow the use, application, sale, or offer for sale of cutback asphalt containing volatile organic compound solvents for the paving of roadways, driveways, or parking lots in Dallas and Tarrant Counties during the period from April 16-September 15 of any year, except:**

- (1) where long-life (longer than one month) stockpile storage is necessary; or
- (2) where the asphalt is to be used solely as a penetrating prime coat.

§115.176. *Counties and Compliance Schedule*

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

(d) **The provisions of §115.171(c) of this title (relating to Cutback Asphalt) shall apply only within Dallas and Tarrant Counties. All affected persons shall be in compliance with this section as soon as**

practicable, but no later than December 31, 1990.

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

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Texas Air Control Board

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(512) 451-5711, ext 354



Surface Coating Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★31 TAC §§115.191, 115.193, 115.194

The Texas Air Control Board (TACB) proposes amendments to §§115.191, 115.193, and 115.194, concerning surface coating processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. The amendment to §115.191 adds a new subsection (a) to require surface coating operations in Dallas and Tarrant Counties which emit more than 100 pounds of volatile organic compounds (VOC), after application of currently required low-solvent technologies, to capture and control by carbon adsorption or incineration the remaining VOC emissions at a reduction effectiveness of at least 80% by weight. The existing language of §115.191 would be included in a new subsection (b). The amendment to §115.191 also adds the following emission limitations: a new paragraph (8)(D) to specify that coatings used in automobile refinishing shall not exceed 3.0 pounds per gallon of coating (minus water) applied as determined by the weighted monthly average of all coatings and solvents purchased, revisions to paragraph (9) to specify that coatings used in miscellaneous wood and plastics parts and products coating operations must satisfy the emission limitations of miscellaneous metal parts and products coating; and a new paragraph (11) to prohibit the sale or offer for sale of any architectural coating with a VOC content of more than 3.5 pounds per gallon. The amendment to §115.193 ensures that the application of exemptions would be consistent with the proposed amendments regarding automobile refinishing. The amendment to §115.194 requires sources in Dallas and Tarrant Counties affected by the proposed changes to §§115.191-115.193 to be in final compliance no later than December 31, 1990. Sources affected by

new §115.191(a) are also required to submit a control plan to the TACB no later than December 31, 1988

These amendments are part of a series of proposed revisions to Chapter 115 to provide the additional VOC emission reductions needed to provide for a demonstration of attainment in the state implementation plan (SIP) revisions for ozone in Dallas and Tarrant Counties required by the United States Environmental Protection Agency (EPA). These revisions will only be adopted as necessary to ensure demonstration of attainment after analysis of testimony regarding all the proposed revisions to Chapter 115 has been completed.

Bennie L. Engelke, director of management and staff services, has determined that for the first five-year period the sections as proposed are in effect, there would be the following fiscal implications for the state and local units of government resulting from activities necessary to adequately enforce the proposed sections. The effect on state and local government will be an estimated additional cost for automobile refinishing of \$0.00 in 1988 and 1989, \$100,000 in 1990, \$50,000 in 1991, and \$17,000 in 1992, and for architectural coating, \$0.00 in 1988 and 1989, \$100,000 in 1990, \$50,000 in 1991, and \$17,000 in 1992. There are no fiscal implications to small businesses.

Les Montgomery, P.E., Director, Technical Support and Regulation Development Program, 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 improved air quality as a result of a reduction of VOC emissions in Dallas and Tarrant Counties after December 31, 1990. In addition, these controls may be necessary to satisfy the EPA requirements for approval of the SIP revisions for Dallas and Tarrant Counties to avoid the imposition of growth sanctions in those counties. The possible economic cost to individuals who are required to comply with the sections as proposed will be the cost of surface coating fugitives based on cost/ton of \$0.00 in 1988 and 1989, and \$11,000 each year in 1990-1992, and a total cost ($\times 10^6$) of \$0.00 in 1988 and 1989, and \$9.3 each year in 1990-1992; the cost of automobile refinishing based on cost/ton of \$0.00 in 1988 and 1989, and \$691 each year in 1990-1992, and a total cost ($\times 10^6$) of \$0.00 in 1988 and 1989, and \$1.2 each year in 1990-1992; the cost of wood and plastics coating based on cost/ton of \$0.00 in 1988 and 1989, and \$5,000 each year in 1990-1992, and a total cost ($\times 10^6$) of \$0.00 in 1988 and 1989, and \$4.8 each year in 1990-1992.

The estimated annual cost of controls at individual facilities could range from \$283,000 for surface coating fugitives, \$1,300 for an automobile refinishing operation (recoating an average of three vehicles per day), and \$3,000 for a wood

or plastics parts coating facility. These costs include assumed operating and amortized capital expenses.

Public hearings on this proposal are scheduled for the following times and places: October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

Copies of the proposed amendments are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m. on November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.191. Emission Limitations.

(a) **No person shall operate or allow the operation of a surface coating process defined in §101.1 of this title (relating to Definitions) in Dallas or Tarrant Counties emitting more than 100 pounds of volatile organic compounds in any consecutive 24-hour period, as determined after application of the low-solvent technology required by subsection (b)(1)-(11) of this section, unless the total remaining volatile organic compound emissions are effectively captured and controlled by carbon adsorption or incineration at a reduction effectiveness of at least 80% by weight.**

(b) No person may cause, suffer, allow, or permit volatile organic compound emissions from the surface coating processes (defined in §101.1 of this title (relating to Definitions)) affected by paragraphs (1)-(11) [(10)] of this subsection [section] to exceed the specified emission limits, which are based on daily weighted average, except for those in paragraph (8) of this subsection [section], as detailed, [and] for those in paragraph (10) of this subsection [section] which are based on paneling surface area, **and those in paragraph (11) of this subsection which are based on the volatile organic compound content of architectural coatings sold or offered for sale.**

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

(8) Automobile and light-duty truck coating.

(A)-(C) (No change.)

(D) Volatile organic compound emissions from automobile refinishing in Dallas and Tarrant Counties shall not exceed 3.0 pounds per gallon of coating (minus water) applied (0.36kg/l) as determined by the weighted average of all coatings and solvents purchased for use in the process during any calendar month.

(9) Miscellaneous metal, wood, and plastic parts and products coating.

(A) Volatile organic compound emissions from the coating (prime and top-coat, or single coat) of miscellaneous metal, **wood, and plastic** parts and products shall not exceed the following limits for each surface coating type:

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

(iv) 3.0 pounds per gallon (0.36 kg/liter) of coating (minus water) applied for all other coating applications that pertain to miscellaneous metal, **wood, and plastic** parts and products; and

(v) (No change.)

(B)-(C) (No change.)

(10) (No change.)

(11) Architectural coating. The volatile organic compound content of any coating sold or offered for sale as an architectural coating in Dallas and Tarrant Counties shall not exceed 3.5 pounds/gallon (0.42 kg/l).

§115.193. Exemptions.

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

(c) The following coating operations are exempt from the application of §115.191 (b)(g) of this title (relating to Emission Limitations):

(1) exterior of airplanes except as required by §115.191(b)(9)(A)(v) of this title (relating to Emission Limitations)

(2) automobile refinishing **except as required by §115.191(b)(8)(D) of this title (relating to Emission Limitations);**

(3)-(5) (No change.)

(6) any surface coating process or processes at a specific property for which the executive director has approved requirements different from those in §115.191(b)(9) of this title (relating to Emission Limitations) based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When he makes such a determination, the executive director shall specify the date or dates by which such different requirements shall be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property shall be reviewed every two years.

(d) The following coating operations are exempt from the application of §115.191(b)(10) of this title (relating to Emission Limitations):

(1)-(3) (No change)

(e) After December 31, 1987, in Dallas and Tarrant Counties, only those surface coating operations, which when uncontrolled, will emit a combined weight of volatile organic compounds of less than 100 pounds (45.4 kg) in any consecutive 24-hour period, except aircraft exterior prime coating controlled by §115.191(b)(9)(A)(v) of this title (relating to Emission Limitations) and automobile refinishing controlled by §115.191(b)(8)(D) of this title (relating to Emission Limitations), shall be exempt from the provisions of §115.191 of this title (relating to Emission Limitations)

§115.194. Compliance Schedule and Counties.

(a) All affected persons within Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with §§115.191-115.194 of this title (relating to surface coating processes in Brazoria, Dallas, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties) except for §115.191(b)(7)(B), (b)(8)(B), and (b)(9)(A)(v) of this title (relating to Emission Limitations), as soon as practicable, but no later than December 31, 1982, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.

(b) All affected persons within the counties listed in subsection (a) of this section shall be in compliance with §115.191(b)(7)(B) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1985, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.

(c) All affected persons within the counties listed in subsection (a) of this section shall be in compliance with §115.191(b)(8)(B) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1986, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.

(d) All affected persons within the counties listed in subsection (a) of this section shall be in compliance with §115.191(b)(9) and (b)(10) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1982, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1980.

(e) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.191(b)(9)(A)(v) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1987, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1985.

(f) All affected persons in Dallas and Tarrant Counties shall be in compliance with

§115.191(b)(8)(D) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1990.

(g) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.191(b)(11) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1990.

(h) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.191(a) of this title (relating to Emission Limitations) as soon as practicable, but no later than December 31, 1990, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 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 23, 1987

TRD-8708187 Allen, Eli Bell
Executive Director
Texas Air Control Board

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December 18, 1987

For further information, please call
(512) 451-5711, ext. 354



Graphic Arts (Printing) by
Rotogravure and Flexographic
Processes in Brazoria, Dallas,
El Paso, Galveston, Gregg,
Harris, Jefferson, Nueces,
Orange, Tarrant, and Victoria
Counties

★ 31 TAC §§115.201-115.203

The Texas Air Control Board (TACB) proposes amendments to §§115.201-115.203, concerning graphic arts (printing) by rotogravure and flexographic processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties. The amendment to §115.201 adds a subsection (b) to require graphic arts facilities in Dallas and Tarrant Counties to use low-solvent inks or to capture and control volatile organic compound (VOC) emissions by carbon adsorption or incineration to provide for an overall VOC control effectiveness of 80% by weight. The amendment to §115.202 also adds a sub-

section (b) to reduce the exemption limit for graphic arts facilities in Dallas and Tarrant Counties after December 31, 1990, to require control of all affected sources which emit more than 100 pounds of VOC in any consecutive 24-hour period. The amendment to §115.203 requires all sources in Dallas and Tarrant Counties affected by the changes to §115.201 and §115.202 to be in final compliance no later than December 31, 1990. The existing control requirements will remain in effect until final compliance is achieved.

The amendments are part of a series of proposed revisions to Chapter 115 to provide the additional VOC emission reductions needed to provide for a demonstration of attainment in the state implementation plan (SIP) revisions for ozone in Dallas and Tarrant Counties required by the United States Environmental Protection Agency (EPA). These revisions will only be adopted as necessary to ensure demonstration of attainment after analysis of testimony regarding all the proposed revisions to Chapter 115 has been completed.

Bennie L. Engelke, director of management and staff services, 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, as identified in the 1982 *Texas Small Business Directory*, which are not expressly required to comply with the rule as proposed.

Les Montgomery, P.E., director, Technical Support and Regulation Development Program, 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 improved air quality as a result of a reduction of VOC emissions in Dallas and Tarrant Counties after December 31, 1990. In addition, these controls may be necessary to satisfy the EPA requirements for approval of the SIP revisions for Dallas and Tarrant Counties to avoid the imposition of growth sanctions in those counties. The anticipated economic cost to individuals who are required to comply with the rule as proposed would be: a cost/ton of \$0.00 in 1988 and 1989, and \$3,045 each year in 1990-1992, and a total cost (x 10⁶) of \$0.00 in 1988 and 1989, and \$1.8 each year in 1990-1992. The annual cost of controls at a facility affected by these proposed amendments is estimated to be \$165,000, including a capital expense of \$238,000 amortized over a 10-year period and operating costs of approximately \$100,000 per year.

Public hearings on this proposal are scheduled for the following times and places:

October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street.

Cleburne, October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington

Copies of the amendments are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written on the amendments is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m., November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.201 - Control Requirements

(a) No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility that uses solvent-containing ink, unless volatile organic compound emissions are limited by one of the following:

(1) (3) (No change.)

(b) No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility in Dallas or Tarrant Counties that uses solvent-containing ink, unless volatile organic compound emissions are limited by one of the following:

(1) The volatile fraction of ink, as it is applied to the substrate, contains 25% by volume or less of volatile organic compound solvent and 75% by volume or more of water.

(2) The ink, as it is applied to the substrate, less water, contains 60% by volume or more of nonvolatile material.

(3) Volatile organic compound emissions are effectively captured and controlled by carbon adsorption or incineration to provide for an overall reduction in volatile organic compound emissions of at least 80% by weight.

§115.202 - Exemptions

(a) Any rotogravure or flexographic facility which when uncontrolled emits a combined weight of volatile organic compounds (VOC) less than 100 tons (91 metric tons) in each year of historical ink and VOC solvent usage is exempt from the requirements of §115.201(a) of this title (relating to Control Requirements).

(b) In Dallas and Tarrant Counties after December 31, 1990, only those rotogravure and flexographic printing facilities which when uncontrolled emit a combined weight of VOCs less than 100 pounds in any consecutive 24-hour period (based on historical ink and solvent usage) are exempt from the requirements of §115.201(b) of this title (relating to Control Requirements).

§115.203 - Compliance Schedule and Counties

(a) The provisions of §115.201(a) of this title (relating to Control Requirements) shall apply within Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. All affected persons shall submit a final control plan for compliance to the Texas Air Control Board no later than December 31, 1980, and shall be in compliance as soon as practicable, but no later than December 31, 1982.

(b) The provisions of §115.201(b) of this title (relating to Control Requirements) shall apply in Dallas and Tarrant Counties. All affected persons shall be in compliance as soon as practicable, but no later than December 31, 1990, and shall remain in compliance with §115.201(a) of this title (relating to Control Requirements) until compliance is achieved.

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 2, 1987.

TRD 8708188

Allen Eli Bell
Executive Director
Texas Air Control Board

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Specified Consumer Solvent Products

★31 TAC §§115.291, 115.293, 115.294

The Texas Air Control Board (TACB) proposes new §§115.291, 115.293, and 115.294, concerning specified consumer-solvent products in Dallas and Tarrant Counties. New §115.291 prohibits the sale or offer for sale in Dallas and Tarrant Counties of automobile windshield washer fluids or space deodorants (room fresheners) which contain volatile organic compounds (VOC) as an active ingredient, solvent, or any other component, and aerosol spray products which contain VOC in the propellant. New §115.293 exempts products purchased by and delivered to a

retail outlet prior to December 31, 1989, products sold or offered for sale to wholesale outlets for distribution or sale to consumers outside of Dallas and Tarrant Counties, and products sold or offered for sale to retail outlets located outside of Dallas and Tarrant Counties from the requirements of §115.291. New §115.294 requires all persons in Dallas and Tarrant Counties affected by the changes to §§115.291-115.293 to be in final compliance no later than December 31, 1990.

These new sections are part of a series of proposed revisions to Chapter 115 to provide the additional VOC emission reductions needed to provide for a demonstration of attainment in the state implementation plan (SIP) revisions for ozone in Dallas and Tarrant Counties required by the United States Environmental Protection Agency (EPA). These revisions will only be adopted as necessary to ensure demonstration of attainment after analysis of testimony regarding all the proposed revisions to Chapter 115 has been completed.

Bennie L. Engelke, director of management and staff services, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications for the state and local units of government resulting from activities to adequately enforce the proposed sections. The effect on state and local government will be an estimated additional cost of \$0.00 in 1988 and 1989, \$300,000 in 1990, \$150,000 in 1991, and \$50,000 in 1992. There are no fiscal implications to small businesses.

Les Montgomery, P.E., director, Technical Support and Regulation Development Program, 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 improved air quality as a result of a reduction of VOC emissions in Dallas and Tarrant Counties after December 31, 1990. In addition, these controls may be necessary to satisfy the EPA requirements for approval of the SIP revisions for Dallas and Tarrant Counties to avoid the imposition of growth sanctions in those counties. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Public hearings on this proposal are scheduled for the following times and places: October 28, 1987, 7 p.m., Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; October 29, 1987, 2 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

Copies of the new sections are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin,

Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the new sections is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by 4 p.m. on November 2, 1987, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Section, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The new sections are proposed under Texas Civil Statutes, Article 4477.5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.291. Control Requirements.

(a) No person may sell or offer for sale in Dallas and Tarrant Counties any of the following consumer-solvent products, as defined in §101.1 of this title (relating to Definitions), which contain volatile organic compounds as an active ingredient, solvent, or any other component:

- (1) automobile windshield washer fluids;
- (2) space deodorants (room fresheners).

(b) No person may sell or offer for sale in Dallas and Tarrant Counties any aerosol spray products which contain volatile organic compounds in the propellant used to discharge the product from the aerosol spray can or container.

§115.293. Exemptions. The following products are exempt from the provisions of §115.291 of this title (relating to Control Requirements):

(1) products purchased by and delivered to a retail outlet in Dallas and Tarrant Counties prior to December 31, 1989;

(2) products sold or offered for sale to wholesale outlets for distribution and sale to consumers outside of Dallas and Tarrant Counties; and

(3) products sold or offered for sale to retail outlets outside of Dallas and Tarrant Counties.

§115.294. Compliance Schedule and Counties. All affected persons in Dallas and Tarrant Counties shall be in compliance with the provisions of §115.291 of this title (relating to Control Requirements) as soon as practicable, but no later than December 31, 1990.

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 23, 1987

TRD-8708182

Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption:

December 18, 1987

For further information, please call
(512) 451-5711 ext. 354

Chapter 116. Permits

★31 TAC §§116.5, 116.7, 116.10

The Texas Air Control Board (TACB) proposes amendments to §§116.5, 116.7, and 116.10, concerning representation in application for permit and exemption; special permits; and public notification and comment procedure, respectively. The amendments responded to new requirements of House Bill 5, 70th Legislature, 1987 (Texas Civil Statutes, Article 6252-13(b).1), to require the TACB to establish time limits for staff review of permit applications and the issuance of permits. An additional amendment to §116.7 reflects recodification of the federal rules cited in the section.

The amendments add requirements for the executive director to notify a permit applicant within a specified period of time of receipt of a complete application and of any deficiencies in an application if it is incomplete. The amendments to §116.7 (e) and §116.10(c)(1) add provisions for the executive director to notify a permit applicant within a specified period of time of the decision to issue or deny a permit. Further amendments to §116.7(e) and §116.10(c)(1) provide that a public hearing or any delay in public notification could lengthen the specified period of time. The amendments to §§116.5, 116.7(h), and 116.10(f) provide for an appeal process relating to the time limits for issuance or denial of permits, special permits, and amendments.

The amendment to §§116.7(e)(3)(D) includes the replacement of the old federal section numbers with new numbers which were published by the United States Environmental Protection Agency in November, 1986, as a recodification of 40 Code of Federal Regulations, §51. The new section numbers replace the old in order to make accurate the citation in §116.7(e)(3)(D).

James C. Myers, P.E., director of the enforcement program, has determined that for the first five-year period the proposed sections will be in effect, there will be fiscal implications. The effect on state government during the first five years the sections will be in effect will be an estimated additional cost of \$50,000 per fiscal year from 1988-1992 for extra postage and handling, additional administrative forms for notification and record-keeping, additional data entry for computerized tracking, and additional staff to conduct the new notification activities. There will be no fiscal implications for local government or small businesses.

Mr. Myers 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 increased understanding by an applicant of the agency's scheduling and time constraints relating to the permit application review process. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

The following statement is published pursuant to Texas Civil Statutes, Article 6252-13(b).1, §3. This statement lists the minimum, maximum, and median times for processing TACB permits, special permits, and permit amendments, from the date an initial application was received to the date of final decision, based on the TACB's actual performance from September 1, 1986, to August 31, 1987. In addition, this statement justifies the time periods which appear in this proposal.

For projects issued from September 1, 1986-August 31, 1987, 364 amendments were issued with a minimum processing time of six days, a maximum time of 1079 days, and a median time of 77 days; 127 permits were issued with a minimum processing time of 15 days, a maximum time of 926 days, and a median time of 151 days; and 333 special permits were issued with a minimum processing time of eight days a maximum time of 1070 days, and a median time of 113 days.

The times for completion of the review of applications for permits, special permits, and amendments are dependent upon several factors, some of which are beyond the control of the TACB staff. Factors which influence completion times are the time used by an applicant to provide all information to demonstrate that the requirements of TACB Regulation VI will be met; the time used by an applicant to initiate and complete public notification requirements; the public interest in the proposed project since requests for public hearings or public meetings will extend the time required for completion due to the time required to satisfy public interest and/or public opposition; the project type and emission rate since the project type and total emission rate of air contaminants can result in a need to consider federal prevention of significant deterioration (PSD) permit requirements, which add significantly to the TACB staff review required prior to permit issuance; the project size, since projects of large size require much more TACB staff review time than average or small projects and extremely complicated projects also require more staff review time; the level of staffing of TACB since the loss of staff and training of new staff result in extended project review because of a lack of staff time available, and the additional review and permit verification requirements, such as recordkeeping and reporting required by new legislation, which add significantly to project completion time.

A public hearing is scheduled for 10 a.m. on November 5, 1987, in the Auditorium of the TACB, located at 6330 U.S. Highway 290 East, Austin, Texas 78723. Copies of the proposal are available from Barry Irwin at the TACB central office and at all TACB regional offices. Public comment, both oral and written, is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony prior to or at the hearing. Written testimony received by 4 p.m. on November 5, 1987 at the TACB central office will be included in the hearing record and should be sent to the Control Strategy Division, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, §3 09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes

§116.5. Representations in Application for Permit and Exemption. All representations with regard to construction plans and operation procedures in an application for a special permit, a permit to construct or a permit to operate, or in any request for an exemption become conditions upon which a subsequent exemption, special permit, or permit to construct or operate are issued. It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless he first makes application to the executive director to amend his permit, special permit, or exemption in that regard and such amendment is approved by the executive director. **Within 90 days of receipt of an application to amend a permit, special permit, or exemption, the executive director shall mail written notification informing the applicant that the application is complete or that it is deficient. If the application is deficient, the notification shall state any additional information required. Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification. Within 150 days of receipt of a completed application, the executive director shall mail written notice informing the applicant of his decision to approve or not approve the amendment. If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director. If the executive director finds that the amendment was not approved or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13(b).1, §3, the executive director shall reimburse the permit fee which was remitted with the application.**

§116.7. Special Permits.

(a) (No change.)
(b) Within 90 [20] days of receipt of an application for such special permit [which is determined by] the executive director of the Texas Air Control Board (TACB) [to be complete, the executive director] shall mail written notification **informing [to] the applicant that the application is complete or that it is deficient. If the application is deficient, the notification shall state any additional information required. Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification. The executive director shall require [acknowledging receipt of the application and requiring] the applicant to provide public notice of the proposed construction. In all cases, public notice [which] shall include the information specified in paragraph (2) of this subsection. The applicant shall provide such notification using each of the methods specified in paragraphs (2) and (3) of this subsection.**

(1)-(6) (No change.)
(c)-(d) (No change.)
(e) The executive director shall issue the special permit **within 180 days of receipt of the completed application**, after considering any written comments submitted pursuant to subsection (c) of this section, if he determines that:
(1)-(2) (No change.)
(3) the proposed facility will operate in compliance with all rules and regulations of the TACB, will utilize the best available control technology (with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility), and will comply with, and submit to the TACB all reports required by the following federal regulations to the extent applicable:

(A)-(C) (No change.)
(D) 40 Code of Federal Regulations §51.165(a) [§51.18(j)] (40 CFR §51.165(a)), as amended [, 40 CFR §51.18(j)]; and

(E) notwithstanding the provisions of this section, any facility which constitutes a major source, or any modification which constitutes a major modification, under any new source review requirement of the Federal Clean Air Act and regulations promulgated thereunder shall be subject to the requirements of §116.3 of this title (relating to Consideration for Granting Permits to Construct and Operate) rather than this section; [.]

(4) no requests for public hearing or public meeting on the proposed facility have been received; and

(5) the applicant has satisfied all public notification requirements of this section.

(f)-(g) (No change.)
(h) **If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director. If the executive**

director finds that the special permit was not issued or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13(b).1, §3, the executive director shall reimburse the permit fee which was remitted with the application.

§116.10. Public Notification and Comment Procedure.

(a) Public notification procedures.
(1) **General requirement. Within 90 days of receipt of a construction permit application, the executive director of the Texas Air Control Board (TACB) shall mail a written notification informing the applicant that the application is complete or that it is deficient. If the application is deficient, the notification shall state any additional information required. Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification. If the application is complete, for any permit subject to the Federal Clean Air Act (FCAA), Part C or D, or to 40 Code of Federal Regulations §51.165(b), the executive director shall state his preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction. If an application is received for a permit not subject to the FCAA, Part C or D, or to 40 Code of Federal Regulations §51.165(b), the executive director shall require the applicant to conduct public notice of the proposed construction. In all cases, public notice shall include the information specified in paragraph (3) of this subsection and the applicant shall provide such notice using each of the methods specified in paragraphs (3) and (4) of this subsection. The executive director may specify that additional information needed to satisfy public notice requirements of 40 Code of Federal Regulations §52.21 also be included in the notice published pursuant to paragraph (3) of this subsection.**

[(1) **General requirement. Within 30 days of receipt of a completed construction permit application, as determined by the executive director of the Texas Air Control Board (TACB), the executive director shall mail a written notification to the permit applicant acknowledging receipt of the application, stating his preliminary determination to issue or not issue the permit (for permits subject to the Federal Clean Air Act, Part C or D, or to 40 Code of Federal Regulations §51.165(b)), and requiring the applicant to provide public notice of the proposed construction which shall include the information specified in paragraph (3) of this subsection. The applicant shall provide such notification using each of the methods specified in paragraphs (3) and (4) of this subsection. The executive director may specify that additional information needed to satisfy public notice requirements of 40 Code of Federal Regulations §52.21, also be included in the notice published pursuant to paragraph (3) of this subsection.]**

- (2)-(7) (No change.)
- (b) (No change.)
- (c) Notification of final action.

(1) Notification of applicant. **Within 180 days of receipt of a completed application**, the executive director shall notify the applicant for a construction permit [as expeditiously as possible] of his final decision to grant or deny the permit, [.] **provided:**

(A) no requests for public hearing or public meeting on the proposed facility have been received;

(B) the applicant has satisfied all public notification requirements of this section; and

(C) the federal regulations for prevention of significant deterioration of air quality do not apply.

(2) (No change.)

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

(f) **If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director. If the executive director finds that the permit was not issued or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13(b).1, §3, the executive director shall reimburse the permit fee which was remitted with the application.**

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

Issued in Austin, Texas, on September 28, 1987

TRD-8708330 Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption
December 18, 1987

For further information, please call
(512) 451-5711, ext. 354.



★ 31 TAC §116.13

The Texas Air Control Board (TACB) proposes new §116.13, concerning emergency orders. The new section is proposed in response to new requirements of the Texas Clean Air Act (TCAA), §3.272, enacted by the 70th Legislature, 1987. The new section of the TCAA provides authority to the TACB to issue emergency orders allowing addition, replacement, or repair of facilities damaged by a catastrophic event.

New §116.13 reflects all the individual provisions and requirements of the new section of the TCAA. The provisions include the purpose of emergency orders for damaged facilities, the contents of an application for an emergency order, the contents of an emergency order, a public hearing and board decision on an emergency order, and public notification of the issuance of an emergency order.

Bill Ehret, Director of Hearings, has determined that for the first five-year period the proposed section will be in effect, there will be fiscal implications for local units of government. There will be a positive fiscal impact on small businesses during that five-year period since a facility owner/operator who is granted an emergency order will be allowed to begin repairs or replacement concurrently with the filing of an application for permit to construct. The proposed section will enhance the timely recovery of lost production at a damaged facility.

The fiscal implications for state government during the first five-year period would be in a range of \$1,000 to \$5,000 per emergency order in terms of costs of a public hearing, administrative processing, and emergency order application review. A public hearing may vary in the amount of time required and the agency costs will vary accordingly. There will be no fiscal implications for units of local government.

Mr. Ehret 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 increased recovery by the local economy of lost production and wages following damage to a facility by a catastrophic event. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

A public hearing on this proposal is scheduled for 10 a.m. on November 5, 1987, in the auditorium of the TACB, 6330 U.S. Highway 290 East, Austin, Texas.

Copies of the new section are available from Barry Irwin at the TACB central office and at all TACB regional offices.

Public comment, both oral and written, on the proposal is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony prior to or at the hearing. Written testimony received by 4 p.m. on November 5, 1987, at the TACB central office will be included in the hearing record and should be sent to the Control Strategy Division, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

The new section is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§116.13. Emergency Orders for Damaged Facilities. The owner or operator of a facility may apply to the executive director of the Texas Air Control Board (TACB) for an emergency order to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizing associated emissions of air contaminants, whenever a catastrophic event

necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act (TCAA). For purposes of this section, a catastrophic event is an unforeseen event including, but not limited to, an act of God, an act of war, severe weather conditions, explosions, fire, or other similar occurrences beyond the reasonable control of the operator, which renders a facility or its functionally related apparatus inoperable.

(1) Application for emergency order. The owner or operator of a facility who applies for an emergency order shall submit a sworn application which contains all of the following:

(A) a statement that the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions, and are necessary for the addition, replacement, or repair of facilities or control equipment necessitated by a catastrophic event;

(B) a description of the catastrophic event;

(C) a statement that there are no practicable alternatives to the proposed construction and emissions;

(D) a statement that the emissions will not cause or contribute to a condition of air pollution;

(E) a statement that the proposed construction and emissions will occur only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, providing no more than a de minimus increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property;

(F) a description of the proposed construction and the type and quantity of air contaminants to be emitted;

(G) an estimate of the dates on which the proposed construction and emissions will begin and end;

(H) an estimate of the date on which the facility will begin operation; and

(I) any other information or item the executive director may require to support or explain the need for, or to expedite the issuance of, an emergency order; including information regarding the applicability of and compliance with any federal requirements for new or modified sources.

(2) Contents of emergency order. An emergency order issued by the executive director shall contain at least the following:

(A) a description of the emergency construction and emissions to be authorized;

(B) reasonable time limits for the beginning and the completion of the proposed construction and emissions;

(C) authorization for action only at the property where the catastrophic event

occurred or on other property owned by the owner or operator of the damaged facility, which also produces the same intermediates, products, or by-products, provided there will be no more than a de minimus increase in the concentration of air contaminants at or beyond the property line at such other property; and

(D) a schedule for submission of a complete construction permit application under provisions of the TCAA, §3.27

(3) Public hearing for emergency order. A public hearing on the merits and needs of an emergency order shall be held either prior to or following issuance of the order. If the hearing is held prior to issuance of a proposed emergency order, the board shall affirm the order as proposed, issue a modified order, or deny and set aside the order. If the hearing is held following issuance of an emergency order, the board shall affirm, modify, or set aside the order as issued. Any hearing on an emergency order shall be conducted by the board or a hearings examiner of the Board in accordance with provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the TACB procedural rules, §§103.41-103.65 of this title (relating to Procedural Rules).

(4) Affirmation of emergency order. The board shall affirm a proposed or issued order if the applicant shows at the hearing, by a preponderance of the evidence, that:

(A) the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

(B) there are no practicable alternatives to the proposed construction and emissions;

(C) the emissions will not cause or contribute to a condition of air pollution;

(D) the proposed construction or emissions will occur only:

(i) at property where the catastrophic event occurred; or

(ii) at other property owned by the owner or operator of the damaged facility which produces the same intermediates, products, or by-products, so long as there will be no more than a de minimus increase in the predicted concentration of the air contaminants at or beyond the property line at such other property;

(E) the time limits in the order for the beginning and completion of the proposed construction and emissions are reasonable; and

(F) the schedule in the order for submission of a complete permit application is reasonable

(5) Modification of an emergency order. The board shall modify a proposed or issued order if the hearing record shows that:

(A) construction and emissions otherwise precluded under the TCAA are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

(B) there is no practicable alternative to such construction and emissions; and

(C) modification of certain terms of the proposed or issued order is necessary to make the order, construction, and or emissions meet the requirements stated in paragraph (4) of this section.

(6) Setting aside an emergency order. The board shall set aside a proposed or issued order if the hearing record does not show, in accordance with paragraphs (4) or (5) of this section, that the order should be either affirmed or modified and adopted as modified.

(7) Application for permit, special permit, or modification. The owner or operator of a facility for which an emergency order has been issued shall submit an application within 60 days of issuance of the order pursuant to the TCAA, §3.272(a)(3) and (b), and in accordance with provisions of the TCAA, §3.27, and with §§116.1-116.10 of this title (relating to Permits). The application shall be reviewed and acted upon by the executive director without regard to construction activity authorized by the emergency order. The appropriate permit fee shall be due and payable pursuant to §116.11 of this title (relating to Permit Fees). Costs and expenses related to additions, replacement, or repair of facilities or control equipment shall not be a consideration in any determination in the review of this application.

(8) Public notification. The TACB shall publish notice of the issuance of an emergency order in the *Texas Register* as soon as practicable after issuance of the order. If the order is issued prior to a hearing, the order shall fix a time and location for a hearing which is to be held as soon as practicable after the order is issued. The TACB shall publish notice of any hearing in the *Texas Register* not later than the 10th day prior to the date set for the hearing, plus give any other general notice determined by the executive director to be warranted and practicable under the circumstances. Notice of the issuance and notice of the hearing may be consolidated for publication in the *Texas Register*.

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 28, 1987

TRD-8708331

Allen Eli Bell
Executive Director
Texas Air Control Board

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety Chapter 3. Traffic Law Enforcement Traffic Supervision

★37 TAC §3.59

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §3.59, concerning regulations governing the transportation of hazardous materials. The department is proposing the repeal of this section due to recent enactment of legislation requiring substantial amendments and additional language. This action is being filed simultaneously with a proposal for a new section concerning regulations governing transportation safety which covers hazardous materials and motor carrier safety.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Virgil Walsmith, captain, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that a new section can be proposed which better conforms the agency's rules regarding transportation of hazardous materials with recent enactment of legislation. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000

The repeal is proposed under Texas Civil Statutes, Article 6701d, which provide the director of the Texas Department of Public Safety with the authority to adopt such regulations as he deems necessary for the safe transportation of hazardous materials over the highways of the state of Texas

§3.59 *Regulations Governing the Transportation of Hazardous Materials*

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 22, 1987

TRD-8708220

Leo E. Gossett
Director
Texas Department of
Public Safety

Earliest possible date of adoption
November 2, 1987

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



The Texas Department of Public Safety proposes new §3.59, concerning regulations governing transportation safety. This action is being filed simultaneous with a proposed repeal of existing §3.59, concerning regulations governing the transportation of hazardous materials. The department adopts by reference applicable Parts of the Code of Federal Regulations concerning hazardous materials and motor carrier safety. This new section promulgates the regulations necessary to administer the provisions of House Bill 908 passed by the 70th Legislature, 1987. The provisions of this section are applicable to commercial vehicles and operators of commercial vehicles with an actual or registered gross weight in excess of 10,000 pounds and also vehicles and operators of vehicles transporting hazardous materials requiring placarding.

Melvin C. Peeples, Assistant Chief of Fiscal Affairs, has determined that there will be fiscal implications as a result of enforcing or administering the section. Regarding the effect on state government the department does not have the historical data necessary to estimate the degree of noncompliance with this section which will cause civil charges to be filed whereby penalties collected will increase revenue to the general fund of the State of Texas; and, in regarding the effect on local government, which will cause criminal charges to be filed in justice and municipal courts whereby penalties collected will increase revenue in these jurisdictions.

Virgil Walsmith, captain, 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 commercial vehicle safety to the motoring public in the state of Texas. The anticipated economic cost to individuals who are required to comply with the proposed section will be \$200 per year for the years 1988-1992, which is the estimated cost per vehicle not presently in compliance.

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 new section is proposed under Texas Civil Statutes, Article 6701d, which provide the director of the Texas Department of Public Safety with the authority to adopt such regulations as he deems necessary to administer the provisions of the hazardous material and motor carrier safety transportation enforcement.

§3.59. *Regulations Governing Transportation Safety.*

(a) Federal Regulations Adopted. On September 28, 1973, the director of the Texas Department of Public Safety adopted the Federal Hazardous Materials Regulations Parts 171-173, 177, and 178; and adopts by reference, effective January 1, 1988, the Federal Motor Carrier Safety Regulations Parts 390-393 and 395-397 of 49 Code of Federal Regulations Chapter 1, including all amendments and interpretations thereto.

(b) Explanations and Exceptions.

(1) Certain terms when used in the Federal Regulations as adopted in subsection (a) of this section, will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Civil Statutes, Article 6701d, §2(o);

(B) the definition of hazardous material shipper will be the same as that given in Texas Civil Statutes, Article 6701d, §2(p);

(C) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety; and

(E) regional highway administrator means the director of the Texas Department of Public Safety.

(2) Specific explanations and exceptions concerning the adoption of the federal motor carrier safety regulations are as follows.

(A) The Federal Motor Carrier Safety Regulations will be applicable to all vehicles defined as motor vehicles in the Code of Federal Regulations Part 390.1, when they are required to display hazardous materials placards as stipulated in the hazardous materials regulations and to all other motor vehicles and/or combination of such vehicles so defined when they have a registered or actual gross weight of 10,000 pounds or more.

(B) The following sections of the Parts of the Code of Federal Regulations adopted in subsection (a) of this section are not adopted by the Texas Department of Public Safety: §§390.33, 390.40, 391.2(a), 391.11(b)(1), 391.11(b)(2), 392.1(c), 393.1(b), 396.1(b), and 397.1(c).

(C) Texas Civil Statutes, Article 6701d, §132(b) and (c), concerning brakes on trailers weighing 15,000 pounds gross weight or less takes precedence over the brake re-

quirements in the federal regulations for trailers of this gross weight specification.

(D) Peace officers of any Texas city having a population of 300,000 or more are considered to be certified by the Texas Department of Public Safety and eligible to enforce the federal motor carrier safety regulations, provided each officer enforcing the federal motor carrier safety regulations must have completed a course of training of which the curriculum and instructors have been approved by the Director of the Texas Department of Public Safety. Peace officers requesting certification as required in this subparagraph shall submit to the Texas Department of Public Safety a schedule of the courses to be taught including identification of the instructor(s).

(E) Under this section, the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under the Code of Federal Regulations Part 391.41(b)(10), provided the person meets the vision standards adopted by the Texas Department of Public Safety in §15.51 of this title (relating to Vision Tests).

(i) Applications for a waiver under subparagraph (E) of this paragraph shall not be accepted by the Texas Department of Public Safety after January 1, 1990.

(ii) Waivers granted under subparagraph (E) of this paragraph are renewable provided the applicant continues to meet vision standards adopted by the Texas Department of Public Safety in §15.51 of this title (relating to Vision Tests).

(F) The enforcement dates for this section are as follows:

(i) Parts 390, 392, 393, 396, and 397, effective January 1, 1988;

(ii) Part 391, effective January 1, 1989; and

(iii) Part 395, effective June 1, 1988.

(3) Specific explanations and exceptions concerning the adoption of the federal hazardous materials regulations are as follows.

(A) The federal hazardous materials regulations, adopted herein, will apply to vehicles transporting hazardous materials as a cargo or part of a cargo when operated upon the streets and highways of this state.

(B) All references in 49 Code of Federal Regulations, Chapter 1, Parts 171-173, 177, and 178, made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(C) Regulations adopted by this department, other than placarding requirements and the federal motor carrier safety regulations, will not apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm when such tank trailers were manufactured or assembled prior to January 1, 1974.

(D) The reporting of hazardous material incidents as required by federal

regulations has not been adopted, and, therefore, is not required by the Texas Department of Public Safety; however, reporting requirements required by Texas Civil Statutes will be applicable.

(E) Regulations adopted by this department, other than placarding, shipping papers, fire extinguisher, and the federal motor carrier safety regulations requirements do not apply to cargo tanks having a capacity of 3,000 gallons or less and used to transport flammable liquids, provided the tank was manufactured or assembled prior to January 1, 1982. All cargo tanks having a 3,000 gallon capacity or less and used to transport flammable liquids manufactured or assembled on or after January 1, 1982, will be required to meet all specifications and regulations for such tanks as required in 49 Code of Federal Regulations Chapter 1, Parts 171-173, 177, and 178.

(4) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Civil Statutes, Article 6701d, §139(h) and (j), and not those stated in the Code of Federal Regulations.

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 22, 1987.

TRD-8708222 Leo E. Gossett
Director
Texas Department of
Public Safety

Earliest possible date of adoption.
November 2, 1987
For further information, please call
(512) 465-2000



Part IX. Texas Commission on Jail Standards Chapter 253. Definitions

★ 37 TAC §253.1

The Texas Commission on Jail Standards proposes an amendment to §253.1, concerning definitions. The amendment explains the use of direct supervision in management of county jails.

Robert O. Viterna, 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. Viterna 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 definition of direct supervision for user agencies, and through the establishment of common us-

age, preclusion of misunderstanding about similar functions. 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 Robert O. Viterna, Executive Director, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115.1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

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

Direct supervision—A proactive management concept in which living areas are directly supervised by staff presiding within the area and in direct contact with inmates.

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 23, 1987.

TRD-8708337 Robert O. Viterna
Executive Director
Texas Commission on
Jail Standards

Earliest possible date of adoption
November 2, 1987
For further information, please call
(512) 463-5505



Chapter 259. New Construction Rules

★ 37 TAC §259.345

The Texas Commission on Jail Standards proposes an amendment to §259.345, concerning dormitories. The amendment expands the maximum size of dormitories from 24 inmates to 48 inmates.

Robert O. Viterna, 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. Viterna also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a structural arrangement which assists officer personnel in their supervisory duties by allowing 48 inmates to congregate in direct supervision jails. 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 Robert O. Viterna, Texas Com-

mission on Jail Standards, PO Box 12985 Austin, Texas 78711

The amendment is proposed under Texas Civil Statutes, Article 5115.1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§259.345. *Dormitories.* Dormitories shall be designed to accommodate nine to [24] 48 inmates and shall contain not less than 40 square feet of clear floor space for one inmate, plus 18 square feet of clear floor space per each additional inmate. Dormitories shall have a bunk for each inmate and a water closet and lavatory (capable of providing drinking water) for each group of eight inmates or increment thereof to be confined therein. Not more than 40% of the inmate capacity of the jail shall be designed for dormitories.

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 23, 1987.

TRD-8708339 Robert O. Viterna
Executive Director
Texas Commission on
Jail Standards

Earliest possible date of adoption
November 2, 1987
For further information, please call
(512) 463-5505



★ 37 TAC §259.346

The Texas Commission on Jail Standards proposes an amendment to §259.346, concerning day rooms. The amendment expands the maximum size of day rooms from 24 inmates to 48 inmates.

Robert O. Viterna, 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. Viterna, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a structural arrangement which will assist officer personnel in their supervisory duties, by permitting the congregating of 48 inmates in direct supervision jails. 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 Robert O. Viterna, Texas Commission on Jail Standards, PO Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115.1, which provide the Texas Commission on

Jail Standards with the authority to promulgate rules affecting county jails

§259.346 *Day Rooms*. [All] Inmate living areas except special purpose cells **should** [shall] be designed to accommodate not more than **48** [eight] inmates[, but shall not be designed to accommodate more than 24 inmates]. It shall contain **40** square feet of clear floor space for one inmate plus 18 square feet of clear floor space per each additional inmate. Day rooms shall have a water closet and lavatory capable of providing drinking water available at all times for each group of eight inmates, or increment thereof to be confined therein. A shower shall be available at all times for each group of 12 inmates, or increment thereof, to be confined therein. Each day room shall otherwise be suitably furnished with, but not limited to, the following: seating and tables to accommodate the number of inmates to be confined therein, and may provide for visiting facilities, dining facilities and other activities. A utility sink should be provided. Sufficient lighting shall be provided for reading, recreation, shaving, and other similar activities. Day rooms may be contiguous with inmate living areas. Convenient electrical receptacles shall be provided.

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 23, 1987

TRD-8708338 Robert O Viterna
Executive Director
Texas Commission on
Jail Standards

Earliest possible date of adoption
November 2, 1987
For further information, please call
(512) 463-5505



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. Texas Department of Human Services Chapter 85. General Licensing Procedures Subchapter NNN. Abuse/Neglect Investigations in Child Care Facilities

★ 40 TAC §85.7005

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

The Texas Department of Human Services (DHS) proposes the repeal of §85 7005 and new §§85 7005-85 7007, concerning investigations of abuse or neglect in child care and child-placing facilities, in its general licensing procedures chapter. The repeals are being replaced by the new sections, which clarify responsibilities in an abuse or neglect case. The new sections include definitions to supplement those on abuse and neglect recently enacted by the 70th Legislature, 1987, and requirements for applying the definitions of abuse and neglect to out-of-home child care programs.

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

Mr Packard also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be greater protection for children in out-of-home care. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-212, Texas Department of Human Services 222-E, PO. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*

§85.7005. *Noncompliance with Minimum Standards.*

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

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

Issued in Austin, Texas, on September 24, 1987

TRD 8708224 Marlin W Johnston
Commissioner
Texas Department
of Human Services

Proposed date of adoption
November 30, 1987
For further information, please call
(512) 450-3765



★ 40 TAC §§85.7005—85.7007

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

§85.7005. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Caregiver—An employee or volunteer at a public or private child care facility or child-placing agency.

Harm—When a child's growth, development, or functioning is impaired or is in danger of impairment.

Improper use of restraint/seclusion—Restraint or seclusion that does not comply with minimum standards but does not result in harm or the substantial risk of harm.

Inadequate supervision—A degree of supervision that does not comply with minimum standards but does not result in harm or the substantial risk of harm.

Inappropriate discipline—Disciplinary action that does not comply with minimum standards but does not result in substantial harm or the substantial risk of harm.

§85 7006. *Abuse and the Role of the Caregiver.* An administrator, director, or other facility staff may be held responsible for abuse if the preponderance of evidence indicates that the caregiver was aware of the abuse or the genuine threat of substantial harm to a child while in care but did not act to prevent the abuse or threat. This finding may be made even if the perpetrator of actual abuse cannot be identified.

§85 7007. *Noncompliance with Minimum Standards.* A facility is in violation of minimum standards and subject to adverse or corrective action on its license if the preponderance of evidence indicates that noncompliance with minimum standards caused or substantially contributed to abuse or neglect. For a facility to be in non-compliance and subject to adverse action, a perpetrator need not be identified.

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 24, 1987

TRD 8708225 Marlin W Johnston
Commissioner
Texas Department
of Human Services

Proposed date of adoption
November 30, 1987
For further information, please call
(512) 450-3765



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 1. ADMINISTRATION Part V. State Purchasing and General Services Commission Chapter 113. Central Purchasing Division Purchasing ★ 1 TAC §113.10

The State Purchasing and General Services Commission adopts an amendment to §113.10, without changes to the proposed text published in the July 24, 1987, issue of the *Texas Register* (12 TexReg 2408).

The amendment permits agencies to more easily make critical acquisitions of supplies, materials, and equipment in excess of \$250 without the necessity of obtaining a signed written bid.

The amendment deletes the requirement for formal bids on emergency purchases over \$1,000 and a written bid from the source on all emergency purchases.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary to maintain an effective and efficient purchasing program for state agencies.

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 24, 1987

TRD-8708232 John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Effective date October 15, 1987
Proposal publication date July 24, 1987
For further information, please call
(512) 463-3446

Surplus Property Sales ★ 1 TAC §113.73

The State Purchasing and General Services Commission adopts an amendment to §113.73, without changes to the proposed text published in the July 24, 1987, issue of the *Texas Register* (12 TexReg 2408).

The amendment enables state agencies to receive the highest possible return on the sale of surplus or salvage property by allowing otherwise valid bids to be considered if bid deposits, when required, are no more than 3.0% less than the required amount. Moreover, the amendment clarifies that valid bids must be signed to reduce appeals, delays, and demands on the State Purchasing and General Services Commission's resources and purchasing program. The amendment adds a requirement that bids on surplus property sales be signed to be valid and a provision allowing a bid to be accepted if the bid deposit is short by no more than 3.0%.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary to maintain an effective and efficient purchasing program for state agencies.

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 24, 1987

TRD-8708231 John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Effective date October 15, 1987
Proposal publication date July 24, 1987
For further information, please call
(512) 463-3446

TITLE 4. AGRICULTURE Part II. Texas Animal Health Commission Chapter 32. Hearing and Appeal Procedures ★ 4 TAC §§32.1-32.12

The Texas Animal Health Commission adopts the repeal of §§32.1-32.12, without changes to the proposed text published in the June 5, 1987, issue of the *Texas Register* (12 TexReg 1810).

The repeals eliminate inadequate sections. The repeals allow for the adoption of sections which more clearly state the requirements for hearing and appeal procedures. New sections regarding hearing and appeal procedures are adopted elsewhere in this issue.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708209 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date October 15, 1987
Proposal publication date June 5, 1987
For further information, please call
(512) 479-6697

★ 4 TAC §§32.1-32.8

The Texas Animal Health Commission adopts new §§32.1-32.8. New §32.2 is adopted with changes to the proposed text published in the June 5, 1987, issue of the *Texas Register* (12 TexReg 1807). New §§32.1, and 32.3-32.8 are adopted

without changes and will not be republished. Similar sections were adopted on an emergency basis effective May 29, 1987.

The new sections replace inadequate sections with more clearly set forth requirements for hearing and appeal procedures and conform with the Administrative Procedure and Texas Register Act.

The new sections detail hearing and appeal procedures that must be followed when appealing a decision of the executive director of the commission. Additional language has been added to new §32.2 to clarify that the written notice of appeal to the chairman of the commission must state the specific issues for consideration on appeal.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and set forth the duties of the commission to protect domestic animals in the state from disease.

§32.2. *Appeal of a Decision or Order by the Executive Director.* A person receiving written notice of a decision or order by the executive director has 15 days from the date of notice to file written notice of appeal to the chairman of the commission at the commission's office in Austin, stating the specific issues for consideration on appeal. The administrative hearing on the specific issues appealed following the executive director's decision will be held in Austin, pursuant to provisions of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on September 18, 1987

TRD-8708208 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 5, 1987
For further information, please call
(512) 479-6697



Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis

★ 4 TAC §§35.2, 35.4, 35.5

The Texas Animal Health Commission adopts amendments to §§35.2, 35.4, and 35.5. The amendment to §35.2 is adopted with changes to the proposed text published in the June 19, 1987, issue of the *Texas Register* (12 TexReg 1958). Amendments to §35.4 and §35.5 are adopted

without changes to the proposed text published in the June 16, 1987, issue of the *Texas Register* (12 TexReg 1929), and the June 19, 1987, issue of the *Texas Register* (12 TexReg 1958), respectively, and will not be republished.

The amendment to §35.2(b) complies with United States Department of Agriculture changes to its brucellosis eradication uniform methods and rules (UM&R's) regarding test interpretations. The amendment is required to keep the Texas Brucellosis Program in compliance with the national program. Test interpretations for the complement fixation test, rivanol test, standard tube agglutination test and standard plate agglutination test amended to conform to the UM&R. Section 35.2(k) is reorganized and reworded to more clearly and completely state the requirements for handling affected, adjacent, or high risk herds following disclosure of reactor or suspect cattle. Subsection (l) rewords procedures to protect an initial test or herd plan. Section 35.2(m) changes wording to provide more detail on identification of adult vaccinates and at the same time conform to the revised test interpretations. Subsection (u) is no longer needed to designate 15 brucellosis advisory committees since the number of state areas have been reduced. The chairman appoints only the number of committees deemed necessary to advise the commissioners on matters pertaining to the brucellosis program.

Since Texas cannot interfere with an international movement of cattle and the United States Department of Agriculture does not require vaccination for entry into the United States, control is required on nonvaccinated cattle arriving on an international permit contrary to Texas entry requirements. The amendment to §35.4(a) specifies requirements for the handling of these cattle. Changes regarding the entry of cattle to a specifically approved livestock market moving directly from a farm of origin are made to conform with the Code of Federal Regulations (CFR).

The amendment to §35.5 changes wording for clarity. In addition, new wording was required to provide alternatives to the quarantine and retest provisions following change of ownership within a special control area. Subsection (f) offers new wording for clarity and two alternatives to the quarantine and retest following movement from a special control area.

The amendment to §35.2 interprets the technician automated complement fixation test, the manual complement fixation test, the rivanol test, and the standard tube agglutination test or the standard plate agglutination test in a manner which conforms with the United States Department of Agriculture's brucellosis eradication uniform methods and rules (UM&R's). The amendment also allows for quarantine and testing of herds where reactors or suspects are found and any other herds that are affected, adjacent, or

high risk. It provides for the development of herd plans, and for the contents of a herd plan to include testing procedures, vaccination procedures, quarantine provisions, quarantine release, and post-quarantine test. In subsection (l) the amendment sets forth the procedures one must follow when protesting an initial test or a herd plan. In subsection (m) an additional explanation on identification of adult vaccinates has been added. New requirements for adult vaccination of cattle in noninfected herds is also added to the requirements. In §35.2(u) the brucellosis advisory committees, which are comprised of livestock producers, may now be appointed by the chairman of the commission. Their duties are to advise the commissioners on the brucellosis program when called upon to do so.

The amendment to §35.4 places restrictions on cattle which enter the State of Texas on an international permit to their stated destination and which have not been vaccinated pursuant to Texas requirements. Texas cannot interfere with international shipments until the shipment reaches its permitted destination. The United States Department of Agriculture does not require vaccination prior to international entry. The amendment requires that for test-eligible cattle to enter the state exempt from testing, S branding, or E permit requirements they must enter directly from a farm of origin to a specifically approved livestock market.

The amendment to §35.5(e) strikes the word "female" which had erroneously been included in the paragraph. The change makes reference to all test-eligible cattle rather than just test-eligible female cattle. The cattle are further identified as originating in the special control area and changing ownership within the area. Two alternatives to the quarantine and retest of cattle changing ownership when they originate in the special control area are now included in the section. One alternative would allow this exception if they were tested negative within 30 days prior to change of ownership and if they originate from a herd which had been tested negative in the past 12 months. The other alternative would allow the exception if the cattle in question withstood two consecutive negative tests at least 60 days apart with the second test conducted within 30 days prior to the change of ownership. Subsection (f) identifies cattle on which the restrictions are placed as those originating in the special control area and are leaving the area. New language provides two alternatives to the quarantine and retest of cattle for movement when they originate in the special control area. One alternative would allow this exception if they were tested negative within 30 days prior to movement and if they originate from a herd which had been tested negative in the past 12 months. The other alternative would allow the exception if the cattle in question withstood two consecutive negative tests at least 60

days apart with the second test conducted within 30 days prior to movement. The amendment to §35.5(g), requiring a permit accompany certain movements of test-eligible cattle, changes the reference since that reference was changed with the previous amendments.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Agriculture Code, Chapters 161 and 163,

Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

§35.2. *General Requirements.*

(a) (No change.)

(b) Classification of cattle. Cattle shall be classified by approved personnel by an evaluation of titer responses for all cattle to serological tests, or by identification of *Brucella abortus* in specimens taken from

these cattle. The following serological tests may be used for the classification of cattle.

(1) (No change.)

(2) Complement fixation test (CF).

(A) Technicon automated complement fixation test. The Technicon automated complement fixation test is an official test when it is conducted at the cooperative state-federal brucellosis laboratory using recognized methods.

(i) Interpretation of the Technicon CF test results.

Interpretation

Test Results

		Officially
	Nonvaccinated	Vaccinated
		(Includes adulthood vaccines beginning 2 months after vaccination)
Negative	Negative at 1:5	Positive at 1:5 but negative at 1:10
Suspect	Positive at 1:5 but negative at 1:10	Positive at 1:10 but negative at 1:20
Reactor	Positive at 1:10 or higher	Positive at 1:20 or higher

An epidemiologist may classify as a reactor an animal with a persistent suspect titer in an infected herd.

(iii) Interpretation of test result codes. The following codes are utilized by the laboratory to represent the corresponding test results.

Complement	Fixation	Text
Code	Test Result	
05	Negative at 1:5	
01	Positive at 1:5	
11	Positive at 1:10	
21	Positive at 1:20	
41	Positive at 1:40	
81	Positive at 1:80	
XI	Positive at 1:160	

(B) Manual complement fixation test The manual complement fixation test is an official test when it is conducted at the cooperative state-federal brucellosis laboratory using recognized methods.

(i) Interpretation of the manual CF test results

Test		Test Results	
Interpretation	Nonvaccinated	Officially Vaccinated	
		(Includes adulthood vaccinated cattle and bison beginning 2 months after vaccination)	
Negative	1 + 1:10 or lower	1 + 1:10 or lower	
Suspect	2 + 1:10 through 1 + 1:20	2 + 1:10 through 4 + 1:20	
Reactor	2 + 1:20 or higher	1 + 1:40 or higher	
	degree of fixation of complement		
	1 + = 25%	3 + = 75%	
	2 + = 50%	4 + = 100%	

An epidemiologist may classify as a reactor an animal with a persistent suspect titer in an infected herd

(ii) Interpretation of test result codes. The following codes are utilized by the laboratory to represent the corresponding test results.

Manual CF Test

Code	Test Result
01	1 + at 1:5
02	2 + at 1:5
03	3 + at 1:5
04	4 + at 1:5
05	Neg at 1:5
10	Neg at 1:10
11	1 + at 1:10

12	2 + at 1:10
13	3 + at 1:10
14	4 + at 1:10
21	1 + at 1:20
22	2 + at 1:20
23	3 + at 1:20
24	4 + at 1:20
41	1 + at 1:40
42	2 + at 1:40
43	3 + at 1:40
44	4 + at 1:40
81	1 + at 1:80
82	2 + at 1:80
83	3 + at 1:80
84	4 + at 1:80
X1	1 + at 1:160
X2	2 + at 1:160
X3	3 + at 1:160
X4	4 + at 1:160
AC	Anticomplementary

(3) Rivanol test. The rivanol test is an official test when conducted in cooperative state-federal brucellosis laboratories. Vaccinated cattle tested under the MCI program that show complete agglutination at dilutions of 1:25 or greater must be reported as MCI reactors for the purpose of state or area classification.

(A) Interpretation of rivanol test results.

Test		Test Results
Interpretation		Officially
	Nonvaccinated	Vaccinated
Negative	Negative at 1:25	Negative at 1:25, However,

		within 5 months after adulthood vaccination of cattle or bison, a positive titer at 1:50 or lower is considered to be negative.
Suspect	Not applicable	Positive at 1:25 to Positive at 1:50, provided the CF test is performed and is interpreted as Negative or Suspect.
Reactor	Positive at 1:25 or higher	Positive at 1:25 or higher provided the CF test is not performed or when the CF test result is interpreted as a reactor, or positive at 1:100 or higher on the rivanol test regardless of CF test results.

(B) Interpretation of test result codes. The following codes are utilized by the laboratory to represent the corresponding test results.

Rivanol Test

Code	Test Result
0	Negative at 1:25
2	Positive at 1:25
4	Positive at 1:50
6	Positive at 1:100
8	Positive at 1:200

(4)-(6) (No change.)

(7) Standard tube agglutination test (STT) or standard plate agglutination test (SPT). The blood titers of cattle and bison tested by the STT or SPT methods are interpreted in the following ways:

Interpretation of STT and SPT Results

Test Result	Test Interpretation	
	Nonvaccinated	Officially Vaccinated
-	Negative	Negative
I	Suspect	Negative
+	Suspect	Negative
+	Suspect	Suspect
+	Reactor	Suspect
+	Reactor	Suspect
+	Reactor	Reactor

(- = No Agglutination; I = Incomplete Agglutination; + = Complete Agglutination.)

(8) New tests under research. Laboratory tests approved by the executive director are authorized to be used in conjunction with tests listed in this subsection for evaluation of their future usefulness in the program.

(c)-(j) (No change.)

(k) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect:

(1) The herd of which the reactor or the suspect was a part shall be placed under quarantine.

(2) An initial test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent, or high risk herds will be conducted within a time set by state/federal personnel upon consultation with each herd owner. The results of the initial herd test or the consultation may identify epidemiological data for release of the quarantine without a herd test.

(3) The results of the initial herd test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent, or high risk herds will be used to determine the need for, and development of, an individual herd plan for prevention or elimination of brucellosis in that herd. The plan shall be developed by a state-federal veterinarian of the brucellosis control program in consultation with the herd owner or caretaker and his veterinarian (if so requested by the owner). The plan developed by the commission shall be final and the owner or caretaker will be provided a

copy. Any proposed herd plan which has identified special management requirements will be reviewed by a regional epidemiologist who will either support or modify the plan. A regional epidemiologist may waive vaccinating cattle over eight months of age in infected herds. The terms and conditions of a herd plan may be amended in writing by the commission upon good cause.

(4) The plan will consist of the following:

(A) Testing procedures.

(i) All eligible cattle in the herd including all nonvaccinated heifers over six months of age shall be presented for testing or retesting at intervals stated in the herd plan until the quarantine is released.

(ii) All cattle to be added to the herd shall be tested prior to commingling with the herd.

(iii) All stray cattle found in the herd shall be presented for testing.

(iv) Cattle identified as reactors shall be removed in accordance with subsection (j) of this section.

(v) All test-eligible cattle in the herd shall be presented for a postquarantine retest to be conducted not less than 10 months nor more than 16 months after the removal of the last reactor.

(b) Vaccination procedures.

(i) All nonvaccinated heifers shall be presented as soon as possible after they reach the age of four months and before the age of six months for dairy heifers and eight months for beef heifers to be vac-

inated with Strain 19, *B. abortus* vaccine.

(iii) All female cattle over eight months of age in beef herds and six months of age in dairy herds shall be presented to be adult vaccinated within 10 days of their negative serological test with Strain 19, *B. abortus* vaccine.

(iii) Replacement female cattle over eight months of age for beef or over six months of age for dairy shall be presented within 10 days after a negative test, to be adult vaccinated prior to their addition to an already vaccinated herd. The epidemiologist will determine if adult vaccination of replacements must continue of the quarantine extends past 18 months, or if the only calfhood vaccines may be added.

(iv) Previously vaccinated negative female cattle shall be presented for revaccination with Strain 19, *B. abortus* vaccine as determined by the epidemiologist.

(C) Quarantine provisions.

(i) Officially vaccinated heifers under six months of age for dairy and under eight months of age for beef may move from the herd without restriction.

(ii) Bulls and nonvaccinated females over four months of age and official vaccinates over six months of age for dairy and over eight months of age for beef must be S branded and receive an S permit prior to movement.

(iii) vaccinated heifers, over six months of age for dairy and eight months of age for beef, may be removed from the infected herd and kept separate under qua-

rantine. Such heifers shall pass a negative brucellosis test after calving or be moved in accordance with subparagraph (B) of this paragraph. The parent herd will qualify for release under subparagraph (D)(i) of this paragraph.

(iv) Vaccinated heifers over six months of age for dairy and eight months of age for beef may be maintained with the parent herd. The herd will qualify for release under subparagraph (D)(iii) of this paragraph.

(v) Dairy herds shall be negative to the last milk ring test prior to completion of a herd plan.

(D) Quarantine release.

(i) Following removal of the heifers, the remainder of the herd may be eligible for quarantine release after two consecutive negative blood tests. The first negative herd test must occur not less than 30 days after removal of the last reactor cattle, and the second at least 180 days after removal of the last reactor cattle.

(ii) On the releasing test of an adult vaccinated herd, all official calfhood vaccinates which test positive on the card test, or have suspect titers on the CF test, shall be classified as suspects and remain quarantined until they are card negative. All other cattle classified negative shall be released from quarantine.

(iii) When the owner/caretaker maintains vaccinated heifers over six months of age for dairy and over eight months of age for beef as part of the quarantined herd, the entire herd shall continue under quarantine until the heifers have calved and the entire herd is tested negative.

(E) Postquarantine test. Upon release of quarantine the owner/caretaker shall retest all test-eligible cattle not less than 10 months nor more than 16 months from the removal of the last reactor. If the brucellosis free herd certification is desired, the owner shall obtain the retest no later than 14 months after the date of the first negative herd test following the removal of the last reactor.

(l) Procedures to protest an initial test or a herd plan.

(1) If a person after consultation with the state/federal veterinarian of the brucellosis control program objects to an initial test or a herd plan for the prevention or elimination of brucellosis in each herd classified as affected, adjacent, or high risk due to a reactor or suspect animal, he may protest such initial test or a herd plan.

(A) To protest, the herd owner must request a meeting, in writing, with the executive director of the commission within 15 days of receipt of the herd plan or notice of an initial test, after which:

(i) the meeting will be set by the executive director no later than 21 days from receipt of the request for a meeting;

(ii) the meeting or meetings shall be held in Austin; and

(iii) the executive director shall

render his decision in writing within 14 days from the date of the meeting.

(B) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the chairman of the commission.

(C) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32, of this title (relating to Hearing and Appeal Procedures).

(m) Official vaccination requirements.

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

(3) Adult vaccinated cattle shall be permanently identified as vaccinates by tattoo or by hot "V" brand and by either dual eartags, at least one of which to be an official eartag, the other to be a plastic or metal bangle tag; or an official metal eartag and a legible numbered brand. Tattoos will be applied to the right ear. The tattoo will include the letters AV, which will be preceded by a number indicating the quarter of the year and will be followed by a number corresponding to the last digit of the year in which the vaccination was done. Hot "V" brands will be applied to the right jaw, open end of the "V" up. An official eartag will be placed in the right ear.

(4) Requirements for vaccination of adult females in noninfected herds. Vaccination will be done by state/federal personnel following a negative test within 10 days prior to adult vaccination. A hold order will be placed on adult vaccinates at time of vaccination and will continue until individually tested card negative.

(n)-(t) (No change.)

(u) Brucellosis advisory committees. There may be one or more committees of cattle owners in the state, appointed by the chairman of the commission, to serve at the pleasure of the commission, for the purposes of advising the commission on matters pertaining to the brucellosis program.

(v) (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 18, 1987.

TRD-8708200 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 19, 1987

For further information, please call
(512) 479-6697.

Chapter 37. Screwworms

★4 TAC §37.2

The Texas Animal Health Commission adopts new §37.2, without changes to the proposed text published in the June 9, 1987, issue of the *Texas Register* (12 Tex-Reg 1858).

The new section incorporates interstate movement requirements for animals entering the state from areas in which the screwworm is known to exist to the screwworm regulations rather than leaving them in the section dealing only with interstate movement. This action alleviates the problem of having to address two separate sections when amending a requirement on animal movement. The new section sets forth interstate movement requirements for animals entering the state. These animals must be free of screwworms and screwworm fly eggs, and must be treated with an approved screwworm killer and fly repellent.

No comments were received regarding adoption of the new section.

The new section is adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708205 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 9, 1987
For further information, please call
(512) 479-6697.

Chapter 39. Scabies

★4 TAC §§39.1, 39.3, 39.4

The Texas Animal Health Commission adopts amendments to §39.1 and §39.4, and new §39.3, without changes to the proposed text published in the June 9, 1987, issue of the *Texas Register* (12 Tex-Reg 1858).

The amendment to §39.1 requires the use of Ivomec Injectable (when the selected treatment in treating cattle for scabies is the use of Ivermectin) and prevents the use of Ivermectin paste, which is not approved for this purpose. New §39.3 adds interstate movement requirements for cattle to the scabies regulations rather than leaving them in the section dealing with interstate movement. This action alle-

viates the problem of having to address two separate sections when amending a requirement on cattle scabies. The amendment to §39.4 adds interstate movement requirements for sheep to the scabies regulations rather than leaving them in the section dealing with interstate movement. This action alleviates the problem of having to address two separate sections when amending a requirement on sheep scabies.

The amendment to §39.1 requires the use of Ivomec Injectable when the selected treatment in treating cattle for scabies is the use of Ivermectin. This was done to prevent the use of Ivermectin paste which has not been approved for this purpose.

New §39.3 sets forth interstate movement requirements for cattle originating in a scabies quarantined area outside the state of Texas. These cattle, on entering the state, must have a permit issued by the commission and a certificate of veterinary inspection stating that the herd of origin has been inspected and declared free of scabies or exposure to the disease and that the cattle have either been treated for scabies by dipping the animals in an approved dip under the supervision of state or federal personnel, or by injecting the cattle with Ivermectin in the stated timeframes.

The amendment to §39.4 sets forth interstate movement requirements for sheep. Sheep destined to slaughter at recognized slaughtering plants are exempt for dipping requirements, but do require a permit. Sheep consigned for purposes other than slaughter or a livestock market must be accompanied by a certificate of veterinary inspection which must state the health of the animals and that the sheep are free from scabies infestation and exposure. Non-infested and nonexposed sheep from eradication and quarantined areas, either state or federal, may enter the state for other than slaughter purposes if they are accompanied by written permission of the commission's executive director, have a certificate of veterinary inspection stating the health of the animals and certifying that the sheep are free from scabies infestation and exposure, and have been dipped in an approved dip in the stated timeframes.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Agriculture Code, Chapter 16, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708204 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 9, 1987
For further information, please call
(512) 479-6697



Chapter 41. Fever Ticks

★ 4 TAC §41.1

The Texas Animal Health Commission adopts an amendment to §41.1, without changes to the proposed text published in the June 9, 1987, issue of the *Texas Register* (12 TexReg 1859).

The amendment places interstate movement requirements for livestock in the tick eradication regulations rather than leaving them in the section dealing with interstate movement. This action alleviates the problem of having to address two separate sections when amending a requirement on livestock movement in a fever tick area. Livestock originating in a fever tick quarantined area must be accompanied by a certificate that states the animals are shipped free of infestation and exposure to fever ticks and have been dipped in a recognized dipping solution prior to shipment and transporting.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708206 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 9, 1987
For further information, please call
(512) 479-6697.



Chapter 43. Tuberculosis

★ 4 TAC §43.2

The Texas Animal Health Commission adopts new §43.2, without changes to the proposed text published in the June 9,

1987, issue of the *Texas Register* (12 TexReg 1860).

The new section places interstate movement requirements for cattle in the tuberculosis regulations rather than leaving them in the section dealing with interstate movement. This action alleviates the problem of having to address two separate sections when amending a requirement on cattle tuberculosis. The new section provides that dairy and registered beef cattle two years of age or older are required to have a negative tuberculin test within six months prior to entry into the state, or they must be accompanied by an entry permit issued by the commission to be quarantined and tuberculin tested within five days after arrival. Cattle originating from accredited tuberculosis free areas or herds are exempt from testing requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708207 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 9, 1987
For further information, please call
(512) 479-6697.



Chapter 51. Interstate Shows and Fairs

★ 4 TAC §§51.1-51.3

The Texas Animal Health Commission adopts the repeal of §§51.1-51.3, without changes to the proposed text published in the June 12, 1987, issue of the *Texas Register* (12 TexReg 1890).

The repeals allow for the reorganization of Chapter 51, since each of the diseases or species of animals referred to in the repealed sections has been added to the section for the particular disease they concern. Rabies requirements for dogs, cats, and exotic animals now fall under the jurisdiction of the State Department of Health. The repeals enable the simultaneous adoption of new section numbers for two of the sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708210 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 12, 1987
For further information, please call
(512) 479-6697



Chapter 51. Regulations Governing Entry of Livestock and Poultry into Texas and Admission into Shows, Fairs, and Exhibitions Both Intra and Interstate

★4 TAC §51.1, §51.2

The Texas Animal Health Commission adopts new §51.1 and §51.2, without changes to the proposed text published in the June 12, 1987, issue of the *Texas Register* (12 TexReg 1890). New §51.1 and §51.2, comprising Chapter 51, renumber the sections that appeared in former Chapter 51.

New §51.1 provides definitions for words and terms used. New §51.2 requires livestock and poultry entering the state to be from herds or flocks not under quarantine unless special written permission is given and/or they are accompanied by a 1-27 shipping permit. This section provides that all livestock or poultry entering the state are required to be accompanied by a certificate of veterinary inspection and sets forth the information to be filled in on the certificate. Exceptions to the certificate requirement are: test-eligible cattle delivered directly from a farm of origin to slaughter or a United States Department of Agriculture specifically approved livestock market by the owner or consigned there and accompanied by a waybill; steers, spayed heifers, cattle under test age, sheep, goats, and equine delivered to slaughter or livestock market; swine and poultry delivered to slaughter; consignments of steers, spayed heifers, and cattle under test age from New Mexico accompanied by a New Mexico official certificate of livestock inspection and consignments of certain baby poultry. A provision requiring entry permits for

livestock or poultry entering the state is included unless exempt by regulations governing entry by species of disease. The new section lists instructions for securing the permits. The new section also gives requirements for livestock and poultry entering shows, fairs, and exhibitions from out-of-state as well as from within the state.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708203 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: June 12, 1987
For further information, please call
(512) 479-6697.



Chapter 55. Swine

★4 TAC §55.6, §55.7

The Texas Animal Health Commission adopts new §55.6 and §55.7, without changes to the proposed text published in the July 3, 1987, issue of the *Texas Register* (12 TexReg 2132).

New §55.6 places interstate movement requirements in the swine regulations rather than leaving them in the section dealing with interstate movement. This action alleviates the problem of having to address two separate sections when amending a requirement on swine movement.

New §55.7 places requirements concerning feeder pig shows and sales in the swine regulations to alleviate the problem of having to address two separate sections when amending a requirement on swine movement.

New §55.6 sets forth entry requirements for swine. The requirements list the statements of health status which must appear on the certificate of veterinary inspection accompanying the animals. Brucellosis, leptospirosis, and pseudorabies requirements are listed for the entry of breeding swine; and pseudorabies requirements are shown for feeder swine.

New §55.7 concerns feeder pig shows and sales. The amendment specifies that the commission must be notified prior to a

sale and that the animals are to be tagged prior to sale and identified to the seller. Animals leaving the sale are to be quarantined to the premises of the buyer for 30 days. If breeding animals over four months of age are entered in the shows and sales, then all swine would have to meet the provision required to enter shows, fairs, and exhibitions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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-8708202 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: October 15, 1987
Proposal publication date: July 3, 1987
For further information, please call
(512) 479-6697.



TITLE 16. ECONOMIC REGULATION Part IV. Texas Department of Labor and Standards Chapter 69. Manufactured Housing Division Standards and Requirements

★16 TAC §69.67

The Texas Department of Labor and Standards adopts new §69.67, without changes to the proposed text published in the March 27, 1987, issue of the *Texas Register* (12 TexReg 1023).

The new section prevents any misinterpretation of the standards that may prevent the sale of custom built manufactured homes.

The new section provides that once the appropriate seal or label is affixed when construction of the custom home is completed, there should be no misinterpretation on the ability to sell the custom built manufactured home.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all rea-

sonable rules and regulations necessary to assure compliance with the intent and purpose of the Act and to provide for uniform enforcement.

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 23, 1987.

TRD-8708238 Larry E. Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: October 15, 1987
Proposal publication date: March 24, 1987
For further information, please call
(512) 463-3127



TITLE 19. EDUCATION Part I. Texas Higher Education Coordinating Board

Chapter 25. Administrative Council

Subchapter B. Administration of the Texas State College and University Employees Uniform Insurance Benefits Program

★ 19 TAC §25.33

The Texas Higher Education Coordinating Board adopts an amendment to §25.33, without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2547).

The amendment brings the section into conformance with the federal Age Discrimination in Employment Amendments (ADEA) of 1986.

The amendment removes from the basic coverage standards the category of reduced basic life insurance benefits at age 70.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Insurance Code, Article 3.50-3, which provides the administrative council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

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 23, 1987.

TRD-8708335 James McWhorter
Assistant Commissioner
for Administration
Texas Higher Education
Coordinating Board

Effective date: October 19, 1987
Proposal publication date: August 7, 1987
For further information, please call
(512) 462-6420.



Subchapter C. Administration of Retirement Annuity Programs

★ 19 TAC §25.72

The Texas Higher Education Coordinating Board adopts an amendment to §25.72, with changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2548).

The amendment brings the section into conformance with Senate Bill 1301, 70th Legislature, 1987. Senate Bill 1301 amends Texas Civil Statutes, Title 110B, Chapter 36, to bring state law into conformance with the federal Tax Reform Act of 1986. The amendment is adopted with minor word changes to the proposed text. The word "obtains" is changed to the word "attains" in subsection (j); the word "attainment" is changed to the word "attainment" in subsection (k); and subsection (l) now reads "Contributions as required by law by participants in the ORP shall be made on a salary reduction basis."

The amendment authorized distribution of benefits under the optional retirement program (ORP) to participants at age 70½ while still employed and to mandate ORP employee contributions to be made on a salary reduction basis.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Insurance Code, Article 3.50-3, which provides the administrative council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.72. ORP Standards.

(a)-(h) (No change.)

(i) An individual terminates participation in the ORP only upon death, retirement, or termination of employment in all public institutions of higher education in Texas.

(j) Benefits under the ORP are available only if the participant terminates participation in the program as provided by subsection (i) of this section, or if the participant attains the age of 70½ years.

(k) No contract issued under the ORP may provide for loans, cash surrender, or contain any other provision which permits the availability of benefits prior to a participant's attainment of age 70½ years or termination as an employee in the public institutions of higher education in Texas.

(l) Contributions as required by law by participants in the ORP shall be made on a salary reduction basis.

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 23, 1987.

TRD-8708336 James McWhorter
Executive Secretary
Administrative Council
Texas Higher Education
Coordinating Board

Effective date: October 19, 1987
Proposal publication date: August 7, 1987
For further information, please call
(512) 462-6420.



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 89. Preventive Health and Health Services

Sexual Assault Prevention and Crisis Service

★ 25 TAC §§89.4—89.8

The Texas Department of Health adopts amendments without changes to the proposed text published in the May 19, 1987, issue of the *Texas Register* (12 TexReg 2921).

The amendments update and clarify the sections with minor wording changes throughout the sections.

No comments were received regarding adoption of the amendments.

The amendments are adopted under 42 United States Code §300w-3 and Texas Civil Statutes, Article 4447c, §2.07 and Article 4414b, §1.05, which provide the Texas Board of Health with the authority to adopt rules covering sexual assault prevention and crisis services.

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 24, 1987.

TRD-8708223 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department
of Health

Effective date: October 15, 1987
Proposal publication date: May 19, 1987
For further information, please call
(512) 465-2601.



Chapter 295. Environmental Health

Hazard Communication

★ 25 TAC §295.2, §295.9

The Texas Department of Health adopts an amendment to §295.2 and new §295.9, with changes to the proposed text published in the July 7, 1987, issue of the *Texas Register* (12 TexReg 2172).

The amendment and new section provide for funds to the department, in the absence of an appropriation; provide adequate enforcement of the Hazard Communication Act (Act), Texas Civil Statutes, Article 5182b; provide for the development of training programs; and provide chemical inventory information at the request of the public, as required by the Act, and by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Public Law 99-499. In addition, the department has been designated by the State Emergency Management Council, at its June 24, 1987, public meeting, as the chief recipient agency in Texas for SARA, Title III, chemical inventory reporting. This federal requirement overlaps and increases the department's existing duties in the community right-to-know area. Finally, the amendment and new section reduce confusion and duplication of effort by allowing employers covered by both state and federal law to substitute a SARA, Title III, chemical list for the state-required list. The amendment defines a temporary workplace such that employers may reduce the fees that they would pay by including temporary workplaces as work areas within a headquarters workplace when there are fewer than 25 items on the temporary workplace chemical list. The new section allows for the consolidation of multiple workplaces having fewer than 25 items on the list and sets the procedures for consolidated filings; specifies who must pay the fee, and how to file a fee; and requires a cover sheet and list form that must be used or simulated for each list, and that a list of chemicals must be submitted that follows the most stringent reporting requirements of federal or state law. In addition, there is a reimbursement procedure for overpayments. Failure to file the list or pay the fee is made a serious violation, subject to the requirements of §295.8 of this title (relating to Assessment of Administrative Penalties).

Concerning §295.2, two commenters objected to partly defining a temporary workplace in terms of the number of chemicals on-site, while one commenter thought that the words "not continually inhabited" should be defined. Both commenters were concerned that the definition would include vehicles and made suggestions for rewording the definition. Both objected to supplying a workplace chemical list at the temporary workplace. The department agrees in part with the suggestions and has revised the defini-

tion so that a temporary workplace must be stationary and inhabited less than 20 hours per week. Thus, vehicles are left to the discretion of the employer as to their inclusion in the workplace chemical list, although vehicle operators cannot be excluded from the rights afforded employees under the Act. The definition is still partly based on the number of chemicals (fewer than 25) because this is a necessary condition set by House Bill 2140, 70th Legislature, 1987, for the minimization of fees. Stating this necessary condition in the definition insures that it will not be overlooked easily. The department disagrees with making the workplace chemical list available only at the headquarters for two reasons: the Act, §19, only authorizes the minimization of fees and not the minimization of hazard communication; and the temporary workplace may be miles from the headquarters and the workplace chemical list would not be readily available, as required in the Act, §6(c) to employees working at the remote location.

Concerning §295.9, various concerns were raised by the commenters. It was suggested that multiple workplaces should be something different than temporary workplaces, and should be allowed in a consolidated filing. Rewording of §295.9(a) was suggested to avoid confusion. The agency agrees with the need to allow consolidated filings for multiple workplaces to minimize fees, as long as each has fewer than 25 items on the workplace chemical list. Subsection (a) has been revised and divided into (a) and (b) for readability and to allow consolidated filing in any combination, so long as workplaces having 25 or more items (before consolidation) are not consolidated together. Subsection (b) has been revised to (c) and a new subsection (d) has been added to make clear that a list of chemicals and the Tier I or II inventory, when required by §311 and §312 of SARA, Title III, must be filed and that a separate fee is required for each. Other minor wording changes have been made for readability and subsections (c)-(i) have been renamed (e)-(k).

One commenter said that the department has no authority to require annual submission of workplace chemical lists because §295.1(b) of this title (relating to Purpose and Scope) states that the Act will be implemented compatibly with the hazard communication standard (OSHA standard). The same commenter also claimed that the agency has no jurisdiction over EPA community right-to-know activities and is not empowered to require chemical lists from or fees of the regulated community for requirements under SARA, Title III.

The department does not agree with the commenters. The department believes that §295.1(b) (relating to Purpose and Scope) is predicated on avoiding confusion, not on negating the community

right-to-know aspects of the Act. Such legislative requirements may not be repealed by department rules. Further, the Act, §6, concerning the workplace chemical list, and §295.6 of this title (relating to Compliance Deadlines), plainly require the annual submission of workplace chemical lists by manufacturing and nonmanufacturing employers that are covered by the Act. SARA, Title III, §321 states that it does not preempt any state or local law.

Allan W. Dees, of Texaco USA, made comments in favor of adoption of the amendment and new section.

Gregory J. Odegard, of El Paso Natural Gas Company, made comments against adoption of the amendment and new section.

The amendment and new section are adopted under the Hazard Communication Act, Texas Civil Statutes, Article 5182b, §19, which authorizes the collection of fees; and Texas Civil Statutes, Article 5182b, §12, which provide the board of health with the authority to adopt rules to implement the Act. The department also has jurisdiction to implement the requirements concerning the Superfund Amendments and Reorganization Act of 1986 (SARA), Title III, reporting in Texas, under authority of Texas Civil Statutes, Article 5182b, which authorizes the collection of fees for lists required by the Hazard Communication Act and other community right-to-know purposes within the jurisdiction of the department; the General Appropriations Act, Rider Number 25, II-24 for the fiscal 1988-1989 biennium, which appropriated all funds collected pursuant to the Hazard Communication Act to the department for implementation of the Hazard Communication Act and SARA, Title III; and the State Emergency Response Commission (State Emergency Management Council), which duly authorized by the governor under SARA, Title III, is recognized by the Environmental Protection Agency. The commission voted at its public meeting on June 24, 1987, to designate the department as the chief recipient agency for SARA, Title III chemical inventory reporting in Texas.

§295.2. Definitions. In addition to the statutory definitions, the following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Temporary workplace—A stationary workplace that is inhabited less than 20 hours per week and which contains fewer than 25 items on the workplace chemical list. A temporary workplace may be considered to be a work area of the headquarters workplace from which employees are routinely dispatched. Temporary workplaces may include pumping stations, switching stations, electrical substations, utility structures, and the like, provided that the requirements of the Texas Hazard Communication Act,

Texas Civil Statutes, Article 5182b, §§6, 7, 9, 10, and 15, are met and employees have ready access to the appropriate workplace chemical lists at the headquarters and the temporary workplace.

Work area—A room or defined space in a workplace where hazardous chemicals are produced or used and where employees are present. A temporary workplace may be considered a work area.

§295.9. Fees for Workplace Chemical Lists.

(a) The department shall charge a separate fee for each complete workplace chemical list or other chemical list that is required to be submitted by manufacturing and nonmanufacturing employers to the department. For the purpose of minimizing fees, consolidated filings may be made under the following conditions.

(1) Temporary workplaces, as defined in §295.2 of this title (relating to Definitions) may be considered work areas within a headquarters workplace, but it is the responsibility of the manufacturing or nonmanufacturing employer to justify such combined reporting in writing at the time that it is submitted.

(2) If an employer has one or more workplaces, each with fewer than 25 hazardous chemicals, those multiple workplaces may be consolidated in one submission, either with one workplace having 25 or more items or with any number of workplaces, each having fewer than 25 items on the workplace chemical list. A separate cover sheet and list must be included for each workplace. If the workplace chemical list contains 25 or more items before consolidation, it may not be consolidated with other such workplaces.

(b) Each list or consolidated filing must be accompanied by a fee, except as provided in subsection (h) of this section, and must be received before the deadline given in §295.6 of this title (relating to Compliance Deadlines). Multiple submissions requiring more than one fee from one employer may be included in the same package, provided that each submission is clearly separated from the others, there is a cover sheet and list for each headquarters or multiple workplace, and the total fee payment is included. Cash payments are not acceptable. Fees must be paid by check or money order to the Texas Department of Health and must be addressed to: Hazard Communication Project, Occupational Health Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(c) Workplaces subject to the Texas Hazard Communication Act and the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, §311 Public Law 99-499, or other community right-to-know laws, must submit an annual workplace chemical list that adheres to the most stringent reporting requirements of any of the applicable laws and associated rules. Facilities not included in the definitions of

manufacturing or nonmanufacturing employer, as given in the Texas Hazard Communication Act, §3, (concerning definitions), but which are subject to SARA, Title III, §311, must submit to the department a list of chemicals that adheres to the reporting requirements of SARA, Title III, §311(a)(2) (concerning contents of list). Workplaces subject only to the Texas Hazard Communication Act must adhere to the reporting requirements of that Act and these sections.

(d) Every facility covered by §312 of SARA, Title III, §312, must annually submit to the department a Tier I emergency and hazardous chemical inventory, which must be accompanied by a fee for each form. A Tier II inventory, which is more detailed, may be submitted instead of the Tier I inventory, as provided for in the proposed section published in the January 27, 1987 issue of the *Federal Register* (52 FedReg 2844).

(e) The department will charge \$25 for each chemical list, properly consolidated filing, or Tier I or II inventory that is submitted. If a workplace has no reportable chemicals under any of the applicable state or federal requirements, no fee need be filed for that workplace. The department shall not charge a fee for any interim addendum to the list that is submitted in compliance with §295.6(c) of this title (relating to Compliance Deadlines), provided that the employer clearly marks the addendum as such. No receipt will be provided for payment of the fee, but a cancelled check may be considered adequate proof of payment. The department may check its records for verification of payment at the request of any person.

(f) The chemical lists must be typed or mechanically produced on a form by the employer, using the most current format published by the department, which shall generally consist of the following:

(1) a cover sheet, which shall include the employer's name, address, and telephone number; the workplace name, address, and telephone number; the facility representative's name and telephone number; the date; the total fee payment that is enclosed; the total number of hazardous chemicals in the list; an indication of the type of chemical list, such as a state-required workplace chemical list as defined in the Texas Hazard Communication Act, §6, §295.2 of this title (relating to Definitions), and §295.6 of this title (relating to Compliance Deadlines), or a SARA, Title III chemical list (as defined in SARA, Title III, §311), or other community right-to-know chemical list; and the chemical nomenclature system (Chemical Abstracts Service, International Union of Pure and Applied Chemistry, or other) that is generally used in the list;

(2) the chemical list itself which shall consist of the following.

(A) If the state-required workplace chemical list is submitted, it shall contain the common or chemical name of

each hazardous material (one per row); the chemical names of all hazardous ingredients in the material; the work areas where the material is used or stored; and (optionally) the hazards and typical quantity of each material.

(B) If the chemical list required under SARA, Title III, §311, is submitted, it shall contain a list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health (OSHA) Act of 1970 (Public Law 91-596) and the OSHA communication standard. The list shall consist of the chemical or the common name of each such chemical as provided on the material safety data sheet; any hazardous component of each such chemical as provided on the material safety data sheet; the health and physical hazards of the material; and (optionally) the work area(s) and the typical quantity of each material.

(g) Submission of material safety data sheets (MSDSs) in lieu of the required chemical lists will not be acceptable.

(h) The department may specify methods for the filing of chemical lists on media that are compatible with computing equipment and software used by the department. Employers must then follow such specifications when submitting lists. If the submission by alternate media is acceptable to the department, the fee shall be sent to the department with the list. In the alternative, if the list is submitted by means of communications equipment and is acceptable to the department, the fee shall be sent to the department by United States mail within five working days after the submission.

(i) The required chemical list form or format must be made available by the department at the request of employers and manufacturing employers, and may be copied for use or simulated by the employer.

(j) The department may reject chemical lists that do not conform to specifications or which are illegible or unusable by automated equipment. Failure to submit an acceptable workplace chemical list and fee payment by the compliance deadline, given in §295.6 of this title (relating to Compliance Deadlines), shall be considered a serious violation, subject to the administrative penalties and procedures described in §295.8 of this title (relating to Assessment of Administrative Penalties).

(k) The department may refund an overpayment to an employer provided that:

(1) the employer provides, in writing, proof of payment, the date(s) on which the workplace chemical list and fees were sent to or received by the department, the circumstances that caused the overpayment, and the reasons why it would have been considered an overpayment under the Act and rules in force at the time of the original filing;

(2) the employer requests the refund in writing within one year of the date on which the workplace chemical list and fee

were received by the department; and

(3) the employer provides, at the time of the request, a handling fee of \$10 per refund, payable by check or money order to the Texas Department of Health.

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 25, 1987.

TRD-8708282

Robert A. Maclean, M.D.
Deputy Commissioner
for Professional
Services
Texas Department
of Health

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Proposal publication date: July 7, 1987
For further information, please call
(512) 458-7810.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services Chapter 35. Pharmacy Services

The Texas Department of Human Services adopts the repeal of §§35.1-35.6, 35.101, 35.102, 35.201-35.203, 35.205-35.210, 35.301, 35.302, 35.401-35.404, 35.501-35.504, 35.601-35.610, 35.701-35.710, 35.801-35.808, 35.901-35.904, 35.9801, 35.9803, and 35.9804, and new §§35.101-35.110, 35.201-35.205, 35.301-35.303, 35.401-35.408, 35.501, 35.502, 35.601-35.610, 35.701-35.709, 35.801-35.804, and 35.9001. New §§35.106, 35.502, 35.606, 35.701, 35.709, and 35.804 are adopted with changes to the proposed text published in the July 28, 1987, issue of the *Texas Register* (12 TexReg 2467).

The repeals and the other new sections are adopted without changes and will not be republished.

The new chapter is recodified to arrange the sections in a more logical order. Deletions and minor word changes have been made to the proposed text for clarity.

The recodification allows for clearer and more understandable rules by deleting obsolete information.

During the 30-day comment period, one comment concerning §35.601, was received from the Texas Federation of Drug Stores. The commenter contends that deletion of or co-op from this section constitutes a change in billing procedures that could cause the Vendor Drug Program to lose substantial amounts of money. The department disagrees with this comment. As the department previously stated to a Texas Federation of Drug Stores representative, the inclusion of the

term "co-op" in this section was intended only to pertain to closed central purchasing arrangements. Because of the misunderstanding of terminology and because this section has never been interpreted as including cooperative buying arrangements that are open to any willing participant, no real changes or fiscal impact results from the deletion of the item. The department, therefore, is adopting §35.601 without changes to the proposed text.

Others sections are changed to further clarify the language.

Subchapter A. Administration

★40 TAC §§35.1-35.6

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

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

Issued in Austin, Texas, on September 28, 1987.

TRD-8708308

Marlin W. Johnston
Commissioner
Texas Department
of Human Services

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For further information, please call
(512) 450-3765.



Subchapter B. Vendor Applications

★40 TAC §§35.101, §35.102

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

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

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(512) 450-3765.



Subchapter A. Participation

★40 TAC §§35.101—35.110

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

§35.106. *Disclosure of Criminal Convictions.* On request, the provider must disclose to the department or to the United States Department of Health and Human Services the name of any person who has ownership or controlling interest in, or is an agent or managing employee of, the pharmacy when that person has been convicted of a criminal offense related to the person's involvement in any program under Title V, XVIII, XIX, or XX of the Social Security Act. The provider must also supply, on request, the ownership, management, control, and business transaction information required by 42 Code of Federal Regulations 455, Subpart B.

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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Marlin W. Johnston
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(512) 450-3765.



Subchapter C. Participation

★40 TAC §§35.201—35.203, 35.205—35.210

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

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

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Subchapter B. Administration

★ 40 TAC §§35.201—35.205

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

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

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(512) 450-3765.



Subchapter D. Hold Procedures

★ 40 TAC §§35.301, §35.302

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

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

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(512) 450-3765.



Subchapter C. Medications

★ 40 TAC §§35.301—35.303

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

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

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Commissioner
Texas Department
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(512) 450-3765.



Subchapter E. Medications

★ 40 TAC §§35.401—35.404

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

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

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(512) 450-3765.



Subchapter D. Limitations

★ 40 TAC §§35.401—35.408

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

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

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(512) 450-3765.



Subchapter F. Audits

★ 40 TAC §§35.501—35.504

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

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

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(512) 450-3765.



Subchapter E. Audits

★ 40 TAC §§35.501, §35.502

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

§35.502. *Exception Notification.* Vendor drug policy and audit staff advises the vendor by certified letter of the audit results, detailing the exceptions and requesting payment within 30 days. If restitution is not received within this time period, a vendor hold is placed on the payment of claims. If the vendor is no longer participating in the program, all unpaid claims are held and payments are placed on vendor hold until restitution is made. If no unpaid claims that can be held exist and restitution is not made, the case is referred to the attorney general's office for legal action.

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

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(512) 450-3765.



Subchapter G. Pharmacy Claims

★ 40 TAC §§35.601—35.610

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

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

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(512) 450-3765.

Subchapter F. Reimbursement

★ 40 TAC §§35.601—35.610

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

§35.606. *Brand-Name Drugs.*

(a) Physicians, who want to dispense a brand name on a prescription for a multisource drug with a maximum allowable cost, handwrite the phrase "brand necessary" on the face of the prescription. This procedure enables payment for the drug at the more expensive brand name estimated acquisition cost. To indicate this certification (override) on the pharmacy claim form, the provider must enter 6 in the block for the physician override. For telephone orders involving physician overrides, a written prescription must be obtained from the prescribing physician within 30 days from the time the order was placed.

(b) A physician override for a prescription is valid only for the life of the prescription. The life of a prescription is defined as the original dispensing and any authorized refills, not to exceed five refills or a six-month supply. The physician override cannot be forwarded or transferred to any other prescription for the same drug.

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

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(512) 450-3765.

Subchapter H. Reimbursement

★ 40 TAC §§35.701-35.710

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

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

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Subchapter G. Pharmacy Claims

★ 40 TAC §§35.701—35.709

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

§35.701. *Pharmacy Claims Form.*

(a) To receive payment from the department, the provider must complete and submit a pharmacy claim. A separate form or entry is submitted for each prescription or refill. Providers submitting claims on the pharmacy claim form furnished by the department must also complete and include one pharmacy claims transmittal card in each packet of pharmacy claims sent to the department. For the original dispensing and each subsequent refill, the provider indicates on the prescription the price and reimbursement method (wholesale estimated acquisition cost, direct estimated acquisition cost, or maximum allowable cost) and Texas Drug Code Number, which is submitted to the department on the corresponding pharmacy claim. All criteria for pharmacy claims set forth in the pharmacy claim instructions apply to the information required on magnetic tape input. All tape service bureaus and vendors generating their own tapes must use the department's magnetic tape format. Claims may be submitted on magnetic tape through an approved tape service or approved vendor's magnetic tape system. Claims submitted over 60 days after the date of service are rejected. For claims on behalf of an individual who has applied for Medicaid coverage but has not yet been assigned a recipient number on the date of service, the filing period does not commence until the date the individual has been assigned a number. The requirements in §35.402 of this title (relating to Prescription Requirements) are also waived for retroactive claims. The provider must ensure, however, that a prescription for a prior eligibility claim conformed to Texas State Board of Pharmacy regulations on the date of service, or a claim cannot be submitted.

(b) Quantity of drugs, as prescribed by the physician, always must be entered in the pricing unit box. The quantity shown as the pricing unit must be calculated after referencing the pricing unit shown in the Texas Drug Code Index. When the drug is dispensed in the original package intended for a single prescription, pricing unit is the quantity of the original package.

(c) The completed pharmacy claim must be submitted to the department with a pharmacy claims transmittal card.

(d) If all necessary information is not supplied, a claim cannot be processed or paid.

§35.709. *Standards for Tape Input Service Bureau Companies.*

(a) Tapes must be received in the department's Pharmacy Claims Section before a designated time of the week to have claims processed for the next scheduled payment. The tapes are dated in the Pharmacy Claims Section, and a receipt is written. If the service bureau company wants to reuse the tapes, the service bureau company or representative leaves a receipt with Pharmacy Claims Section staff when picking up the tapes.

(b) The tape input service bureau must submit a listing of the company's input for each week. The format generally follows the payment register format. Additionally, there must be a summary, by vendor, of the total number of claims (per page, per tape, and total input) and dollar amount. The weekly listings are in vendor number order.

(c) In computer programs, service bureau companies provide the correct numeric Texas Drug Code for all drugs and package sizes covered by the Texas Drug Code Index and updates. Use of a single code to cover a similar drug of several manufacturers is not permitted because of the variation in estimated acquisition cost.

(d) Sequential numbers must be used by a service bureau company on claims, beginning with number one to infinity, so that claims can be referenced and located, researched, and audited by the department. The sequential number assigned claims by the service bureau company serve as the preprint number on the pharmacy claim form.

(e) Each service bureau company must handle its vendors' corrections. The service bureau must have a program in its processing system that allows it to recycle corrected claims. Dual input by a pharmacy provider, partially by tape and partially by use of the pharmacy claim form, must be avoided.

(f) Each week each service bureau company must submit an updated list of the vendors participating in its processing system. The Pharmacy Provider Enrollment Section must be notified of participation of new vendors. Specific beginning and ending dates for participating vendors must be included in the notification. The Pharmacy Provider Enrollment Section must also be supplied with a copy of the contract between the service bureau company and its vendors.

(g) The Pharmacy Provider Enrollment Section sends tape record layout format to potential contractors to ensure that the tape record layout conforms with the requirements of the Office of Information Systems.

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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Marlin W. Johnston
Commissioner
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Subchapter I. Limitations

★ 40 TAC §§35.801-35.808

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

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

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Subchapter H. Texas Drug Code Index—Additions, Retentions, and Deletions

★ 40 TAC §§35.801—35.804

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

§35.804. *Retention and Deletion of Drugs.*

(a) The department reviews the TDCI to evaluate the need for retaining or deleting drugs according to the following criteria.

(1) The department may delete a drug if the drug company fails to submit, on request, documentation of approval of:

- (A) an NDA;
- (B) an ANDA; and
- (C) any amendments to both applications.

(2) The department may delete a drug if the drug company fails to remove from pharmacies any drug recalled by the FDA. A drug may be deleted if the drug company fails to meet other federal re-

quirements. If the drug company repeatedly fails to meet FDA or other federal requirements, the department may delete all drugs manufactured by the company.

(3) The department may delete a drug if the drug company fails to provide the department the current drug costs. This includes the direct estimated acquisition cost (DEAC) to a pharmacy, the cost to a wholesaler, and the estimated wholesale cost to a pharmacy. If the department retains a drug for which the cost was not reported, the department establishes the cost. The allowable WEAC and DEAC are the costs to a pharmacy, as determined by review of published or nonpublished prices resulting from routine marketing practices.

(4) The department may delete a drug for which no claims or a minimal number of claims have been received during the last 12 months. Deletion of the drug is based on the criteria in §35.802(a) and (b) of this title (relating to Review and Evaluation).

(5) The department deletes a legend drug if the same drug becomes available as an over-the-counter drug.

(6) The department may delete drugs not yet proven effective by the FDA.

(7) Effective on notification, the department deletes discontinued or permanently recalled drugs. This provision applies to:

- (A) drugs permanently recalled by the manufacturer;
- (B) drugs permanently recalled by the FDA; and
- (C) drugs no longer manufactured.

(8) The department deletes drugs for which federal matching funds are no longer available. Federal matching funds are not available for:

(A) drugs determined to have been manufactured, packaged, or distributed in violation of, or not according to, current good manufacturing practice for pharmaceuticals or other current regulations;

(B) drugs for which notice of opportunity for hearing has been published in the *Federal Register*.

(b) If a drug is deleted, the drug company is entitled to be notified and given an opportunity to request reconsideration of the decision, unless the deletion is based on criteria in subsection (a)(5)-(8) of this section. The department presents the request to the formulary advisory subcommittee for reconsideration and recommendation. The department, however, retains the right to make the final decision.

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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Marlin W. Johnston
Commissioner
Texas Department
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(512) 450-3765.



Subchapter J. Texas Drug Code Index—Additions, Retentions, and Deletions

★ 40 TAC §§35.901-35.904

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

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

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(512) 450-3765.



Subchapter U. Support Documents

★ 40 TAC §35.9001

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

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

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Commissioner
Texas Department
of Human Services

Effective date: November 16, 1987
Proposal publication date: July 28, 1987
For further information, please call
(512) 450-3765.



Subchapter UUUU. Support Documents

★ 40 TAC §§35.9801, 35.9803, 35.9804

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

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

Issued in Austin, Texas, on September 28, 1987.

TRD-8708318

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: November 16, 1987

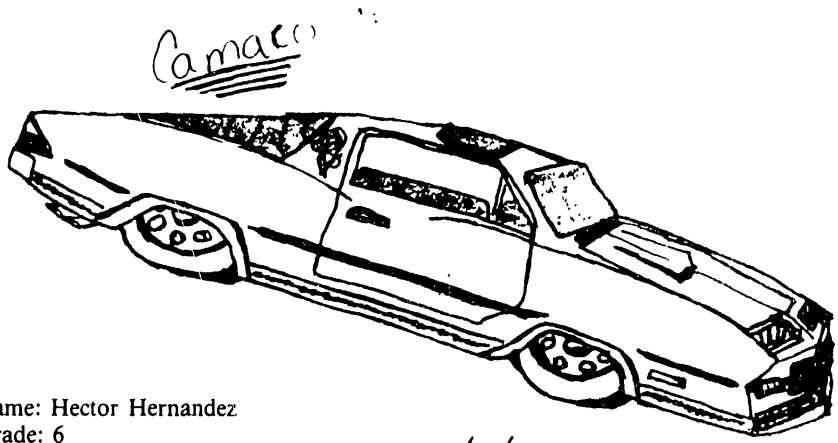
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For further information, please call
(512) 450-3765.



Name: Hector Hernandez
Grade: 6
School: Clifton Middle School, Houston

Hector
Hernandez



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 Adult Probation Commission

The Texas Adult Probation Commission will meet in Suite 600, Building B, 8100 Cameron Road, Austin. Dates, times, and agendas follow.

Thursday, October 8, 1987, 1 p.m. The Audit Review Committee will consider initial reviews of fiscal audit reports from Angelina, Collin, Coryell, Dawson, Eastland, Fayette, Hardin, Jack, Jones, McLennan, Milam, Palo Pinto, Reeves, Upshur, Wheeler, and Young Counties; and final reviews from Bexar, Cameron, Ellis, and San Patricio Counties.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Austin, Texas 78753, (512) 834-8188.

Filed: September 28, 1987, 2:05 p.m.
TRD-8708368

Thursday, October 8, 1987, 1 p.m. The Program Committee will consider proposed standards of program services report from court residential treatment centers, specialized caseloads, and restitution centers (revisions based on legislative changes; surveillance probation grant applications from Harris and Taylor Counties; adoption of surveillance probation standards; grant adjustment from Ector County Restitution Center; supplemental funding application from San Patricio County; and waivers to TAPC standards from various counties.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Austin, Texas 78753, (512) 834-8188.

Filed: September 28, 1987, 2:05 p.m.
TRD-8708369

Thursday, October 8, 1987, 3 p.m. The Planning and Development Committee will approve minutes of the previous meeting; consider proposed standards concerning electronic monitoring; approval of the action plan for the committee; presentation of the TAPC drug intervention plan concerning applications to the Criminal Justice Division of the Governor's Office relating to enhancement of apprehension and prosecution and adjudication of drug abusing offenders,

treatment alternatives to street crime through probation, narcotics control specialized caseloads, boot camp supervision for drug offenders, and electronic monitoring as a tool for surveillance and apprehension; an open forum in which department representative will present ideas on programs for the next biennium; and a report on substance abuse in Texas by Monsignor Dermot N. Brosnan.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Austin, Texas 78753, (512) 834-8188.

Filed: September 28, 1987, 2:05 p.m.
TRD-8708370

Friday, October 9, 1987, 9 a.m. The commission will introduce guests; approve minutes of the previous meeting; hear financial report; proposed services report concerning proposed standards relating to CRTCs, specialized caseloads, RC's, and electronic monitoring; surveillance probation grant applications concerning Harris and Taylor County; adoption of surveillance proposed standards; grant adj. Ector County RC; E. Supp. funding for San Patricio County; waivers; presentation of TAPC drug intervention plan relating to appointment to the Criminal Justice Division of the Officer of the Governor and 1-5 various; certificates of commendation to department participating in the sample project in Victoria County; hear data services report on statistical reports; fiscal services report from Audit Review Committee; and Executive Division report concerning liability, prosecution training, and administrative business.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Austin, Texas 78753, (512) 834-8188.

Filed: September 28, 1987, 2:05 p.m.
TRD-8708371

Texas Department of Agriculture

Tuesday, October 20, 1987, 2 p.m. The Texas State Seed and Plant Board of the Texas

Department of Agriculture will meet in the Colorado Room, Stouffer Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda, the board will consider minutes; review applications for license as certified seed growers; and hear a request for certification eligibility of new varieties.

Contact: Kenneth Boatwright, P.O. Box 12847, Austin, Texas 78711, (512) 463-7614.

Filed: September 24, 1987, 2:26 p.m.
TRD-8708240

Automated Information and Telecommunications Council

Tuesday, September 29, 1987, 4 p.m. The Council for Automated Information and Telecommunications Council met in emergency session in Room 106, John H. Reagan Building, 105 West 15th Street, Austin, rescheduled from September 28, 1987. According to the agenda, the council will approve minutes; discuss automated information and telecommunications rules; and consider future business. The emergency status was necessary to discuss approval of rules.

Contact: Tina J. Turner, 510 South Congress Avenue, Suite 216, Austin, Texas 78704, (512) 463-5530.

Filed: September 25, 1987, 5:16 p.m.
TRD-8708307

Bond Review Board

Monday, October 5, 1987, 2 p.m. The Bond Review Board will meet in Senate Chambers, State Capitol, 11th Street and Congress Avenue, Austin. According to the agenda, the board will consider proposed public bond offerings.

Contact: Robert E. Davis, Governor's Office of Budget and Planning, Sam Houston Building, Seventh Floor, Austin, Texas 78701, (512) 463-1778.

Filed: September 25, 1987, 3:41 p.m.
TRD-8708284

Monday, October 5, 1987, 2 p.m. The Bond Review Board will meet in the Lieutenant Governor's Committee Room 220, State Capitol, Austin. According to the agenda, the board will receive information on proposed public bond offerings.

Contact: T.C. Adams, P.O. Box 12728, Austin, Texas 78711, (512) 463-1778.

Filed: September 28, 1987, 4:22 p.m.
TRD-8708384



Texas Commission for the Deaf

Saturday, October 17, 1987, 9 a.m. The Board for Evaluation of Interpreters of the Texas Commission for the Deaf will meet at 5151 McArdle Road, Corpus Christi. According to the agenda, the board will approve previous meeting minutes; approve recertification forms; and hear the chairpersons report. The board also will meet in executive session to discuss the development of new scripts for evaluation, and review certificate recommendations, evaluations, and revocations.

Contact: Larry D. Evans, 510 South Congress Avenue, Austin, Texas 78704, (512) 469-9891.

Filed: September 28, 1987, 1:55 p.m.
TRD-8708372



General Land Office

Friday, October 2, 1987, 9 a.m. The Veterans Land Board of the General Land Office will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of the September 23, 1987, meeting; consider an increase in the origination fee in the Veterans Housing Assistance Program from 1% to 2% on the first mortgage-two note situation and the first mortgage-two note situation on take-out loans; discuss changes in rules and policies concerning collection of delinquencies and procedures for forfeitures; discuss the selection of bond counsel for the Veterans Land Program, Veterans Housing Assistance Program, Home Improvement Program, and the Farm and Ranch Finance Program, under the pending request for proposals.

Contact: Jack Giberson, 1700 North Congress Avenue, Room 831, Austin, Texas 78701, (512) 463-5254.

Filed: September 22, 1987, 2:15 p.m.
TRD-8708239



Texas Department of Human Services

Wednesday, October 7, 1987, 9 a.m. The Advisory Committee on Child Care Administrators and Facilities of the Texas Department of Human Services will meet on the Sixth Floor, Conference Room 6W, West Tower, 701 West 51st Street, Austin. According to the agenda, the committee will hold a quorum call and introductions; approve minutes; review tracking report; hear the assistant commissioner's report; consider recommendations on bylaws changes; review fiscal year 1987 objectives; and discuss objectives for fiscal year 1988.

Contact: Doug Sanders, P.O. Box 2960, Austin, Texas, (512) 450-3253.

Filed: September 28, 1987, 9:13 a.m.
TRD-8708357



Texas Industrial Accident Board

Monday, September 28, 1987, 9:30 a.m. The Texas Industrial Accident Board met for an agenda revision in Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board will consider Item 8, Crime Victims Advisory Committee, which became Item 9, and Item 9 became Item 10.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, First Floor, Austin, Texas 78704, (512) 448-7960.

Filed: September 24, 1987, 3:47 p.m.
TRD-8708243



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 29, 1987, 10 a.m. The board made an emergency addition to the agenda of a meeting held in Room 414, to consider consultation with attorneys with respect to contemplated participation in litigation; viz., *Otto v. Variable Annuity Life Insurance Company*. The emergency status was necessary because of need for advice from attorneys toward immediate decision for timely action with respect to pending litigation.

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

Filed: September 25, 1987, 2:46 p.m.
TRD-8708273

Monday, October 5, 1987, 11 a.m. The board will meet in Room 414, to consider board orders on several different matters including personnel matters relating to Fire Marshal, Research and Information Ser-

vices, and Commissioner; litigation matters relating to Commissioner; and appointment of public representative to the Board of Directors of the Texas Title Insurance Guaranty Association.

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

Filed: September 25, 1987, 2:46 p.m.
TRD-8708274

Monday, October 5, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9677—Application for amendment to articles of incorporation of Coronado Life Insurance Company, El Paso, increasing the authorized capital.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 24, 1987, 11:43 a.m.
TRD-8708226

Thursday, October 6, 1987, 9 a.m. The board will meet in Room 414, to consider decision on petitions by Texas Workers' Compensation Assigned Risk Pool concerning amendment of surcharge formula and elimination of premium discounts (hearing held September 9, 1987).

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

Filed: September 25, 1987, 2:46 p.m.
TRD-8708275

Tuesday, October 6, 1987, 9:30 a.m. The board will meet in Room 414 to consider decision on property rates (hearing held on June 29, 1987).

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

Filed: September 25, 1987, 2:46 p.m.
TRD-870276

Tuesday, October 6, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9670—Proposed plan of merger of Tyler Life Insurance Company of Texas, Galveston, into Mack H. Hannah Life Insurance Company, Houston.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: September 29, 1987, 9:52 a.m.
TRD-8708351

Tuesday, October 6, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9678—Application for amendment to the articles of incorporation of Citadel Insurance Company, Houston, increasing the number of authorized shares of capital stock.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 28, 1987, 9:52 a.m.
TRD-8708352

Tuesday, October 6, 1987, 2 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9679—Application of AON Corporation to acquire control of Citadel Insurance Company, Houston.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 28, 1987, 9:52 a.m.
TRD-8708353

Wednesday, October 7, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9667—Application of Southwest Business Corporation, San Antonio, to acquire control of Afton Life Insurance Company, Houston.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 28, 1987, 9:53 a.m.
TRD-8708354

Wednesday, October 7, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9674—Application of GW Capital Corporation to acquire control of Houston National Life Insurance, Houston.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: September 28, 1987, 9:53 a.m.
TRD-8708355

Wednesday, October 7, 1987, 9:30 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9675—Application of JA Acquisition Corporation, General Electric Credit Corporation, and Merrill Lynch Capital Partners, Inc. to acquire control of Houston National Life Insurance, Houston.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: September 28, 1987, 9:53 a.m.
TRD-8708356

Tuesday, October 13, 1987, 9 a.m. The board will meet in the Hearing Room, DeWitt Greer Building, 11th and Brazos Streets, Austin. According to the agenda, the board will review standard and uniform rules and rates for general liability insurance and hold public hearing on amendments thereto under legal authority of the Texas Insurance Code, Articles 5.14, 5.15, 5.19, and 5.97.

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

Filed: September 28, 1987, 9:57 a.m.
TRD-8708345



Interagency Council on Early Childhood Intervention

Monday, October 5, 1987, 1 p.m. The Interagency Council on Early Childhood Intervention will meet in the Second Floor Conference Room, 1101 East Anderson Lane, Austin. According to the agenda, the council will review and approve minutes; hear a report on Lufkin State School; and approve fiscal year 1988 expansion and new grant awards.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: September 25, 1987, 9:15 a.m.
TRD-8708245



Texas Department of Labor and Standards

Friday, October 9, 1987, 2 p.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 Acorn Mobile Homes 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 24, 1987, 1:49 p.m.
TRD-8708237

Monday, October 19, 1987, 8 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 1-100, William B. Travis Building, Austin. According to the agenda, the division will hear comments regarding the proposed manufactured housing rules published in the *Texas Register* on August 28, 1987, (12 TexReg 2887): Proposed §§69.118, 69.121-69.125, 69.127-69.129, 69.132, and 69.135.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 25, 1987, 4:08 p.m.
TRD-8708285



Legislative Budget Board

Tuesday, October 13, 1987, 9 a.m. The Legislative Budget Board will meet in Room 310, State Capitol, Austin. According to the agenda, the board will review determination of costs for the Texas Department of Cor-

rections; consider mental health and mental retardation projects and programs; and discuss any other business that might come before the board.

Contact: Homer Scace, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: September 28, 1987, 9:16 a.m.
TRD-8708358



Texas Department of Mental Health and Mental Retardation

Thursday, October 1, 1987, 10 a.m. The Texas Board of Mental Health and Mental Retardation of the Texas Department of Mental Health and Mental Retardation rescheduled a meeting to be held in the Central Office, 909 West 45th Street, Austin. The meeting was originally scheduled for October 1-2, 1987, in Kerrville. According to the agenda, the board will approve minutes of the September 18, 1987, meeting; consider duties of the commissioner; litigation relating to *RAJ v. Miller*, *Lelsz v. Kavanagh*, and *Griffin v. Bynum*; and consider potential litigation. Unanticipated staff attendance required changing location to save travel expenses.

Contact: Gary E. Miller, P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: September 28, 1987, 4:54 p.m.
TRD-8708390



Board of Pardons and Paroles

Monday-Friday, October 5-9, 1987, 1:30 p.m. daily, except 11 a.m. on Friday. A three member board panel for the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the panel 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 25, 1987, 10:45 a.m.
TRD-8708251

Tuesday, October 6, 1987, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will approve minutes of the September 8, 1987, meeting; consider halfway house contract recommendations; hear the Electronic Monitoring Committee report; consider the executive director's job description, attorney general's opinion regarding full pardon and/or restoration of full civil rights of

citizenship, and procedures for distribution of gate money; and hear public input/comments and the executive director's report.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: September 28, 1987, 4:16 p.m.
TRD-8708383



Tuesday, October 6, 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 25, 1987, 10:45 a.m.
TRD-8708252

Texas State Board of Public Accountancy

Tuesday, October 2, 1987, 9 a.m. The Technical Standards Review Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee will review the status report for July and August; make recommendations regarding specific complaints—87-07-45L, 86-12-03L, 87-07-25L, 87-07-19L, 87-07-20L, 87-07-21L, 87-04-24L, 87-07-65L, 87-07-55L, 87-07-47L, 87-07-51N, 87-07-46L, 87-07-14L, 87-07-64L, 87-07-01, 87-07-02L, 87-07-05L, 87-07-52L, 87-07-53L, 87-07-54L, 87-07-09L, 87-07-56L, and 87-07-30L; discuss Complaint 86-03-03L; review backlog of complaints; review processing §8 complaints; review attorney general representation; review Constructive Enforcement Program; and review and discuss changes for the new system worked on data processing by the committee chairman.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 25, 1987, 3:34 p.m.
TRD-8708280



Public Utility Commission of Texas

The Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Wednesday, October 7, 1987, 9 a.m. The Hearings Division will consider Docket

7635—Petition of Southwestern Electric Power Company to refund fuel cost over-recoveries and to set interim fixed fuel factor.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 25, 1987, 2:51 p.m.
TRD-8708277

Thursday, October 8, 1987, 1:30 p.m. The Hearings Division will consider Docket 7660—Application of AT&T Communications of the Southwest, Inc., to change certain prices in accordance with substantive rule 23.25(c).

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 25, 1987, 2:50 p.m.
TRD-8708278

Friday, October 9, 1987, 1:30 p.m. The Hearings Division will consider Docket 7721—Complaint of C.E. Mulkey against Houston Lighting and Power Company.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 25, 1987, 2:50 p.m.
TRD-8708279



Railroad Commission of Texas

Monday, September 28, 1987, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas met in emergency session in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The division met to consider whether to use funds to plug leaking well: unidentified operator, unknown lease, unidentified well, Kent County. The emergency status was necessary as this item must be taken on less than seven days notice as a matter of urgent public necessity. The well is leaking approximately 4-5 barrels of water per day and is running into the double mountain fork of the Brazos River which could be a threat to the public's health, safety, and welfare.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: September 25, 1987, 3:38 p.m.
TRD-8708283

Monday, October 5, 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 action on management stu-

dy, 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 25, 1987, 10:50 a.m.
TRD-8708253

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 25, 1987, 11 a.m.
TRD-8708254

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 25, 1987, 11 a.m.
TRD-8708255

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 25, 1987, 11 a.m.
TRD-8702683

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 25, 1987, 11 a.m.
TRD-8708257

The LP-Gas Division director's report on division administration, budget, procedures, personnel matters, and consider various matters falling within the Railroad Commission of Texas LP-Gas regulatory jurisdiction.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: September 25, 1987, 11 a.m.
TRD-8708258

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 25, 1987, 11 a.m.
TRD-8708259

Additions to the previous agenda:

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 25, 1987, 11 a.m.
TRD-8708260

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 25, 1987, 11:02 a.m.
TRD-8708261

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 25, 1987, 11:03 a.m.
TRD-8708262

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 25, 1987, 11:03 a.m.
TRD-8708263

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 14,674; state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: September 25, 1987, 11:03 a.m.
TRD-8702690

Additions to previous agenda:

Consideration and possible election of chairman of Railroad Commission of Texas.

Contact: Walter E. Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: September 25, 1987, 11:03 a.m.
TRD-8708265

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: September 25, 1987, 11:03 a.m.
TRD-8708266

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: C. Tom Clowe, Jr., P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: September 25, 1987, 11:04 a.m.
TRD-8708267

Monday, October 19, 1987, 1:30 p.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the division will conduct a statewide oil and gas hearing.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: September 25, 1987, 11:04 a.m.
TRD-8708268



Texas Savings and Loan Department

The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. Dates, times, and agendas follow.

Tuesday, October 6, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of BancPLUS Savings Association, Pasadena, Harris County, to relocate a branch office from 1200 Smith Street, Houston, to 817 East Southmore, Pasadena, Harris County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 24, 1987, 1:40 p.m.
TRD-8708235

Tuesday, October 6, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of BancPLUS Savings Association, Pasadena, Harris County, to relocate the home office from 817 East Southmore, Pasadena, to 1200 Smith Street, Houston, Harris County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 24, 1987, 1:41 p.m.
TRD-8708236

Thursday, October 8, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of Park Cities Savings Association, Dallas, Dallas

County for a branch office at 8201 Preston Road, Dallas, Dallas County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 24, 1987, 1:40 p.m.
TRD-8708233

Friday, October 9, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of Great Western Savings Banc, a savings association, Lockhart, Caldwell County, for a loan office relocation from 3510 South Congress Avenue, Austin, Travis County, to 515 Capital of Texas Highway South, Austin, Travis County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 24, 1987, 1:40 p.m.
TRD-8708234



School Land Board

Tuesday, October 6, 1987, 10 a.m. The School Land Board will meet in Rooms 118 and 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will approve minutes of the previous meeting; consider bids received for the October 6, 1987, lease sale, pooling applications, good faith claimant applications, emergency repeal and proposed repeal of 31 TAC §155.8(f) and §155.11, concerning protection and limitation of development on certain coastal public lands, coastal public lands relating to commercial lease applications, lease applications, easement applications, and proposed blanket easement to the City of Clear Lake Shores.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 28, 1987, 4:28 p.m.
TRD-8708386



State Securities Board

Thursday, October 15, 1987, 10 a.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda summary, the commissioner will determine whether a cease and desist order should be issued prohibiting the sale or offer for sale of securities by Trust Company Bank, through its agents, Susan Winslow Callendar and Carol I. Culpepper, to Texas

residents. This meeting is rescheduled from September 29, 1987.

Contact: Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas 78711, (512) 474-2233.

Filed: September 28, 1987, 4:27 p.m.
TRD-8708385



Texas Surplus Property Agency

Thursday, October 8, 1987, 9:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet in the Captain's Boardroom, Sheraton-Marina Hotel, 300 North Shoreline Boulevard, Corpus Christi. According to the agenda, the board will approve minutes of the previous meeting, consider sunset review update, Fort Worth site development, and homeless assistance.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: September 29, 1987, 9:03 a.m.
TRD-8708389



Texas Southern University

The Board of Regents of Texas Southern University will meet at 3100 Cleburne Avenue, Texas Southern University, Houston. Dates, times, rooms, and agendas follow.

Thursday, October 1, 1987, 4 p.m. The Personnel and Academic Affairs Committee met in Room 117, Hannah Hall, to consider personnel actions concerning faculty changes relating to the 1987-1988 fiscal year budget and report on progress of academic activities and programs. The committee also met in executive session to consider evaluation of instructional personnel.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004 (713) 529-8911.

Filed: September 28, 1987, 9:21 a.m.
TRD-8708359

Friday, October 2, 1987, 9:30 a.m. The board will meet in Room 203, Sterling Student Life Center to hold an executive session concerning evaluation of university personnel and conference with university attorney.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004 (713) 529-8911.

Filed: September 28, 1987, 9:21 a.m.
TRD-8708360

Friday, October 2, 1987, 9:30 a.m. The board will meet in Room 203, Sterling Student Life Center to consider matters relating to financial reporting systems and fiscal reports from the administration; investments; budget changes and informational items; establishment of policy on surplus and

salvage property; establishment of a Standing Committee on Auxiliary Operations called the Auxiliary Committee; changes in the 1987-1988 educational budget; project management services contract; construction change orders; payment to architects, contractors, and engineers; authorization and ratification of contracts and awards; informational items; review ongoing construction and current contractual relations; consider personnel actions; faculty changes relating to the 1987-1988 fiscal year budget; and hear a report on progress of academic activities and programs.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004 (713) 529-8911.

Filed: September 28, 1987, 9:20 a.m.
TRD-8708361

Friday, October 2, 1987, 9:30 a.m. The Building and Grounds Committee will meet in Room 203, Sterling Student Life Center, to consider project management services contract; construction change orders, payment to architects, contractors, and engineers; authorization and ratification of contracts and awards; informational items; and review ongoing construction and current contractual relations.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004 (713) 529-8911.

Filed: September 28, 1987, 9:20 a.m.
TRD-8708362



Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Wednesday, October 7, 1987, 10 a.m. The commission will meet in Room 118 to consider water district requests for release from escrow, use of surplus funds, water rate matters, proposed water quality permits, amendments and renewals, water use applications, and petition regarding rulemaking relating to the protection of water in the Edwards Aquifer.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:11 p.m.
TRD-8708289

Wednesday, October 7, 1987, 2 p.m. The commission will meet in Room 118, to consider request for transfer of Commission Permit 12899-01 from Neil Davis and DW.D. Properties, Inc. to Clemons Creek Joint Venture.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:11 p.m.
TRD-8708288

Wednesday, October 14, 1987, 2 p.m. The commission will meet in Room 118, to determine whether Emergency Order 87-12E, granted by the commission on September 15, 1987, to ABTEX, Inc., Brinkerhoff Oil Company, 1200 Milam, Suite 306, Houston, Texas 77002, should be affirmed, modified, or set aside by the commission. The order permitted ABTEX, Inc. to construct a ballast water treatment facility in the Corpus Christi Ship Channel, Nueces County, and to discharge therefrom not to exceed 30,000 barrels per month of treated oily ballast water from crude oil and heavy hydrocarbon process vessels into the Corpus Christi Inner Harbor in Segment 2484 of the bays and estuaries.

Contact: Wendall Corrigan, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: September 25, 1987, 4:11 p.m.
TRD-8708290

Thursday, November 5, 1987, 9 a.m. The Office of Hearings Examiner will meet in Room 103, Lubbock County Courthouse, 904 Broadway, Lubbock. According to the agenda summary, the office will consider application of City of Lubbock (Southeast Water Reclamation Plant SEWRP), P.O. Box 2000, Lubbock, Texas 79457, for an amendment to Permit 10353-02, which regulates the disposal of treated domestic wastewater effluent from two independent plants operated in parallel. Plant A handles a volume not to exceed 130,000,000 gallons per day average and Plant B handles a volume not to exceed 12,000,000 gallons per day average. Effluent disposal is accomplished under contract for use as irrigation water and/or makeup water for the Southwest Public Services Company's Jones Power Plant.

Contact: Micheal L. Woodward, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1987, 4:12 p.m.
TRD-8708291

Thursday, November 5, 1987, 9 a.m. The Office of Hearings Examiner will meet in Room 618, to consider application of Rabbit Hill Water Supply Corporation, 828 Sidney Baker, Kerrville, Texas 78028 for a permit (Proposed Permit 13359-01) to authorize the disposal of treated domestic sewage effluent by irrigation at a final volume not to exceed an average of 98,000 gallons per day. The planned facilities are to be constructed in phases to serve a residential retirement community development. The sewage treatment facilities are to consist of activated sludge system(s), an irrigation storage reservoir, and tailwater pond. All effluent is to be used to irrigate non-food crops on 45 acres of land. Application rates for the irrigated land shall not exceed 2.52 acre-feet/acre/year.

Contact: Ann F. MacMurray, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1987, 4:11 p.m.
TRD-8708292

Tuesday, November 10, 1987, 9 a.m. The Office of Hearings Examiner will meet in the City Council Chambers, Stephenville City Hall, 354 North Belknap, Stephenville. According to the agenda summary, the office will consider application of Michael D. Lloyd, Route 4, Box 192, Dublin, Texas 76446, for a permit (Proposed Permit 02922) to authorize the disposal by irrigation of wastewater effluent from a 900 milking head capacity dairy. The dairy operation will generate washdown, flushwater, and stormwater which will be retained in two ponds with a total capacity of 13.97 acre-feet. The wastewater from the ponds is to be used for irrigation of 43 acres of coastal bermuda grass. Manure/solids are to be disposed of by application as fertilizer to 220 acres cropland/improved pasture.

Contact: James Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1987, 4:12 p.m.
TRD-8708293

Thursday, November 12, 1987, 9 a.m. The Office of Hearings Examiner will meet in Room 215, to consider application of Howell Hydrocarbons Incorporated, 7811 South Presa, San Antonio, Texas 78223-3531, for a permit (Proposed Permit 02921) to authorize an intermittent discharge of stormwater from the diked tank area at a variable flow via outfall 001 and the discharge of treated groundwater at a variable flow via outfall 002. The applicant operates a petroleum refinery which produces petroleum naphthas, solvents, diesels, gasoline, and jet fuels.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1987, 4:12 p.m.
TRD-8708294

Tuesday, November 17, 1987, 10 a.m. The commission will meet in Room 118, to hold a public hearing on the City of Denison 02-4910 seeks to extend the time to commence and complete construction of a dam authorized by Certificate of Adjudication 02-4910, on an unnamed tributary of Iron Ore Creek, Red River Basin, Grayson County, for recreational purposes.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:11 p.m.
TRD-8708295

Tuesday, November 17, 1987, 10 a.m. The commission will hold a public hearing on Standard Oil Production Company, Permit 5154 seeks a permit to divert water per annum from the underflow of the Brazos River, Brazos River Basin, for mining purposes in Stonewall County, involving about 12 oil wells in the Katz Field.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:10 p.m.
TRD-8708296

Tuesday, November 17, 1987, 10 a.m. The commission will meet in Room 118, to hold a public hearing on B. Gill Clements, Permit 5153, to construct and maintain a dam and reservoir on Mine Creek, tributary of Coon Creek, tributary of Trinity River, Trinity River Basin, for in place recreational use in Henderson County.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:10 p.m.
TRD-8708297

Tuesday, November 17, 1987, 10 a.m. The commission will meet in Room 118, to hold a public hearing on Glen Eagles Country Club, Inc., Permit 4483A, seeking to amend Permit 4186. The applicant desires to increase the area of land to be irrigated and add four existing off-channel reservoirs and three existing on-channel reservoirs for recreational use, storage, and diversion purposes in Collin County.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:10 p.m.
TRD-8708298

Tuesday, November 17, 1987, 10 a.m. The commission will meet in Room 118, to hold a public hearing on United States Department of Interior Fish and Wildlife Service, Permit 5156, seeking maintain two reservoirs created by dikes on an unnamed tributary of Middle Bernard Creek, tributary of San Bernard River, Brazos-Colorado Coastal Basin for wildlife preservation, Colorado County.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1987, 4:10 p.m.
TRD-8708299

Wednesday, November 18, 1987, 9 a.m. The Office of Hearings Examiner will meet in the City Council Chambers, Denton City Hall, 215 East McKinney, Denton. According to the agenda summary, the office will consider United Spaces, Inc., 5999 Summerside Drive, Suite 202, Dallas, Texas 75252, applying for a permit (Proposed Permit 13384-01) to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 52,000 gallons per day from the Preston West Farms Wastewater Treatment Plant. The proposed permit would also authorize the use of some of the effluent to irrigate the wastewater treatment site. Application rates for the irrigated land are not to exceed 2.2 acre-feet/acre/year. The proposed facilities will serve a 200 acre residential development.

Contact: Douglas Roberts, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1987, 4:12 p.m.
TRD-8708300

Wednesday, November 18, 1987, 10 a.m. The Office of Hearings Examiner will meet in the First Floor Conference Room, El Paso City Hall, corner of Santa Fe and Missouri Streets, El Paso. According to the agenda, the office will consider San Elizario Independent School District, P.O. Box 920, San Elizario, Texas 79849, applying for a permit (Proposed Permit 13380-01) to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 40,000 gallons per day from the San Elizario School Wastewater Treatment Facilities. The applicant proposes to construct wastewater treatment facilities to serve two campuses of the district because the land that is currently used for drain fields is needed for additional classroom facilities.

Contact: Steve Dickman, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1987, 4:13 p.m.
TRD-8708301



Regional Agencies Meetings Filed September 24

The Brazos River Authority, Board of Directors, met at the Hyatt Regency Hotel, DFW Airport, Irving, on September 28, 1987, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Ellis County Tax Appraisal District, Appraisal Review Board, met at 406 Sycamore Street, Waxahachie, on September 28, 1987, at 8:30 a.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.
TRD-8708242



Meetings Filed September 25

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on September 1-2, 5-8, 12-16, 19-22, 26-28, and 30, 1987, at 8:30 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Burnet County Appraisal District, Board of Directors Special Called Session, met at 215 South Pierce Street, Burnet, on September 29, 1987, at 5 p.m. Information may be obtained from Alvin C. Williams, Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Education Service Center, Region XIII, Board of Directors, met 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 Education Service Center, Region XVIII, Board of Directors, met at 2811 La-Force 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 Grand Parkway Association, met at 140 East Wing, 5757 Woodway, Houston, on September 30, 1987, at 10:30 a.m. Information may be obtained from Larry W. Nettles, 2823 First City Tower, 1001 Fannin, Houston, Texas 77002 6760, (713) 654-4586.

The Middle Rio Grande Development Council, Annual Board of Directors Meeting, Joint Session, and Annual Council Meetings, were held at the Civic Center, Del Rio, on September 30, 1987, at noon, 1 p.m., and 3 p.m., respectively. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

TRD-8708244



Meetings Filed September 28

The Ark-Tex Council of Governments, Board of Directors, will meet in the Queen

Maria Paddleboat, Lake Bob Sandlin, FM Road 21, Mount Pleasant, on October 6, 1987, at 5:30 p.m. Information may be obtained from Dana Buckworth, P.O. Box 5307, Texarkana, Texas 775505 (214) 832-8636.

The Burnet County Appraisal District, Board of Directors, will meet at 215 South Pierce Street, Burnet, on October 8, 1987, at 6:30 p.m. Information may be obtained from Alvin C. Williams, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Education Service Center, Region III, Board of Directors, met at 1905 Leary Lane, on October 1, 1987, at 1 p.m. Information may be obtained from Kenneth Mueller, 1905 Leary Lane, Victoria, Texas 77901, (512) 578-0731.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on October 8, 1987, at 10:30 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Middle Rio Grande Development Council, Joint Session, met in the Civic Center, Del Rio, on September 30, 1987, at 1 p.m. Information may be obtained from Michael

M. Patterson, Del Rio National Bank Building, Room 307, Del Rio, Texas 78840, (512) 876-3533.

TRD-8708350

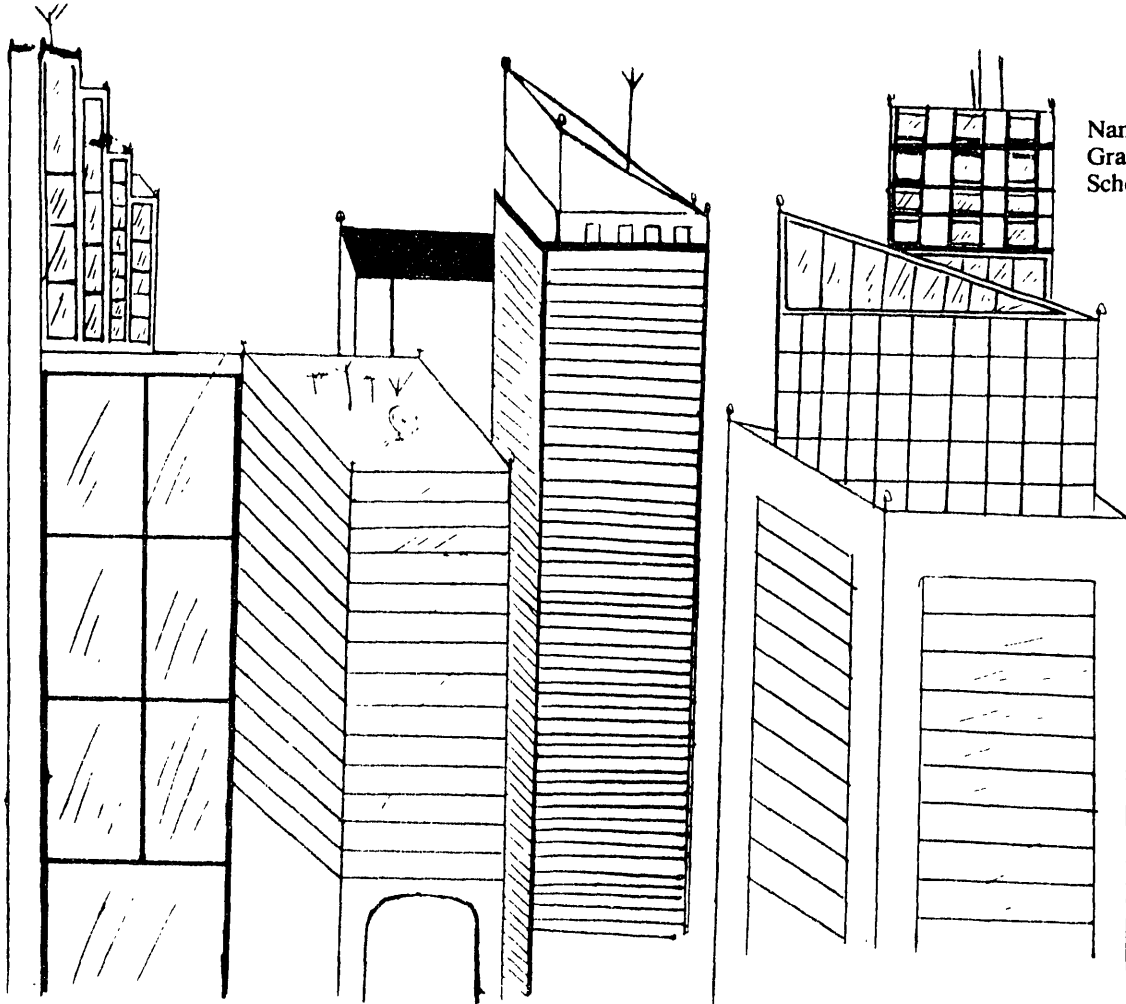


Meetings Filed September 29

The Brazos Valley Development Council, Executive Committee and Brazos Valley Regional Review Committee, will meet in Suite 7, 3006 East 29th Street, Bryan, on October 8, 1987, at 11 a.m. and 4 p.m., respectively. Information may be obtained from Glenn J. Cook and Jill Hyde, P.O. Drawer 4128, Bryan, Texas 77801, (409) 776-2277.

The West Central Council of Governments, Ombudsman Task Force, will meet at 1025 East North 10th Street, Abilene, on October 9, 1987, at 2 p.m. Information may be obtained from Jimmy Walls, 1025 East North 10th Street, Abilene, Texas 79604, (915) 672-8544.

TRD-8708388



Name: Emma Castillo
Grade: 6
School: Clifton Middle School,
Houston

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 September 7-11, 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.

Southern Post Company, Austin; fence post painting; Travis County; 18324; new

Arco Chemical Company, Pasadena; catalyst recovery unit; Pasadena, Harris County; 18327; new

Dal-tile Corporation, Dallas; ceramic tile manufacturing; Dallas, Dallas County; 18330; new

Issued in Austin, Texas, on September 21, 1987.

TRD-8708342 Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: September 28, 1987
For further information, please call (512) 451-5711, ext. 354.



The Texas Air Control Board gives notice of applications for construction permits received during the period of September 14-18, 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.

Chevron U.S.A., Murray; T/B Nash Daniels; Murray, Young; 18334; new

Metal Prep, Ltd., Houston; descaling frac. #2; Houston, Harris County; 18335; new

Southwestern Refining Company, Corpus Christi; HF alkylation expansion; Corpus Christi, Nueces County; 18338; new

Acme Bag Manufacturing, Inc., Dallas; flexible packaging manufacturing facility; Dallas, Dallas County; 18340; new

Issued in Austin, Texas, on September 21, 1987.

TRD-8708341 Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: September 28, 1987
For further information, please call (512) 451-5711, ext. 354.



Notice of Public Hearings

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act (TCAA), Article 4477-5, §3.09; 40 Code of Federal Regulations 51.102 of the Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIP); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Texas Air Control Board (TACB) procedural rules, §103.11(4), the Texas Air Control Board will conduct public hearings to receive testimony on proposed revisions to Texas Air Control Board Regulation V, concerning control of air pollution from volatile organic compounds, and the ozone SIP for Dallas and Tarrant counties.

The proposed revisions are intended to provide for sufficient volatile organic compound (VOC) emission reductions in Dallas and Tarrant counties to satisfy EPA requirements for a demonstration of attainment of the national ambient air quality standard for ozone by December 31, 1992. The adoption of a SIP revision providing for a demonstration of attainment and its submittal to EPA by December 31, 1987, may provide an adequate basis for EPA not to invoke growth sanctions for Dallas and Tarrant counties, as proposed in the July 14, 1987, *Federal Register*. The proposed sanctions would prohibit the con-

struction of any major source of VOC emissions and major modifications to existing major sources of VOC emissions in the two counties.

The proposed changes and additions to the control strategy include summaries of ambient ozone monitoring data, VOC emission inventories, calculations of emission reduction requirements, identification of measures available to reduce emissions (including the Regulation V changes), and calculations of the resulting emission reductions. Also included are commitments, contingent upon legislative authorization, to implement a motor vehicle parameter inspection and maintenance (I/M) program in Collin, Denton, Ellis, Johnson, Kaufman, Parker, and Rockwall counties, and to enhance the vehicle parameter I/M program in Dallas and Tarrant counties by addition of automated tail pipe emission testing. The vehicle parameter I/M program would be extended to Wise County also if ozone monitoring conducted from May-September, 1987, detects a violation of the national ambient air quality standard in that county. Another addition to the control strategy is the commitment by local governments to fund and implement certain transportation control measures.

The Texas Air Control Board proposes to amend or add the following sections for Dallas and Tarrant counties: §§115.163-115.164, concerning general vent gas streams, to require incineration of vent gas streams with a concentration of VOC greater than 0.003 psia; §§115.171-115.176, concerning specified solvent-using processes, to prohibit the use or sale of cutback asphalt during the period from April 16 to September 15 of each year; §§115.191-115.194, concerning surface coating processes, to require automobile refinishing operators to limit VOC emissions to less than 3.0 pounds per gallon as applied, to prohibit the sale or offering for sale of architectural coatings having a VOC content greater than 3.5 pounds per gallon, to extend the existing emission limits for miscellaneous metal parts and products to include wood and plastic parts and products, and to require any surface coating operation emitting more than 100 pounds per day, after application of low-solvent technology, to capture and control by adsorption or incineration the remaining fugitive emissions; §§115.201-115.203, concerning graphic arts (printing) processes, to require additional control of all rotogravure and flexographic printing facilities which emit over 100 pounds of VOC per day, and, when adsorption or incineration is used, to require an emission reduction effectiveness of at least 80% by weight; §§115.291-115.294, concerning consumer-solvent products, to prohibit the sale or offering for sale of automobile windshield washer fluids containing VOC solvents, room fresheners/deodorants capable of emitting VOC's, and aerosol spray products with VOC propellants; §§115.131-115.135, concerning motor vehicle fuel dispensing facilities (gasoline service stations), to control, if required by EPA, VOC emissions from refueling of vehicles (Stage II); and §101.1, concerning definitions, to define automobile refinishing, architectural coating, and consumer-solvent products.

The Texas Air Control Board has been receiving technical guidance from EPA concerning updated methods to be used to calculate vehicular emissions, and specifications for running the computer model used to determine the emission reductions required in Dallas and Tarrant counties. Some of this guidance and associated technical data has been received too late to verify the adequacy of emission reduction requirements determined using previous technical information. Also, failure to take sufficient control measures to public hearing to allow adoption of those necessary to demonstrate attainment prior to December

31, 1987, would increase the risk of growth sanctions. Therefore, the Texas Air Control Board has elected to propose more control measures than may be required according to technical analyses performed to date. Since of the costs and other impacts associated with these controls are significant, the Texas Air Control Board plans to match the controls actually adopted very closely to the emission reduction requirements determined following completion of the latest technical analyses.

Public comments, both oral and written, are invited at the public hearings. The hearings will be held at the following times and locations: October 28, 1987, 7 p.m., at the Cleburne Civic Center, 1501 West Henderson Street, Cleburne; October 29, 1987, 2 p.m., at the City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington; October 28, 1987, 7 p.m., District Court Room, Rockwall County Courthouse, Rockwall; and October 29, 1987, 7 p.m., City Council Chambers, Municipal Building, 101 West Abrams Street, Arlington.

The hearings are structured for the receipt of narrative comments. Interrogation or cross-examination is not permitted, although a Texas Air Control Board staff member will be available immediately before and after each hearing to answer questions informally. Accordingly, persons desiring to testify at a hearing should examine the materials on file beforehand and prepare their statements for presentation at the hearing.

Written comments not submitted at a hearing may be submitted to the Texas Air Control Board central office in Austin prior to, and including, November 2, 1987. Comments received by 4 p.m. on that date at the Texas Air Control Board central office in Austin will be considered by the board prior to any final decision on the proposed revisions. Five copies of all written comments are requested.

Copies of the proposal are available for inspection at the central office of the Texas Air Control Board located at 6330 U.S. Highway 290 East, Austin, Texas 78723, and at the Texas Air Control Board, Fort Worth regional office located at 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116. For further information, call Russell Baier at (512) 451-5711.

Issued in Austin, Texas, on September 23, 1987.

TRD-8708181 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: September 23, 1987
For further information, please call (512) 451-5711, ext. 354.

Public Hearing

Pursuant to the requirements of Texas Clean Air Act (TCAA), §3.09, Texas Civil Statutes, Article 4477-5, 40 Code of Federal Regulations 51.102 of the Environmental Protection Agency regulations concerning state implementation plans; the Administrative Procedure and Texas Register Act, §5, Texas Civil Statutes, Article 6252-13a, and §103.11(4) of the procedural rules of the Texas Air Control Board (TACB), the TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

The TACB is proposing to revise §116.5, concerning representation in application for permit and exemption, §116.7, concerning special permits, and §116.10, concerning public notification and comment procedure. The purpose of these revisions is to establish time limits and an applicant appeals procedure relating to TACB staff review of applications for permits, special permits, and permit amendments. Such time limits and appeals procedure are required under the provisions of Texas Civil Statutes, Article 6252-13(b).1, §§1-7, enacted by the 70th Legislature, 1987.

The TACB is proposing new §116.13, concerning emergency orders, which establishes the purpose of an emergency order and the procedure for issuance of an emergency order. In addition, the TACB is proposing to revise §103.11, concerning types of hearings, §103.41, concerning contested cases, and §103.53, concerning proposal for decision in contested cases, to support the public hearing provisions of the new §116.13. New §116.13 and the revisions to §§103.11, 103.41, and 103.53 are proposed in response to new requirements of the TCAA, §3.272, enacted by the 70th Legislature, 1987. The new section of the TCAA provides authority to the TACB to issue emergency orders allowing addition, replacement, or repair of facilities damaged by catastrophic events.

The hearing will be held at 10 a.m. on November 5, 1987, in the auditorium of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723. The hearing is structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to answer questions informally.

Written comments not presented at the hearing may be submitted to the TACB central office in Austin prior to and including November 5, 1987. Material received by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the central office of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. For further information, call Barry Irwin at (512) 451-5711.

Issued in Austin, Texas, on September 28, 1987.

TRD-8708340 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: September 28, 1987
For further information, please call (512) 451-5711, ext. 354.



Texas Department of Banking Notice of Hearing

The hearing officer of the Texas Department of Banking will conduct a hearing on October 29, 1987, at 9 a.m. at 2601 North Lamar Boulevard, Austin, on the application of Kiker-Seale Funeral Home, Inc., of Colorado City, for approval of conversion from trust funded prepaid funeral services to an annuity funded program, entitled Trust Enhancement Program proposed by Funeral Directors Life Insurance Company (FDLIC), Abilene.

Additional information may be obtained from Harold L. Rose, Director of Special Audits, State Banking Department, 2601 North Lamar Boulevard, Austin, (512) 479-1200.

Issued in Austin, Texas, on September 23, 1987.

TRD-8708241 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 24, 1987
For further information, please call (512) 479-1200.



Texas Education Agency Request for Applications—Extension of Deadline for Submission of Applications

The Texas Education Agency, in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2819), requested proposals for the establishment by school districts of school-community guidance centers in areas reflecting high concentration of adjudicated persons. The Texas Education Agency is extending the deadline for submission from Wednesday, September 16, 1987, to Monday, October 12, 1987. The purpose of the centers is to decrease the incidence of disruptive student behavior and decrease student contacts with the criminal justice system.

School districts, cooperatives of school districts, and cooperatives of school districts with an educational service center that have an average daily attendance of at least 6,000 students are eligible to apply. The program begins October 1, 1987, and terminates August 31, 1988. The 70th Legislature, 1987, appropriated in Article III of the State Appropriations Bill \$1,500,000 per year, \$3,000,000 for the 1987-1989 biennium. Approximately 21 projects will be funded. Currently funded first-year applicants must apply for the second year of funding. The second year of funding is contingent upon the program's achieving its first-year objectives and the quality of implementations.

Selection of the contractor will be based on the contractor's capacity to develop a school-community guidance center, administer and manage the project, related experience, management and staffing plans, budget, and evaluation procedures.

A copy of the complete request for application may be obtained by calling or writing the Document Control Center, Room 6-108, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Applications may be delivered by mail or in person to the Texas Education Agency Document Control Center. Applications received after 5 p.m. on Monday, October 12, 1987, will not be considered for funding.

Issued in Austin, Texas, on September 28, 1987.

TRD-8708306 W. N. Kirby
Commissioner of Education

Filed: September 28, 1987
For further information, please call (512) 463-9212.



Texas Department of Health Correction of Error

Emergency amendments submitted by the Texas Department of Health contained errors as submitted in the August

28, 1987, issue of the *Texas Register* (12 TexReg 2900).

The statutory authority to subchapter C should read as follows: "The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis, and Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements of custodial care homes."

The statutory authority to subchapter D should read as follows: "The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis, and Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements of maternity homes."

The statutory authority to subchapter L should read as follows: "The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis, and Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements of personal care homes."

The statutory authority to subchapter N should read as follows: "The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis, and Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements for facilities serving the mentally retarded citizens of Texas."

The statutory authority to subchapter O should read as follows: "The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis, and Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements for the architectural design of facilities serving the mentally retarded."

In §145.238, subsection (a) should read as follows:

(a) Residential building types. Detached single-family type dwellings embody most of the qualities and requirements expected for this category. However, other existing building types such as duplexes and certain small apartment or dormitory type buildings can sometimes be utilized. Due to the innumerable variations possible in floor plan arrangement, construction, type of building, etc., each existing facility must be evaluated independently. Distinct parts of another building are not allowed. Applicable codes include the NFPA 101, Life Safety Code, **1985, Chapter 21, [(1976), Chapter 11], Residential Board and Care, Occupancies, [§11-5, Lodging or Rooming Houses,]** and applicable local codes and ordinances."

Proposed rules submitted by the Texas Department of Health contained errors as submitted in the September 4, 1987, issue of the *Texas Register* (12 TexReg 3017).

The fiscal note and public benefit note to the preamble of Chapter 145 should read as follows: "Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections concerning custodial care homes, maternity homes, and facilities for the mentally retarded; additionally, Mr. Seale has determined that for personal care homes there will be no fiscal implications for state or local government, but there will be some fiscal impact on small businesses as a result of

enforcing or administering the sections. The cost of compliance for personal care homes of eight beds or less will vary between a one-time cost of \$3,000 to a one-time cost of \$13,000. An average small personal care home business would incur a one-time cost somewhere between \$3,000 and \$10,000. There are no additional costs anticipated for existing custodial care homes, maternity homes, and facilities serving the mentally retarded, most of which are small businesses, in meeting the applicable amended requirements.

"Mr. Seale has also 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 as proposed will be that the fire safety requirements for custodial care homes, maternity homes, personal care homes, and facilities serving the mentally retarded will be more consistently and uniformly applied, and all such facilities will conform to the latest edition of the nationally-recognized Life Safety Code, which represents the most current state of the art in fire safety. There is no anticipated cost to individuals who are required to comply with the proposed sections."

The statutory authority note to subchapter C should read as follows: "The amendments are proposed under Texas Civil Statutes, Article 4442c, §4A and §7, which provide the Board of Health with the authority to adopt rules concerning fire safety requirements of custodial care homes."

The statutory authority note to subchapter D should read as follows: "The amendments are proposed under Texas Civil Statutes, Article 4442c, §4A and §7, which provide the Board of Health with the authority to adopt rules concerning fire safety requirements of maternity homes."

The statutory authority note to subchapter L should read as follows: "The amendments are proposed under Texas Civil Statutes, Article 4442c, §4A and §7, which provide the Board of Health with the authority to adopt rules concerning fire safety requirements of personal care homes."

In §145.182(a)(3)(G), the first sentence should read: "Doors between resident rooms and corridors or public spaces shall be not less than 1 3/4 [1-3/8] inches thick solid core wood construction and latch in their frames."

The statutory authority note to subchapter N should read as follows: "The amendments are proposed under Texas Civil Statutes, Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements for facilities serving the mentally retarded citizens of Texas."

The statutory authority note to subchapter O should read as follows: "The amendments are under Texas Civil Statutes, Article 4442c, §4A and §7, which require the Board of Health to adopt rules concerning fire safety requirements for the architectural design of facilities serving the mentally retarded."

Radioactive Material License Amendment

The Texas Department of Health gives notice that it has granted an amendment to the following radioactive material license: Radioactive Material License Number L03905, issued to Syncor International Corporation, for their facility located in El Paso, (mailing address: Syncor International Corporation, 1810 Murchison Road, Suite 205, El Paso, Texas 79902). The amendment to the license changes the person designated as radiation safety officer.

The Division of Licensing, Registration, and Standards has determined that the amendment has no significant impact on the human environment; the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety and the environment; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety and the environment; the issuance of the license amendment will not be inimical to public health and safety or have a detrimental impact on the environment; and the licensee satisfies any applicable special requirements in *Texas Regulations for the Control of Radiation*, Part 44.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(b), and as set out in *Texas Regulations for the Control of Radiation* 13.6. A person affected is defined as a person who is resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, call (512) 835-7000.

Issued in Austin, Texas, on September 23, 1987.

TRD-8708246 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: September 25, 1987
For further information, please call (512) 835-7000.



Request for Proposals

The Texas Department of Health announces the availability of funds for fiscal year 1988 for project grants to local service providers. The funds are to be used to assist minority communities to organize and collaborate to deliver AIDS health education and risk reduction messages to prevent the spread of HIV infections in the black and Hispanic communities of Texas.

Funding of these grants was authorized by a cooperative agreement with the Centers for Disease Control (U62/

CC602008-02-01). Funds appropriated for these grants total \$474,258. Proposals for SMSA based projects should be within a range \$10,000 to \$75,000 based on a combination of the extent of the AIDS problem in the community, the size of the minority community, and the number of AIDS cases or HIV infections in the minority community. Proposals for statewide projects should be within the range of \$50,000 to \$100,000 and must demonstrate with letters of support, the ability to work with minority organizations around the state both in and outside of SMSAs and other statewide agencies/organizations. Letters of intent to apply for funds should be postmarked not later than October 16, 1987, and sent to C. E. Alexander, M.D., Dr.P.H., Texas Department of Health, Bureau of AIDS and STD Control, 1100 West 49th Street, Austin, Texas 78756-3199.

When writing to the department, please identify by title (Minority AIDS Information/Education Project Grant) the name of this grant. Completed applications must be postmarked on or before November 20, 1987. Eligible entities are nonprofit minority organizations and organizations with a minority component serving minority communities in the following areas: Austin, Corpus Christi, Dallas, Fort Worth, El Paso, Houston, Laredo, Lower Rio Grande Valley, and San Antonio. In addition, two statewide organizations coordinating minority programs are eligible. Eligible entities that send a letter of intent will receive an application kit consisting of materials essential for submitting an application. For more information, contact Dr. C. E. Alexander, (512) 458-7304.

Issued in Austin, Texas, on September 25, 1987.

TRD-8708304 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: September 25, 1987
For further information, please call (512) 458-7236.



The Texas Department of Health announces the availability of funds for fiscal year 1988, for project grants to local nonprofit AIDS service organizations. The purpose of these funds is to help prevent the further transmission of human immunodeficiency virus (HIV) and AIDS in target groups believed to be at increased risk for AIDS. These target groups are gay/bisexual men, IV drug users, prostitutes, heterosexuals with multiple partners, and the sex and/or needle-sharing partners of the target group. Funding of these grants was authorized by a cooperative agreement with the Centers for Disease Control (U62/CC602008-02-01). Funds appropriated for these grants total \$100,000. Proposals may range from \$25,000 to \$50,000 and must come from nonprofit AIDS service groups serving a county or other geographical area having at least 20 cases of AIDS reported to TDH as of October 16, 1987. (Exception: No minimum number of reported cases is required if the proposal covers an entire state health planning region.) Letters of intent to apply for funds should be postmarked not later than October 16, 1987, and sent to C. E. Alexander, M.D., Dr.P.H., Texas Department of Health, Bureau of AIDS and STD Control, 1100 West 49th Street, Austin, Texas 78756-3199.

When writing to the department, please identify by title (AIDS Service Organization Project) the name of this grant. Completed applications must be postmarked no later than November 20, 1987.

For more information, contact Dr. C. E. Alexander, (512) 458-7304.

Issued in Austin, Texas, on September 25, 1987

TRD-8708305 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: September 25, 1987
For further information, please call (512) 458-7304.



The Texas Department of Health (TDH) is soliciting proposals for the provision of comprehensive out-patient clinic case management services including diagnostic, treatment, counseling, and social services, to persons with symptoms of epilepsy in selected medically underserved areas of the state. Services must be coordinated with appropriate TDH regional clinic activities.

Project headquarters must be within a non-profit medical facility (e.g. teaching hospital or medical school) with itinerant outreach clinics in the areas served. The entire project must be under the direction of a physician and all patient records from itinerant outreach clinics must be maintained at the headquarters.

Clinic services will be reimbursed through contractual arrangements with TDH, Crippled Children's Services (CCS) Bureau. Each contract will cover a 12-month period with program option to extend through August 31, 1989, and will be in accordance with regulations contained in UGCS manual which is available from TDH, Grants Management Division. Total payments for all contracts will not exceed \$250,000 per 12 month period.

Contracts will be awarded on the basis of the most cost efficient and professionally appropriate plan of operation as evidenced by: description of service delivery methodology with time-phased and measurable goals and objectives; professional staff and resources available; documentation of planning coordination and support from regional and local public health offices and the local medical community; description of geographic area to be served including demographic and medical need indicators; projected annual average cost per patient served including the number of individuals to be served, the number of patient encounters by type of service, and frequency of services provided each individual; and outcome to be achieved including number of patients to be stabilized, number of persons maintaining employment, number of patients re-employed, decrease in number of days of inpatient hospitalization, etc.

To be considered, proposals must indicate that at least 20% of the budget will be provided from other sources during the initial contract period. The proposal should also describe a long range plan to increase funding from other sources. The contract recipient shall use funds from this contract to supplement its budget. These funds will in no event supplant existing funds currently available to the contract recipient.

Proposals should be directed to Jim Rabin, purchasing and records supervisor of the CCS Bureau (512/465-2666). In order to be considered, proposals must be received by the CCS Bureau of TDH no later than 5 p.m. September 30, 1987.

Use of Funds and Patient Eligibility. Contract funding will provide a basic funding mechanism for the provision of clinic services to any person with symptoms of epilepsy in the defined service area. Clinic services include prescribed laboratory tests, diagnostic procedures and interpretations, prescribed medications, and patient assistance such as meals or transportation reimbursement. Texas residents with income/assets less than 200% of federal poverty level must not be required to pay any fee for service provided. Others may be charged up to usual and prevailing fees.

Charges for clinic services may be submitted to all available third party payors. All income generated from third party payments and patient fees must be utilized by the contract recipient in accordance with UGCS regulations.

Required Service Delivery Methodology. Proposal submissions must detail the methods by which required services will be provided. Services must be provided on a regular frequency as designated in the proposal in out-patient clinics conducted at easily accessible, barrier-free sites in each clinic city designated in the proposal. Clinics will be staffed by qualified professional and support personnel and be conducted in accordance with prevailing public health clinic protocols. Each clinic will be directed by a physician who is licensed to practice in Texas, is certified in the specialty of neurology by the American Board of Medical Specialties, or equally qualified in neurology by training and experience. The clinic physician will be physically present at the site during the entire clinic period, and each patient will be examined by the physician who will: diagnose and evaluate newly referred patients to include a history and physical exam and perform follow-up exams on established patients; obtain appropriate tests and laboratory work for patient evaluation and treatment; develop and implement a treatment plan for each patient; prescribe and adjust medications as appropriate for seizure control; meet with the medical social worker to discuss the medical treatment and social services plans in order to coordinate efforts; advise the patient of findings and the treatment plan, instruct the patient as appropriate, and schedule subsequent clinic appointments; and cause all clinic transactions to be properly recorded in the patient's file. Each new clinic patient will receive counseling by the medical social worker. Established patients will receive follow-up counseling as professionally appropriate. A social services plan will be developed by the medical social worker in conjunction with the patient/family and updated each year at a minimum. Copies of selected plans/updates are to be sent to the regional TDH social work staff for coordination purposes. Additional clinic services will include prescribed laboratory tests, diagnostic procedures and interpretations, prescribed medications for epilepsy and related complications, and assistance to patients as necessary with transportation and meals.

Required Clinic Staffing. Staffing at each clinic on each clinic date must include: the physician clinic director; at least one registered nurse (BSN); at least one medical social worker (MSW or equivalent experience); and at least one records clerk. Duties and qualifications of each person must be specified.

Proposed Annual Cost Per Patient Served. Cost per patient must encompass costs for all budget categories including staff salaries, professional fees, office rental, travel costs, equipment, supplies, and all other categories. Applicant must show proposed costs and charges for all types of services and yearly volume estimates for each type of service.

Reporting Requirements. In addition to reports and audits mandated in the UGCS manual, the contract will require the following reports to be submitted in a contract-prescribed format which is compatible with IBM-PC data systems:

(1) detailed clinic activity reports to support monthly billings;

(2) quarterly summary reports containing caseload and services provided information, including charges submitted to other third party payment sources; and assessment of degree of goal attainment;

(3) a year-end narrative and quantitative summary evaluating measurable objectives as defined in the initial plan of operation; and

(4) an end of contract patient status report which will include a brief individual patient record of services received and reimbursements obtained. Copies of each patient's complete file must be provided to the TDH not more than 60 days after contract expiration or cancellation. This provision may be waived only at the discretion of TDH.

Issued in Austin, Texas, on September 24, 1987

TRD-8708230 Robert A. Maclean, M.D.
Deputy Commissioner
for Professional
Services
Texas Department
of Health

Filed: September 24, 1987
For further information, please call (512) 465 2666



Texas Higher Education Coordinating Board

Request for Proposals

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Higher Education Coordinating Board invites proposals from qualified private and public concerns to provide a comprehensive evaluation of Youth Opportunities Unlimited 1984, 1985, and 1986, to ascertain the degree of achievement of the principle goals of a 90% high school completion rate and a 25% improvement in high school retention for the target population. The contractor will be required to perform all tasks necessary to identify data sources; design and implement evaluative instruments; gather data from program participants, families, school districts, sponsors, and hosts; compile attitudinal/satisfaction survey data; and using a comparable group of 2,000 or more non-YOU JTPA program participants from same or similar geographic and socioeconomic background, compare high school completion and retention rates.

Project deliverables shall include periodic reports and 200 copies of a final report to: evaluate YOU participant outcomes for high school graduation and school retention; compare YOU outcomes with outcomes of comparison group; compile attitudinal/satisfaction data of participants, families, sponsors, YOU host campuses, and home school districts; compile suggestions for program improvements from each group interviewed, make recommendations; and provide all survey data, source materials, student data cross reference to the Texas Higher Education Coordinating Board.

Selection Criteria. Selection will be based on factors including, but not limited to, the following: the contractor should have demonstrated experience in evaluation of high school dropout prevention residential models; have a working

knowledge of the YOU program philosophy and design, an understanding of coordination efforts of YOU, and higher education's role in dropout prevention; provide previous project experience that would relate, or be of benefit, to this project; and demonstrate organizational and staff capability for successful completion.

Application Procedure. Funding for this project is made available through the YOU administrative contract from JTPA, §123, education coordination funds. Funding for this project shall not exceed \$30,000 and the contract period shall be a maximum of six months. Applications must be postmarked no later than the close of business (5 p.m.) on October 23, 1987. Three copies of the final application are required and may be mailed to Claudia Romero Rogers, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or hand-delivered to the same at 200 East Riverside Drive, Room 201, Austin. For additional information regarding this request for proposal, please contact Claudia Romero Rogers, Texas Higher Education Coordinating Board, at the previously mentioned address or by calling (512) 462-6409.

Issued in Austin, Texas, on September 23, 1987.

TRD-8708303 Kenneth H. Ashworth
Commissioner of Higher Education
Texas Higher Education Coordinating
Board

Filed September 25, 1987
For further information, please call (512) 462-6420



Texas Department of Human Services Amended Consultant Contract Award

The Texas Department of Human Services (TDHS) published notice of a contract award to Cynthia Roberts-Gray for program evaluation in Food Services Programs in the June 12, 1987, issue of the *Texas Register* (12 Tex Reg 1918). Notice is given that TDHS is amending the contract to increase the amount of labor and materials specified in the contract by \$55,000.

Issued in Austin, Texas, on September 28, 1987

TRD-8708328 Marlin W. Johnston
Commissioner
Texas Department
of Human Services

Filed September 28, 1987
For further information, please call (512) 450-3765.



State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for incorporation of Equal Life Insurance Company, a domestic stipulated premium insurance company. The home office is to be in Fort Worth.

(2) Application for a name change by American Bankers Life Insurance Company, a domestic life insurance company. The home office is in Waco. The proposed new name is NGC American Bankers Insurance Company.

(3) Application for a name change by American Insurance Company of Texas, a domestic life insurance company. The home office is in Waco. The proposed new name is NGC American Insurance Company.

(4) Application for a name change by Boren Life Insurance Company, a domestic stipulated premium insurance company. The home office is in Jacksonville. The proposed new name is Republic Service Life Insurance Company.

(5) Application for admission to do business in Texas of Security Title and Guaranty Company, a foreign title insurance company. The home office is in New York, New York.

(6) Application for admission to do business in Texas of Wisconsin Life Insurance Company, a foreign life insurance company. The home office is in Madison, Wisconsin.

Issued in Austin, Texas, on September 24, 1987.

TRD-8708302 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: September 24, 1987
For further information, please call (512) 463-6327.



Notice of Public Hearing

The State Board of Insurance will hold a public hearing on Docket 1549 on Tuesday, October 13, 1987, at 9 a.m., in the hearing room of the DeWitt Greer Building, 11th and Brazos Streets, Austin. The purpose of the hearing is to consider approval of general liability insurance rate revisions proposed in four filings submitted by Insurance Services Office, Inc. Petitions by the Insurance Services Office request revision of bodily injury and property damage basic limits rates for premises/operations classifications (new Subline 334) for Division Six of the *Commercial Lines Manual*. This revision does not apply to the old Subline 313; revision of basic limits bodily injury rates for premises/operations classifications (new Subline 334) for Division Six of the *Commercial Lines Manual*. This revision does not apply to old Subline 316; revision of bodily injury increased limit factors for products/completed operations classifications (new Subline 336) for Division Six of the *Commercial Lines Manual* and *Texas Guide (a) Rate Pamphlet*. This revision does not apply to old Subline 316; revision of basic limits bodily injury and property damage rates for products/completed operations classifications (new Subline 336) for Division Six of the *Commercial Lines Manual*. The revision does not apply to old Subline 316.

The petitions filed by the Insurance Services Office are available for public inspection at the office of the Chief Clerk of the State Board of Insurance in the State Insurance Building, Room 406, 1110 San Jacinto Boulevard, Austin.

The procedure that will be used in consideration of these filings will be in accordance with the rules of practice and procedure before the State Board of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) as revised by the Insurance Code, Article 5.97.

The proposed rate revisions are considered under the jurisdiction and legal authority of the Insurance Code, Articles 1.04, 5.14, 5.15, 5.19, and 5.97.

Please direct any inquiries to James Fisher, Assistant Director of General Liability Insurance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998 (512) 463-6317

Issued in Austin, Texas, on September 28, 1987

TRD-8708344 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: September 28, 1987
For further information, please call (512) 463-6327.



Texas State Board of Public Accountancy Contract Award

The Texas State Board of Public Accountancy (TSBPA), in accordance with Texas Civil Statutes, Article 6252-11c, announces a personal service contract award, to conduct a feasibility study of the current computer system, make a recommendation for future computer requirements, and prepare a five year plan in accordance with Automated Information and Telecommunications Council rules, §201.1 (1 TAC §201.1).

The request for proposals was published in the May 22, 1987, issue of the *Texas Register* (12 TexReg 1676).

Proposals were received from Arthur Anderson, White Petrov McHone, Seidman and Seidman, Gus Schneiderheinz, and Touche Ross. The contract was awarded to Gus Schneiderheinz, 8807 Rustling Meadows, San Antonio, Texas 78250.

The consultant contract began June 22, 1987, and ended August 31, 1987. The fee estimate was \$20,500, including travel reimbursement, with a provision to revise the study and/or plan as requested by the board after August 31, 1987, at an hourly rate of \$50 per hour.

The feasibility study provided an analysis of the current and projected needs of the agency and identified additional/replacement computer equipment required to meet these needs maximizing utilization of current computer system resources. Both the feasibility study and five year plan were submitted to the board prior to August 31, 1987.

Issued in Austin, Texas, on September 25, 1987.

TRD-8708281 Bob E. Bradley
Executive Director
Texas State Board of Public
Accountancy

Filed: September 25, 1987
For further information, please call (512) 451-0241.



Railroad Commission of Texas LP-Gas Advisory Committee Meeting

The LP-Gas Division of the Railroad Commission of Texas announces a meeting of the LP-Gas Advisory Committee to be held on Tuesday, October 20, 1987, at 9:30 a.m. in Room 7-156 at 1701 North Congress Avenue, Seventh

Floor, William B. Travis Building, Austin.

Issued in Austin, Texas, on September 25, 1987

TRD-8708269 Walter Earl Lillie
Special Counsel
Railroad Commission of Texas

Filed: September 25, 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 Lillie
Special Counsel
Railroad Commission of Texas

Filed: September 4, 1987

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



Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of September 21-25, 1987.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within

30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of September 21-25, 1987

Harris County Municipal Utility District; wastewater treatment facilities; 5300 Addicks-Satsuma Road, approximately 5.1 miles north of IH-10 and approximately 1,600 feet east of State Highway 6 in Harris County; 12124-01; renewal

Weston Municipal Utility District; wastewater treatment facilities; on the western bank of realigned Mason Creek (Harris County Flood Control Ditch Number T-101-00-00) on the northeast quadrant of the intersection of Mason Road and IH-10 in Harris County; 11632-01; renewal

Northwest Harris County Municipal Utility District Number 23; wastewater treatment plant; approximately one mile southeast of the intersection of Stuebner-Airline Road and Bammel-North Houston Road, Northwest of the City of Houston in Harris County; 12144-01; renewal

Alligator Head Club; sewage treatment plant; approximately one mile west of Port O'Connor on Maple Street on the north bank of the Intracoastal Waterway in Calhoun County; Port O'Connor; 11874-01; renewal

West Texas Utilities Company, Concho Steam Electric Station; steam electric station; on the west bank of Bell Street Lake and south and east of the intersection of East Avenue H and Burgess Street in the City of San Angelo, Tom Green County; San Angelo; 00965; renewal

GAF Chemicals Corporation; amiben manufacturing plant and acetylene manufacturing plant; on company property in Abstract Number 17 of the John Little Survey, Moore County; Texas City; WDWs-34, 113, 114; amendments

Malone Service Company; diverse industrial facilities; on company property, approximately three miles south of Texas City, in the Samuel C. Bundick Survey, Abstract 7, Galveston County; Texas City; WDWs-73 and 138; amendments

Montgomery County Municipal Utility District Number 58; wastewater treatment facilities; approximately 1,200 feet east of U.S. Highway 59 and approximately 2,200 feet north of Kingwood Drive in Montgomery County; Houston; 12530-01; renewal

City of Streetman; wastewater treatment facilities; on the north bank of Sloan Creek, east of and adjacent to the intersection of FM Road 416 and U.S. Highway 75, at the southern edge of Streetman in Freestone County; Streetman; 10471-01; renewal

Lakewood Village Utilities Company; wastewater treatment facilities; approximately 7,000 feet northeast of the north end of the Old Lake Dallas Dam in Denton County; Dallas; 10903-01; renewal

City of Giddings; wastewater treatment facilities; along an unnamed creek to the south of the State Boys School, approximately one mile south of U.S. Highway 290 and two miles east of the City of Giddings in Lee County; Giddings; 10456-03; renewal

Harris County Municipal Utility District Number 70; wastewater treatment facilities; on the north bank of Langham Creek at FM Road 529 (Freeman Road) in Harris County; Houston; 11486-01; renewal

Whitecliff Services, Inc.; private condominium development; at the south end of Judy Drive in the subdivision area, approximately four miles northeast of the intersection of FM Road 2322 and State Highway 71 in Travis County; Spicewood; 11151-01; renewal

City of Orange Grove; wastewater treatment facilities; on the east side of County Road 351, approximately 1/2 mile south of the city of Orange Grove, Jim Wells County; Orange Grove; 10592-01; renewal

Larry R. Buck; wastewater treatment facilities; north of the intersection of Bud Cross Drive and McRee Street, approximately 1.75 miles northwest of the intersection of FM Road 1220 (Morris-Ditto-Newark Road) and East Peden Road in Tarrant County; Fort Worth; 12909-01; renewal

Angle Acres Water Supply Corporation; wastewater treatment facilities; approximately two miles east of the City of Angleton, on the southwest quadrant of the intersection of County Road 213 and County Road 598 in Brazoria County; Angleton; 12420-01; renewal

Spring Branch Savings and Loan Association; wastewater treatment facilities; at 1544 Sawdust Road in Montgomery County; 12544-01; renewal

City of Cameron; wastewater treatment plant; approximately 1 1/4 miles northwest of the intersection of U.S. Highway 77 and FM Road 2095 and 1 1/4 miles southeast of downtown Cameron in Milam County; Cameron; 10004-01; renewal

Baltimore Spice Company; wastewater treatment facilities; at 8909 Kingsway Street in the City of Anthony, El Paso County; Anthony; 02591; amendment

Postive Feeds, Inc.; livestock feed manufacturing plant; on the east side of State Highway 36 approximately one mile north of the City of Sealy, Austin County; Sealy; 02314; renewal

Diamond Shamrock Refining and Marketing Company; waste disposal wells; about eight miles northeast of the City of Dumas, in Moore County; Dumas WDWs-102, 192; amendments

Issued in Austin, Texas, on September 25, 1987.

TRD-8708286 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: September 25, 1987
For further information, please call (512) 463-7898



Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th

day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Henderson County Municipal Water Authority, on September 15, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting William W. Thompson, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 22, 1987.

TRD-8708229 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: September 24, 1987
For further information, please call (512) 463-7898.



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to J. M. Huber Corporation, on September 14, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Debra C. Eccles, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 22, 1987.

TRD-8708227 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: September 24, 1987
For further information, please call (512) 463-7898.



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Natalia, on September 14, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Debra Eccles, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 22, 1987.

TRD-8708228 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: September 24, 1987
For further information, please call (512) 463-7898.





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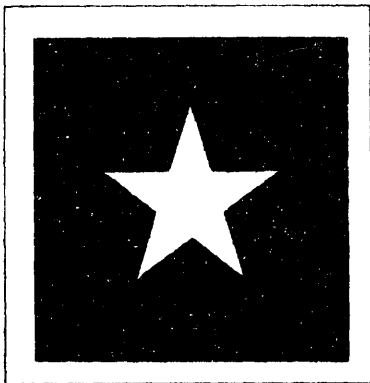


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